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IN [illegible] VOLUMES.

VOLUME [illegible] J—M.

[illegible] BY [illegible]

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[illegible] Smith St. [illegible] B. H. Blackwell, 50 & 51 Broad Street, Oxford.
Deighton, Bell & Co., Cambridge.

ON THE CONTINENT.

[illegible] Carlstrasse, Berlin. Karl W. Hiersemann, Leipzig.
Ernest Leroux, 28, Rue Bonaparte, Paris.
Martinus Nijhoff, The Hague.

IN INDIA.

[illegible] Calcutta and Simla. Superintendent, American Baptist Mission Press, Rangoon.
[illegible] Manager, Educational Book Depôt, Nagpur and Jubbulpore.
[illegible] Rai Sahib M. Gulab Singh and Sons, Mufid-i-Am Press, Lahore.
Messrs. A. J. Combridge & Co., Bombay.

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See CASES UNDER FISHERY, RIGHT OF.

See FOREST ACT, s. 45.
[I. L. R., 24 Calc., 504
L. R., 24 I. A., 33

JOINDER OF CAUSES OF ACTION
—continued.

16. ———— **Suit for specific performance and return of money advanced on agreement**—*Civil Procedure Code, 1877, s. 44—Misjoinder.*—The plaintiffs sued for specific performance of an agreement in writing which set forth, *inter alia*, that the defendants had agreed to sell, etc., under " certain conditions as agreed upon." Part of the purchase-money had been advanced by the plaintiffs to the defendants, for which the defendants had given their promissory notes; and the plaint contained a prayer that the defendants be ordered to pay over the amount of the notes. *Held* (affirming the decision of WILSON, *J.*) that there was no misjoinder of causes of action within the meaning of s. 44, rule (*a*), of the Code of Civil Procedure (Act X of 1877). CUTTS *v.* BROWN **I. L. R., 6 Calc., 328**
[5 C. L. R., 487: 7 C. L. R., 171

17. ———— **Suit for administration and accounts of separate estates**—*Civil Procedure Code, 1882, s. 44.*—The plaintiffs, who were the widow and daughter of *A*, sued the executors of the will of *A*'s father (*B*) for administration and account. There were four distinct subjects of claim in the plaint, *viz.*, (*1*) the estate of *A*.s great-grandfather, (*2*) the estate of *A*'s grandfather, (*3*) the jewels and ornaments which formed the stridhan of *A*'s mother which were in *A*'s possession at the time of his death, (*4*) a sum of R1,90,000 which it was alleged that *B* had settled on *A* at the time of his marriage. Subsequently to the filing of the suit, the first plaintiff amended the plaint and claimed the jewels and ornaments, which formed the subject-matter of the third claim, as her own property, alleging that they had been presented to her on the occasion of her marriage. The plaint prayed (*1*) for the declaration that a certain portion of the estate in the hands of the first three defendants had been ancestral property in *B*'s hands, (*2*) for an account and administration, (*3*) that the jewels and ornaments should be delivered up. *Held* that there was a misjoinder of causes of action, having regard to the provisions of rule (*b*), s. 44 of the Civil Procedure Code (Act X of 1877). Part of the claim in the plaint was for a portion of *A*'s estate, and was founded upon the plaintiff's alleged right as heir of *A*. The other portion of the claim in the plaint—*viz.*, that relating to the ornaments—had no reference to *A*'s estate, and was personal to the first plaintiff herself. ASHABAI *v.* TYEB HAJI RAHIMTULLA
[I. L. R., 6 Bom., 390

18. ———— **Suit for moveable and immoveable property**—*Civil Procedure Code, 1882, s. 44.*—There is nothing irregular in seeking to recover moveable and immoveable property in the same suit if the cause of action is the same in respect of both. GIYANA SAMBANDHA PANDARA SANNADHI *v.* KANDASAMI TAMBIRAN **I. L. R., 10 Mad., 375**

19. ———— **Suit for mortgage-debt with alternative prayer for sale**—*Civil Procedure Code, s. 44.*—A suit for recovery of a mortgage-debt with an alternative prayer for sale of the motgaged property, is not a suit for recovery of immoveable property within the meaning of s. 44 of the Civil Procedure Code. A claim for arrears of rent therefore can be joined with a claim for recovery of a mortgage-debt with such an alternative prayer without leave of the Court first obtained. GOVINDA *v.* MANA VIKRAMAN. MANA VIKRAMAN *v.* GOVINDA
[I. L. R., 14 Mad., 284

JOINDER OF CAUSES OF ACTION
—concluded.

20. ———— **Administration suit**—*Acts of maladministration regarding immoveable property outside jurisdiction—Civil Procedure Code (1882), s. 44, rule (a).*—In an administration action the fact that amongst other things leases of immoveable property granted by the executors to themselves are sought to be set aside on the ground that such leases are acts of maladministration does not make the action one for the recovery of immoveable property, and leave under s. 44, rule (*a*), is not necessary. NISTARINI DASSI *v.* NUNDO LALL BOSE
[I. L. R., 26 Calc., 891
3 C. W. N., 670

21. ———— **Misjoinder of causes of action**—*Civil Procedure Code (1882), s. 44—Zamindari and appurtenant sir land sold by separate deeds—Suit for pre-emption of both zamindari and sir.*—Where a zamindari share and the sír land held with it were sold to the same vendee by two separate deeds of sale executed on the same day, it was held that a suit to pre-empt both the zamindari share and the sír land was not liable to be defeated on the ground of misjoinder of causes of action. AMBIKA DAT *v.* RAM UDIT PANDE . . . **I. L. R., 17 All., 274**

22. ———— *Civil Procedure Code (1882), s. 44—Suit by assignee of Mahomedan widow for part of her dower and for part of the estate of the widow's deceased husband.*—*Held* that a suit by the assignee of a Mahomedan widow for the recovery of part of the assignor's dower, and of part of the estate of the assignor's late husband, did not contravene the provisions of s. 44, rule (*b*), of the Code of Civil Procedure. *Ashabai* v. *Tyeb Haji Rahimtulla, I. L. R., 6 Bom., 390,* dissented from. AHMAD-UD-DIN KHAN *v.* SIKANDAR BEGAM
[I. L. R., 18 All., 256

JOINDER OF CHARGES.

See CRIMINAL PROCEEDINGS.
[B. L. R., Sup. Vol., 750
I. L. R., 6 Calc., 96
I. L. R., 5 Mad., 20
I. L. R., 14 Calc., 128, 358, 395
I. L. R., 9 All., 452
I. L. R., 11 Mad., 441
I. L. R., 12 Mad., 273
I. L. R., 20 Calc., 537
1 C. W. N., 35

1. ———— **Charges for distinct offences**—*Separate charges and trials—Several offences under one section of Penal Code.*—In a case of several offences under one section of the Penal Code, the proper way is to try the accused (under separate charges) for each of the several distinct offences under the section. QUEEN *v.* SOBRAI GOWALLAH
[20 W. R., Cr., 70

2. ——— *Criminal Procedure Code, 1872, s. 453—Practice.*—S. 453 of the Criminal Procedure Code simply placed a statutory limit on the number of charges which may legally form part of a single trial. There was nothing in the section, however, to prevent an accused from being separately charged and tried on the same day for any number of distinct offences of the same kind committed within the year. EMPRESS *v.* DHONONJOY BARAJ . **I. L. R., 3 Calc., 540 : 1 C. L. R., 478**

3. ——— **Dacoity and receiving stolen property**—*Distinct offences—Penal Code, ss. 395, 412.*—The practice of dividing the facts which constitute parts of one offence into several minor offences condemned. A person convicted of dacoity under s. 395, Penal Code, cannot be convicted also of dishonestly receiving stolen property transferred by commission of dacoity under s. 412, when there is no evidence of the commission of more than one offence. QUEEN *v.* SHAHABUT SHEIKH . **13 W. R., Cr., 42**

4. ——— **Robbery on same night in several different places**—*Criminal Procedure Code, 1872, s. 453—Separate and distinct offences of same kind.*—Where persons are committed on three separate and distinct charges for three separate and distinct robberies committed on the same night in three different houses, they must be tried separately on each of the three charges. QUEEN *v.* ITWAREE DOME . . . . . **6 W. R., Cr., 83**

5. ——— **Theft and house-breaking by night**—*Criminal Procedure Code, 1872, s. 453.*—A person accused of theft on the 1st August, and of house-breaking by night in order to steal on the 2nd August, both offences involving a stealing from the same person, was charged and tried by a Magistrate of the first class at the same time for such offences, and sentenced to rigorous imprisonment for two years for each of such offences. *Held* that the joinder of the charges was regular under s. 453 of Act X of 1872, and the punishment was within the limits prescribed by s. 314. *Empress* v. *Umeda,* unreported, observed on by STRAIGHT, *J.* IN THE MATTER OF DAULATIA . **I. L. R., 3 All., 305**

6. ——— *Offences of the same kind committed in respect of different persons—Criminal Procedure Code (Act X of 1872), ss. 452, 453.*—Where an accused was charged under one charge including four counts, *viz.,* (1) house-breaking by night with intent to commit theft in the house of *A*; (2) theft from the same house; (3) house-breaking by night with a like intent in the house of *B*; (4) theft from that house; and where he pleaded guilty to the first and third charges,—*Held* that the case was within the terms of s. 453, and that the words "offences of the same kind" are not to be limited by the explanation to that section, but include a case like this, where a man has within a year committed two offences of house-breaking. *Held* also that the words "offences of the same kind" are not limited to offences against the same person. *Per* FIELD, *J.*—The explanation to s. 453 must be understood as extending and not as limiting the meaning of that section. *Per* NORRIS, *J.*—Care should be taken that accused persons are not prejudiced by charges being joined, and the Court should at all times be anxious to lend a willing ear to any application upon their behalf for separation of charges and for separate trials upon separate charges. *Empress* v. *Murari, I. L. R., 4 All., 147,* dissented from. MANU MIYA *v.* EMPRESS

[I. L. R., 9 Calc., 371 : 11 C. L. R., 52

7. ——— **Theft, receiving stolen property, giving and receiving illegal gratification, and false evidence**—*Criminal Procedure Code, 1872, s. 452—Separate charges—Distinct offences.*—The accused persons were tried on 27 charges, comprising the offences of theft, abetment of theft, and receiving stolen property, in 1872-73; similar offences in 1873-74; similar offences in 1874-75; the giving and receiving of illegal gratifications to and by public servants in 1874-75; and finally, the fabrication and abetment of fabrication of false evidence in 1876. One of the accused was convicted on two heads of charge, and the rest acquitted. The convicted appealed against his conviction and sentence; and the Government appealed against his acquittal on the other heads as well as against the acquittal of the rest. *Held* that the trial was irregular under s. 452 of the Code of Criminal Procedure; and so would be the hearing of the appeal. The High Court, however, heard the appeal in respect of offences in 1874-75 only, it appearing that this course did not prejudice the accused persons who had been fully and fairly tried for those offences. QUEEN *v.* HANMANTA . . **I. L. R., 1 Bom., 610**

8. ——— **Receiving, retaining, and dealing in stolen property**—*Criminal Procedure Code, 1872, s. 453—Penal Code, ss. 411, 413—Offences of different kinds—Procedure.*—A prisoner cannot be tried at the same trial for receiving or retaining (s. 411, Penal Code) and habitually receiving or dealing in (s. 413) stolen property. The proper course is to try the accused first for the offences under s. 411, and if he is convicted, to try him under s. 413, putting in evidence the previous convictions under s. 411, and proving the finding of the rest of the property in respect of which no separate charge under s. 411 could be made or tried by reason of the provisions of s. 453 of the Criminal Procedure Code. IN THE MATTER OF THE PETITION OF UTTOM KOONDOO. EMPRESS *v.* UTTOM KOONDOO

[I. L. R., 8 Calc., 634 : 10 C. L. R., 466

9. ——— **Rioting and hurt**—*Penal Code, ss. 147, 323—Offence made up of several offences.*—Rioting and hurt in the course of such rioting are distinct offences, and each offence is separately punishable. EMPRESS OF INDIA *v.* RAM ADHIN

[I. L. R., 2 All., 139

10. ——— *Criminal Procedure Code, s. 454—Committal on two separate charges—Trial as for one offence—Separate trial.*—Where persons are charged with rioting and also with causing hurt, although they may be tried as for one offence under s. 454 of the Criminal Procedure Code, it is not illegal to try them for both offences

separately. IN THE MATTER OF THE PETITION OF AMIRUDDIN. AMIRUDDIN *v.* FARID SARKAR [I. L. R., 8 Calc., 481

11. ———— **Abandonment of child and culpable homicide**—*Penal Code, ss. 304, 317—Exposure of child.*—Where a mother abandoned her child, with the intention of wholly abandoning it and knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment,—*Held* that she could not be convicted and punished under s. 304 and also under s. 317 of the Penal Code, but s. 304 only. EMPRESS OF INDIA *v.* BANNI . . . . **I. L. R., 2 All., 349**

12. ———— **Cheating different persons**—*Criminal Procedure Code, 1872, s. 453—Joinder of charges—Offences of the same kind committed in respect of different persons.*—*M* was accused of cheating *G* on two different occasions, and also of cheating *K* on a third occasion. The three offences were committed within one year of each other, and *M* was charged and tried at the same time for the three offences. *Held* that such joinder of charges was irregular, inasmuch as the combination of three offences of the same kind for the purpose of one trial can only be where such offences have been committed in respect of one and the same person, and not against different prosecutors, within the period of one year, as provided in the Criminal Procedure Code. EMPRESS OF INDIA *v.* MURARI **[I. L. R., 4 All., 147**

13. ———— **Misappropriation of money at different times**—*Postmaster—Criminal Procedure Code, ss. 233, 234—Offences of the same kind committed in respect of the same person.*—Where a postmaster was accused of having, on three different occasions within a year, dishonestly misappropriated moneys paid to him by different persons for money orders,—*Held* that, the offences of which such person was accused being the dishonest misappropriations by a public servant of public moneys (for, as soon as they were paid, they ceased to be the property of the remitters), such offences were "of the same kind" within the meaning of s. 234 of the Criminal Procedure Code, and such person might therefore, under that section, be charged with and tried at one trial for all three offences. *Empress* v. *Murari, I. L. R., 4 All., 147,* observed on. QUEEN-EMPRESS *v.* JUALA PRASAD . . . . **I. L. R., 7 All., 174**

14. ———— **Charge of three offences of the same kind**—*Criminal Procedure Code (Act X of 1882), s. 234.*—An accused was charged with criminal breach of trust as a public servant in respect of three separate sums of money deposited in the savings bank under three separate accounts. The third of these charges related to the misappropriation of R195 composed of two separate sums of R150 and R45 alleged to have been misappropriated on the 16th and 25th November, respectively. These sums the accused in his statement at the trial stated he had paid over on those dates to the depositor, and produced an account book showing entries of such payments on these dates. This statement was proved to be untrue, and the accused was convicted. On an application to quash the conviction on the ground that the trial had been held in contravention of s. 234 of the Code of Criminal Procedure,—*Held* that the entries in the account books did not clearly show that the misappropriation of the sum of R195 took place on two dates, or consisted of two transactions, the entries having been made for the purpose of concealing the criminal breach of trust; and that, under the circumstances, the criminal breach of trust with regard to the R195 was really one offence and could be included in one charge. IN THE MATTER OF LUCHMINARAIN **[I. L. R., 14 Calc., 128**

15. ———— **Framing incorrect record, forgery and using forged document**—*Penal Code (Act XLV of 1860), ss. 167, 466, 471—Separate trials—Offences of the same kind—Amendment of charge.*—The prisoner was committed for trial on fifty-five charges, including three charges under ss. 167, 466, and 471 of the Penal Code. At the trial before the District Judge sitting with assessors, the Court informed the prisoner that the trial would be confined to the three charges last mentioned. The prisoner was convicted on these, but the Court allowed evidence to be adduced by the prosecution on all the remaining charges, and in respect of these the prisoner was acquitted. On appeal to the High Court,—*Held* that the District Judge should have exercised the powers conferred on him by ss. 445 and 446 of the Code of Criminal Procedure, and then have proceeded to hold separate trials; that he should not have tried together the charges under ss. 167 and 466 of the Penal Code, as the offences were not of the same kind within the meaning of s. 453 of the Code of Criminal Procedure; but the convictions on these charges were upheld, as it did not appear that the prisoner had been prejudiced by the mode of trial adopted. IN THE MATTER OF THE PETITION OF SREENATH KUR. EMPRESS *v.* SREENATH KUR **[I. L. R., 8 Calc., 450 : 10 C. L. R., 421**

16. ———— **Offences one of which is a summons and the other a warrant case**—*Summons and warrant cases—Criminal Procedure Code, ss. 247 and 253—Procedure.*—In the investigation of a complaint, which forms the subject of two distinct charges arising out of the same transaction, one of which is a summons and the other a warrant case, the procedure should be that prescribed for warrant cases. RAJNARAIN KOONWAR *v.* LALA TAMOLI RAUT . . . **I. L. R., 11 Calc., 91**

17. ———— **Obtaining minor for prostitution**—*Criminal Procedure Code, ss. 284 and 537—Penal Code, ss. 372, 373—Misjoinder of charges—Immaterial irregularity.*—A woman, being a member of the dancing girl caste, obtained possession of a minor girl and employed her for the purpose of prostitution; she subsequently obtained in adoption another minor girl from her parents who belonged to the same caste. She and the parents of the second girl were charged together under ss. 372, 373 of the Penal Code. The charges related to both girls. *Held* that the two charges should not have been tried together, but the irregularity committed in so trying them had caused no failure of justice. QUEEN-EMPRESS *v.* RAMANNA . **I. L. R., 12 Mad., 273**

18. ———— **Rioting and criminal trespass**—*Criminal Procedure Code (Act X of 1882), ss. 233, 234, 537—Separate charges for distinct offences.*—Five persons were charged with having committed the offence of rioting on the 5th December; four out of those persons and one *F* were charged with having committed the offence of criminal trespass on the 9th December. These two cases were taken up and tried together in one trial and were decided by one judgment. *Held* that the trial was illegal, and the defect was not cured by s. 537 of the Criminal Procedure Code. IN THE MATTER OF THE PETITION OF CHANDI SINGH. QUEEN-EMPRESS *v.* CHANDI SINGH . . . **I. L. R., 14 Calc., 395**

19. ———— **Receiving stolen property and theft**—*Criminal Procedure Code, 1882, ss. 233, 239—Joint trial.*—*B, M, K,* and *R* were jointly tried, *B* for receiving stolen property under s. 411 of the Penal Code and the others for theft under s. 380, and were convicted. *Held* that the joinder of the above charges was illegal, and was a ground for setting aside the conviction and ordering a new trial, but not for discharging the accused. *In the matter of David, 6 C. L. R., 245,* distinguished. BISHNU BANWAR *v.* EMPRESS . . . . . **1 C. W. N., 35**

20. ———— **Offences committed by different accused against different persons at different times**—*Criminal Procedure Code, 1882, ss. 235 and 239—Joint trial.*—If, in any case, either the accused are likely to be bewildered in their defence by having to meet many disconnected charges, or the prospect of a fair trial is likely to be endangered by the production of a mass of evidence directed to many different matters and tending by its mere accumulation to induce an undue suspicion against the accused, then the propriety of combining the charges may well be questioned. The four accused, who were members of the Dharwar police force, were charged with ill-treating the complainant *H*, his wife *R*, and his son-in-law *Y*, during the course of a police investigation into a case of theft. They were committed for trial for the following offences: (1) All the accused for an offence under s. 330, Penal Code, the charge covering several acts of violence alleged to have been committed against *H* during his confinement, which forms the subject of the second head of the charge. (2) All the accused for an offence under s. 348, Penal Code, committed against *H* between the 5th and the 18th January 1889. (3) Accused Nos. 1 and 3 for an offence under s. 348, Penal Code, committed against *R* on the 15th January 1889. (4) Accused No. 3 for an offence under s. 330, Penal Code, committed against *R* on the 14th January 1889. (5) All the accused for an offence under s. 330, Penal Code, committed against *Y* between the 15th and 23rd January 1889. (6) All the accused for an offence under s. 348 committed against *Y* during the same period. (7) Accused Nos. 1, 2, and 3 for an offence under s. 346, Penal Code, committed against *Y* between 8th February and 9th March 1889. The accused were committed to the Court of Session in two separate cases. The Sessions Judge tried both cases together under ss. 235 and 239 of the Code of Criminal Procedure (Act X of 1882), as the same four persons were accused in both cases and "were charged with different offences committed in what was virtually one transaction, namely, a police investigaition into an alleged theft." The accused were convicted of the offences charged and sentenced to various terms of imprisonment. *Held*, reversing the convictions and sentences, that the combination of the two cases necessarily prejudiced the accused by making it possible for the prosecution to bring forward a mass of evidence at the trial relating to many matters, some only remotely connected with relevant questions which must to some extent have had the effect of embarrassing and confusing the accused. *Held* also that all the several acts of violence alleged to have been committed against *H* during his illegal confinement could be rightly regarded as constituting a single transaction. But the act of violence said to have been committed against *R* at a different place could not be regarded as a part of that transaction. Nor was the wrongful confinement of *R* by accused Nos. 1 and 3 on the 15th January a part of the transaction constituted by the hurt caused to her by accused No. 3 on the previous day. In the same way all acts of hurt caused to *Y* during his first period of wrongful confinement would with the confinement form a part of the same transaction; but the second period of confinement, which was said to have commenced some time after the termination of the first period of confinement, would be a separate transaction. QUEEN-EMPRESS *v.* FAKIRAPA . **I. L. R., 15 Bom., 491**

21. ———— **Trial of separate offences and accused together**—*Criminal Procedure Code, ss. 233, 234, and 537—Irregularity in criminal trial.*—Where four accused were at one and the same trial tried for offences of murder and robbery committed in the course of one transaction, and for another robbery committed two or three hours previously and at a place close to the scene of the robbery and murder,—*Held* that the trial of these separate offences together, though an error or irregularity within the meaning of s. 537 of the Code of Criminal Procedure, would not necessarily render the whole trial void. QUEEN-EMPRESS *v.* MULUA

[I. L. R., 14 All., 502

22. ———— **Separate charges for distinct offences**—*Criminal Procedure Code (Act X of 1882), ss. 233, 234, 235, and 537—Using forged documents—Charges for using eleven forged documents in three sets on three separate occasions—Irregularity in criminal trial.*—The accused was charged with using as genuine eleven forged receipts which were put in by him in sets on three separate occasions, each set with a written statement in three suits pending against him. A charge was framed against him in respect of the using of each set of receipts, and he was tried on these three charges and convicted and sentenced. On appeal it was contended that a separate charge should have been framed in respect of each of the documents, as the using of each document constituted a distinct and separate offence, and that consequently the trial was illegal and should be set aside. the accused having been tried for more than three offences in one and the same trial. *Held* that, as the "using" charged was the putting in of

JOINDER OF CHARGES—*concluded.*

each set of documents with the respective written statements in the three suits, and as there was nothing to show that any of the documents had been used at any other time, there was only one using in respect of each set of documents, and that there was therefore no valid ground for questioning the conviction. Queen-Empress *v.* Raghu Nath Das
[I. L. R., 20 Calc., 413

23. ——— **Offences of same kind not within year**—*Failure of justice—Application of s. 537 of the Code of Criminal Procedure—Code of Criminal Procedure (Act V of 1898), ss. 233, 234, and 537.—Held* that s. 537 of the Code of Criminal Procedure can be applied to any case in which the trial has been held on charges joined together contrary to s. 234 of that Code. *In the matter of Luchminarain, I. L. R., 14 Calc., 128; Queen-Empress* v. *Chandi Singh, I. L. R., 14 Calc., 395;* and *Raj Chunder Mozumdar* v. *Gour Chunder Mozumdar, I. L. R., 22 Calc., 176,* overruled. In the matter of Abdur Rahman . **I. L. R., 27 Calc., 839**
[4 C. W. N., 656

JOINDER OF PARTIES.

See Cases under Misjoinder.

See Cases under Multifariousness.

See Cases under Parties—Adding Parties to Suits.

See Specific Relief Act, s. 9.
[I. L. R., 15 All., 384

JOINT CONTRACTORS.

See Contract Act, s. 43. **25 W. R., 419**
[I. L. R., 3 Calc., 353
I. L. R., 5 Mad., 37, 133
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JOINT CREDITORS.

See Debtor and Creditor.
[I. L. R., 20 Mad., 461

See Cases under Limitation Act, 1877, art. 179—Joint Decree—Joint Decree-holders.

See Right of Suit—Joint Right.
[I. L. R., 7 All., 313

JOINT DEBTORS.

See Cases under Contribution, Suit for—Payment of Joint Debt by one Debtor.

See Limitation Act, 1877, art. 12 (1871, art. 14) . . **I. L. R., 2 Calc., 98**

See Cases under Limitation Act, 1877, art. 179—Joint Decree—Joint Judgment Debtors.

JOINT DECREE.

See Cases under Contribution, Suit for—Payment of Joint Debt by one Debtor.

See Cases under Execution of Decree—Joint Decree, Execution of and Liability under.

See Limitation Act, 1877, art. 99 (1871, s. 100) . . **I. L. R., 4 Calc., 529**
[3 C. L. R., 480

See Cases under Limitation Act, 1877, art. 179 (1859, s. 20)—Joint Decree.

JOINT DECREE-HOLDERS.

See Cases under Limitation Act, 1877, art. 179—Joint Decree—Joint Decree-holders.

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[I. L. R., 1 All., 444

JOINT FAMILY.

See Arms Act, 1878, s. 19.
[I. L. R., 15 All., 129

See Enhancement of Rent—Notice of Enhancement—Service of Notice.
[I. L. R., 4 Calc., 592
I. L. R., 10 Calc., 433

See Guardian—Appointment.
[I. L. R., 8 Calc., 656
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I. L. R., 19 Calc., 301
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See Hindu Law—Joint Family.

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See Parties—Parties to Suits—Joint Family.

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[I. L. R., 18 Calc., 86
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——— **business.**

See Hindu Law—Joint Family—Debts and Joint Family Business.

——— **Exclusion from—**

See Cases under Limitation Act, 1877, art. 127 (1859, s. 1, cl. 13).

——— **property.**

See Compromise—Construction, Enforcing, Effect of, and Setting aside Compromise . **I. L. R., 1 All., 651**

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See Cases under Execution of Decree—Mode of Execution—Joint Property.

See Cases under Hindu Law—Inheritance—Joint Property and Survivorship.

See Cases under Hindu Law—Joint Family—Sale of Joint Family Property in Execution of Decree, etc.

See Cases under Hindu Law—Partition.

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——— **Representative of, for voting purposes.**

See Calcutta Municipal Consolidation Act, s. 31.
[I. L. R., 19 Calc., 192, 195 note, 198

——— **Suit for share of—**

See Decree—Form of Decree—Possession . . **I. L. R., 1 Bom., 95**
[I. L. R., 5 Bom., 493, 496, 499
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See Cases under Parties—Parties to Suits—Joint Family.

JOINT LANDLORDS.

See Bengal Tenancy Act, s. 56.
[I. L. R., 24 Calc., 169

See Bengal Tenancy Act, s. 188.

JOINT MORTGAGORS.

See Limitation Act, 1877, art. 148.
[I. L. R., 8 All., 295
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JOINT PROPERTY.

See Certificate of Administration—Right to sue or execute Decree without Certificate.
[I. L. R., 19 Bom., 338
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1 C. W. N., 32

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See Cases under Sale in Execution of Decree—Joint Property.

JOINT TENANCY.

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[1 Bom., 66
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[I. L. R., 11 Bom., 69, 573
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[2 Bom., 55: 2nd Ed., 53

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JUDGE.

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——— **Disqualification of—**

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1. APPOINTMENT OF JUDGE.

1. ——— **Consent of Governor General**—*Act XXIX of 1845—Ratification.*—The consent of the Governor General in Council, as required by s. 5 of Act XXIX of 1845, to the appointment of a Joint Judge had to be given before the appointment was made. The doctrine of subsequent ratification does not apply in a criminal case. Reg. *v.* Rama bin Gopal . . 1 Bom., 107

2. DUTY OF JUDGE.

2. ——— **Trial of question of fact**—*Ground for decision—Private knowledge or information—Public rumour.*—In trying a question of fact, no Judge is justified in acting principally on his own knowledge and belief, or public rumour, and without sufficient legal evidence. Meethun Bibee *v.* Busheer Khan [7 W. R., P. C., 27: 11 Moore's I. A., 213

3. ——— *Private knowledge or information.*—A Judge ought not to import his own private knowledge or opinion into a case, but ought simply to decide the issues before him and on the evidence before him. Meheroonissa *v.* Bhashaye Merdha . . 2 W. R., Act X, 29

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JUDGE—*continued.*

2. DUTY OF JUDGE—*concluded.*

4. ——— *Knowledge of facts—Judge as a witness.*—A Judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts. Hurpurshad *v.* Sheo Dyal. Ram Sahoy *v.* Sheo Dyal. Balmokund *v.* Sheo Dyal. Ram Sahoy *v.* Balmokund . L. R., 3 I. A., 259: 26 W. R., 55

5. ——— **Judicial notice**—*Judgment of proper Court.*—It is within the province of a District Judge to know, and it is his business to declare if he knows, whether a decree, produced before him, of a Court within his district was obtained in a proper Court, and is such as he can take judicial notice of. Bukshoollah Chowdry *v.* Hur Chunder Chund . . 16 W. R., 248

6. ——— *Opinion of assessor—Personal knowledge.*—A Sessions Judge should not import into his judgment the opinion of an assessor derived from personal knowledge and unsupported by evidence on the record. Queen *v.* Ram Churn Kurmokar . . 24 W. R., Cr., 28

3. POWER OF JUDGE.

7. ——— **Power of, to delegate to assessors examination of witnesses.**—In a case of the assessors viewing the scene of the offence, the Judge cannot delegate to them his power of examining witnesses on the spot. Queen *v.* Chutterdharee Singh . . . 5 W. R., Cr., 59

8. ——— **Pronouncing judgment out of Court**—*Irregularity in criminal case.*—Where a Magistrate conducted and closed the trial in the established Court-house, but could not by reason of illness pronounce judgment which he did at his private house,—*Held* that the Judge was not competent to quash the sentence on this ground and to order a new trial by the Magistrate, his power being limited to refer the case for consideration of the High Court under s. 434, Criminal Procedure Code, 1861. Government *v.* Holasee Singh [1 Agra, Cr., 17

9. ——— **Holding cutcherry in Munsif's Court**—*Irregularity in trial of civil case—Consent of parties.*—Where a District Judge took advantage of his presence in the locality, and heard and decided a suit in the Munsif's Court, which had originally been instituted in that Court, but subsequently transferred to the Judge's Court for trial, and it appeared that the course taken was with the consent, implied, if not express, of both parties, who were represented at the hearing,—*Held* that the District Judge was justified in taking the course he had done. Madhaby *v.* Goburdhun Hulwai [I. L. R., 7 Calc., 694: 9 C. L. R., 303

10. ——— **Deciding case on evidence taken by his predecessor**—*Irregularity in criminal case.*—In the case of several prisoners who were tried by a Sessions Court consisting of a Judge and assessors, the latter convicted them, which finding was recorded by the Judge. The Judge, however, postponed giving judgment and left the district without recording his finding or his judgment, and the Judge's successor, after considering the evidence which had been taken before his predecessor, convicted and passed sentence on the prisoners. *Held* that the conviction was not valid and the trial had not been completed. The High Court accordingly set aside the conviction and ordered the re-trial of the prisoners upon the charges upon which they were committed for trial. QUEEN *v.* GOPI NOSHYO

[21 W. R., Cr., 47

See TARADA BALADU *v.* QUEEN

[I. L. R., 3 Mad., 112

QUEEN *v.* RUGHOONATH DOSS

[23 W. R., Cr., 59

11. ——— **Power of Judge to deal with evidence taken by his predecessor**—*Civil Procedure Code, s. 191—Hearing of suit.*—A Subordinate Judge, having taken all the evidence in a suit before him, adjourned the case to a future date for disposal. Upon the date fixed a further adjournment was made. The Subordinate Judge, at this stage of the proceedings, was removed, and a new Subordinate Judge was appointed. *Held* that the trial, so far as it had gone before the first Subordinate Judge, was abortive, and, as a trial, became a nullity. *Held* also that the duty of the second Subordinate Judge, when the case was called on before him, was to fix a date for the entire hearing and trial of the case before himself; that he might, at the request of the pleaders, have fixed the same day upon which the case was called on and proceeded to try it at once; and that the trial should then have proceeded in the ordinary way, except that the parties would be allowed, under s. 191 of the Civil Procedure Code, to prove their allegations in a different manner. *Jagram Das* v. *Narain Lal, I. L. R., 7 All., 857,* referred to. AFZAL-UN-NISSA BEGAM *v.* AL ALI

[I. L. R., 8 All., 35

12. ——— *Civil Procedure Code, 1882, s. 191—Hearing of suit—Trial—Death or removal of Judge during suit—Procedure to be followed by new Judge.*—The trial of a suit before a Subordinate Judge was completed except for argument and judgment, and a date was fixed for hearing argument. At this point a new Subordinate Judge was appointed, and he passed an order directing a further adjournment and fixing a particular date for disposal of the case. After some further adjournments, the Subordinate Judge delivered judgment, having heard argument on both sides upon the evidence taken by his predecessor. The District Judge having on appeal upheld the Subordinate Judge's decision, a second appeal was preferred to the High Court, and an objection was raised on the appellant's behalf that the proceedings taken before the Subordinate Judge were void, and he could not be said to have tried the case, inasmuch as no evidence was taken before him, and his judgment was based solely on evidence recorded by his predecessor. No objection of this kind was taken in either of the Courts below. *Held* by the Full Bench that, with reference to the ground of appeal and under the circumstances of the case, the officer who passed the decree in the Court of first instance had jurisdiction to deal with and determine the suit in the mode in which he did. *Jagram Das* v. *Narain Lal, I. L. R., 7 All., 857,* and *Afzal-un-nissa Begam* v. *Al Ali, I. L. R., 8 All., 35,* discussed. *Per* STRAIGHT, *Offg. C.J.,* that as no objection was raised before the Subordinate Judge to his taking up and dealing with the case in the mode in which he did, but the evidence was discussed and criticised on both sides, there had been a waiver on the part of the appellant in reference to the action of the Subordinate Judge of which he now sought to complain. *Per* OLDFIELD, *J.,* that where a Judge takes up a trial begun by another, although the law permits him to deal with the evidence taken by his predecessor as if he himself had taken it down, he must deal with it judicially, and try the cause as though it had come before him in the first instance, and there must be a hearing of the entire case before himself; and in every case it has to be seen whether, as a matter of fact, there has been a real trial and hearing of the entire case by the Judge; and if the evidence previously taken was not judicially dealt with, counsel heard upon it, and the entire case fully heard and tried, there has been no trial in the legal sense of the word, and the proceedings must be set aside. *Jagram Das* v. *Narain Lal, I. L. R., 7 All., 857,* and *Afzal-un-nissa Begam* v. *Al Ali, I. L. R., 8 All., 35,* followed. *Per* MAHMOOD, *J.,* that, although it is true that "a trial must be one, and must be held before one Court only," the identity of the Court is not altered by a new Judge being appointed to preside in such Court; that when a trial goes on for more than one day, each day constitutes a separate hearing, and that such hearings cannot be treated as a trial heard on the original date; that the Civil Procedure Code does authorize a Judge to take up a case which has been partly heard before his predecessor, and to continue it from the point at which his predecessor left off; that where the Judge who has partly heard a case dies or is removed, the trial, so far as it has gone before him, is neither abortive nor becomes a nullity; that the new Judge is not required to fix a day for the entire hearing of the suit before himself, nor is there anything to prevent him from taking up a trial which has been partly heard by his predecessor and to proceed with it as if it had been commenced before himself; that the Code does not recognize such procedure as amounting to separate trials; that the Judge who succeeds another after a trial which has partly proceeded before his predecessor is not bound to fix a new day for commencing the trial *de novo,* nor should the trial proceed before the new Judge as if the day were the first on which the case had ever come on for hearing; that the evidence recorded by the preceding Judge, by the mere fact of being upon the record, is *ipso facto* evidence in the cause, and could, under s. 191 of the Code, be treated by the succeeding Judge "as if he himself had taken it down or caused it to be made;" that when the case comes on for hearing before the new Judge, there is no necessity for putting in the depositions of

3. POWER OF JUDGE—*concluded.*

witnesses which, though taken by his predecessor, are already upon the record; that such depositions must be dealt with as materials of evidence before the new Judge; that a judgment and decree upon such evidence are neither illegal nor absolute nullities, there being no want of jurisdiction; that when such judgment and decree are passed, the Court of first appeal is prohibited by s. 564 of the Code to order a trial *de novo*, but is bound by s. 565 of the Code to decide the appeal upon the evidence on the record; that where further issues are directed to be tried, or additional evidence is to be taken, the Court of appeal is bound to act according to the provisions of ss. 566, 568, and 569 of the Code, but cannot order a new trial; that even when there has been an irregularity on the part of the first Court in receiving or rejecting evidence, the provisions of s. 578 of the Civil Procedure Code and s. 167 of the Evidence Act prohibit the reversal of a decree and the remand of a case for new trial, unless the irregularity affects the merits of the case or the jurisdiction of the Court. *Jagram Das* v. *Narain Lal, I. L. R., 7 All., 857,* and *Afzal-un-nissa Begam* v. *Al Ali, I. L. R., 8 All., 35,* dissented from. JADU RAI *v.* KANIZAK HUSAIN . . **I. L. R., 8 All., 576**

13. ——————— *Power of, to try case irregularly by consent of parties—Determination of case by Judge who has not taken evidence in it.*—The parties to a suit which is being tried in a Court of first instance have a right to insist upon having all the advantages which attach to a public hearing of the whole case and the examination of all the witnessess in open Court before the Judge who is judicially to determine the matter in dispute between them, although they may, either expressly or impliedly, consent to the suit being determined by a Judge who has not been present throughout the trial, and to his taking into consideration evidence which has not been given before him. SOOBENDRO PERSHAD DOBEY *v.* NUNDUN MISSER **21 W. R., 196**

4. QUALIFICATIONS AND DISQUALIFICATIONS.

14. ——— **Disqualification**—*Interest in case.*—Judges should not try cases in which they have any personal interest. CALCUTTA STEAM TUG CO. *v.* HOSSEIN IBRAHIM BIN JOHUR

[Bourke, O. C., 273

QUEEN *v.* BOIDONATH SINGH . **3 W. R., Cr., 29**

15. ——————— *Form of memorandum of appeal—Alleged bias of Judge.*—*Per* SUBRAMANIA AYYAR, *J.*—"It is open to an appellant to set up any circumstance showing that a Judge whose decision is appealed against was disqualified from trying and deciding the case . . . When a Judge is shown . . . to stand in such a position that he might be reasonably suspected of being biassed, he must be held to have been disqualified. . . . In cases where any bias can be presumed, the party is entitled to show the grounds which raise the presumption . . . But where there is no such presumption, the party must not be allowed to question the

4. QUALIFICATIONS AND DISQUALIFICATIONS—*continued.*

impartiality of the Judge." ZAMINDAR OF TUNI *v.* BENNAYYA . . . **I. L. R., 22 Mad., 155**

16. ——————— *Interest in case—Municipal cases—Magistrate also Vice-Chairman of Municipality.*—Where a Magistrate was also Vice-Chairman of a Municipal Committee, it was held he could impose fines under Bengal Act III of 1864. ANONYMOUS . . . **3 W. R., Cr., 33**

17. ——————— *Interest in case—Judge as a witness.*—The jailor of a district jail being accused by one of the jail clerks of falsifying his accounts and defrauding the Government, the matter was enquired into by the District Magistrate, and the jailor was, by the Magistrate's order, placed on trial before a Bench of Magistrates, consisting of the District Magistrate himself, *L*, the Officiating Superintendent of the Jail, and three other Honorary Magistrates. The prisoner and his pleaders were alleged to have stated before the commencement of the trial, on being questioned, that they had no objection to the composition of the Bench, but after the charges had been framed, the prisoner's counsel objected to the Bench as formed. The District Magistrate directed the Government pleader to prosecute, and both the District Magistrate and *L* gave evidence for the prosecution. After the case for the prosecution was closed, two formal charges were drawn up, namely, that the prisoner had debited Government with the price of more oil-seed than he actually purchased, and that he had received payment for certain oil at a higher rate than he credited to Government. The moneys, the receipt of which were the subject of the first charge, were obtained by the prisoner on the strength of certain vouchers which he had induced *L* to sign as correct, and *L* had sanctioned the sale at the rates credited to Government. Upon the prisoner's giving the names of the witnesses he intended to call in his defence, *L* was deputed by his brother Magistrates to examine some of them who were connected with the jail, in order "to guard against deviation," and the depositions so taken were placed on the record, "to be used by either party, though not themselves as evidence." The prisoner was convicted. On a motion to quash the conviction,—*Held* that *L* had a distinct and substantial interest which disqualified him from acting as Judge. *Held,* further, that although a Magistrate is not disqualified from dealing with a case judicially merely because in his character of Magistrate it may have been his duty to initiate the proceedings, yet a Magistrate ought not to act judicially in a case where there is no necessity for his doing so, and where he himself discovered the offence and initiated the prosecution, and where he is one of the principal witnesses for the prosecution. QUEEN *v.* BHOLANATH SEN

[I. L. R., 2 Calc., 23 : 25 W. R., Cr., 57

18. ——————— *Disqualification of servant of Corporation of Calcutta to adjudicate on summons at instance of Corporation.*—*A*, alleged to have carried on business in Calcutta without having taken out a license under Bengal Act IV

4. QUALIFICATIONS AND DISQUALIFICATIONS—*continued.*

of 1876, was summoned at the instance of the Corporation by *B*, a servant of the Corporation and also a Justice of the Peace. The case was subsequently heard by *B*, who convicted *A*, and sentenced him to pay a fine. *Held* that the proceedings and ultimate conviction of *A* were illegal, inasmuch as *B*, being a servant of the prosecutor, *i.e.*, the Corporation, had such an interest as might give him a bias in the matter, and that consequently he ought not to have sat as Justice of the Peace either at the granting or upon the hearing of the summons. WOOD *v.* CORPORATION OF THE TOWN OF CALCUTTA

[I. L. R., 7 Calc., 322 : 9 C. L. R., 193

See QUEEN *v.* TARINEE CHURN BOSE

[21 W. R., Cr., 31

where it was held that there was nothing absolutely illegal in a Municipal Commissioner, also editor of a newspaper, trying a case of which he had expressed a strong opinion in his paper.

19. ——— *Transfer of suits—Judge exercising executive functions—Bengal Civil Courts Act (VI of 1871), s. 25—Act XIV of 1882, s. 25.*—An officer who exercises executive and judicial functions having himself dealt with a certain matter and formed and expressed an opinion upon its merits in his executive capacity, and having further advised and directed litigation in support of this view, is in consequence disqualified from dealing as a Judge with this same question when it comes into Court and has to be dealt with judicially. LOBURI DOMINI *v.* ASSAM RAILWAY AND TRADING CO. . . . . **I. L. R., 10 Calc., 915**

20. ——— *Expression of opinion by a Judge in a counter case—Competence to try—Grounds of transfer—Criminal Procedure Code, 1882, s. 555.*—A Judge is not incompetent to try a case of rioting simply because he has tried and decided a counter rioting case and expressed an opinion; but in trying the one before him, he ought not to be influenced by the impression he may have formed in the other case, but ought to deal with it on its own merits, and on the evidence adduced therein, quite independently of the evidence which may have been produced before him in the counter case. *Queen* v. *Chunder Bhuya, I. L. R., 20 Calc., 537; Bachoo Mulla* v. *Sia Ram, I. L. R., 14 Calc., 385; Hossain Bux* v. *Empress, I. L. R., 6 Calc., 96,* referred to. *Chakowri Lal* v. *Moti Kurmi, 13 C. L. R., 275,* distinguished. ASIMUDDI *v.* GOVINDA BAIDYA . . **1 C. W. N., 426**

21. ——— *Jurisdiction—Bias—Magistrate's jurisdiction where complainant is his private servant—Legality of conviction and sentence passed by such Magistrate in such a case.*—The mere circumstance that a trying Magistrate is the master of the complainant does not deprive the Magistrate of his jurisdiction, though it is expedient that such a complaint should be referred to another Magistrate. IN RE THE PETITION OF BASAPA

[I. L. R., 9 Bom., 172

4. QUALIFICATIONS AND DISQUALIFICATIONS—*concluded.*

22. ——— *Disqualification for trying case—Bias—Mamlatdar acting in the management of property under the orders of the Talukhdari Settlement Officer—Possessory suit—Interest disqualifying Judge from trying case.*—No Judge can act in any matter in which he has any pecuniary interest, nor where he has any interest, though not a pecuniary one, sufficient to create a real bias. A Mamlatdar, who under the orders of the Talukhdari Settlement officer had acted in the management of the property in dispute in a possessory suit before him, was held to have such an interest as to disqualify him from trying the case. Where an officer of Government has in the course of his executive duties "formed an opinion upon a matter and has acted upon that opinion, or sought to give effect to it as an agent on behalf of a public body which has become a litigant in a cause," the law will presume an interest creating a bias sufficient to disqualify him as a Judge. ALOO NATHU *v.* GAGUBHA DIPSANGJI . . **I. L. R., 19 Bom., 608**

23. ——— *Criminal Procedure Code (Act X of 1882), s. 555—Jurisdiction of Appellate Court interested in case to grant permission to a subordinate Court to try a case.*—The interest which might disqualify a Court from trying or committing for trial a case having regard to s. 555 of the Code of Criminal Procedure will not prevent an Appellate Court from giving the permission contemplated by that section. QUEEN-EMPRESS *v.* FATEH BAHADUR . . **I. L. R., 20 All., 181**

24. ——— **Qualification as witness**—*Judge giving evidence in case.*—A Judge cannot give evidence in a case merely by making a statement of fact in his judgment. If he intends the Courts to act upon his statement, he is bound to make that statement in the same manner as any other witness. ROUSSEAU *v.* PINTO , **7 W. R., 189**

KISHORE SINGH *v.* GUNNESH MOOKERJEE

[9 W. R., 252

See IN THE MATTER OF THE PETITION OF HURRO CHUNDER PAUL . . . **20 W. R., Cr., 76**

KALLONAS *v.* GUNGA GOBIND ROY CHOWDHRY

[25 W. R., 121

25. ——— *Competent witness in trial of case instituted by himself.*—A Judge is a competent witness and can give evidence in a case being tried before himself, even though he laid the complaint acting as a public officer, provided that he has no personal or pecuniary interest in the subject of the charge, and he is not precluded thereby from dealing judicially with the evidence of which his own forms a part. QUEEN *v.* MUKTA SINGH

[6 B. L. R., A. Cr., 7 : 13 W. R., Cr., 60

5. DEATH OF JUDGE BEFORE JUDGMENT.

26. ——— **Re-hearing of case.**—When a Judge dies after hearing and deciding a case, the only record of his decision being an entry in the Court

JUDGE—*concluded.*

5. DEATH OF JUDGE BEFORE JUDGMENT —*concluded.*

order-book, it is not competent to any co-ordinate Court to take up and re-hear the case; but the High Court will, on the ground of want of record of reasons for the decision, reverse the order and remand the case for re-hearing. SUKRAM *v.* KALA KAHAR

[3 B. L. R., A. C., 105

See NOBO CHUNDER BANERJEE *v.* ISHUR CHUNDER MITTER . . . . . **12 W. R., 254**

27. ———————— In a case where written opinions in a case had been sent to the Registrar by Judges who had heard the case and then died or resigned before judgment was pronounced in open Court, it was held by the Full Bench that such opinions were not judgments, but merely memoranda of the opinions and arguments of such Judges in the case. MAHOMED AKIL *v.* ASADUNNISSA BIBEE. MUTTY LALL SEN GURJAL *v.* DESKHAI ROY

[B. L. R., Sup. Vol., 774: 9 W. R., 1

JUDGE OF HIGH COURT.

See PRACTICE—CIVIL CASES—APPLICATION AFTER REFUSAL.

[I. L. R., 16 Bom., 511

———— **acting in English Department of High Court.**

See TRANSFER OF CRIMINAL CASE—GENERAL CASES.

[I. L. R., 1 Calc., 219

———— **Order of—**

See CASES UNDER LETTERS PATENT, HIGH COURT, CL. 15.

———— **Power of—**

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[9 B. L. R., Ap., 6

See BENG. REG. V OF 1812, s. 26.

[B. L. R., Sup. Vol., 655

See CERTIFICATE OF ADMINISTRATION—CANCELMENT OR RECAIL OF CERTIFICATE . . **5 B. L. R., Ap., 21**

See GUARDIAN—APPOINTMENT.

[I. L. R., 26 Calc., 133

See LETTERS PATENT, HIGH COURT, CL. 15 . **I. L. R., 20 Mad., 152**

See REFERENCE TO FULL BENCH.

[B. L. R., Sup. Vol., Ap., 43
I. L. R., 25 Calc., 896

See REVIEW—POWER TO REVIEW.

[I. L. R., 23 Calc., 339

See CASES UNDER SUPERINTENDENCE OF HIGH COURT.

1. ———— **Appointment of Judge**—*High Courts' Charter Act (24 & 25 Vict., c. 104), ss. 7 and 16—Interpretation of statute—"On the happening of a vacancy"—Nature of power conferred by s. 7 discussed—Evidence—Presumption of law arising from the exercise de facto of the functions of a Judge of a High Court.*—The word "upon the happening of a vacancy in the office of any other Judge" in s. 7 of the 24 & 25 Vict., c. 104, mean upon the happening of a vacancy in the office of a Judge appointed to his office by Her Majesty. They are not applicable to the case of a vacancy caused by a person appointed to act as a Judge, under the provisions of the second part of the abovementioned section, ceasing to perform the duties of such office. The words above quoted further mean that the power conferred by s. 7 must be exercised within a reasonable time, that is to say, a practicable time after the happening of a vacancy. It cannot be held that the power conferred by the abovementioned section can be held in suspense for several years and then be legally exercised. Where a person had in fact for a period of more than a year been exercising all the functions of a Judge of the High Court in virtue of an appointment purporting to be made by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, under sanction of Her Majesty's Secretary of State for India, it was *held* that though, so far as the validity of the appointment depended upon the provisions of ss. 7 and 16 of the 24 & 25 Vict., c. 104, the appointment was apparently *ultra vires*, it must nevertheless be presumed, in the absence of fuller information, that the appointment was legally made in the exercise of some power, unknown to the Court, vested in the Secretary of State for India. QUEEN-EMPRESS *v.* GANGA RAM . **I. L. R., 16 All., 136**

2. ———————— *'High Courts' Charter Act (24 & 25 Vict., c. 104), ss. 7 and 16—Unreasonable delay in making appointment, Effect of.—Held* in reference to the High Court's Act, 1861 (24 & 25 Vict., c. 104), in which no time is mentioned for the appointment of an Acting Judge on the occurrence of a vacancy, that such an appointment could not be questioned on the ground of its not having been made until after a period alleged to be unreasonable. BALWANT SINGH *v.* RAMKISHORE

[I. L. R., 20 All., 267
L. R., 25 I. A., 54

RAO BALWANT SINGH *v.* RAMKISHORE.

[2 C. W. N., 273

3. ———— **Judge sitting in ordinary original criminal jurisdiction of the High Court**—*Trial commenced and evidence partly gone into before one Judge—Retirement of Judge from the case under s. 555, Criminal Procedure Code, without discharging the jury—Replacement by new Judge appointed by the Chief Justice—Powers of Chief Justice over other Judges of the High Court—Jurisdiction of the new Judge to try case pending before another properly constituted Court—Discharge of jury before verdict, how effected—Concurrent trials on the same indictment and on the same facts—Nolle prosequi—Criminal Procedure Code, 1882, ss. 282, 283, 323, 555.*—At the Criminal Sessions of the High Court the trial of the accused had commenced before RAMPINI, *J.*, and evidence

JUDGE OF HIGH COURT—*concluded.*

partly had been gone into when His Lordship retired from the case under s. 555 of the Criminal Procedure Code and the case was adjourned without the jury being discharged. The Chief Justice, purporting to act under cl. 13 of the Charter, appointed STEVENS, *J.*, to preside at the trial of the accused. In answer to a question by STEVENS, *J.*, the standing counsel intimated that he intended proceeding with the trial from the point where it had been left. Whereupon it was contended on behalf of the accused that STEVENS, *J.*, could not proceed with the trial as RAMPINI, *J.*, and the jury empannelled before him had still the seisin of the case. The Advocate General preferred a *nolle prosequi*, and the accused was discharged. QUEEN-EMPRESS *v.* KHAGENDRA NATH BANERJEE
[2 C. W. N., 481

4. ———————— *Grant of application for leave to institute suit which had been refused by another Judge.*—Leave to institute a suit relating to property out of the jurisdiction, as well as to property within such jurisdiction, was refused by one Judge on the 30th June 1874. The same application, in the same suit, between the same parties, relating to the same property, and founded on the same cause of action, was made before another Judge on the 15th December 1874, and the leave prayed for was granted. *Held* that the order should not have been made, and that it should be discharged. VYTHELINGA MUDELLY *v.* CUNDASAWMY MUDELLY
[8 Mad., 21

JUDGE OF THE SUPREME COURTS IN INDIA.

———— **Power of acting as Judge and jury.**—By the constitution of the Supreme Courts in India, the Judges, for the purpose of the trial of an action, sit as a jury as well as Judges, and the same weight is to be given to a decision of the Judges in such circumstances as to the verdict of a jury in England in which the Judge who tries the case makes no objection. MENADEE MAHOMED CAZUN SERAZEE *v.* ALI MAHOMED SHOOSBEY
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1. CIVIL CASES.

(*a*) What amounts to.

1. ——— **Record of impression or opinion on partial evidence.**—Where a District Judge on appeal made an order of remand under Act VIII of 1859, s. 356, that evidence might be taken on one of the points raised, and at the same time recorded the impression which his mind had received on the other parts of the case, it was held that the opinion so recorded was not a judgment on appeal. Buloram Baboo *v.* Issur Chunder Baboo
[23 W. R., 77

2. ——— **Memoranda of opinions**—*Resignation or death of Judge before judgment.*—*Held per totam curiam* that written opinions sent to the Registrar by Judges who had retired or died before the judgment in the case was pronounced in open Court are not judgments, but merely memoranda of the opinions and arguments of such Judges. Mahomed Akil *v.* Asadunnissa Bibee. Mutty Lall Sen *v.* Deskhar Roy
[B. L. R., Sup. Vol., 774; 9 W. R., 1

3. ——— **Judgment written by Judge, and pronounced in Court by his successor.**—A Subordinate Judge wrote out his judgment in a case which had been heard before him after he had been relieved from his office, and left the judgment to his successor to be pronounced in open Court. The judgment was pronounced in Court by the succeeding Subordinate Judge. An objection being taken in special appeal that the judgment read out by the succeeding Subordinate Judge was not a judgment according to Act VIII of 1859,—*Held* that the judgment was valid. Parbutti *v.* Bhikun
[8 B. L. R., Ap., 98
S. C. Parbutty *v.* Higgin . **17 W. R., 475**

4. ——— **Judgment given by successor by Judge getting promotion.**—Remarks on the impropriety of a Principal Sudder Ameen, who, after hearing the evidence in a suit, was promoted in the same district from the second to the first grade and refrained from giving judgment, but left it to his successor for decision. *Quære per* Markby, *J.*—Whether such decision is legal. Radha Nath Banerjee *v.* Jodoo Nath Singh
[7 W. R., 441

5. ——— **Death of plaintiff after hearing, but before judgment**—*Judgment given by Court in ignorance of plaintiff's death—Judgment and decree, Validity of—Doctrine of nunc pro tunc.*—The successful plaintiff in a suit died a few days after the hearing of the suit had been concluded and judgment reserved. Unaware of the death of the plaintiff, the Court proceeded to deliver judgment and pass a decree in favour of the deceased plaintiff. *Held* that nothing remaining to be done by the parties on the day when judgment was reserved, the judgment should read as from that date, and the decree was a valid decree. *Cumber* v. *Wane, Smith's, 1 L. C., 10 Ed., 325; Ramacharya* v. *Anantacharya, I. L. R., 21 Bom., 314;* and *Surendro Keshub Roy* v. *Doorgasoondery Dossee, I. L. R., 19 Calc., 513,* followed. Chetan Charan Das *v.* Balbhadra Das
[I. L. R., 21 All., 314

(*b*) Language of.

6. ——— **Proper language for judgment**—*Judge whose vernacular is English.*—A Judge whose vernacular language is English ought to write his decision in his own language, though to do otherwise does not affect its validity. Huro Soondury Dabee *v.* Sreedhur Bhuttacharjee
[17 W. R., 352

(*c*) Form and Contents of Judgment.

7. ——— **Oral judgment**—*Oral statement of intended judgment.*—A Judge may, at the close of the hearing of a suit, state at once orally the judgment which he intends to record and deliver. Anonymous . . . . **5 Mad., Ap., 8**

8. ——— **Materials on which judgment should be founded**—*Civil Procedure Code, 1859, ss. 172, 183—Examination of witnesses in lower Court—Perusal of depositions.*—The meaning of s. 183, Act VIII of 1859, taken in connection with s. 172, is that the judgment is to be given upon the examination of the witnesses by the Judge himself in the Court of first instance, and not upon a perusal of depositions except those taken

JUDGMENT—*continued.*

1. CIVIL CASES—*continued.*

under s. 173 and the subsequent sections, which are expressly allowed to be read in evidence at the hearing; and care should be taken, in the transfer of suits and in the disposal generally of the business of the lower Courts, to prevent the necessity of resummoning witnesses. Naranbhai Vrijbhukandas *v.* Naroshankar Chandro Shankar [4 Bom., A. C., 98

9. ——— *Decision on facts—Reasons.*—In deciding on the facts of a case, Judges should not base their decision upon some isolated piece of evidence, but take into consideration and record their opinion on the whole evidence offered on both sides. Tiluckdharee Singh *v.* Samoodra Singh . . . **6 W. R., 9**

10. ——— **Necessity of distinct findings on material issues.**—There must be a distinct finding one way or other on all the material issues in a case. Shurno Moyee Dossia *v.* Joy Narain Bose . . . . . . **8 W. R., 481**

11. ——— *Duty of Appellate Court as to judgments—Civil Procedure Code, 1859, s. 359.*—It is the duty of Appellate Judges to act so far in conformity with the provisions of the Code of Civil Procedure as is sufficient to show that the Court has dealt with each ground of appeal, and more especially to record distinct findings on questions of fact. Anonymous . . **4 Mad., Ap., 56**

12. ——— **General assent to judgment of lower Court**—*Duty of Appellate Court as to judgments.*—Where the Civil Judge, confirming a decree of the District Munsif, stated by way of judgment that he was of opinion that the decision of the Munsif was fair and equitable, the High Court, on special appeal, sent back the case with directions to the Civil Judge to record a judgment in substantial conformity with the provisions of the Code of Civil Procedure. Kristna Reddy *v.* Strinivasa Reddy . . . **4 Mad., Ap., 56 note**

13. ——— *Duty of Appellate Court as to judgments.*—An Appellate Court should take notice of all the specific objections argued before it, and not content itself with recording a general assent to a first Court's finding. Shumbhoonath Chowdhry *v.* Prokash Chunder Dutt [**8 W. R., 272**

14. ——— **Judgment of Appellate Court**—*Reasons for the decision—Civil Procedure Code, 1882, s. 574.*—S. 574 of the Code of Civil Procedure is imperative. Under that section, the Appellate Court is bound to state the reasons for its decision. A Court of Appeal framed certain issues under s. 566 of the Code of Civil Procedure and remanded them for findings by the original Court. On the return of those findings, as neither party filed any objections, the Appellate Court accepted these findings, without giving any reasons for so doing, or even stating in its judgment whether it concurred in them or not, and confirmed the decree of the original Court. *Held* that the judgment of the Appellate Court was not a judgment according to law. Bhagvan *v.* Kesur Kuverji [**I. L. R., 17 Bom., 428**

JUDGMENT—*continued.*

1. CIVIL CASES—*continued.*

15. ——— **Judgment not in proper form**—*Civil Procedure Code, 1859, s. 359—Illegal and defective judgment.*—A Judge's decision, not being in conformity with the provision of s. 359, Act VIII of 1859, was held to be illegal and defective. Rughobur Suhai *v.* Chattrapat . **1 Agra, 73**

Imrit Singh *v.* Koylashoo Koer **11 W. R., 558**

16. ——— *Civil Procedure Code, 1859, s. 359—Judgment of lower Appellate Court—Omission to record decision on material points.*—The Judge of the lower Appellate Court not having recorded his judgment as required by s. 359 of Act VIII of 1859, the case was sent back to the lower Court for the Judge to state the points for decision, and to give his decision upon those points consecutively. Tatur Khawas *v.* Jagannath Prasad . **7 B. L. R., Ap., 14: 15 W. R., 131**

17. ——— *Judgment of Appellate Court.*—The judgment of an Appellate Court should clearly and fully dispose of all the points in issue between the parties by a distinct finding on each of them. Bhagbut Khan *v.* Puddo Bewa . . . . . . **3 W. R., 192**

Dhun Rae *v.* Ramphul Rae . **2 N. W., 109**

Sookh Raj Singh *v.* Tuffazool Hossen [**2 W. R., 142**

18. ——— *Civil Procedure Code (1882), s. 574—Contents of appellate judgment.*—The judgment of an Appellate Court should show on the face of it that the points in dispute were clearly before the mind of the Judge, and that he exercised his own discrimination in deciding them. Sitarama Sastrulu *v.* Suryanarayana Sastrulu [**I. L. R., 22 Mad., 12**

19. ——— **Reasons for decision**—*Civil Procedure Code, 1859, s. 359.*—S. 359, Code of Civil Procedure, made it incumbent upon an Appellate Court to set down distinctly the point or points on which it has to decide the appeal, and record its reasons for the decision it arrives at in each and all of these points. Shurbessur Ghose *v.* Sadhoo Churn Ghose . . . **15 W. R., 130**

Raj Chunder Burmun *v.* Roma Kant Chuckerbutty . . . . . **15 W. R., 324**

20. ——— *Civil Procedure Code, 1859, s. 359.*—The judgment of an Appellate Court should state clearly the reasons of the conclusions therein contained. Chunder Kant Chowdhry *v.* Hurish Chunder Chowdhry . **1 W. R., 214**

Goburdhun *v.* Sadhoo . . . **1 W. R., 244**

Kartick Napit *v.* Personomoyee Naptinee [**2 W. R., 77**

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Khettur Mohun Gossain *v.* Bhyrub Chunder Sheet . . . . . . **3 W. R., 126**

Trilochun Dutt *v.* Ishen Chunder Chowdhry [**3 W. R., 176**

JUDGMENT—*continued.*

1. CIVIL CASES—*continued.*

HOSSEIN BUKSH *v.* AMEENA KHATOON [16 W. R., 280

KORBAN ALI *v.* ASHAN ALI . 4 W. R., 4

SHATHUK PAUL *v.* GUDADHUR ROY [4 W. R., 100

GANPATRAM LAKHMIRAM *v.* JAICHAND TALAKCHAND . . . . 4 Bom., A. C., 109

BHAGVATSANGJI JALAMSANGJI *v.* PARTABSANGJI AJJABHAI . . . 4 Bom., A. C., 105

21. ———— The reasons for their decisions must in all cases be recorded by the Judges of the High Courts in India. KACHEKALYANA RUNGAPPA KALAKKA TOLA UDIAR *v.* KACHIVIGAJAYA RUNGAPPA KALAKKA TOLA UDIAR [2 B. L. R., P. C., 72: 11 W. R., P. C., 33 12 Moore's I. A., 495

22. ———— *Appellate Court.*—An Appellate Court is not bound to discuss *seriatim* the arguments adduced by a lower Court in support of its judgment, but need only give its own reasons for its own judgment. INDRABATI KUNWARI *v.* MAHADEO CHOWDHRY . 1 B. L. R., S. N., 2

23. ———— *Reversal of judgment of lower Court.*—An Appellate Court is bound to state its reasons for reversing the decision of a lower Court. MAHADEO OJHA *v.* PARMESWAR PANDAY . . . . . 2 B. L. R., Ap., 20

MUNSOOB BIBEE *v.* ALI MEAH . 17 W. R., 358

MAHOMED SALLEH *v.* NUSSEEROODDEEN HOSSEIN [21 W. R., 284

24. ———— *Civil Procedure Code, 1859, s. 359.—Held* by MARKBY, J., that in saying that the "reasons" for the decision of an Appellate Court must be stated, s. 359, Act VIII of 1859, meant not the reasons for coming to any conclusion of fact, but the reasons showing upon what points of fact or law the decision runs. The bare fact that a Judge had not given the reasons for his judgment is not in itself a ground of special appeal. RAMESSUR BHUTTACHARJEE *v.* BHANOO [12 W. R., 272

25. ———— *Omission to state reasons in judgment—Civil Procedure Code (Act XIV of 1882), ss. 574, 584.*—The fact that the judgment of an Appellate Court is not drawn up in the manner prescribed by s. 574 of the Civil Procedure Code is no ground for a second appeal under s. 584, unless it can be shown that the judgment has failed to determine any material issue of law. BISVANATH MAITI *v.* BAIDYANATH MANDUL [I. L. R., 12 Calc., 199

26. ———— *Civil Procedure Code, 1859, s. 359.*—The judgment of an Appellate Court must contain the points for determination, the decision thereupon, and the reasons therefor. It need not, under s. 359 of the Code, contain a review or setting forth of the whole of the evidence. The propriety of giving an intelligent and clear account of the evidence in the judgment laid down. NOOR MAHOMED *v.* ZUHOOR ALLY . 11 W. R., 34

JUDGMENT—*continued.*

1. CIVIL CASES—*continued.*

27. ———— *Finding of Appellate Court—Omission to give reasons.*—The finding of an Appellate Court not accompanied by reasons is not conclusive. GOPALRAO GANESH *v.* KISHOR KALIDAS . . . . I. L. R., 9 Bom., 527

See KAMAT *v.* KAMAT . I. L. R., 8 Bom., 371

28. ———— *Judgment unsupported by reasons—Defective judgment in facts—Grounds of second appeal.*—Where no reasons are given by a lower Appellate Court for the conclusions arrived at, such conclusions cannot be accepted as legal findings of fact in second appeal. *Kamat* v. *Kamat, I. L. R., 8 Bom., 368 (370),* and *Raghunath* v. *Gopal Nilu Nathaji, I. L. R., 9 Bom., 452 (454),* referred to. NINGAPPA *v.* SHIVAPPA [I. L. R., 19 Bom., 323

29. ———— *Omission to give reasons for order holding appeal barred.*—Order discharged under the circumstances, the District Judge having given no reasons for making the order. RAGHUNATH GOPAL *v.* NILU NATHAJI [I. L. R., 9 Bom., 452

30. ———— *Judgment of Appellate Court.*—It is not obligatory on an Appellate Court to meet categorically every one of the arguments advanced by the first Court in support of its decision. The meagreness of the judgment of a lower Appellate Court can only warrant a remand when the judgment does not show that the Court has considered the evidence. KRISHENDRO ROY CHOWDRY *v.* DIGUMBUREE DEBIA CHOWDRAIN . 16 W. R., 15

See SHUMSHUROODDY *v.* JAN MAHOMED SIKDAR [21 W. R., 260

31. ———— *Appellate Court confirming judgment.*—An Appellate Court is bound to give reasons for deciding a specific point (in this case limitation) raised before it on appeal, even if it confirm generally the order of the Court below. RADHA GOBIND KUR *v.* RAM KISHORE DUTT [8 W. R., 340

32. ———— *Civil Procedure Code (Act XIV of 1882), s. 574—Judgment not containing the reasons for decision, Validity of—Judgment of Appellate Court affirming judgment of first Court.*—Where a judgment of the lower Appellate Court does not go fully into the reasons for affirmance and even does not so much as state whether it accepts, as correct, reasons given by the first Court, it is not a proper judgment within the meaning of s. 574 of the Civil Procedure Code. It is very desirable that the Appellate Court should state, with as much fullness as the nature of the case may require, the reasons for its affirming the decision of the first Court. *Radha Gobind Kur* v. *Ramkishore Dutt, 8 W. R., 240,* referred to. HAIMABATI DASI *v.* GOVINDA CHANDRA GHOSH [2 C. W. N., 695

JUDGMENT—*continued.*

1. CIVIL CASES—*continued.*

33. ———— *Omission to give reasons—Appellate Court—Civil Procedure Code, 1877, s. 574.*—Where the judgment of the lower Appellate Court dismissing an appeal was merely as follows: "the appeal is dismissed with costs"—the High Court set aside the decree on the ground that the Court had not complied with the provisions of s. 574 of the Civil Procedure Code. SRIKANT DEY *v.* HURI DAS PAL **11 C. L. R., 131**

34. ———— *Affirming judgment of lower Court.*—Where the decision of a case involves issues of fact, and the first Court has gone fully into the evidence and recorded its finding and decision, if the Appellate Court agrees with the conclusions of the Court below, the Appellate Court is not obliged by law to state in detail the reasons previously recited in which it concurs. LALLA JUGGESHUR SAHOY *v.* GOPAL LALL . **15 W. R., 54**

35. ———— *Civil Procedure Code, 1859, s. 359—Omission to give reasons.*—In a case decided on pure questions of fact, no point being left undetermined, in which the Judge in appeal endorsed the opinion of the first Court, without giving detailed reasons, the High Court did not consider it right to remand the case to the Judge to set forth in his judgment the same reasons which influenced the Court of first instance. IMRIT LALL THAKOOR *v.* NUCKSHED SUHAYE . . **10 W. R., 100**

KULUMUTEE KOOER *v.* JOWAHUR LALL [**11 W. R., 318**

36. ———— *Civil Procedure Code, 1859, s. 359.*—Where a lower Appellate Court took no notice in its decision of a large quantity of evidence of very considerable importance which had been urged before it as of the highest possible character, and gave no reasons for agreeing with the Court of first instance that the evidence in question had very little connection with the case, its judgment was held to be not a legal decision in the terms of s. 359, Act VIII of 1859. ADHEEN MISSER *v.* JOGRAJ MISSER . . . . . **11 W. R., 312**

37. ———— *Affirmance of decision of lower Court—Decision on oral testimony.*—A plaintiff is entitled to some opinion by the lower Appellate Court upon the oral testimony on his side. The mere affirmance of the decision of the first Court which considered the oral evidence in detail does not involve the adoption by the lower Appellate Court of the first Court's view of the oral testimony. RAJOO *v.* RAJ COOMAR SINGH . . **7 W. R., 137**

38. ———— *Omission to give reasons.*—As a matter of law, the decision of a lower Appellate Court cannot be said to be erroneous or fit to be reversed because the Judge has not, in reversing the decision of the Court below, categorically met and refuted the reasons on which that decision had proceeded; but such an omission may form a good ground for an application to the High Court to require the lower Appellate Court to set forth the reasons on which its judgment proceeded. GOLAM HOSSEIN *v.* RAM DOYAL GHOSE . **12 W. R., 152**

39. ———— *Judgment of an Appellate Court reversing the judgment of the first Court, Requisites of.*—It is clearly the duty of an Appellate Court, reversing the judgment of the first Court, to state clearly and fully the grounds on which it does so, and the more especially when the first Court has gone fully into the facts and the reasons for the conclusion arrived at. RAM RANGINI CHANDA CHAUDHURANI *v.* CHANDRA BINODE PAL [**1 C. W. N., 691**

40. ———— *Civil Procedure Code, 1859, s. 359—Ground for remand.*—It is the duty of the Appellate Court when it reverses the decision of the first Court, and more especially when the judgment of the first Court is full and cogent, to point out the grounds on which it comes to a different conclusion. Where a District Judge had omitted to do so, and, having left the country, could not be required to supply the omission, the High Court, being unable to make the ordinary presumption that he had fully considered the evidence, set aside his judgment, and remanded the case to be heard in appeal *de novo.* KRISTO CHUNDER CHUCKERBUTTY *v.* RAM BROMHO CHUCKERBUTTY . . . **20 W. R., 403**

41. ———— *Duty of Appellate Court—Transfer of Judge—Irregularity in recordiug judgment.*—The Civil Judge, in confirming a decision of the District Munsif, did not state the reasons upon which his judgment was founded, and the High Court remitted the case in order that the Civil Judge might record a judgment in accordance with the Civil Procedure Code. The Civil Judge had been appointed to another district; and when the case went down, the new Judge had the case re-argued before him, and reversed the decision of the Munsif. The High Court, under the circumstances, held that effect should be given to the first judgment, notwithstanding the irregularity. KRISTNA REDDI *v.* SRINIVASA REDDI . **5 Mad., 174**

42. ———— *Omission to give reasons—Death of Judge before judgment.*—A Deputy Collector having died before giving his reasons for a decree said to have been made by him, the whole of the subsequent proceedings were held to be bad, and the case was remanded to the Collector to be tried *de novo* upon the evidence upon the record. NOBO CHUNDER BANERJEE *v.* ISHUR CHUNDER MITTER . . . . **12 W. R., 254**

43. ———— *Judgment of Appellate Court—Omission to give reasons—Remand under ss. 566 and 587, Civil Procedure Code, 1882.*—Where the lower Appellate Court omits to give reasons for its decision, the High Court will retain the case in second appeal, and either require the Judge to state his reasons, or, in the event of his absence, refer the case to his successor for fresh trial. ASSANULLAH *v.* HAFIZ MAHOMED ALI [**I. L. R., 10 Calc., 932**

44. ———— **Judgment containing findings unnecessary for disposal of case—**

Appellate Court—Dismissal of suit—Findings unnecessary for disposal of case—Appeal by successful party—Civil Procedure Code, 1882, s. 203.—When a suit has been dismissed on the merits in the Court of first instance, and that decision is upheld by the District Judge on appeal, merely on the ground of non-joinder, the District Judge should not record any findings in the appellant's favour on the merits of the case; and, if he does so, such findings will, on second appeal to the High Court, be expunged from the record. NANDA LAL RAI *v.* BONOMALI LAHIRY . . . **I. L. R., 11 Calc., 544**

45. ———— **Additions to judgment after delivery**—*Adding reasons for decision.*—It is irregular to add to a judgment once delivered when the effect of the addition is to alter the grounds on which the judgment proceeded. *Semble*—A Judge may append to his judgment additional reasons, merely to show more fully the correctness of the decision at which he has arrived, though such a course is not strictly warranted by the Civil Procedure Code. SNADDEN *v.* TODD, FINDLAY & CO. **[7 W. R., 286**

46. ———— **Final disposal on settlement of issues**—*Omission to take evidence.*—Where the Judge finally disposed of the case on the day fixed for the settlement of issues without allowing the parties the opportunity to adduce evidence and fully ascertaining the facts,—*Held* that his judgment was illegal and defective. GULZAR SHAH *v.* MEHTAB SINGH . . . **2 Agra, 30**

47. ———— **Form of judgment on appeal**—*Judgment not in conformity with law—Dismissal of appeal—Civil Procedure Code (Act XIV of 1882), ss. 551, 574.*—The lower Appellate Court, in disposing of an appeal from a decree of the Munsif, recorded the following judgment: "Suit laid at R480, value of buffaloes. Appeal rejected under s. 551 of the Civil Procedure Code." *Held* that this was not a judgment in conformity with law. The dismissal of an appeal under s. 551 of the Civil Procedure Code by a Court whose decision may be the subject of an appeal does not relieve the Court from the necessity of writing a judgment which, according to the provisions of s. 574 of the Code, should show the points raised, the decision upon those points, and the reasons for deciding them. RAMI DEKA *v.* BROJO NATH SAIKIA . . . **I. L. R., 25 Calc., 97 [1 C. W. N., 692**

48. ———— **Applicability of provisions as to first appeals**—*Remand—Judgment of first Appellate Court—Civil Procedure Code, ss. 574, 578.*—The judgment of a lower Appellate Court, after setting forth the claim, the defence, the nature of the decree of the first Court, and the effect of the pleas in appeal, concluded, with general observations, as follows: "The point to be determined on appeal is whether or not the decision is consistent with the merits of the case. The Court, having considered the evidence on the record and the judgment of the Munsif, which is explicit enough, concurs with the lower Court. . . . . The finding arrived at by the

Munsif, that the plaintiff's claim is established, is correct and consistent with the evidence. The pleas urged in appeal are therefore undeserving of consideration." *Held* that this was in law no judgment at all, inasmuch as it did not satisfy the requirements of s. 574 of the Civil Procedure Code, and that the decree of the lower Appellate Court must therefore be set aside, and the record returned to that Court for a proper adjudication, in accordance with the provisions of that section. *Mahadeo Prasad* v. *Sarju Prasad, Weekly Notes, All., 1886, p. 171,* referred to. Observations by MAHMOOD, *J.*, upon the distinction between the duties of the Courts of first appeal and those of the Courts of second appeal in connection with the provisions of ss. 574 and 578 of the Civil Procedure Code, and with the remand of cases for trial *de novo*. *Ram Narain v. Bhawanidin, I. L. R., 9 All., 29 note,* and *Sheoambar Singh* v. *Lallu Singh, I. L. R., 9 All., 30 note,* referred to. SOHAWAN *v.* BABU NAND **[I. L. R., 9 All., 26**

49. ———— **Judgment of High Court**—*Civil Procedure Code, ss. 574, 633—"Substantial question of law"—Contents of judgment—Rules made by High Court under s. 633 for recording judgments.*—The intention of the Legislature as expressed in s. 633 of the Civil Procedure Code was that the High Court might frame rules as to how its judgments should be given, whether orally or in writing, or according to any mode which might appear to it best in the interests of justice. The section does not merely give the High Court power to direct that judgment shall be recorded in a particular book or with a particular seal. Rule 9 of the rules made under s. 633 in March 1885 is therefore not *ultra vires* of the Court, and it modifies the provisions of s. 574 in their application to judgments of the High Court. With reference to the terms of Rule 9, it is not necessary, in a case where the High Court substantially adopts the whole judgment of the Court below, to go through the formality of restating the points at issue, the decision upon each point, and the reasons for the decision. *Per* EDGE, *C.J.*—Apart from Rule 9, it never was intended that s. 574 of the Code should apply to cases where the High Court, having heard the judgment of the Court below and arguments thereon, comes to the conclusion that both the judgment and the reasons which it gives are completely satisfactory, and such as the High Court itself would have given. Assuming the provisions of s. 574 to be applicable, a judgment of the High Court stating merely that the appeal must be dismissed with costs and the judgment of the first Court affirmed, and that it was unnecessary to say more than that the Court agreed with the Judge's reasons, is a substantial compliance with those provisions. The judgment of the High Court in a first appeal was as follows: "This appeal must, in my opinion, be dismissed with costs, and the judgment of the first Court affirmed; and I do not think it necessary to say more than that we agree with the Judge's reasons." The appellant applied for leave to appeal to Her Majesty in Council on the ground that the requirements of s. 574 of the Civil Procedure Code had not been complied with. *Held* by the Full Bench that the objection involved no substantial question of law, and that the application for leave to appeal must therefore be rejected. SUNDAR BIBI *v.* BISHESHARNATH

[I. L. R., 9 All., 93

50. ———— **Finding of lower Court based on misconception of evidence**—*Defective judgment in facts—Ground of second appeal.*—The finding on an issue of a lower Appellate Court, which is based on a misconception of what the evidence is, cannot be accepted in second appeal as a legal finding on it. GOVIND *v.* VITHAL

[I. L. R., 20 Bom., 753

51. ———— **Findings on issues on remand**—*Civil Procedure Code (1882), ss. 566, 569, and 574—Duty of Appellate Court to form its own opinion on the evidence and record reasons for findings—Procedure.*—In certifying to the High Court the findings on issues sent back on remand and found by the Court of first instance, the lower Appellate Court is, in the absence of any admission by the party against whom the issues have been found, bound to form its own opinion on the evidence and record its findings with the reasons for them. RAMCHANDRA GOVIND MANIK *v.* SONO SADASHIV SARKHOT

[I. L. R., 19 Bom., 551

52. ———— **Contents of appellate judgment**—*Civil Procedure Code (1882), s. 574—Duty of Appellate Court to examine the correctness of a finding in the absence of a memorandum of objections.*—A Judge, having remanded a case for further evidence to be taken and a fresh finding recorded on a question of fact, is bound to examine the correctness of the finding, and to state in his judgment the reasons for which he either accepts or rejects it. KUNHI MARAKKAR HAJI *v.* KUTTI UMMA . . . . **I. L. R., 20 Mad., 496**

53. ———— **Date of operation of judgment**—*Adjournment for written judgment—Death of party between hearing and judgment—Civil Procedure Code (1882), s. 234—Practice.*—An appeal having been argued on the 11th November 1892, the case was adjourned for judgment, which was delivered on the 30th November 1892, and was in favour of the plaintiffs. In the meanwhile, the defendant had died. On application for execution, it was contended that the decree was null and void, as the respondent was dead when it was passed. *Held* that the judgment should be treated as operating as if it had been delivered on the day when the argument was closed. NARNA *v.* ANANT

[I. L. R., 19 Bom., 807

54. ———— **Contents of judgment in appeal**—*Civil Procedure Code (1882), s. 574—Duty of Appellate Court to hear appeal after remand for findings, though no memorandum of objections.*—On the hearing of a plaintiff's appeal against an order dismissing his suit, the District Judge, finding the issues that had been framed futile, struck them all out, substituted others, and remanded the suit for findings after evidence had been taken. On the appeal coming on for hearing after the return of those findings, neither party having filed any objections, the District Judge dismissed the suit on the ground that by his failure to file objections, plaintiff must be taken to have consented to the new findings, which were against him. *Held* that the Judge was not absolved from hearing the appeal by reason of the absence of a memorandum of objections. *Kunhi Marakkar Haji* v. *Kutti Umma, I. L. R., 20 Mad., 496.* SUBBAYYA *v.* RAMI REDDI

[I. L. R., 22 Mad., 344

55. ———— **Judgment of Small Cause Court, what should be contained therein**—*Civil Procedure Code, s. 203—Revision—Civil Procedure Code, ss. 562, 622, and 647—Provincial Small Cause Court (Act IX of 1887), s. 25.*—S. 203 of the Code of Civil Procedure does not relieve the Judge of a Small Cause Court from the necessity of giving some indication in his judgment that he has understood the facts of the case in which such judgment is given. Where a judgment in a Small Cause Court suit stated merely that the suit was dismissed for reasons given in the Judge's decision in another suit, and the judgment in the suit so referred to was in the following words: "Claim for recovery of money lent with interest. Reply: Defendant pleads that he has paid the debt to the plaintiff. Issue: Has the defendant paid the debt claimed to the plaintiff? Finding: It is not proved that the defendant paid the debt to the plaintiff. Ordered that the claim is decreed with costs." *Held* that this was in fact no judgment at all, and the case must be remanded for re-trial on the merits under the analogy of s. 562 of the Code of Civil Procedure, read with s. 647. MANIK RAHMAT *v.* SHIVA PRASAD.

[I. L. R., 13 All., 533

(*d*) JUDGMENT GOVERNING OTHER CASES.

56. ———— **One judgment governing several cases**—*Filing judgment.*—Where a judgment in one case governed other cases,—*Held* that the filing of that judgment was a substantial compliance with the requirements of the law, and that the filing of a short judgment referring to the other judgment was merely formal, and the delay excusable. MOTHOORNATH CHUCKERBUTTY *v.* KISSEN MOHUN GHOSE . **W. R., 1864, Mis., 9**

BHYRUBNATH SANDYAL *v.* HURE SOONDUREE DOSSEE . . . **W. R., 1864, Mis., 28**

(*e*) CONSTRUCTION OF JUDGMENT.

57. ———— **Inconsistency in portions of judgment**—*Ambiguity.*—In construing a judgment, if a difficulty is found in reconciling the conclusion ultimately arrived at with the previous part, such part must be rejected. BYKUNT CHUNDER CHUCKERBUTTY *v.* DHUNPUT SINGH . **19 W. R., 104**

58. ———— **Matter omitted in conclusion arrived at**—*Former decisions of same*

JUDGMENT—*continued.*

1. CIVIL CASES—*concluded,*

Judge as guides.—Where the final sentence in a judgment of the High Court made no mention of a matter specified in the previous words, and the District Judge had the option of taking the latter to throw light on the former, or the former to be controlled by the latter, he was held to be entitled to follow the effect of previous judgments delivered by the same Judge of the High Court. TARA CHAND BISWAS *v.* RAM JEEBUN MOOSTAFEE . **22 W. R., 202**

(*f*) RIGHT TO COPIES OF.

59. ——— **Right of parties to copy of judgment**—*Translation.*—Parties to a suit are entitled to receive copies of the original judgment, not merely a translation. VARJIVAN RANGJI *v.* ALI DAJI . . . . **1 Bom., 165**

60. ——— *Copies of judgment of Courts of Small Causes.*—Judges of Courts of Small Causes were bound to give copies of their judgments to parties requiring them. IBRAHIM FATTE ALI *v.* CHANDRA BHAU VALAD BAPUJI **[7 Bom., A. C., 130**

61. ——— **Right of strangers to copy of judgment.**—Strangers to a suit may obtain as of course copies of judgments, decrees, or orders at any time after they have been passed or made. See Circular Order, 2nd June 1875. IN RE BAMA CHURN GHOSAL . . . . . **2 C. L. R., 553**

62. ——— **Copies of, Delay in furnishing**—*Civil Procedure Code, s. 198—Resolution of High Court, 6th July 1872.*—The plaintiff applied for the admission of a special appeal, and his application was refused on the ground that the time for the admission of the appeal had expired. It appeared that he had applied for a copy of the judgment and decree, but had been refused, as he had not put in a sufficient quantity of blank papers for copies. On appeal to the High Court,—*Held* the judicial officer was not justified in delaying the giving of copies until blank papers were put in. Such copies, by s. 198 of Act VIII of 1859 and a resolution of the Court of 6th July 1872, are to be issued on production of the necessary stamps. NILMONEY SINGH *v.* CHINIBAS MAHANTI **[12 B. L. R., Ap., 8: 20 W. R., 405**

2. CRIMINAL CASES.

63. ——— **Illegal judgment**—*Judgment pronounced by successor—Re-trial.*—Until the finding is recorded, the trial is incomplete. If before the finding is recorded the presiding officer of a Court is removed, the successor cannot pass judgment upon consideration of the evidence recorded by the predecessor. ANONYMOUS . . **4 Mad., Ap., 43**

64. ——— **Necessity of findings on each charge**—*Criminal Court—Sessions Judge.*—A Sessions Judge should record findings, whether of conviction or acquittal, on all the charges under which prisoners are committed for trial. QUEEN *v.* MAHOMED ALI . . . **13 W. R., Cr., 50**

JUDGMENT—*continued.*

2. CRIMINAL CASES—*continued.*

65. ——— To enter up findings on every head of charge is not only not illegal, but the most convenient course. ANONYMOUS **[6 Mad., Ap., 47**

66. ——— **Reasons for decision**—*Criminal Appellate Court—Judgment in affirming conviction.*—Although as a general rule it is not incumbent on an Appellate Court when confirming a decision to set forth its reasons in full, yet in the circumstances of a case anything peculiar should be noticed. REG. *v.* MOROBA BHASKARJI . **8 Bom., Cr., 101**

67. ——— *Sessions Judges.*—Sessions Judges should record their reasons for confirming, reversing, or modifying the sentences or orders of the Magistrates. ANONYMOUS **[5 Mad., Ap., 12**

68. ——— *Omission to give reasons—Criminal Procedure Code (Act X of 1882), ss. 367-424.*—A Sessions Judge, after hearing an appeal, gave the following judgment: "It is urged that the evidence is quite untrustworthy, and that the decision should be reversed. The depositions have been gone through, and commented on at considerable length. The Court finds no ground for interference. The appeal is dismissed." *Held* that this was not a sufficient compliance with ss. 367 and 424 of Act X of 1882, and that the case should be re-tried. KAMRUDDIN DAI *v.* SONATUN MANDAL **[I. L. R., 11 Calc., 449**

69. ——— **Judgment not in proper form**—*Form and contents of judgment—Criminal appeal to Magistrate—Criminal Procedure Code, 1882, ss. 367, 424.*—A Magistrate, hearing an appeal from the Deputy Magistrate, gave the following judgment: "I see no reason to distrust the finding of the lower Court. The sentence passed, however, appears harsh. I reduce the term of imprisonment to fifteen days. The fines and terms of imprisonment in default will stand." *Held,* following the decision in *Kamruddin Dai* v. *Sonatun Mandal, I. L. R., 11 Calc., 449,* that it was not a judgment within the meaning of ss. 367 and 424 of the Criminal Procedure Code. IN THE MATTER OF THE PETITION OF RAM DAS MAGHI . **I. L. R., 13 Calc., 110**

70. ——— *Criminal Procedure Code, 1882, ss. 367 and 424—Judgment, Contents of—Omission to give reasons.*—A District Magistrate, in disposing of an appeal, recorded the following judgment: "The affray was a faction fight between members of the two parties into which the society of Dhunshi seems to be split up. There is no good ground for doubting the justice of the Magistrate's finding that the two appellants took part in the affray, and that the party to which they belonged were the aggressors. The appeal is dismissed, and the conviction and sentence are confirmed." *Held* that this was not a judgment in accordance with ss. 367 and 424 of the Code of Criminal Procedure (Act X of 1882). IN RE SHIVAPPA BIN SHIDLINGAPPA . . **I. L. R., 15 Bom., 11**

JUDGMENT—*continued.*

2. CRIMINAL CASES—*continued.*

71. ——— *Form and contents of judgment—Criminal Procedure Code (Act X of 1882), ss. 367 and 537.*—A Sessions Judge, in disposing of a criminal appeal, recorded the following judgment: "The appellants have been convicted of breaking into *H*'s house at night, dragged *H*'s wife to the fields and dishonoured her, though they did not have intercourse with her. I have read through the evidence and heard the appellant's pleader, and I think that the Deputy Magistrate was quite right to believe the evidence. The sentence of one year's imprisonment and R50 fine is not heavy. I dismiss the appeal." It was contended that this was not a judgment within the terms of s. 367 of the Code of Criminal Procedure. *Held* that, having regard to the provisions of s. 537, it does not follow that, because the form of a judgment does not exactly comply with all the requirements of s. 367, it is not a valid judgment, and that, as this judgment showed that the Sessions Judge had appreciated the point that the prosecution had to establish, *viz.*, the credibility of the evidence of the witnesses for the prosecution, and had expressed his opinion on that point, there being nothing to show that any other point was raised before him, it was not a case in which the High Court should exercise its revisional powers. *Kamruddin Dai* v. *Sonatun Mandal, I. L. R., 11 Calc., 449,* and *In the matter of the petition of Ram Das Maghi, I. L. R., 13 Calc., 110,* referred to and commented on. ROHIMUDDI *v.* QUEEN-EMPRESS

[I. L. R., 20 Calc., 353

72. ——— *Judgment of Appellate Court—Criminal Procedure Code (Act X of 1882), ss. 367 and 421—Appeal rejected without any reasons given.*—An Appellate Court, on rejecting an appeal under the provisions of s. 421 of the Criminal Procedure Code, need not give its reasons for the decision. RASH BEHARI DAS *v.* BALGOPAL SINGH . . . **I. L. R., 21 Calc., 92**

73. ——— *Criminal Procedure Code (1882), ss. 367 and 421—Summary rejection of appeal—Reasons for rejection.*—It is advisable that a Court, when rejecting an appeal in a criminal case under the provisions of s. 421 of the Code of Criminal Procedure, 1882, should record shortly its reasons for such rejection in view of the possibility of such order being challenged by an application for revision. QUEEN-EMPRESS *v.* NANHU

[I. L. R., 17 All., 241

74. ——— *Criminal Procedure Code (1882), s. 421—Judgment rejecting an appeal.*—In rejecting an appeal under s. 421 of the Code of Criminal Procedure (Act X of 1882), the Appellate Court is not bound to write a judgment. *Rash Behari Das* v. *Balgopal Singh, I. L. R., 21 Calc., 92,* followed. QUEEN-EMPRESS *v.* WARUBAI

[I. L. R., 20 Bom., 540

75. ——— *Form and contents of judgment—Criminal appeal, Judgment in—Criminal Procedure Code (1882), ss. 367 and 424.*—A Deputy Commissioner, after hearing an appeal from a Deputy Magistrate who had convicted the appellants of rioting, gave the following judgment: "After hearing the arguments of the pleader for the appellants and examining the record, I am of the opinion that the lower Court had ample ground for convicting the accused of rioting. I do not consider the sentence too severe. Appeal dismissed." *Held* that this was not a judgment within the meaning of ss. 367 and 424 of the Criminal Procedure Code, and that the appeal must be reheard. *Kamruddin Dai* v. *Sonatun Mandal, I. L. R., 11 Calc., 449,* and *In the matter of the petition of Ram Das Maghi, I. L. R., 13 Calc., 110,* followed. FARKAN *v.* SOMSHER MAHOMED . . . **I. L. R., 22 Calc., 241**

76. ——— *Form of judgment—Criminal Procedure Code (1882), ss. 367 and 424.*—On appeal, the Sessions Judge gave the following judgment: "After reading the evidence and hearing the learned counsel for the appellant and the learned Government pleader, I am convinced that the Deputy Magistrate has decided the case rightly. The appeal is dismissed." *Held* that the judgment was not in accordance with the law within the meaning of ss. 367 and 424 of the Criminal Procedure Code. GIRISH MYTE *v.* QUEEN-EMPRESS

[I. L. R., 23 Calc., 420

77. ——— *Criminal Procedure Code (1882), ss. 362, 367, and 424—Judgment of Appellate Court—What such judgment must contain.*—A Magistrate having special powers under s. 34 of the Code of Criminal Procedure convicted one *P B* under ss. 471 and 476 of the Indian Penal Code, and sentenced him to four years' rigorous imprisonment. *P B* appealed to the Sessions Judge, and on that appeal the Sessions Judge recorded the following judgment: "I have perused the record, and see no cause for interference with the finding of the District Magistrate. As regards the sentence, it is not excessive, but, having regard to the great age of the appellant, I will reduce it to three years' rigorous imprisonment with three months' solitary confinement." *Held* that this judgment was in compliance with the provisions of s. 367 of the Code of Criminal Procedure, read with s. 424 of the same Code. QUEEN-EMPRESS *v.* PANDEH BHAT

[I. L. R., 19 All., 506

78. ——— *Judgment in stereotyped form—Judgment showing consideration of evidence—Criminal Procedure Code, 1882, ss. 367, 424.*—Where the judgment of a Criminal Appellate Court is in the nature of a stereotyped one which might answer for any case, it is not one in accordance with ss. 367 and 424 of the Criminal Procedure Code; but when the judgment, though not a long and elaborate one, affords a clear indication that the Court duly considered the evidence, it is a good judgment and should not be set aside. *In re Shivappa, I. L. R., 15 Bom., 11,* and *Farkan* v. *Somsher Mahomed, I. L. R., 22 Calc., 241,* distinguished. KASIMUDDI *v.* QUEEN-EMPRESS

[1 C. W. N., 169

79. ——— *Civil suit—Criminal Procedure Code (Act X of 1882), s. 370*

JUDGMENT—*continued.*

2. CRIMINAL CASES—*continued.*

cl. (i)—Summary procedure—Conviction, Reasons for.—The meaning of s. 370, cl. (*i*), of Act X of 1882 is that, where the offence found is sufficiently grave to involve a fine of R200 or imprisonment as the substantive sentence, the Magistrate is bound to record his reasons for the conviction, so as to enable the party to bring the matter up to the High Court; but in petty cases which can be met by a fine of a few rupees, the decision of the Magistrate may be recorded shortly. A sentence of a fine of R10, and imprisonment in default of payment of the fine, is not a sentence of imprisonment within the meaning of the section. MOTEERAM *v.* BELASEERAM [**I. L. R., 14 Calc., 174**

80. ———— *Criminal Procedure Code, 1898, s. 263, cl. (h)—Summary trial—Statement of reasons in judgment—Findings of fact constituting offence.*—A judgment in a summary trial must, in accordance with s. 263, cl. (*h*), set out a brief statement of the reasons for the conviction, which include the findings of fact upon which the conviction is based. The proceedings in a summary trial must show the reasons for convicting the accused so that the High Court in revision may judge whether there are sufficient materials in support of the conviction. LALIT MOHAN SAHA *v.* CHUNDER MOHAN ROY . . . . . **3 C. W. N., 281**

QUEEN-EMPRESS *v.* SHIDGANDA [**I. L. R., 18 Bom., 97**

81. ———— *Irregularity—Magistrate passing sentence before finishing his judgment—Criminal Procedure Code (Act X of 1882), ss. 366, 367, and 537.*—A Magistrate on a charge of rioting passed sentence on the accused without delivering his judgment in open Court, the judgment (one in course of being written during the hearing of the case) being in fact not then completed. The case went on appeal to the Sessions Judge, who, dealing fully with the evidence taken before the Magistrate, confirmed the conviction and sentence. *Held per* PRINSEP and TREVELYAN, *JJ.*, that the judgment of the Magistrate was not one in accordance with the law as laid down in s. 366 of the Criminal Procedure Code: but *held* by PRINSEP and O'KINEALY, *JJ.* (TREVELYAN, *J.*, dissenting) that the irregularity was one contemplated by s. 537 of the Code, and not having occasioned any failure of justice, it did not necessitate a re-trial of the case. *Per* TREVELYAN, *J.*—The case was more than one of mere "error, omission, or irregularity" within the meaning of s. 537; the judgment having been irregularly arrived at and pronounced, there was no "judgment" in accordance with law, and therefore no fair trial to which every accused person is entitled; the case ought therefore to be re-tried. DAMU SENAPATI *v.* SRIDHAR RAJWAR [**I. L. R., 21 Calc., 121**

82. ———— *Criminal Procedure Code (1882), ss. 366, 367, and 537—Pronouncing sentence before writing judgment—Irregularity.*—In this case, after the evidence was adduced on both sides, the Assistant Magistrate fixed a day for hearing argument and passing judgment. On that day argument was heard, and the case adjourned to another day for judgment, when the Magistrate pronounced sentence, though he had not written his judgment. The judgment was, however, written in the evening of the same day. *Held* the judgment of the Assistant Magistrate was not in accordance with the provisions of ss. 366 and 367 of the Criminal Procedure Code. In the circumstances of the case, the omission of the Magistrate in recording a judgment before pronouncing his sentence was an omission or irregularity which fell within the purview of s. 537 of the Code. The sentence itself, by reason of this irregularity, was not an illegal sentence so as to render the trial nugatory. *Queen-Empress* v. *Hargobind Singh, I. L. R., 14 All., 242,* and *Damu Senapati* v. *Sridhar Rajwar, I. L. R., 21 Calc., 121,* discussed. TILAK CHANDRA SARKAR *v.* BAISAGOMOFF . **I. L. R., 23 Calc., 502**

83. ———— *Record sent to Appellate Court—Criminal Procedure Code, 1882, s. 367, para. 5, proviso—Record of heads of charge—Judgment in trial by jury.*—*Held* that the words in s. 464, Code of Criminal Procedure, that in trials by jury "heads" of the Judge's "charge" are to be recorded, must be construed reasonably, and include such statement on the part of the Sessions Judge as will enable the Appellate Court to decide whether the evidence has been properly laid before the jury, or whether there has been any misdirection in the charge. QUEEN *v.* KASIM SHAIKH [**23 W. R., Cr., 32**

84. ———— **Comments on conduct and evidence of police officers**—*Sessions Judges.*—For the purposes of a judgment in Sessions trials the testimony or conduct of police officers concerned should be scrutinised and commented on in the same degree as those of other material witnesses, and no further. QUEEN *v.* BUDRI ROY [**23 W. R., Cr., 65**

85. ———— **Note added to judgment of judicial officer in criminal case**—*Irregularity.*—Observations by STUART, *C. J.*, on the impropriety of a judicial officer adding a "note" to his judgment in a criminal case impugning the correctness of the conclusion he has arrived at on the evidence in such case. EMPRESS *v.* CHATTER SINGH [**I. L. R., 2 All., 33**

86. ———— *Rules of High Court, N.-W. P., 18th January 1898, rule 83—Finality of judgment or order of the High Court—Power of Judge to alter it.*—*Held* that a judgment or order of the High Court is not complete until it is sealed in accordance with Rule 83 of the Rules of Court of the 18th January 1898, and up to that time may be altered by the Judge or Judges concerned therewith without any formal procedure by way of review of judgment being taken. QUEEN-EMPRESS *v.* LALIT TIWARI [**I. L. R., 21 All., 177**

JUDGMENT IN REM.

See CASES UNDER ESTOPPEL—ESTOPPEL BY JUDGMENT.

See EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS.

1. ———— **Decision as to status of particular person or family**—*Judgment inter partes.*—A judgment is not a judgment *in rem* because, in a suit by *A* for the recovery of an estate from *B*, it has determined generally concerning the status of a particular person or family; it is a judgment *inter partes.* KATTAMA NACHEAR *v.* RAJAH OF SHIVAGUNGAH . . **2 W. R., P. C., 31**
[9 Moore's I. A., 539

2. ———— **Rule making judgments conclusive**—*Exceptions to rule.*—The rule which makes a judgment conclusive against parties, and those who claim under them, is subject to certain exceptions which are the offspring of positive law, and the reason of the exception may be generally stated to be that the nature of the proceedings by which there is a fictitious, though not unjust, extension of parties, renders it proper to use the judgment against those not formally parties. The rule as to judgments *in rem,* except in some peculiar cases, results from the nature of the proceedings; and before attempting to apply the rule in this country, consideration should be given to the question whether there are Courts so proceeding as to warrant the application of the doctrine of decrees *in rem.* Mr. Smith's definition of a judgment *in rem* discussed and dissented from, and the authorities in English and Roman law upon the subject examined and commented upon. YARAKALAMMA *v.* ANAKALA NARAMMA . **2 Mad., 276**

3. ———— **Judgments of mofussil Courts**—*High Court—Evidence.*—In a suit by *R C* against *D,* the widow of *R N,* to set aside alienations by *D* and to establish his title as reversionary heir to the property left by *R N* on the ground that *R N* had been adopted by *J L,* deceased, and that, on the death of *R N* without issue, the right accrued to *R C* as an agnate of *JL,* it was found that *R N* had been adopted by *J L,* and that *R C* was reversionary heir. In a subsequent suit by *K L* against *R C* for a declaration of his right as heir to *R N* and for possession of the property on the ground that *R N* had not been adopted by, but took the property by gift from, *J L,*—*Held* that the judgment in the former suit was not admissible in evidence on the question of the adoption. *Semble*—There are no judgments *in rem* in the mofussil Courts; and, as a general rule, decrees in those Courts are not admissible against strangers, to prove the truth of any matter directly or indirectly determined by the judgment, or by the finding upon any issue raised in the suit, whether relating to status, property, or any other matter. KANHYA LALL *v.* RADHA CHURN
[B. L. R., Sup. Vol., 662
2 Ind. Jur., N. S., 229 : 7 W. R., 338

4. ———— **Decision as to disputed succession to raj**—*Power of Courts to give judgment in rem.*—In a case of disputed succession to a raj, *A,* one son of the Raja, deceased, was put into possession under Act XIX of 1841, and a suit brought against him on behalf of another infant son, *B,* failed on proof of the legitimacy of *A.* A third son, *C,* now claimed to be entitled against *A*'s son, on the ground that *A* was illegitimate or was the offspring of an inferior marriage. *Held* the decree in the former suit was not a bar to the further prosecution of this suit, nor would it have been had the issues in the two suits been precisely the same. *Quære*—Does there exist in India (exclusive of the particular jurisdictions which are exercised by the High Courts in matters of probate and the like, and which in the case of war might be exercised in matters of prize) any Court capable of giving a judgment *in rem?* JOGENDRO DEB ROY KUT *v.* FUNINDRO DEB ROY KUT
[11 B. L. R., 244 : 17 W. R., 104
14 Moore's I. A., 367

5. ———— **Decree declaring deed to be forged**—*Evidence.*—The plaintiff sued to set aside a decree which had been obtained against a co-sharer on a mokurari pottah. The decree which declared the pottah to be a forgery was in a suit to which the plaintiff was no party. *Held* the decree did not operate as a judgment *in rem.* GUNGADHUR ROY *v.* WOOMA SOONDEREE DOSSEE
[B. L. R., Sup. Vol., 672
2 Ind. Jur., N. S., 120 : 7 W. R., 347

See LALA RANGLAL *v.* DEONARAYAN TEWARY
[6 B. L. R., 69 : 14 W. R., 201

6. ———— **Decision on question of adoption.**—The Full Bench decision in *B. L.R., Sup. Vol., 662 : 2 Ind. Jur., N. S., 229 : 7 W. R., 338* merely laid down that a decision in a suit *inter alias* relating to a question of adoption was not a judgment *in rem* and was not conclusive; and that a judgment or order in a suit *inter partes,* in which it had been found that the plaintiff had been adopted, could not be used at all as evidence of the fact of adoption in a suit *inter alias.* It only spoke of decrees or judgments *inter alias,* and never intended to speak of the admissibility or inadmissibility of thakbust maps or other similar surveys as to whether they would or would not be evidence against persons who were not parties to them. MOTEE LALL *v.* BHOOP SINGH
[2 Ind. Jur., N. S., 245 : 8 W. R., 64

JUDGMENT-DEBT.

See CONTRACT ACT, s. 25.
[I. L. R., 3 All., 781
I. L. R., 14 Bom., 390

JUDGMENT-DEBTOR.

See CASES UNDER ARREST—CIVIL ARREST.

See CASES UNDER ATTACHMENT—ATTACHMENT OF PERSON.

See BENGAL TENANCY ACT, s. 174.
[I. L. R., 15 Calc., 482

See IMPRISONMENT.
[I. L. R., 13 Mad., 141

JUDGMENT-DEBTOR—*continued.*

See Cases under Insolvency—Insolvent Debtors under Civil Procedure Code.

See Limitation Act, 1877, art. 11.
[I. L. R., 1 Mad., 391
I. L. R., 11 Bom., 45, 114
I. L. R., 15 Calc., 674
I. L. R., 17 Bom., 629
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See Right of Suit—Execution of Decree . **I. L. R., 15 Calc., 437, 674**
[I. L. R., 23 Mad., 195
I. L. R., 10 All., 479

———— **Death of—**

See Civil Procedure Code, s. 108.
[I. L. R., 21 All., 274

See Civil Procedure Code, s. 244—Parties to Suits.
[I. L. R., 10 All., 479
I. L. R., 24 Calc., 62
I. L. R., 16 All., 286
I. L. R., 19 All., 332

See Civil Procedure Code, s. 244—Questions in Execution of Decree.
[I. L. R., 17 All., 431

See Cases under Execution of Decree—Execution by and against Representatives.

See Limitation Act, art. 179—Nature of Application—Irregular and Defective Applications.
[I. L. R., 19 All., 337

See Cases under Representative of deceased Person.

See Cases under Sale in Execution of Decree—Invalid Sales—Death of Judgment-debtor before Sale.

———— **Discharge of—**

See Attachment—Attachment of Person . . . **Bourke, O. C., 109**
[5 N. W., 220
I. L. R., 6 Mad., 170
I. L. R., 8 Mad., 21, 276, 503
I. L. R., 12 Bom., 46
I. L. R., 11 Calc., 527
I. L. R., 20 Calc., 874

See Civil Procedure Code, 1882, s. 341.
[I. L. R., 9 Bom., 181
I. L. R., 8 Mad., 21

See Cases under Insolvency—Insolvent Debtors under Civil Procedure Code.

See Cases under Subsistence-money.

———— **Insanity of—**

See Sale in Execution of Decree—Setting aside Sale—Irregularity.
[I. L. R., 19 Mad., 219

JUDGMENT-DEBTOR—*concluded.*

———— **Representative of—**

See Cases under Civil Procedure Code, s. 244—Parties to Suits.

See Cases under Representative of deceased Person.

JUDICIAL ACT.

See Cases under Judicial Officers, Liability of.

JUDICIAL COMMISSIONER.

———— **Power of**—*False evidence—Criminal Procedure Code (Act XXV of 1861), s. 172.*—A Judicial Commissioner has no power, under s. 172 of the Code of Criminal Procedure, to commit a witness for a false deposition given before the Assistant Commissioner. Queen *v.* Mati Khowa
[3 B. L. R., A. Cr., 36 : 12 W. R., Cr., 31

JUDICIAL COMMISSIONER, ASSAM.

———— **Jurisdiction of**—*Act XL of 1858—Succession Act (X of 1865), s. 235.*—Assam does not come within the definition of a province, but of a district, for the purposes of Act X of 1865; and the jurisdiction in granting probates and letters of administration under s. 235 of that Act is vested not in the Deputy Commissioner, but in the Judicial Commissioner. The Court of the Judicial Commissioner, not of the Deputy Commissioner, is the principal Court of original civil jurisdiction in Assam, and the Judicial Commissioner is the officer to whom, under Act XL of 1858, the charge of minors and their property is committed. Kristo Surma Adhikaree *v.* Basoodeb Gossamee
[12 W. R., 424

JUDICIAL COMMISSIONER, PUNJAB.

———— **Circular orders passed by—**

See Indian Councils Act.
[12 B. L. R., P. C., 167

JUDICIAL DECISIONS.

See Hindu Law—Custom—Generally.
[I. L. R., 16 All., 379

JUDICIAL NOTICE.

See Civil Procedure Code, 1882, s. 87.
[4 B. L. R., O. C., 51

See Evidence Act (I of 1872), s. 57.
[I. L. R., 14 Calc., 176

See Religion, Offences relating to.
[I. L. R., 7 All., 461

———— **Justice of the Peace**—*Case sent up to High Court.*—Where *R* had tried a case and sent it up to the High Court, but it did not appear whether he had done so in his capacity of a Magistrate or of a Justice of the Peace,—*Semble*—The High Court was bound to take judicial notice that *R* was a Justice of the Peace for Bengal. Queen *v.* Nabadwip Goswami
[1 B. L. R., O. Cr., 15 : 15 W. R., Cr., 71 note

JUDICIAL OFFICER.

See BENGAL TENANCY ACT, s. 153.
[I. L. R., 15 Calc., 327

See FALSE EVIDENCE—GENERALLY.
[I. L. R., 27 Calc., 820

———— **Charge by, for executing commission.**

See COMMISSION—CIVIL CASES.
[12 B. L. R., Ap., 4

———— **Transfer of—**

See CASES UNDER MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING TRIAL.

JUDICIAL OFFICERS, LIABILITY OF—

1. ———— **Protection while exercising judicial functions**—*Stat. 21 Geo. III, c. 70, s. 24—Trespass, Action of.*—The 21st Geo. III, c. 70, s. 24, protecting Provincial Magistrates in India from actions for any wrong or injury done by them in the exercise of their judicial offices, does not confer unlimited protection, but places them on the same footing as those of English Courts of a similar jurisdiction, and only gives them an exemption from liability when acting *bonâ fide* in cases in which they have mistakenly acted without jurisdiction. Trespass will not lie against a Judge for acting judicially, but without jurisdiction, unless he knew, or had the means of knowing, of the defect of jurisdiction, and it lies upon the plaintiff in every such case to prove that fact. CALDER *v.* HALKET
[2 Moore's I. A., 293

2. ———— **Act XVIII of 1850**—*Person acting within limits of his jurisdiction—Bonâ fides.*—Under the provisions of s. 1 of Act XVIII of 1850, no person acting judicially is liable for an act done or ordered to be done by him in the discharge of his judicial duty within the limits of his jurisdiction. In such a case the question whether he acted in good faith does not arise. MEGHRAJ *v.* ZAKIR HUSAIN
[I. L. R., 1 All., 280

3. ———— *Acts done in good faith—Pleading.*—Act XVIII of 1850 does not protect judicial officers from being sued in a Civil Court except in respect of acts done by them in good faith in the discharge of their judicial functions. When a plaint is presented to a Judge against such an officer which complains of a wrongful act on the part of that officer, the Judge is bound to receive the plaint and to leave it to the defendant to plead Act XVIII of 1850. VENKAT SHRINIVAS *v.* ARMSTRONG
[3 Bom., A. C., 47

4. ———— *Criminal Procedure Code, 1861, ss. 68, 212—Liability of Magistrate.*—*Held* that neither Act XVIII of 1850 nor ss. 68 and 212 of the Code of Criminal Procedure, 1861, protected a Magistrate who had failed to act reasonably, carefully, and circumspectly in the discharge of his duties. VINAYAK DIVAKAR *v.* BAI ITCHA . . . . 3 Bom., A. C., 36

JUDICIAL OFFICERS, LIABILITY OF —*continued.*

5. ———— *Liability of public servant for injury done by his act, illegal though bonâ fide—Protection of judicial officers—Cantonments Act (XXII of 1864), s. 11—Lunatic Asylums Act (XXXVI of 1858), s. 4.*—Act XVIII of 1850 is for the protection of judicial officers acting judicially, and of officers acting under their orders. An officer commanding in cantonments, acting *bonâ fide* in the discharge of his public duty, and under the belief that a person was dangerous by reason of insanity, caused him to be arrested, in order that he might be examined by medical officers, and caused him to be detained in his house for that purpose, he not being a dangerous lunatic. The medical officers, while reporting him sane, recommended that he should be placed under the observation of the civil surgeon of the station, for which purpose the same officer caused his further detention. The commanding officer, who, under Act XXII of 1864, s. 11, had control and direction of the police in the cantonment, did not proceed, or intend to proceed, under s. 4 of Act XXXVI of 1858. *Held* that, although his belief might have justified the commanding officer, if he had proceeded under the provisions last mentioned, yet he not having done so, and not having any legal authority for what he had done, was not protected from liability in respect of the above acts. SINCLAIR *v.* BROUGHTON
[I. L. R., 9 Calc., 341 : 13 C. L. R., 185
L. R., 9 I. A., 152

6. ———— *Liability of Municipal Commissioner sitting as Magistrate under Beng. Act III of 1864.*—A Municipal Commissioner invested with the powers of a Magistrate under Bengal Act III of 1864 is protected by Act XVIII of 1850 in respect of every act done by him in such capacity judicially; and so long as he acts within his jurisdiction, and in good faith, no action for damages will lie against him in a Small Cause Court. HALIMOOZZUMAH *v.* MUNICIPAL COMMISSIONERS OF HOOGHLY
[13 W. R., 340

7. ———— *Collector of Sea Customs at Madras—Imposition of fine without jurisdiction—Bonâ fide belief.*—The defendant, who was Collector of Sea Customs at Madras, professing to act under the 24th section of Act VI of 1863, imposed a fine on the plaintiff, over whom he had no jurisdiction, and seized the property of the plaintiff, with a view to realizing such fine. *Held*, on a consideration of all the circumstances of the case, that the belief of the defendant that he had jurisdiction was not *bonâ fide*, and that accordingly he was not protected by Act XVIII of 1850. COLLECTOR OF SEA CUSTOMS *v.* PUNNIAR CHITHAMBARAM . I. L. R., 1 Mad., 89

8. ———— *Judicial act within the limits of the officer's jurisdiction—Such act protected, though done erroneously, illegally or not in good faith—"Jurisdiction"—Magistrate, Jurisdiction of.*—Under Act XVIII of 1850, where an act done or ordered to be done by a judicial officer in the discharge of his judicial duties is within the limits of his jurisdiction, he is protected whether or not he has discharged those duties erroneously, irregularly, or

even illegally, or without believing in good faith that he had jurisdiction to do the act complained of. Where the act done or ordered to be done in the discharge of judicial duties is without the limits of the officer's jurisdiction, he is protected if, at the time of doing or ordering it, he in good faith believed himself to have jurisdiction to do or order it. The word "jurisdiction" is used in Act XVIII of 1850 in the sense in which it was used by the Privy Council in *Calder* v. *Halket, 2 Moore's I. A., 293.* It means authority or power to act in a matter, and not authority or power to do an act in a particular manner or form. A judicial officer who in the discharge of his judicial duties issues a warrant which he has authority to issue, though the particular form or manner in which he issues it is contrary to law, acts within, and not without, the limits of his jurisdiction in this sense. Where a Magistrate of the first class, having sentenced an accused person to three years' rigorous imprisonment and R500 fine under ss. 379 and 411 of the Penal Code, and having issued a warrant, purporting to act under s. 386 of the Criminal Procedure Code, for the levy of the fine by distress and sale of cattle belonging to the accused, sold such cattle before the date fixed for the sale, and in contravention of form 37, sch. V and s. 554 of the Code, and form D in ch. V of the circular orders of the High Court,—*Held* that he was acting in the discharge of his judicial duty within his jurisdiction as a Magistrate of the first class; that under such circumstances it was immaterial that he did not in good faith believe himself to have jurisdiction to sell the property in the manner he did; and that the fact that he acted with gross and culpable irregularity did not deprive him of the protection afforded by Act XVIII of 1850. TEYEN *v.* RAM LALL . . . **I. L. R., 12 All., 115**

9. ——— *Liability of Magistrate—Conviction of servant for misbehaviour—Bom. Reg. I of 1814—Act II of 1839.—Held* that an action of trespass for false imprisonment lay against a Magistrate who proceeded without jurisdiction to convict a tailor, charged before him under Bombay Rule, Ordinance, and Regulation I of 1814, for misbehaviour as a domestic servant, there being no information or evidence on oath of the offence charged as required by the Regulation, as well as by Act II of 1839, and the plaintiff not being a domestic servant, or any servant within the scope of the Regulation; and when called upon to plead, having stated that he left the service because there were wages due to him from his employer, upon which statement he was convicted, without any proper investigation into the truth of it. *Held* also that the Magistrate, who failed to act reasonably, carefully, and circumspectly, cannot be said to have in good faith believed himself to have jurisdiction within the meaning of Act XVIII of 1850, and consequently that he cannot claim the protection of that Act in an action brought against him in a Civil Court. VITHOBA MALHARI *v.* CORFIELD . . . . . **3 Bom., Ap., 1**

10. ——— *Order made by Political Agent in his executive capacity.*—In a suit brought in the High Court, Bombay, by the Hindu inhabitants of Mahalingpore, a village in the territories of the Chief of Modhool, against the Political Agent at the Court of Modhool, for damages for injury done to them by certain orders made by him which affected their caste, the plaint stated that the defendant, at the time the orders were made, exercised exclusive civil jurisdiction throughout the territories of the Chief of Modhool, and that the Court of the defendant was a Court subject to the superintendence of the High Court at Bombay; and that the orders complained of were made by him as Political Agent and in his executive capacity. *Held* that there was no cause of action, whether the acts were done by the defendant as Political Agent or in his judicial and magisterial capacity. INHABITANTS OF MAHALINGPORE *v.* ANDERSON . . **7 B. L. R., 452 note**

11. ——— *Refusing bail, Liability of Magistrate to action for.*—The refusing or accepting of bail is a judicial, not merely a ministerial, duty, and a mistake in the performance of that duty by a Magistrate without malice will not be sufficient to sustain an action. PARANKUSAM NARASYA PANTULU *v.* STUART . . **2 Mad., 396**

12. ——— *Liability of Magistrate—Delay in trying prisoners—Power to adjourn case.*—A Deputy Magistrate, who without reason causes delay in proceeding with the trial of persons whom he keeps in jail, is liable, notwithstanding Act XVIII of 1850, to an action for damages if the prisoners are eventually acquitted. By s. 22 of the Code of Criminal Procedure, a Magistrate may, by a written order from time to time, adjourn an enquiry for a period not exceeding fifteen days. QUEEN *v.* SHAHON . . **11 W. R., Cr., 19**

13. ——— *Illegal arrest when acting bonâ fide—Liability of public officer.*—Where the defendant, a commanding officer of a regiment, had unlawfully caused the plaintiff, a contractor, to be arrested and kept in confinement on the reasonable suspicion of fraud entertained against him, believing himself to be lawfully possessed of the authority to do so, and did not act in malice or conscious violation of the law, nor for the furtherance of any unlawful purpose, but failed to establish the fraud imputed,—*Held* that the plaintiff under the circumstances was entitled to substantial damages. PATTON *v.* HUREE RAM . . **3 Agra, 409**

14. ——— *Improper procedure of Magistrate.*—The Magistrate of a district issued an order under s. 308 of the Criminal Procedure Code, 1861, calling on the petitioner to remove a building, on the ground that it was an unlawful obstruction in a highway. A jury of five persons, though without any instructions and differing in their views as to the proper performance of their duties, found, after the time for their report had expired, that the building was not on the high road at all. Five days after, the Magistrate issued another order requiring the petitioner to pull down the house within 15 days, as the report of the jurors had not been made within the time prescribed. The petitioner showed cause under s. 313, but without effect,

JUDICIAL OFFICERS, LIABILITY OF —*continued.*

and the order was repeated. The Sessions Judge meanwhile, upon application of the petitioner, called for the proceedings under s. 434; but the Magistrate wrote questioning the Judge's authority to interfere, and without waiting for the reply proceeded to try the petitioner for disobedience to an order duly promulgated by a public servant, and sentenced him to 25 days' imprisonment under s. 188 of the Penal Code. His house was also pulled down. The proceedings were ultimately forwarded to the Sessions Judge, whose successor in office returned them with the remark that nothing appeared to have been done contrary to the law for the removal of local nuisances. *Quære*—Whether Act XVIII of 1850 would protect a Magistrate in such a case from being sued for damages. REG. *v.* DALSUKRAM HARIBHAI

[2 Bom., 407: 2nd Ed., 384

15. ——————— *Liability of Magistrate—Illegal order under s. 308 of Criminal Procedure Code, 1861.*—A Magistrate who makes an illegal order, which purports to be made under s. 308 of Act XXV of 1861, but is not made in accordance with the provisions of that section, is liable to be sued in the Civil Court in respect of such order, and to be restrained by injunction from carrying it into effect. ASHBURNER *v.* KESHAV VALAD TUKU PATIL

[4 Bom., A. C., 150

16. ——————— *Liability of Magistrate—Officer acting without jurisdiction.*—Suit to recover damages from defendant, Deputy Magistrate of the Zillah of Trichinopoly, for a trespass alleged to have been committed in execution of an order made by him under s. 311 of the Criminal Procedure Code, directing the demolition of the plaintiff's house, as being a nuisance to a public thoroughfare. Defendant denied his liability, alleging in justification of his order that he believed the house to be obstructive to public comfort, and proceeded in accordance with *ss. 308, 310, and 311* of the Criminal Procedure Code, 1861, and that, having acted in good faith in discharge of his duties as a Magistrate, he was protected by Act XVIII of 1850. The issues settled were (1) whether the house was an obstruction and nuisance within s. 308 of the Criminal Procedure Code; (2) whether the defendant acted in good faith in the discharge of his public duty in ordering the removal of the house; (3) whether the plaintiff was entitled to the amount of damages claimed. The Civil Judge held upon the first issue that the defendant had no jurisdiction to order the removal of the house; upon the second issue that defendant had not acted with due care and attention, but from feelings of personal animosity towards plaintiff, and was therefore not protected by Act XVIII of 1850; upon the third issue he assessed the damages at R500. The defendant appealed, relying mainly upon the objection that no action lay against him, inasmuch as, first, it had not been shown that he acted without jurisdiction in making the order complained of; and, secondly, that even if he had acted without jurisdiction, he acted believing at the time with good faith that he had jurisdiction, and was therefore entitled to the protection given by Act XVIII of 1850. *Held* upon the

JUDICIAL OFFICERS, LIABILITY OF —*continued.*

first point that an entire absence of jurisdiction to make the order had been shown; upon the second point, that the facts of the case furnished no reasonable or probable ground for belief in the existence of jurisdiction by a Magistrate of ordinary qualifications; that the defendant must therefore be held not to have entertained that belief in good faith, unless the provisions of the Criminal Procedure Code, under which he acted, admit of the view that he might, not unreasonably, think that it was probably intended to apply to such an annoyance as that complained of; that, however, these provisions were open to such a misunderstanding and misapplication by a Magistrate of ordinary qualifications, and consequently that the suit should be dismissed. RAGUNADA RAU *v.* NATHUMANI THATHAMAYYANGAR . . **6 Mad., 423**

17. ——————— *Liability of Magistrate to damages for illegal order made under s. 308, Criminal Procedure Code, 1861.*—The first defendant, acting as a Magistrate, ordered the removal of the plaintiff's house under s. 308 of the Criminal Procedure Code, upon the ground that it was a nuisance and obstructive to the public thoroughfare. *Held* that the house was neither an obstruction nor a nuisance, and that the first defendant had no jurisdiction to direct its removal, but the first defendant having acted in his judicial capacity, and in good faith believed himself at the time to have jurisdiction, a suit for damages could not be maintained against him. SESHAYIYANGAR *v.* RUGHUNATHA ROW

[5 Mad., 345

18. ——————— *Liability of Magistrate—Order under Criminal Procedure Code (Act XXV of 1861), Ch. XX, ss. 62, 308.*—The plaintiff sued a Magistrate for damage occasioned to him by the cutting of his bund at the Magistrate's order. The Magistrate raised the defence that he was protected by Act XVIII of 1850 for all acts done by him *bonâ fide* in his magisterial capacity. *Held* on the facts that the Magistrate was liable. Act XVIII of 1850 does not protect a Magistrate who has not acted with due care and attention. The mere absence of *mala fides* is no defence. A Magistrate cannot be said to have "in good faith" believed himself to have jurisdiction to do or order the act complained of, unless he in arriving at that belief acted reasonably, circumspectly, and carefully. A Magistrate would not be personally liable for an act done by him under a misconstruction or misinterpretation of the law, if his proceedings were in other respects regular, and if the misconstruction or misrepresentation were one which might have been put upon the law by a reasonable man, acting with ordinary care and attention. But a Magistrate is not protected by saying he misconstrued the law, unless his proceedings have been in other respects regular, and the view of the law taken by him is such as a reasonable and careful man might take. Neither s. 62 nor Ch. XX of the Criminal Procedure Code authorizes a Magistrate to dispose of the property of others at his mere will and pleasure, or without his having distinct and legal grounds for the course he takes. When a Magistrate violates the plain language of the law and the very first principles

JUDICIAL OFFICERS, LIABILITY OF —*concluded.*

of judicial enquiry, his proceedings presumably are characterized by want of care. TARAKNATH MOOKHOPADHYA *v.* COLLECTOR OF HOOGHLY
[4 B. L. R., A. C., 37 : 13 W. R., 13

In the same case on review the lower Appellate Court found, as a fact, that the Magistrate proceeded under Ch. XX of the Criminal Procedure Code; that he called on the plaintiff to show cause, and did hold an enquiry through the police. The High Court, in special appeal, accepting the fact as found by the lower Court, held that the Magistrate was acting judicially and with jurisdiction (though under the circumstances disclosed carelessly and irregularly), and was therefore protected from an action for damages. A proceeding under Ch. XX of the Criminal Procedure Code, if regular and such as the law prescribes, is a judicial proceeding; but a Magistrate does not act legally under it if he does not first call on the person with whose property he proposes to interfere to appear and show cause. COLLECTOR OF HOOGHLY *v.* TARAKNATH MUKHOPADHYA
[7 B. L. R., 449 : 16 W. R., 63

19. ———— *Judicial act—Right of suit—Liability of Magistrate—Beng. Act VI of 1868, sch. K.*—The removal by a Magistrate of an obstruction in the exercise of the powers conferred upon him by sch. K, cl. 1, of Bengal Act VI of 1868 is not a judicial act; and the Magistrate is therefore not protected by Act XVIII of 1850 from a suit in the Civil Court to try the question of the right of the person against whom the order was made to create the obstruction and for damages. CHUNDER NARAIN SINGH *v.* BRIJO BULLUB GOOYEE
[14 B. L. R., 254 : 21 W. R., 391

Affirming decision in CHUNDER NARAIN SING *v.* BROJO BULLUB GOOYEE . . 21 W. R., 126

20. ———— *Abuse of his authority by Judge.*—Wilful abuse of his authority by a Judge—that is, wilfully acting beyond his jurisdiction—is a good cause of action by the party who is injured. AMMIAPPA MUDALI *v.* MAHOMED MUSTAFA SAIB . . . . 2 Mad., 443

JUDICIAL PROCEEDING.

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 84 . I. L. R., 17 Bom., 731

See CIVIL PROCEDURE CODE, 1882, s. 2.
[I. L. R., 2 Bom., 553

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I. L. R., 20 Mad., 283
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JUDICIAL PROCEEDING—*concluded.*

See CASES UNDER FALSE EVIDENCE—GENERAL CASES.

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[I. L. R., 14 Bom., 381

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[I. L. R., 19 Mad., 18
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See CASES UNDER SUPERINTENDENCE OF HIGH COURT.

JUDICIAL SEPARATION.

See DIVORCE ACT, s. 3, CL. 9.
[I. L. R., 4 Calc., 260

See DIVORCE ACT, s. 7.
[I. L. R., 22 Calc., 544

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[9 B. L. R., Ap., 6
I. L. R., 5 Calc., 357

See DIVORCE ACT, s. 41 . 6 B. L. R., 318

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JUDICIAL SUPERINTENDENT OF RAILWAYS.

———— **Dominions of Nizam of Hyderabad**—*Power of Court of Judicial Superintendent of Railways to commit to High Court—Charges preferred by Advocate General—Letters Patent, 1865, cl. 24—European British subjects.*—The provisions of the Code of Criminal Procedure (X of 1882) apply to the Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions held at Secunderabad. Where, after a magisterial inquiry, a European British subject, being a public servant within the meaning of s. 197 of the Criminal Procedure Code (X of 1882), was committed for trial to the High Court of Bombay by the Judicial Superintendent of Railways in His Highness the Nizam's Dominions, without any previous sanction having been obtained as required by that section,—*Held* that the proceedings were illegal and without jurisdiction, and that a sanction subsequently obtained was of no effect; but held also that the provisions of s. 532 of the Criminal Procedure Code applied, and that the Judge presiding at the criminal sessions of the High Court had power, in his discretion, to accept the commitment and to proceed with the trial of the prisoner. *Per* SARGENT, *C.J.*—The Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions is subordinate to the High Court of Bombay in all criminal matters relating to European British subjects. *Per* BAYLEY, *J.*—The Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions is not subject to the suerintendence of the High Court of Bombay within the meaning of cl. 24 of the Letters Patent, 1865, and a prisoner committed by the former Court for

JUDICIAL SUPERINTENDENT OF RAILWAYS—*concluded.*

trial by the High Court cannot be tried on charges preferred by the Advocate General under that clause. QUEEN-EMPRESS *v.* MORTON

[I. L. R., 9 Bom., 288

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See DECREE—CONSTRUCTION OF DECREE—ENDOWMENT . . **20 W. R., 331**

JUNGLEBURI TENURE.

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . **I. L. R., 14 Calc., 323**

See RIGHT OF OCCUPANCY—PERSONS BY WHOM RIGHT MAY BE ACQUIRED.

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JURISDICTION.

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See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION.

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——— **Illegal exercise of, or failure to exercise—**

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1. QUESTION OF JURISDICTION.

(*a*) GENERALLY.

1. ——— **Duty of Court to show its jurisdiction on its proceedings.**—The High Court pointed out the necessity of a Court showing its jurisdiction and competency on the face of all its proceedings. QUEEN *v.* BIPRO DOSS
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2. ——— **Jurisdiction on what dependent**—*Nature of claim—Nature of defence.*—The jurisdiction of a Court of justice as to a cause of action depends on the nature of the claim put forward by the plaintiff and the matter involved in it, not on what the defendant may assert by way of defence. CHUNDER KOOMAR MUNDUL *v.* BAKUR ALI KHAN . . . . . **9 W. R., 598**

DALGLEISH *v.* JEEBUN MAHTO . **25 W. R., 130**

WATSON *v.* HEDGER . **W. R., 1864, Act X, 25**

NOBIN CHUNDER ROY CHOWDHRY *v.* BHOWANEE PERSHAD DOSS . . **W. R., 1864, Act X, 52**

3. ——— **Questions of jurisdiction how governed**—*Statements in plaint and defence—Valuation of suit.*—Questions of jurisdiction, whether with reference to the nature of the suit or with reference to the pecuniary limits of the claim, are matters to be governed by the statements contained in the plaint in the cause. The valuation of the claim as preferred by the plaintiff, and not as set up by the plea in defence, would govern the action, not only for the purposes of the original Court, but also for the purposes of appeal, and indeed throughout the litigation. JAG LAL *v.* HAR NARAIN SINGH
[I. L. R., 10 All., 524

4. ——— **Objection to jurisdiction**—*Evidence of jurisdiction—Military Court of Requests Act (XI of 1841), s. 8.*—Where the plaintiff alleges the defendant to be amenable to the jurisdiction of the Court, and the defendant denies its jurisdiction,—*Held* that the parties should be allowed to go into evidence to support their allegations, and the Court ought not to have rejected the plaint, without recording its reasons for the same, or taking evidence on the point, under s. 8, Act XI of 1841. ANOOP CHUND *v.* SHUMBHOO MULL . . **1 Agra, 222**

5. ——— *Appeal on merits of case.*—In a suit for confirmation of possession of an estate under a bill of sale, by setting aside a bond in favour of a third party, and a sale in execution of a decree of the Small Cause Court upon the bond, the first Court found that plaintiff's bill of sale was fraudulent, and that he was not in possession. On appeal the Judge, on an objection taken for the first time in his Court, held that the Small Cause Court had no jurisdiction to try a suit on a bond in which land was hypothecated, and, without going into plaintiff's case, gave him a decree. *Held* that the Judge ought to have tried first, not the defendant's case, but the plaintiff's, who was bound to prove his possession and the genuineness of his bill of sale; until then the question of jurisdiction did not arise. RASH BEHAREE ROY *v.* EZUD BUKSH
[11 W. R., 276

6. ——— **Admission or rejection of jurisdiction by Court**—*Judicial investigation.*—A judicial investigation of allegations and facts sufficient to guide the Court should precede the admission or rejection of jurisdiction. NUSRUN BEEBEE *v.* WATSON & Co. . . **3 W. R., 215**

See HUREE PERSAD MALEE *v.* KOONJO BEHARY SHAHA . . . **Marsh., 99 : 1 Hay, 238**

and ISHAN CHUNDER ROY *v.* TARRUCK CHUNDER BANERJEE . . . . **18 W. R., 238**

JURISDICTION—*continued.*

1. QUESTION OF JURISDICTION—*continued.*

7. ——— **Jurisdiction in supplemental suit.**—Courts having jurisdiction over the subject-matter of a suit in which a right is asserted have also jurisdiction over a supplemental suit in which the plaintiff seeks to follow out that right. KASHEE NATH KOOER *v.* DEB KRISTO RAMANOOJ DOSS . . . . . . **16 W. R., 240**

8. ——— **Distinction between suits, appeals, and applications in matters of jurisdiction.**—The distinction made for the purposes of limitation between suits, appeals, and applications by the Limitation Acts has no bearing upon a question of jurisdiction. BALAJI RANCHODDAS *v.* MOHANLAL DALSUKHRAM . **I. L. R., 5 Bom., 680**

9. ——— **Plea of jurisdiction**—*Power of Appellate Court.*—An Appellate Court cannot treat a plea to jurisdiction as a technical plea which may be disregarded if the Court is satisfied with the decision on the merits. KESHAVA SANA BHAGA *v.* LAKSHMINARAYANA . **I. L. R., 6 Mad., 192**

JOY KISHEN MOOKERJEE *v.* HUREEHUR MOOKERJEE . . . . **6 W. R., 289**

10. ——— *Power of Court to decide want of jurisdiction in another Court.*—Although one Court cannot set aside the proceedings of another Court for want of jurisdiction, yet when a matter arises before a Court in the ordinary course of its jurisdiction, and one of the parties relies on, or seeks to protect himself by the proceedings of, another Court, then in that way the jurisdiction of the Court whose proceedings are pleaded may be enquired into. Accordingly, in a suit in which the plaintiff asked for a declaration of title, and a Revenue Court's want of jurisdiction appeared on the face of its decree, a Munsif was held to be justified in holding that the Revenue Court had no jurisdiction. GUNNESH PATTEO *v.* RAM NIDHEE KOONDOO . **22 W. R., 361**

11. ——— *Right to object to jurisdiction.*—Where a suit is instituted against a Collector and another person, and the Collector does not appeal,—*Held* that the question of the District Court's jurisdiction to entertain the suit being a ground common to all the parties affected by the judgment, it is open to the other person to object that the plaint did not disclose a cause of action against the Collector, and that the District Court consequently had not jurisdiction. SANGAPA MALAPA *v.* BHIMANGOWDA MARIAPA . . . . **10 Bom., 194**

(*b*) WHEN IT MAY BE RAISED.

12. ——— *Objection not taken in first Court.*—The Court will receive and adjudicate a point of jurisdiction, though not taken below, because as acts done without jurisdiction are acts of no legal effect at all, they must be set aside. GOOROO PERSAD ROY *v.* JUGGOBUNDO MOZOOMDAR [**W. R., F. B., 15**

JUGGOBUNDO MOZOOMDAR *v.* GOOROO PERSAD ROY . . . **Marsh., 54: 1 Hay, 228**

13. ——— *Objection not taken in first Court.*—The plea of want of jurisdiction can be entertained for the first time at any stage of a suit, provided there is on the record sufficient material to substantiate it. NIDHI LAL *v.* MAZHAR HUSAIN . . . . **I. L. R., 7 All., 230**

14. ——— *Objection to jurisdiction in Appellate Court.*—An objection to the jurisdiction, the validity of which is patent on the face of the proceedings, can be taken at any stage of the proceedings. SIDHESHWAR PANDIT *v.* HARIHAR PANDIT . . . **I. L. R., 12 Bom., 155**

15. ——— *Time for taking objection.*—It is an objection which can be taken at any stage of the case. NOBEEN KISHEN MOOKERJEE *v.* SHIB PERSHAD PATTACK . . **7 W. R., 490**

SUSHTEEBUR MOOKERJEE *v.* MACKENZIE [**2 W. R., Act X, 76**

ANUNDEE KOONWAR *v.* TAKOOR PANDEY [**4 W. R., Mis., 21**

16. ——— *Objection taken for first time in appeal.*—The question of jurisdiction cannot be raised in appeal for the first time, unless it appear upon the face of the pleadings or the admission of the parties, or upon the evidence, that the suit will not lie. Where it did not appear on the face of the pleadings, or on the evidence, under what kind of bastu the land in dispute fell, and no plea to the jurisdiction of the Court under Act X of 1859 had been taken in the Courts below, the High Court would not remand the case to enquire under which class of bastu land the subject-matter of suit fell, or entertain the point of jurisdiction in appeal. NAIMUDDA JOWARDAR *v.* MONCRIEFF [**3 B. L. R., A. C., 283**

S. C. NYMOODDEE JOARDAR *v.* MONCRIEF [**12 W. R., 140**

17. ——— *Objection taken on appeal after remand.*—The Court will take notice of a question affecting its jurisdiction even when urged for the first time on appeal after remand. CHOWDRY WAHID ALI *v.* MULLICK INAYET ALI [**6 B. L. R., 52: 14 W. R., 288**

18. ——— An objection to jurisdiction may be raised at any stage of a suit, even after remand by the High Court in second appeal. KESHAV *v.* VINAYAK [**I. L. R., 23 Bom., 22**

19. ——— *Objection taken on appeal after remand.*—When the High Court has remanded a suit for re-trial on the merits, the lower Appellate Court has no authority to raise a question of jurisdiction for the first time. TEMULJI RUSTAMJI *v.* FARDUNJI KAVASJI [**5 Bom., A. C., 137**

20. ——— *Objection raised for first time on appeal.*—Where a suit which ought to have been instituted in the Court of the Sudder Ameen was, that Court being closed for the vacation, referred by order of the District Judge for

JURISDICTION—*continued.*

1. QUESTION OF JURISDICTION—*continued.*

trial by the Assistant Judge,—*Held*, on objection taken on appeal, that the District Judge ought to have considered the objection, as involving a question of jurisdiction, though raised before him for the first time during the hearing, and not taken in the memorandum of appeal against the decree of the Assistant Judge. MOTILAL RAMDAS *v.* JAMNADAS JAVERDAS . . . **2 Bom., 42: 2nd Ed., 40**

21. ———— *Objection raised for first time on appeal.*—*A* sued *B* in a Court which had no jurisdiction to entertain the claim. The suit was heard and determined in favour of *B* by the Munsif, whose decree was affirmed on appeal by the District Court. *Held* that *A* had a right in special appeal to take the objection that the Courts below had proceeded without jurisdiction. BHAI TRIMBAKJI *v.* TOMU VALAD KUTUR

[2 Bom., 200: 2nd Ed., 192

22. ———— *Objection raised on special appeal.*—Where an objection to the jurisdiction of the Court of first instance was taken for the first time in special appeal, being based on an illegal withdrawal of the suit by the District Judge from the Sudder Ameen to the Assistant Judge's file, it was held that the High Court was not bound to entertain the objection unless it was patent on the face of the record. BAPUJI AUDITRAM *v.* UMEDBHAI HATHESING . . **8 Bom., A. C., 245**

23. ———— *Objection raised after remand on special appeal.*—A plaint presented to a Court not being the Court of the lowest grade competent to try it, was returned to the plaintiff. It was subsequently registered by the same Court in obedience to an order of the District Judge, and a decree was passed in plaintiff's favour. On appeal the defendant pleaded want of jurisdiction in the Court below. The plea was overruled, and the case remanded for re-trial on its merits. The Court of first instance again passed a decree in favour of the plaintiff, and the defendant again urged his plea of jurisdiction in appeal, but the Judge declined to go into it a second time. *Held* that, the suit not having been instituted in the Court of the lowest grade competent to try it, the District Judge had no power to direct the Court of first instance to hear the case, and although no special appeal was preferred against the decree of the District Judge in which he remanded the case for re-trial, it was still open to the defendant in special appeal to raise the plea of jurisdiction. GANPUTRAV RANCHODJI *v.* BAI SURAJ

[7 Bom., A. C., 79

24. ———— *Objection raised on special appeal—Suing without authority.*—A widow, without any written authority, sued on behalf of her son, who was absent on military service beyond the jurisdiction of the Court; the defendant did not object to her want of authority in the Court of first instance, but did so in the Courts of appeal and special appeal. *Held* that the objection was a valid one. SHIVRAM VITHAL *v.* BHAGIRTHIBAI

[6 Bom., A. C., 20

25. ———— *Objection raised on special appeal—Presumption of jurisdiction.*—*Held* by MARKBY, *J.*, that whenever an objection is made to the want of jurisdiction for the first time in the High Court on special appeal, every presumption should be made in favour of the jurisdiction of the Courts below. ROOKE *v.* PYARI LAL

[4 B. L. R., Ap., 43: 11 W. R., 634

26. ———— *Objection to jurisdiction taken at late stage of suit—Procedure.*—When an objection to the jurisdiction is first taken at a late stage of the suit, instead of being brought forward as it should be at the first stage of the suit when the plaint is presented for admission, the proper course is, even if the jurisdiction be doubtful, to proceed to determine the suit. BAGRAM *v.* MOSES

[1 Hyde, 284

27. ———— *Procedure on allowance of.*—Where the objection of jurisdiction had been raised and allowed at an early stage of the case, the plaint should have been returned to be presented in the proper Court. KHOOSHAL CHUND *v.* PALMER

[1 Agra, 280

KHANDU MORESHVAR *v.* SHIVJI GORKOJI

[5 Bom., A. C., 212

28. ———— *Objection taken on appeal—Costs.*—Where the plea of want of jurisdiction was taken in special appeal, each party was made to bear his own costs. NOBEEN KISHEN MOOKERJEE *v.* SHIB PERSHAD PATTACK

[7 W. R., 490

29. ———— *Application for execution of decree—Objection apparent in record.*—*Quære*—Whether, upon an application for execution of a decree, an objection, apparent on the face of the record, to the jurisdiction of the Court which made the decree, can be entertained. MOHAN ISHWAR *v.* HAKU RUPA . . **I. L. R., 4 Bom., 638**

30. ———— *Objection to order made without jurisdiction—Objection on appeal from subsequent order.*—A Court has no jurisdiction, reading s. 372 of the Civil Procedure Code with s. 647, to bring in a party after decree and make him a judgment-debtor for the purposes of execution. *Gocool Chunder Gossamee* v. *Administrator General of Bengal, I. L. R., 5 Calc., 726,* and *Attorney General* v. *Corporation of Birmingham, L. R., 15 Ch. D., 423,* referred to. Where a Court had so acted, by an order which might have been, but was not, made the subject of appeal under s. 588 of the Code,—*Held* that, as there was no jurisdiction to make such an order, the party aggrieved was competent to object thereto on appeal from a subsequent order enforcing execution against him as a judgment-debtor. GOODALL *v.* MUSSOORIE BANK . . . . **I. L. R., 10 All., 97**

31. ———— *Objection that certificate had not been obtained for suit—Suit under Dekkan Agriculturists' Relief Act.*—*Held* that an objection to a suit under the Dekkan Agriculturists' Relief Act, on the ground that a proper

certificate had not been obtained, could be taken for the first time in second appeal, as it was an objection affecting the jurisdiction of the Courts below. NYAMTULA *v.* NANA VALAD FARIDSHA **[I. L. R., 13 Bom., 424**

32. ——— *Objection as to jurisdiction, first taken in second appeal—Waiver of objection to jurisdiction.*—A suit of which the subject-matter was less than R2,500 was instituted in a subordinate Court. The Subordinate Judge tried the suit and passed a decree, and an appeal against this decree was entertained and determined by the District Judge without objection taken that the subordinate Court had no jurisdiction to hear and determine the suit. On second appeal the objection was taken as above. *Held* that the objection could not be waived, but must prevail, and the plaint be returned for presentation in the proper Court. VELAYUDAM *v.* ARUNACHALA **[I. L. R., 13 Mad., 273**

33. ——— *Criminal Court.*—*Objection taken for first time on appeal.*—A plea of want of jurisdiction may be taken in the High Court, though not taken below. MACDONALD *v.* RIDDELL . . . . **16 W. R., Cr., 79**

34. ——— *Criminal Court.*—The case of a prisoner accused of the offence of attempting to cheat by personation was referred for trial by the District Magistrate to a Magistrate, who, without a complaint being made to him, convicted and sentenced the prisoner. The conviction and sentence were confirmed by the Sessions Judge. On application to the High Court to annul the conviction, on the ground that the Magistrate had no jurisdiction to try the case, the Court refused the application, as the question of jurisdiction had not been raised before the Sessions Court. REG. *v.* VISHVANATH DAULATRAV . **4 Bom., Cr., 33**

(c) WRONG EXERCISE OF JURISDICTION.

35. ——— **Suit instituted in wrong Court**—*Transfer of suit.*—Where a suit has been instituted in the wrong Court, the defect of jurisdiction is not cured by its transfer to the Court in which it ought to have been brought. PACHAONI AWASTHI *v.* ILAHI BAKSH . **I. L. R., 4 All., 478**

36. ——— **Case tried without jurisdiction owing to improper valuation**—*Civil Procedure Code, 1859, s. 6—Irregularity not prejudicing defendant—Valuation of suit.*—Act VIII of 1859, s. 6, occurring in a Code of Civil Procedure regulated the practice of Courts, but did not take away jurisdiction from any Court which, like a Subordinate Judge's Court, had general jurisdiction. Accordingly, where an alleged irregularity had in no way prejudiced the appellant, the High Court thought it unnecessary to go into the question of valuation with a view to determine in what Court the suit ought to have been brought. RUSSICK CHUNDER *v.* RAM LALL SHAHA . . **22 W. R., 301**

37. ——— *Subject-matter—Act XIV of 1869, s. 25.*—What *primâ facie* determines the jurisdiction of a Court is the claim, or subject-matter of the claim, as estimated by the plaintiff, and the determination having given the jurisdiction, the jurisdiction itself continues, whatever the event of the suit. And this is so, notwithstanding a *bonâ fide* error in the estimate made by the plaintiff. But the plaintiff cannot oust the Court of its jurisdiction by making unwarrantable additions to the claim which cannot be sustained and which there is no reasonable ground for expecting to sustain. LAKSHMAN BHATKAR *v.* BABAJI BHATKAR **[I. L. R., 8 Bom., 31**

38. ——— **Suit brought with jurisdiction**—*Suit brought without authority—Subsequent sanction, Effect of.*—Where a suit was brought by a widow on behalf of her son who was absent on military service, and the objection of jurisdiction was taken and allowed,—*Held* that the defect of jurisdiction could not be cured by the production of a written authority on special appeal. SHIVRAM VITHAL *v.* BHAGIRTHIBAI . **6 Bom., A. C., 20**

39. ——— **Suit brought under honest misinformation**—*Judge trying suit over which he had no cognizance—Dekkan Agriculturists' Relief Act, 1879, Ch. II.*—An application of Ch. II of the Dekkan Agriculturists' Relief Act (XVII of 1879) by a Subordinate Judge, which would have been illegal and wrong if the Subordinate Judge had known the subject-matter of the suit was of greater value than R100, may be sustained if he was led into applying it by honest misinformation. The original proceedings being thus justified, a Special Judge has jurisdiction to revise them, and, if necessary, to order a new trial. KONDAJI BAGAJI *v.* ANAN **[I. L. R., 7 Bom., 448**

40. ——— **Suit against Sardar**—*Retrospective effect of appointment.*—Creation of the defendant as Sardar in 1867 cannot have a retrospective effect so as to affect a suit instituted against her in the Civil Court in 1861 and to render the decree of that Court one without jurisdiction. RAMABAI SAHEB PATVARDHAN *v.* APPA . **12 Bom., 13**

41. ——— **Exercise of jurisdiction by Court wrongly, owing to negligence of party.**—Where jurisdiction over the subject-matter exists, requiring only to be invoked in the right way, the party who has invited or allowed the Court to exercise it in a wrong way cannot afterwards challenge the legality of the proceedings due to his own invitation or negligence. But if there is no jurisdiction over the subject-matter, the acquiescence of the parties concerned cannot create it. VISHNU SAKHARAM NAGARKAR *v.* KRISHNARAO MALHAR **[I. L. R., 11 Bom., 153**

NARO HARI *v.* ANPURNABAI **[I. L. R., 11 Bom., 160 note**

(*d*) CONSENT OF PARTIES AND WAIVER OF OBJECTION TO JURISDICTION.

42. ———— Consent of parties—*Power to give Court jurisdiction by consent.*—Where a Court has no jurisdiction, no consent of parties can give it jurisdiction. AUKHIL CHUNDER SEN ROY *v.* MOHINY MOHUN DASS **[I. L. R., 5 Calc., 489: 4 C. L. R., 491**

BHOOPENDRO NATH CHOWDHRY *v.* KALEE PROSUNNO GHOSE . . . . **24 W. R., 205**

43. ———— *Agreement of parties that suit shall be brought in Court which has no jurisdiction.*—Jurisdiction cannot be given or taken away by the agreement of parties. *Held,* therefore, that a clause in a bill of lading vesting jurisdiction in a Court which has no jurisdiction can have no legal effect or be pleaded in bar of a suit brought in a Court which has jurisdiction. CRAWLEY *v.* LUCHMEE RAM . . . **1 Agra, 129**

44. ———— *Suit brought not in competent Court—Case transferred by consent to competent Court.*—When a suit has been tried by a Court having no jurisdiction over the matter, the parties cannot, by their mutual consent, convert the proceedings into a judicial process; although, when the merits have been submitted to a Court, it may result that, having themselves constituted it their arbiter, the parties may be bound by its decision. On the other hand, in a suit tried by a competent Court, the parties having without objection joined issue and gone to trial upon the merits, cannot subsequently dispute the jurisdiction on the ground of irregularities in the initial procedure which, if objected to at the time, would have led to the dismissal of the suit. A suit, having been instituted in a Court not of competent jurisdiction, was transferred with the consent of parties to a Court which was competent; but the defence of jurisdiction was set up before the issues were fixed, and was afterwards insisted on throughout. *Held* that in the single fact that the defendant had personally concurred in the transfer, there had been no waiver of the right to maintain this defence, and that the suit must be dismissed on the ground that it was not competently brought. LEDGARD *v.* BULL . . . . **I. L. R., 9 All., 191 [L. R., 13 I. A., 134**

45. ———— *Effect of consent—Land situated beyond British territories.*—The Raja of Dangradra, an independent Chief, sued the Government of Bombay for a village which he described in the plaint as situated in the Raja's own territory. The District Judge, Ahmedabad, rejected the suit for want of jurisdiction, as the village in dispute was beyond the British territories. On appeal, the High Court remanded the case for re-trial on the merits, on the agreement by the plaintiff that he would so amend the plaint as to bring the suit within the jurisdiction of the Ahmedabad District Court. The plaint was accordingly amended, and the District Court decided the case on the merits in favour of the plaintiff. The High Court, however, finding that the amendment did not alter the original statement in the plaint regarding the situation of the village, and finding that the plaintiff's evidence and arguments were directed solely to prove that the village was not in British, but foreign territory, annulled the decree, although both the parties expressed their willingness that the appeal should be decided on the merits, the Court acting on the rule of law that no consent of parties can give to the Court a jurisdiction which it does not possess over the subject-matter of the suit. GOVERNMENT OF BOMBAY *v.* RANMALSINGJI AMARSINGJI **[9 Bom., 242**

46. ———— *Consent to jurisdiction—Waiver of objection to jurisdiction.*—The plaintiff sued three defendants on a bond alleged to have been executed by them to the plaintiff. Two of the defendants did not appear, or make any defence to the suit. The second defendant only appeared and objected to the jurisdiction of the Court; but his objection was overruled, and a decree was made against all three defendants. On appeal the lower Appellate Court reversed the decree, holding that the Court of first instance had no jurisdiction. The plaintiff preferred a second appeal, and contended that the first and third defendants had consented to the jurisdiction of the Court, and that the decree was binding as against them. *Held,* affirming the decision of the lower Appellate Court on the question of jurisdiction, that the conduct of the defendants, even if it could be held to have amounted to consent or acquiescence, did not give the lower Court any jurisdiction. Consent or acquiescence does not give jurisdiction to a Court of limited jurisdiction, though the waiver may be sufficient in a Court of superior jurisdiction. The consent which waives an irregularity, or allows the Court to exercise a power not vested in it, cannot by itself give the authority itself as an attribute of the Court, which must directly or indirectly emanate from the Sovereign. BABAJI *v.* LAKSHMIBAI . **I. L. R., 9 Bom., 266**

47. ———— *Hearing of evidence and decision by different Judges.*—Where the Judge who decides the case is not the Judge who heard the witnesses and received the evidence, the defect may be cured by the assent of the parties. MOHAMED *v.* OOMDAH KHANUM **13 W. R., 184**

48. ———— *Bengal Civil Courts Act (VI of 1871), s. 17—Close holiday—Proceeding on civil side of District Court during vacation—Irregularity.*—S. 17 of the Bengal Civil Courts Act (VI of 1871) was framed in the interests of the Judges and officials of the Courts, and probably also in the interests of the pleaders, suitors, and witnesses, whose religious observances might interfere with their attendance in Court on particular days. On a close holiday, a Judge might properly decline to proceed with any inquiry, trial, or other matter on the civil side of his Court; and any party to any judicial proceeding could successfully object to any such inquiry being proceeded with, and, in the event of any such inquiry having been proceeded with in his absence and without his consent, would be entitled to have the proceeding set aside as irregular, probably in any event, and certainly if his interests had been prejudiced by such irregularity. But, at the furthest, the entertaining and deciding upon a matter within the ordinary jurisdiction of the Court on a close holiday is an irregularity the right to which can be waived by the conduct of the parties; and a party who, on a close holiday, does attend, and without protest takes part in a judicial proceeding, cannot afterwards successfully dispute the jurisdiction of the Judge to hear and determine such matter. *Bennett* v. *Potter, 2 C. & J., 622; Andrews* v. *Elliott, 5 E. & B., 502: 6 E. & B., 38;* and *Bisram Maton* v. *Sahib-un-nissa, I. L. R., 3 All., 333,* referred to. RAM DAS CHAKARBATI *v.* OFFICIAL LIQUIDATOR OF THE COTTON GINNING COMPANY **[I. L. R., 9 All., 366**

49. ———————— *Transfer of case —Objection to jurisdiction subsequently taken.*—A suit having been instituted in the Court of the Subordinate Judge who was incompetent to try it, the case was transferred by consent of parties to the Court of the District Judge for convenience of trial. *Held* that such transfer was incompetent, and that such consent did not operate as a waiver of the plea to the jurisdiction which was taken in the defendant's written statement and subsequently insisted on. LEDGARD *v.* BULL . . **L. R., 13 I. A., 134 [I. L. R., 9 All., 191**

50. ———————— *Objection to jurisdiction after consent.*—In a cause which a Judge is competent to try, if the parties without objection join issue and go to trial upon the merits, the defendant cannot subsequently dispute his jurisdiction upon the ground of irregularities which, if objected to at the proper time, might have led to the dismissal of the suit. But when the Judge has no jurisdiction over the subject-matter of a suit, the parties cannot by their mutual consent convert it into a proper judicial process. *Ledgard* v. *Bull, L. R., 13 I. A., 134,* referred to and followed. MINAKSHI NAIDU *v.* SUBRAMANYA SASTRI **[I. L. R., 11 Mad., 26 L. R., 14 I. A., 160**

KUMARASAMI REDDIAR *v.* SUBBARAYAR REDDIAR **[I. L. R., 23 Mad., 314**

51. ———— **Waiver of jurisdiction**—*Consent of parties.*—An objection to jurisdiction cannot be waived by the parties. LALMONEY DOSSEE *v.* JADDOONAUTH SHAW **1 Ind. Jur., N. S., 319**

Contra, see TICKUM LALL DOSS *v.* MACARTHUR **[1 W. R., 279**

52. ———————— *Omission to raise plea of jurisdiction.*—In a suit in a Munsif's Court on a right of pre-emption, in which plaintiff undervalued his claim, the defendant, without objecting to the jurisdiction, allowed the case to go to trial, and, after passing through the subordinate Courts, to come up to the High Court in special appeal. It was remanded on a question of fact and came up again in special appeal, when the point was raised for the first time (though not taken in the petition of appeal) that the suit was not cognizable by the Munsif, and therefore that all that had been done had been done without jurisdiction. *Held* that the defendant was not at liberty to waive jurisdiction, and that the objection must be allowed to be taken even at this late stage. *Held* that, the suit having been beyond the Munsif's jurisdiction, his judgment was not legal, and his decree, in the eye of the law, no decree at all and of no legal effect. NAUNHOO SINGH *v.* TOFAN SINGH **14 W. R., 228**

53. ———————— *Omission to raise plea of jurisdiction.*—*Held* that, if a defendant who appears in a suit chooses not to raise the plea of want of jurisdiction, he must be taken to submit to the jurisdiction, and that any decree which may be pronounced against him cannot, when it is sought to be executed, be objected to by him on the ground that the Court which made it had no jurisdiction to try the suit. EX-PARTE MANOHAR BHIVRAV POTANIS . . **2 Bom., 396: 2nd Ed., 374**

KANDOTH MAMMI *v.* NEELAN CHERAYIL ABDU KALANDAN . . . . . **8 Mad., 14**

54. ———————— *Defendant not taking plea of jurisdiction, Effect of.*—Where a Court has no inherent jurisdiction over the subject-matter of a suit, the parties cannot by their mutual consent give it jurisdiction. A suit of a nature cognizable by a Court of Small Causes alone was brought in the Court of a Joint Subordinate Judge. The defendant objected to the jurisdiction of the Court, but his objection was overruled. The suit was, however, dismissed on the merits. On appeal before the District Judge the defendant did not renew the plea of want of jurisdiction. The District Judge reversed the decree of the Subordinate Judge and awarded the plaintiff's claim. The defendant thereupon applied to the High Court under s. 622 of the Code of Civil Procedure (Act XIV of 1882). *Held* that both the lower Courts had no jurisdiction to deal with the suit. The mere circumstance that the defendant did not raise the plea of want of jurisdiction in the Appellate Court did not clothe that Court with a jurisdiction not given to it by law. LADLI BEGAM *v.* RAJE RABIA **[I. L. R., 13 Bom., 650**

55. ———————— *Agreement to submit to execution of decree—Jurisdiction.*—A decree-holder, with a certificate showing that satisfaction of his decree had not been obtained in the district in which it had been passed, applied to the Judge of another district and succeeded in obtaining partial execution. Upon a second attachment issuing, the judgment-debtor prayed for time and agreed in his petition that, if he did not satisfy the debt within the period named, the property might be sold. His prayer was granted. He then raised the plea that the Court which made the decree had no jurisdiction to entertain the suit. *Held* that, having pleaded in the Court below on the assumption that the decree was a money-decree which the Court which made it had jurisdiction to make, it was not open to the judgment-debtor's pleader to urge that it was not a money-decree. Radha Gobind Gossami *v.* Ooma Sundurbe Dossia . . . **24 W. R., 363**

56. ——————— *Omission to raise objection to execution of decree.*—Certain property having been sold in execution of a decree by a Court to which the decree had been transferred, a suit was brought to set aside the sale on the ground that the Court from which the transfer had been made had no jurisdiction to grant, as it did, a certificate of non-satisfaction. It appeared that on execution being applied for in the Court to which the decree had been transferred, no objection to the jurisdiction had been raised. *Held* that the objection, assuming it to be valid, was taken too late and the sale could not be set aside. Modun Mohun Ghose Hazra *v.* Boroda Sondari Dasia . . . **8 C. L. R., 261**

57. ——————— *Omission to raise plea till late stage of case—Right to raise, on special appeal.*—A Munsif having returned a plaint under Act XXIII of 1861, s. 8, and dismissed the suit as being in value beyond his jurisdiction, the plaintiff appealed to the District Judge, who, on the 14th June 1872, pronounced the decision wrong, and ordered the Munsif to try the suit. The suit was accordingly tried and dismissed, but on appeal it was decreed, by the Subordinate Judge. Subsequently a special appeal was preferred in which objection was raised on the score of jurisdiction. *Held* that the objection could not be taken at this stage, as the defendant had not chosen to appeal against the District Judge's order of 14th June 1872. Koylash Chunder Ghose *v.* Ashruf Ali . . . . **22 W. R., 101**

Raj Narain *v.* Rowshan Mull **22 W. R., 126**

58. ——————— A suit for rent having been brought in the Beerbhoom Collectorate and decreed, the case was referred in execution to the Collector of Burdwan, within whose jurisdiction the property lay. The tenure was sold by the Deputy Collector of the latter district and purchased by the decree-holder. Appeals were made to the Collector and the Commissioner by the judgment-debtor, and were rejected by both officers. The judgment-debtor then brought a suit for possession in the Civil Court, and obtained a decree reversing the sale on the ground that the decree for rent had been made by a Collector who had not jurisdiction. *Held* that, after all that had passed, it was too late to raise the question of jurisdiction. Ooma Soondurbe Dossee *v.* Bipin Beharee Roy . . . . **13 W. R., 292**

59. ——————— *Civil Procedure Code, 1882, s. 20.*—In 1876, *K* sued *M* on a bond, dated 25th December 1869, for R5,000, by which certain land in the district of South Tanjore was hypothecated as security for the debt, and obtained a decree on the 6th of April 1876 for the sale of the lands, which he purchased on the 17th August 1876 for R6,000. *K* then discovered that part of the land hypothecated, situated within the jurisdiction of the subordinate Court at Kumbakonam, had been acquired by a railway company under the Land Acquisition Act in 1874, and that the compensation, R460 (claimed by *M's* mother, who sold the land to the company), was lodged in the treasury of Kumbakonam in the name of *M's* mother. *K* having applied to the subordinate Court for an order for payment out of this sum, the Court, by order dated 28th February 1880, directed that the question of title to the money should be decided by suit. *K* then sued *M* as the sole heir of his deceased mother in the District Munsif's Court of Tiruvadi (where *M* resided) for a declaration of right to and to recover the said sum of R460. On the 16th April 1880, *M* assigned his interest in the money sued for to *V*, who was made defendant in the suit on his own application, and pleaded that the Court had no jurisdiction, as both the money and the land which it represented were, and he (*V*) resided, without the Munsif's Court's jurisdiction. *Held* that the suit was for money, and that *V*, not having applied to stay proceedings under s. 20 of the Civil Procedure Code, must be held to have acquiesced in the jurisdiction of the Court. Venkata Viraragava Ayyangar *v.* Krishnasami Ayyangar . . . **I. L. R., 6 Mad., 344**

60. ——————— *Subsequent plea of, by same party in another case.*—The fact of a defendant not subject to the jurisdiction of a Court having waived his privilege in previous suits brought against him does not give the Court jurisdiction to entertain a suit against him in which he pleads that he is not subject to such jurisdiction. Beer Chunder Manikkya *v.* Raj Coomar Nobodeep Chunder Deb Burmono

[I. L. R., 9 Calc., 535 : 12 C. L. R., 465

61. ——————— *Waiver of want of jurisdiction—Civil Procedure Code, s. 25, Order made under, without notice to the party not applying—Transfer of civil case.*—A suit for land was filed in 1883 in the subordinate Court of Cochin. In 1884, the Government, by a notification under Act III of 1874, transferred the district where the land was situated from the jurisdiction of that Court to that of the subordinate Court of Calicut, whereupon the plaintiff applied to the District Court to transfer the case to the file of the first-mentioned Court under s. 25 of the Code of Civil Procedure. The District Judge granted the application without notice to the defendants. The defendants went to trial, and also preferred an appeal against the decree, which was passed in favour of the plaintiff, without objection to the jurisdiction of the Court. In execution of the above decree (which was affirmed on appeal), the plaintiff was obstructed. He therefore filed the present suit against the obstructors under the provisions of s. 331 of the Code of Civil Procedure, and they pleaded that the decree sought to be executed had been passed without jurisdiction. *Held* (1) that the want of notice to the defendants of the application made under s. 25 of the Code of Civil Procedure was immaterial; (2) that the defect, if any, of the jurisdiction of the Court passing the decree had been waived by the defendants, and that the present defendants were precluded from availing themselves of it. Sankumani *v.* Ikoran . **I. L. R., 13 Mad., 211**

(*a*) Dwelling, Carrying on Business, or Working for Gain.

62. ———— **Dwelling-place**—*Animus revertendi.*—Whatever the purpose for which a man may go to another jurisdiction than that in which his family resides, if there is an *animus revertendi*, the family dwelling-house must be considered to be his dwelling-place. Kashee Nath Kooer *v.* Deb Kristo Ramanooj Doss . . **16 W. R., 240**

63. ———— *Civil Procedure Code, 1859, s. 5—Act XXIII of 1861, s. 4—Residence—Soldier with his regiment.*—The fixed and permanent home of a man's wife and family, and to which he had always the intention of returning, will constitute his dwelling-place within the meaning of s. 5 of Act VIII of 1859 and s. 4 of Act XXIII of 1861. Fatima Begam *v.* Sakina Begam

[I. L. R., 1 All., 51

64. ———— **Occasional residence.**—Occasional residence will not bring a defendant within the jurisdiction; he must be a fixed inhabitant of the district in which the suit is brought. Zalem Tewaree *v.* Gobindgeer Gossain

[1 Ind. Jur., O. S., 85

S. C. Lelim Tewaree *v.* Gobindgeer Gossain

[Marsh., 64 : 1 Hay, 132

65. ———— **Dwelling**—*Letters Patent, cl. 12—Temporary residence—Habits, calling, and nature of establishment.*—A person having a permanent residence at Dinapore came to Calcutta and resided there temporarily for the purpose of carrying on a suit. *Held* that he could not be said to dwell in Calcutta within the meaning of cl. 12 of the Letters Patent. The influence of his habits, calling, and the nature of his establishment may be considered in deciding whether a defendant is resident within the jurisdiction. Emrit Lall *v.* Kidd

[Cor., 46 : 2 Hyde, 117

66. ———— *Letters Patent, cl. 12—Officer on leave.*—The defendant, an officer in the Bombay Staff Corps, holding an appointment in Scinde, came to Bombay on leave, and remained about ten days. During his stay in Bombay, he was served with a writ of summons on a cause of action arising in Scinde. *Held* that the defendant did not "dwell" within the local limits so as to give the Court jurisdiction under cl. 12 of the Letters Patent. Kavasji Framji *v.* Wallace . . **1 Bom., 113**

67. ———— *Letters Patent, cl. 12—Leave of Court.*—*H* died at Ajmere, his representative then and at the time of suit brought being resident there. Previous to the death of *H*, a cause of action had accrued against him in Bombay. *Held* that it was not necessary to obtain the leave of the Court under cl. 12 of the Letters Patent before instituting a suit against *H's* representative in respect of such cause of action. Hargopal Premsukdas *v.* Abdool Khan Hajee Muhammad . **9 Bom., 429**

68. ———— *Addition of a defendant residing out of jurisdiction in a suit in which leave to sue has been already obtained—Letters Patent, 1865, cl. 12—Fresh leave to sue such new defendant necessary.*—Where a defendant is added who does not reside within the jurisdiction of the High Court, and against whom the cause of action has not arisen wholly within that jurisdiction, leave must be obtained under cl. 12 of the Letters Patent, 1865, even if leave was obtained when the suit was originally filed. Rampartab Samrathrai *v.* Foolibai

[I. L. R., 20 Bom., 767

69. ———— *Civil Procedure Code, 1859, s. 5—What constitutes "dwelling" within the meaning of that section.*—A testator bequeathed the income of his "altamgha," "zamindari," and "thikadari lands" situate in the districts of Delhi, Hissar, and Bulandshahr, to his five sons in equal shares, and to their issue; directing that one of the sharers should manage the estate, accounting yearly to the others, and receiving ten per cent. per annum. The lands described as "altamgha" were in the Bulandshahr district, within the local limits of the jurisdiction of the Civil Court of Meerut; and on them an establishment was maintained at the expense of the estate. At Hansi, in Hissar, there was also a residence belonging to the estate, and another at Delhi. The will directed that the brothers might, if they liked, live together at Bilaspur, and build houses "with mutual consent in the altamgha and zamindari;" also that certain memorials of the testator were to be retained by the manager at Bilaspur. At this place the manager used to stay occasionally, though travelling for the most part about the estate during the cold weather. No particular place for rendering the yearly accounts was fixed, either by contract or in practice, but they were rendered by the manager to the sharers at different times and in different places, including Delhi, Bilaspur, and Hansi; at which last place, it being the sudder station of Hissar, the older records of the estate were kept. When this suit was brought, the manager was actually residing at the hill station of Mussoorie, in the Saharanpur district, for the hot weather; and in his answer he stated that the unsettled accounts were open to inspection by the sharers at Bilaspur. *Held* that a person might "dwell," within meaning of Act VIII of 1859, s. 5, at more places than one; and that, on the evidence, this manager so dwelt at Bilaspur as to make him subject to the jurisdiction of the Meerut Court in this suit. It was accordingly not necessary to consider whether he was or was not also subject to that Court's jurisdiction by reason of the cause of action having arisen within its local limits; nor was it necessary to consider whether he had or had not such a dwelling-place at Hansi as would have rendered him subject to the jurisdiction of the Hissar (Punjab) Courts. Orde *v.* Skinner

[I. L. R., 3 All., 91
L. R., 7 I. A., 196

70. ———— *Letters Patent, 1865, cl. 12—"Dwell"—"Carry on business"—"Personally working for gain."*—The plaintiff claimed to be the acharya or high priest of the

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

Vaishnav community and the Maharaj Tikait of Shri Nathji at Nathdwar in the territories of the Maharana of Oodeypore. In 1876, he was deported from the territories of His Highness, and his son, the defendant, had ever since been in charge of the shrine. The plaintiff alleged that at the time of his deportation he had money and valuables at Nathdwar which he had entrusted to his son, the defendant, for safe custody. He now sued to recover this property from the defendant. The defendant pleaded that the High Court of Bombay had no jurisdiction to try the suit. It appeared that the defendant's permanent residence was at Nathdwar, from which he was absent only when on pilgrimage or on tour. He had in Bombay an establishment called a pedi in which a bhandari or treasurer, a munim, and mehtas and servants were regularly employed. Into this pedi offerings made to the shrine of Shri Nathji by devotees were paid, as also offerings to another shrine at Nathdwar of which the defendant claimed to be the owner, and to a very small extent offerings to the defendant personally as the owner of such shrines. The defendant had similar establishments in other places in the Bombay Presidency. The offerings collected in them were transmitted to the Bombay pedi and dealt with there. The moneys from the Bombay pedi were transmitted to Nathdwar sometimes by means of hundis drawn at Nathdwar on the Bombay pedi and honoured by that pedi, and sometimes by articles being purchased for the defendant's use by the servants of the pedi in Bombay and sent to Nathdwar. In May 1888, the defendant agreed to purchase a house in Bombay for R1,18,500. Earnest-money (R10,000) was paid out of moneys in the Bombay pedi, and the employés of the pedi after the purchase lived in the house. Interest was paid on the unpaid purchase-money. In 1889, when the defendant visited Bombay, he lived in this house, but he sold it in the same year shortly before he returned to Nathdwar. The defendant had never been in Bombay until 1889. In that year, in accordance with the practice, he obtained from the British Resident at Meywar a permit to travel with an armed following to the places mentioned in the permit, one of which was Bombay. The journey was supposed to last for six months. The defendant left Nathdwar in February 1889, and after various stoppages reached Bombay on the 2nd April, and took up his quarters at the house above mentioned. The reason assigned for his coming to Bombay was that his devotees had asked him to come. When in Bombay, his followers visited him, and he visited their houses on invitation. On these occasions he received offerings which in the aggregate amounted to about R75,000. These offerings were personal, and were not paid into the pedi. This suit was filed on the 3rd May 1889, while the defendant was in Bombay. Early in August he left Bombay and retuned to Nathdwar. The plaintiff contended that the Court had jurisdiction under cl. 12 of the Letters Patent, 1865. *Held* that at the date of the institution of the suit the defendant was neither dwelling, nor carrying on business, nor personally working for gain, in Bombay, and that the Court had no jurisdiction. GOSVAMI SHRI 108 *v.* GOVARDHANLALJI . . . **I. L. R., 14 Bom., 541**

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

71. ———————— *Residence for temporary purpose—Receipt of presents by high priest of temple—Office for receiving presents—Purchase of house—Letters Patent, High Court, cl. 12.*—The word "dwell" must be construed with reference to the particular object of the enactment in which it occurs. Residence in Bombay merely for a temporary purpose is not to "dwell" there so as to give jurisdiction to the High Court under cl. 12 of the Letters Patent, 1865. *Held* that the mere fact that the defendant had purchased the house which he occupied during a temporary visit to Bombay afforded no inference of an intention to dwell there. A defendant who was the acharya or high priest of the Vaishnav community and the Maharaj Tikait of Shri Nathji at Nathdwara had a pedi, or place of business, in Bombay where devotees paid in any presents they intended to offer him. *Held* that this did not amount to "carrying on business" so as to give the High Court jurisdiction under cl. 12 of the Letters Patent, 1865. The defendant, when in Bombay, was invited by his devotees and pupils to their houses, where he was treated as an incarnation of the deity with certain forms and ceremonies, and received presents, and gave his blessing. *Held* that this did not amount to "personally working for gain" within the meaning of cl. 12 of the Letters Patent, 1865. GOSWAMI SHRI 108 SHRI GIRDHARIJI *v.* GOVARDHANLALJI GIRDHARIJI **I. L. R., 18 Bom., 290**

Held, on appeal to the Privy Council, that the expression "carry on business" in cl. 12 of the Letters Patent, 1865, is intended to relate to business in which a man may contract debts, and ought to be liable to be sued by persons having business transactions with him. The defendant, who was an acharya of the Vaishnav community and was head of their institution at Nathdwara in Udepur, where he usually resided, was, when this suit was brought, in Bombay for a time. He had in the latter place a treasurer and other servants employed in an establishment for the collection and entry of gifts made by devotees; and there also donations, made in like establishments elsewhere, were received for transmission to Nathdwara. The defendant also, while in Bombay, accepted offerings on ceremonial visits made or received by him personally, but no bargain for the amount was made beforehand. *Held* by the Privy Council that in the above transactions there was no "carrying on business" within cl. 12 of the Letters Patent, 1865. GOSWAMI SHRI 108 SHRI GIRDHARIJI *v.* GOVARDHANLALJI GIRDHARIJI

[I. L. R., 18 Bom., 294
L. R., 21 I. A., 13

72. ———————— *Suit for rent of land in Gwalior, defendant being resident in British India—Place where defendant resides—Civil Procedure Code (1882), s. 17.*—*Held* that a suit by a lessor against his lessee to recover rent which had accrued due in respect of agricultural land situated in Gwalior, the plaintiff being a subject of the Gwalior State, but the defendant a British subject resident in the district of Jhansi, was properly brought in a Civil Court in the district of Jhansi.

Gurdyal Singh v. *Raja of Faridkot, I. L. R., 22 Calc., 222,* referred to. BHUJBAL *v.* NANHEJU [I. L. R., 19 All., 450

73. ———— *Immoveable property—Civil Procedure Code (Act XIV of 1882), s. 16—Varshasans charged on villages in Nizam's territory and paid in the same territory—Suit to establish title to a share in such varshasans.*—Plaintiffs filed a suit in the Court of the first class Subordinate Judge at Nasik to establish their right to a certain share in two varshasans (annual allowances). The allowances were charged on the revenues of two villages in the Nizam's territory, and paid to the defendants by the treasury officers at Aurangabad in the same territory. The plaintiffs alleged that the varshasans were granted to a common ancestor of the parties and enjoyed as joint ancestral property, while the defendants contended that the allowances were granted to their grandfather as his exclusive property to descend to his heirs, and that plaintiffs had no right to share in them. *Held* that the Nasik Court had no jurisdiction to try the suit. The varshasans were immoveable property, and there being a *bonâ fide* claim of title to them, the claim should be determined according to the law in force in the Nizam's dominions. The suit should therefore be brought in the Courts of the Nizam, in whose territory the varshasans were granted and paid. Plaintiffs could not claim a declaration of title or ask for a refund of the allowances in a British Court, merely because the defendants happened to be residents in British territory. KESHAV *v.* VINAYAK . . I. L. R., 23 Bom., 22

74. ———— *Civil Procedure Code (1882), s. 16—Relief to be obtained by personal obedience of defendants—Property situate outside the jurisdiction of the Court in which the suit is filed.*—The proviso to s. 16 of the Civil Procedure Code (Act XIV of 1882) requires not only that the relief sought should be entirely obtainable through the personal obedience of the defendant, but also that the defendant should reside within the jurisdiction of the Court in which the suit is filed. *Held* therefore that a suit for the determination of an interest in immoveable property filed in a Court within the jurisdiction of which the property was not situate did not lie in that Court, as all the defendants did not reside within the jurisdiction of that Court, even though the relief sought could have been obtained through their personal obedience. ISAK *v.* KHATIJA [I. L. R., 23 Bom., 756

75. ———— *Suit to establish right to a share in certain income—Property having a foreign origin—Incomes received within the jurisdiction of the Court—Question of title not involved—Civil Procedure Code, ss. 16 and 17.*—All property having a forign origin is not outside the jurisdiction of a British Court. "The Courts of equity in England are, and always have been, Courts of conscience, operating *in personam* and not *in rem;* and in the exercise of this personal jurisdiction they have always been accustomed to compel the performance of contracts and trusts as to subjects which were not either locally or *ratione domicilii* within their jurisdiction." The jurisdiction of Courts in India is governed and must be ascertained by the same principles except so far as they may be at variance with legislative enactment. *Ewing* v. *Orr Ewing, L. R., 9 Ap. Ca., 34,* followed. The plaintiff sued in the Court at Nasik in British India to establish his right to a share in the income derived from certain grants of land situate outside of British India, but received by the defendant within the jurisdiction of the Nasik Court. *Held* that the suit was within the jurisdiction of the Court, there being no dispute as to title. *Keshav* v. *Vinayak, I. L. R., 23 Bom., 22,* distinguished. KASHINATH GOVIND *v.* ANANT SITARAMBOA . I. L. R., 24 Bom., 407

76. ———— *Residence alternately in Calcutta and mofussil.*—A party spending his time alternately in the mofussil and Calcutta and resident in the latter for some days previous to, and on the day of, filing his plaint, is subject to the jurisdiction of the High Court in its ordinary original civil jurisdiction. NISHADINEY DOSSEE *v.* CALLY KRISTO GHOSE . . . . Cor., 24

77. ———— *Temporary residence for pleasure—Person without residence elsewhere.*—That a temporary residence in Calcutta, for purposes of pleasure, with intention of remaining there a month, without having at the time a residence out of the jurisdiction, is a sufficient dwelling within the jurisdiction to satisfy cl. 12 of the Charter. MORRIS *v.* BAUMGARTEN [Bourke, O. C., 127 : Cor., 152

MAYHEW *v.* TULLOCH . . 4 N. W., 25

78. ———— **Residence out of jurisdiction**—*Bringing suit for damages by collision.*—One who sues for damages caused by a collision at sea and out of the jurisdiction of the High Court subjects himself to a cross suit for damages caused by the same collision, though himself residing out of the jurisdiction of the Court. BOMBAY COAST AND RIVER STEAM NAVIGATION COMPANY *v.* HELEUX [4 Bom., O. C., 149

79. ———— **Carrying on business**—*Suit against Government—Residence or place of business of Government.*—In a suit for specific performance of a contract against Government where the land was situated out of the limits of the ordinary original jurisdiction of the Court,—*Held* that, the land being so situate, the Court could not be said to have jurisdiction by reason of the Secretary of State as the representative of the Government "dwelling" or carrying on business or "personally working for gain" within the local limits of the Court, in the meaning of cl. 12 of the Letters Patent. The words "personally working for gain" were intended to give the Court jurisdiction over individuals only. Though Government is in one sense, through its officers, ubiquitous, s. 65 of 21 & 22 Vict., c. 106, means not that the Secretary of State may sue or be sued in any Court irrespective of all question of jurisdiction, but that he may sue or be sued in such Court or Courts as may have jurisdiction in respect of each particular cause of action. RUNDLE *v.* SECRETARY OF STATE . . . . . **1 Hyde, 37**

80. ———————— *Suit against Government—Civil Procedure Code, 1859, s. 5.—Letters Patent, cl. 12.—Semble*—The jurisdiction to entertain suits against the Government under s. 5 of Act VIII of 1859 exists only where the cause of action arose. Under cl. 12 of the Letters Patent (1862) constituting the High Court of Madras, the Government must be considered as carrying on business at the place where its members exercise all the functions of Government. The words "carry on business" in that clause imply a personal and regular attendance to business within the local limits. A suit will not lie in the High Court against the Collector of Madras residing and carrying on business at Sydapet in respect of matters arising in Chingleput, though his Deputy Collector carried on business within the local limits, and the orders and proceedings in reference to the matters in question were in his name of office as Collector of Madras. SUBBARAYA MUDALI *v.* GOVERNMENT **1 Mad., 286**

81. ———————— *Letters Patent, cl. 12—Secretary of State for India in Council.*—The words "cause of action" in cl. 12 of the Letters Patent, 1865, mean all those things necessary to give a right of action; and in a suit for breach of contract, where leave has not been obtained to sue under that section, it must be established that the contract as well as the breach have taken place within the local limits of the Court. The work carried on by the Government of India in governing the country, in salt, opium, etc., although carried on by Government officers in charge of the several departments of Government, is not, properly speaking, business carried on by Government, but work carried on for the benefit of the Indian Exchequer. The words of cl. 12 "carry on business or personally work for gain" are, however, inapplicable to the Secretary of State for India in Council. DOYA NARAIN TEWARY *v.* SECRETARY OF STATE FOR INDIA **I. L. R., 14 Calc., 256**

82. ———————— *Civil Procedure Code, 1877, s. 17—Residing — Onus probandi.*—Where the cause of action arises in the jurisdiction of a Court other than that in which the suit is brought, the plaintiff must, under the provisions of s. 17 of Act X of 1877, show that the defendant at the time of the commencement of the suit actually and voluntarily resided or carried on business, or personally worked for gain, within the jurisdiction of the Court in which the suit was brought. MODHU SUDAN CHOWDHRY *v.* COCHRANE . **6 C. L. R., 417**

83. ———————— *Letters Patent, cl. 12—Temporary stay and office in Calcutta.*—*A*, who had no regular office, but came once or twice a week from the mofussil to a friend's house in Calcutta, and saw people there on business, contracted with *B* in Calcutta for the hire of certain cargo-boats. While being towed by a steamer, which *A* had chartered according to agreement, the boats, when beyond the jurisdiction of the Court, sustained great damage by reason of gross negligence on the part of *C*, whom *A* had placed in charge. *Held* (1) that the cause of action did not arise in Calcutta; (2) that *A* "carried on business" in Calcutta within the meaning of cl. 12 of the Charter. GREESH CHUNDER BANNERJEE *v.* COLLINS . . . . **2 Hyde, 79**

84. ———————— *Letters Patent, cl. 12 — Temporary residence.*—*M*, residing at Meerut, sued *B* in respect of a cause of action which did not arise in Calcutta. It appeared that *B* usually resided at Mussoorie from March to October, but attended races at Meerut, Calcutta, and elsewhere, at which races he ran horses, but not for gain. *B* had no pursuit or occupation other than that afforded by his horses. He had come to Calcutta to attend a race meeting, and had been living in Calcutta for some days previous to and on the day the plaint was filed. The Court decided that he was amenable to its jurisdiction. *Held* that such racing transactions do not constitute a "carrying on business" or "personally working for gain" within the meaning of cl. 12 of the High Court Charter. MORRIS *v.* BAUMGARTEN **[Bourke, O. C., 127 : Cor., 152**

MAYHEW *v.* TULLOCH . . . **4 N. W., 25**

85. ———————— *Letters Patent, cl. 12.*—A trader in the mofussil habitually sent grain to Madras for sale by a general agent for the sale of goods sent to him by different persons. On some occasions the trader himself accompanied the loaded bandies. Since his death the first defendant, his widow, carried on his business. The grain so sent for sale was never stored, but remained in the bandies until sold by the agent, who acted himself as broker, the purchasers paying his brokerage commission, and the consignors of the grain paying nothing. *Held* that the first defendant did not "carry on business" within the jurisdiction of the High Court of Madras within the meaning of cl. 12 of the Letters Patent. CHINNAMAL *v.* TULUKANNATAMMAL . **3 Mad., 146**

86. ———————— *Letters Patent, cl. 12.*—The defendant resided and carried on business in London, and employed *C F & Co.* as their commission agent in Bombay. The plaintiffs at Bombay executed a power-of-attorney in favour of the defendants to enable him to sue in England for certain money due to the plaintiffs, and handed the power-of-attorney to *C F & Co.*, who undertook to forward it to the defendants in London, and that the defendants should endeavour to recover the money so due to the plaintiffs. The defendants recovered the money in England for the plaintiffs, but did not transmit it to the plaintiffs in Bombay. In a suit brought by the plaintiffs to recover the money so received by the defendants, it was held that the cause of action had not arisen wholly in Bombay, and that the High Court, under cl. 12 of its Letters Patent, had no jurisdiction to entertain the claim, the leave of the Court to file the suit not having been obtained. Where an English firm, upon the usual terms, employs a Bombay firm to act as the English firm's commission agents in Bombay, such English firm does not thereby render itself liable to be sued in the High Court of Bombay, as it does not carry on business within the local jurisdiction of such High Court within the meaning of the above clause of the Letters Patent. KHIMJI CHATURBHUJ *v.* FORBES . . . **8 Bom., O. C., 102**

87. ———— *Letters Patent, 1865, cl. 12—Suit on hundi.*—The defendant, who resided and carried on business at Patna, was in the habit, several times in the course of the year, of sending goods to Calcutta by boat and coming down himself by rail; he received his goods and remained in Calcutta until he sold them. He had no place of business, nor any gomastah or agent of his own in Calcutta, but used to sell the goods himself, and put up sometimes at one ârut, sometimes at another. His stay in Calcutta varied from two to four months. He used to pay commission on the goods sold to the ârut where he put up, and he was in the habit of drawing hundis at Patna on himself at Calcutta, accepting and paying them in Calcutta. The plaintiff brought a suit on a hundi so drawn, and purporting to be so accepted by the defendant, of which payment was refused by the defendant. The defendant admitted the drawing of the note, but alleged that the acceptance was forged. The Judge found that the note had not been accepted by the defendant. The summons was served on the defendant in Calcutta. Leave to institute the suit had not been obtained under cl. 12 of the Letters Patent. *Held* the whole cause of action did not arise in Calcutta. *Held* also that the defendant was not, at the commencement of the suit, carrying on business in Calcutta within cl. 12 of the Letters Patent. Leave to institute the suit under cl. 12 not having been obtained, the Court had no jurisdiction to entertain the suit. HARJIBAN DAS *v.* BHAGWAN DAS

[7 B. L. R., 102 : 16 W. R., O. C., 16

Held, on appeal, reversing the decision of the Court below, that the defendant was "carrying on business" in Calcutta within cl. 12 of the Letters Patent. HARJIBAN DAS *v.* BHAGWAN DAS

[7 B. L. R., 535 : 16 W. R., O. C., 16

88. ———— *Letters Patent, cl. 12.*—A defendant does not "carry on business" so as to come within cl. 12 of the Letters Patent of the High Court of Bombay and render himself subject to the ordinary original civil jurisdiction of that Court, though he may have an agent at Bombay for certain purposes connected with his business, where that which is the essential ingredient in his business does not take place within the local limits of the jurisdiction of the Court. A retail dealer in European goods residing and carrying on business at an up-country station is not within the jurisdiction of the High Court on the ground that he has an agent in Bombay for the purpose of purchasing and forwarding goods to be used in his trade. FRAMJI KAVASJI *v.* HORMASJI KAVASJI . . . . **1 Bom., 220**

89. ———— *Letters Patent, cl. 12—Carrying on business by agent.*—Cl. 12 of the Letters Patent of the Madras High Court does not, in order to give jurisdiction, require a defendant personally to carry on business within the local limits of Madras. MUTHAYA CHETTI *v.* ALLAN

[I. L. R., 4 Mad., 209

90. ———— *High Court of Bombay, Jurisdiction of—Letters Patent, High Court, 1865, cl. 12—Persons not British subjects resident outside the jurisdiction, but carrying on business by an agent within the jurisdiction—British subjects resident outside the jurisdiction, but carrying on business by an agent within the jurisdiction—Cause of action arising wholly outside the jurisdiction.*—In cl. 12 of the Letters Patent, 1865, of the Bombay High Court, the words "if the defendant . . . shall . . . carry on business" must be interpreted to mean "if the defendant being a British subject . . . shall . . . carry on business," and where the liability of a foreigner is in question, the "carrying on business" must include actual residence. The scope and object of cl. 12 of the Letters Patent was to define the jurisdiction of the Municipal Courts of India. It must therefore be read by the light of the general principles of municipal jurisdiction, save so far as it expressly derogates from their general principles. Every statute is to be interpreted and applied so far as its language admits so as not to be inconsistent with the comity of nations or with the established rules of international law. All legislation is, *primâ facie*, territorial. It binds all subjects of the Crown, but only such subjects of other countries as have brought themselves within the allegiance of the Sovereign. A person not a British subject resident out of the jurisdiction, but carrying on a branch business in Bombay through an agent, is not liable to be sued in the High Court of Bombay where the cause of action has arisen wholly outside the jurisdiction. *Semble*—The High Court has jurisdiction in such cases where the defendant is a British subject. See *Chinammal* v. *Talukannammal, 3 Mad., 146.* KESSOWJI DAMODAR JAIRAM *v.* KHIMJI JAIRAM . **I. L. R., 12 Bom., 507**

91. ———— *Foreigner carrying on business by agent.*—*Per* SARGENT, *C.J.*—Although it is true that a non-British subject who does not personally carry on business within the territorial limits of the Court does not make himself personally subject to the municipal law of British India, still, by establishing his business in British India, from which business he expects to derive profit, he accepts the protection of the territorial authority for his business, and his property resulting from it, and may be fully regarded as submitting to the Courts of the country. GIRDHAR DAMODAR *v.* KASSIGAR HIRAGAR . **I. L. R., 17 Bom., 662**

92. ———— *Civil Procedure Code, 1882, s. 17—Suit on a foreign judgment—"Carrying on business" within the jurisdiction—Business carried on by the managing member of a Hindu family—"Principal and agent" with reference to s. 17 of Civil Procedure Code—Application of s. 17 of Civil Procedure Code to non-resident foreigner.*—Plaintiff, having obtained judgment against defendant in a suit on a bond in the

Civil Court at Pondicherry, sued him on the said judgment in a District Court in British India. The date of the foreign judgment was 20th March 1896, and that of the suit in British India, 9th October 1896; but in the meanwhile, namely, on 20th July 1896, defendant had been declared an insolvent in Pondicherry, and a syndic had been appointed to take charge of and administer his property. The ground of jurisdiction relied on by plaintiff was that defendant was carrying on a business within the jurisdiction of the District Court, the said business being conducted by his cousin; and that, the cousin being the manager of a Hindu family, the presumption was that the business was carried on with the consent of the defendant as well as for his benefit. *Held* that the District Court had no jurisdiction to entertain the suit. Inasmuch as defendant and his cousin had, as a fact, become partially divided prior to the commencement of the business, and as there was no evidence of his consent, the presumption contended for could not arise. But even if the facts had been otherwise, and the defendant had been entitled to claim an interest in the business on the ground that it was carried on by one who was the managing member of his family at the time, defendant would not be "carrying on business" within the meaning of s. 17 of the Code of Civil Procedure. To bring a principal within the operation of s. 17, the person acting as the agent within the jurisdiction should be an agent in the strict and correct sense of the term. *Semble*—That a member of joint family who actually consents to a trade being carried on within the jurisdiction on his behalf, or by his conduct puts himself in the position of a joint trader, carries on business within, though he may live outside, the jurisdiction. Whether s. 17 of the Code of Civil Procedure should be construed so as to exclude from its operation non-resident foreigners, even though they carry on business in British India through agents; and, if such construction be inadmissible, whether the said section of the Indian Legislature should be held with reference to such foreigners to be *ultra vires*,—*Quære*. MURUGESA CHETTI *v.* ANNAMALAI CHETTI . . **I. L. R., 23 Mad., 458**

93. ——— **Personally working for gain**—*Suit to recover value of timber.*—A suit to recover the value of timber alleged to have been forcibly carried off by the defendants from a ghât in the district of Tirhoot having been brought in the Court of the Subordinate Judge of the 24-Pergunnahs, that Court was held to have jurisdiction in the case, on its being shown that one of the defendants, at the commencement of the suit, personally worked for gain within the limits of the 24-Pergunnahs. MOTEE DOSSEE *v.* DEETA HURUKMUN SINGH **[11 W. R., 64**

94. ——— *Cause of action—Civil Procedure Code, 1859, s. 5—Jurisdiction—Suit for breach of contract.*—When a person residing at Benares made an agreement at Allahabad with a barrister to conduct his case for him, which was then pending in the Court of the Judge of Benares, and it was alleged that an advance of fees had been paid on the specific condition that such advance was to be returned in the event of the barrister not appearing on behalf of the party engaging him, or of his doing no work for him, or of the case being decided in his absence, and it was further alleged that the barrister did not appear at the hearing of the case, and that it was decided in his absence, and that the advance of fees had not been returned—*Held*, in a suit for the recovery of the moneys advanced as aforesaid, that the cause of action arose at Benares. If the alleged condition was not complied with, and the fees thereby became returnable to the client, it would have been the duty of the barrister to have sought out his creditor at Benares and to have paid him there, or have remitted the money to him. *Semble*—That a member of the Bar of the High Court residing out of the station in which the High Court is located, but who holds himself out as ready to practise in the High Court, and who goes to the High Court whenever he is engaged to appear there, is one who "personally works for gain" inside of the limits of the station in which the High Court is located within the meaning of s. 5, Act VIII of 1859. RAI NARAIN DASS *v.* NEWTON . . . . **6 N. W., 43**

(*b*) CAUSE OF ACTION.

95. ——— **General cases as to arising of cause of action**—*Civil Procedure Code, 1859, s. 5—Act XXIII of 1861, s. 3.*—A Civil Court has jurisdiction to determine a suit where the defendants dwell, or the cause of action arises within the jurisdiction. The two qualifications need not exist together. Act XXIII of 1861, s. 3, requires the absence of both to justify the dismissal of the suit for want of jurisdiction. MORRIS *v.* ATMAKURU LUTCHMANA ROW . . . **6 Mad., 43**

ANONYMOUS CASE . . . **5 Mad., Ap., 4**

96. ——— *Letters Patent, cl. 12—Cause of action partly arising—Leave of Court.*—Under cl. 12 of the Charter of the High Court, 1865, when the cause of action arises only partly within the local limits, the leave of the Court must be obtained before the institution of the suit. ABDOOL HAMED *v.* PROMOTHONATH BOSE · **[1 Ind. Jur., N. S., 218**

97. ——— *Suit for sum made up of items as to which cause of action arose in different places—"Whole cause of action."*—An application was refused for leave to commence a suit in the original side of the High Court, to recover a sum which was made up of various items, with respect to some of which the cause of action arose in Madras, but as to the great bulk of the claim, the cause of action arose elsewhere. Upon appeal the decision was sustained. *Per* BITTLESTON, *J.*—The High Court, especially when exercising its ordinary original jurisdiction, is bound to adopt the interpretation of the words "cause of action" and "part of the cause of action" laid down with general, if not complete, uniformity under the English County Court Act. The cause of action means the whole cause of action. The whole cause of action includes every fact essential to the maintenance of the action, and each of those facts separately is but a part of the cause of action. The Charter of the High Court refers to a cause of action arising wholly or in part within the local limits. The cause of action spoken of may consist of several parts, which parts may arise in different places. *Per* HOLLOWAY, *J.*—The High Court is not bound by the definition of cause of action derivable from the English cases. Where there is a manifest discordance between a decision of the Judicial Committee of the Privy Council and the Common Law Courts at Westminster, the decision of the Judicial Committee is entitled to the greater weight. Irrespectively of the domicile of the defendant, there is a competent forum wherever a place can be indicated to which the right and its infraction can both be referred, because there is a cause of action and the whole cause of action. DE SOUZA *v.* COLES . . . **3 Mad., 384**

98. ———————— *Evidence as to jurisdiction at hearing—Letters Patent, High Court, cl. 12—Suit for rent of house out of jurisdiction and for price of goods sold by defendants in Calcutta as agents—Amendment of plaint to cause of action.*—The plaintiff as Receiver to the estate of *S* instituted a suit on the 11th July 1898 against the defendants to recover the sum of R2,808-13-2, a portion of the said sum being the rent of a house occupied by the defendants at Mandalay since January 1894 till the 11th July 1898, the remaining portion being the price of goods sold by the defendants as agents of *S*. The plaintiff at the institution of the suit obtained leave under cl. 12 of the Charter. The defendant contended that the Court had no jurisdiction, inasmuch as the plaint on its face did not show that the cause of action or any part of it arose in Calcutta; that the cause title alone represented the defendants as carrying on business in Calcutta, and that portion of the plaint was not verified; nor could the plaintiff give evidence to prove that his cause of action arose in Calcutta, as it would be varying the cause of action, and that fresh leave would have to be granted, which could not be done in this suit. *Held* that the Court had jurisdiction, and the plaintiff was entitled to give evidence at the hearing to show that his cause of action arose in Calcutta. To admit evidence of that fact, and, if necessary, amend the plaint by adding a statement that part of the cause of action did arise in Calcutta, does not cause a variance in the original cause of action. It is sufficient to show that the cause of action or part of it arises in Calcutta when the suit comes on for hearing. FINK *v.* BULDEO DASS . . . **I. L. R., 26 Calc., 715**
[3. C. W. N., 524

99. ———— **Account, Suit for**—*Letters Patent, cl. 12—Leave to sue—Part of the cause of action material.*—The plaintiff and the second defendant were the owners of a family business which was carried on by munims in Bombay, Cutch and Zanzibar. The first defendant was for many years the munim in management of the business at Zanzibar. This suit was brought, praying that an account might be taken of the management by the first defendant of the business at Zanzibar, and that in taking such account the first defendant might be charged with all sums misappropriated by him, or lost by his neglect or fraud. The second defendant was joined as a defendant merely because he refused to join as a plaintiff. The plaint instanced various acts of misappropriation and neglect and fraud on the part of the first defendant, some few of which were said to have been effected by means of transfer and other entries made in the books of the Bombay firm on instructions sent by the first defendant from Zanzibar. At the time of filing the suit the leave of the Court, under cl. 12 of the Letters Patent, was obtained. On a summons taken out to rescind such leave,—*Held* that the leave given must be rescinded, no such material part of the cause of action having arisen in Bombay as would justify this Court in transferring to itself a case which *primâ facie* ought to be tried elsewhere. *Ismail Hadjee Hubbeeb* v. *Mahomed Hadjee Joosub, 13 B. L. R.. 91,* referred to. KESSOWJI DAMODAR JAIRAM *v.* LUCKMIDAS LADHA . . . **I. L. R., 13 Bom., 404**

100. ———————— *Cause of action arising on items of account—Civil Procedure Code, 1859, s. 5—Act XXIII of 1861, s. 4.*—In the Civil Court of Berhampore, plaintiffs sued defendants for money due by one *S*, deceased. Defendants 1, 2, 3, and 4 were sued as heirs of the deceased; the fifth defendant as having instigated the other defendants to withhold payment. The first defendant resided at Vizagapatam, second at Bimlipatam, third and fourth at Madras. The fifth defendant resided at Berhampore. From the accounts produced, it appeared that there were, between the plaintiffs (merchants at Berhampore) and deceased (a merchant at Madras), a series of transactions of different kinds, in which they acted sometimes as principal and sometimes as agent, the one for the other. *Held* that, although in the account sued upon there were some items which, if they could be separated from the rest, would give a cause of action within the jurisdiction of the Berhampore Court, they could not be so separated, and that the intention was that the dealing should be continuous; that upon that footing the plaintiffs had properly sued for the balance of the whole account, but that they had brought their suit in the wrong Court, because the whole cause of action did not arise within the jurisdiction of that Court, and none of the defendants, who were properly joined in the suit, dwelt or worked within that district. *Held* also that the wrongful addition of the resident defendant could not bring the case under the operation of s. 4, Act XXIII of 1861, and that the cause of action against the fifth defendant was totally distinct from that alleged against the others, and the two could not be joined in one suit. ATMAKURI BHAVANA SETTI *v.* SANYASI SETTI . **3 Mad., 222**

101. ———————— *Civil Procedure Code, 1859, s. 5—Place of making and performance of contract different.*—*B* entered into a verbal agreement with *A* at Serampore, where *A* resided, to start in Calcutta a certain banianship business in conjunction with *A*'s son; *A* agreeing to advance the required funds on the condition that the sum advanced should be repaid him within a certain date with interest. No place was fixed for repayment. The money was advanced partly at Serampore and partly in Calcutta. *B* afterwards went to reside at Chandernagore. In a suit by *A* for recovery of the balance of the sum advanced, brought in the Hooghly Court, the Judge held that he had no jurisdiction, inasmuch as the cause of action arose in Calcutta. *Held* on appeal that, under s. 5, Act VIII of 1859, the Hooghly Court had jurisdiction to try the suit. *Per* MARKBY, *J.*—An action may be brought either in the forum of the place where the contract was made or in that where the performance was to have taken place. *Quære*—Whether this rule would apply if both parties were, at the time the contract was made, in a district where neither of them had any dwelling or place of business. *Per* BIRCH, *J.*—When no place for the performance of a contract is prescribed by the agreement, or exacted by the necessities of the case, the place where it is intended by the parties such contract should be fulfilled ought to supply the forum. GOPIKRISHNA GOSSAMI *v.* NILKOMUL BANERJEE

[13 B. L. R., 461 : 22 W. R., 79

102. ———— *Agreement to repay balance struck.*—Where a balance was struck, and an agreement to repay the balance was drawn out at Cawnpore,—*Held* the Cawnpore Court had jurisdiction to entertain a suit on that agreement, and its jurisdiction was not affected by the fact of the transaction, in respect of which the agreement was given, having happened elsewhere. HAIM RAJ *v.* RAM BUX . . . . . **1 Agra, 115**

103. ———— *Place of payment not specified.*—*D & Co.*, carrying on business at C, shipped goods to London for sale on account of *P D*, and advanced money to *P D* against the shipments. *P D* promised to pay the difference if the amount realized by the sales in London fell short of *D & Co.*'s advance, costs, and commission. No place of payment was specified. *Held*, in a suit to recover money due on account of such short falls, that the whole cause of action arose at C, where *D & Co.* carried on business, where the promise was made, and where the money must be taken to have been payable. DARRAGH & CO. *v.* PURSHOTAM DEVEJI . . . . **I. L. R., 4 Mad., 372**

104. ———— *Residence by agents—Joinder of causes of action.*—The right to join in one suit to causes of action against a defendant cannot be exercised, unless the Court to which the plaint is presented has jurisdiction over both causes of action. The defendants, who resided and carried on business at Bombay, acted as the agents of the plaintiff for the sale, purchase, and despatch of goods to Tellicherry, where the plaintiff resided. The plaintiff sued the defendants for money due on account of the transactions in Tellicherry. *Held* that no cause of action arose in Tellicherry. KHIMJI JIVRAJU SHETTU *v.* PURUSHOTAM JUTANI

[**I. L. R., 7 Mad., 171**

105. ———— *Venue—Act X of 1859, s. 24—Suit by zamindar against manager of two estates.*—The defendant was appointed a superintendent of two estates, one called Chulman, within the subdivision of Diamond Harbour, and the other Alipore, within the subdivision of Alipore. By his kabuliat he agreed to make good any retrenchments his employer, the zamindar, might make in his accounts. Some retrenchments were made, and to recover the balance which appeared due the zamindar brought this suit. *Held* that, as the defendant had agreed by his kabuliat to make the principal kutcherry his place of business, and as both the plaintiff and defendant agreed that the cause of action arose in the principal kutcherry, and as it was the place to which all the moneys were remitted, and where all the accounts were prepared, and the money first came under the control of the defendant and was by his order disbursed, the cause of action arose in the district within which the principal kutcherry lay. PRASANNA CHANDRA BOSE *v.* PRASANNA CHANDRA RAJ . . . **7 B. L. R., Ap., 35**

[**15 W. R., 343**

106. ———— **Agreement**—*Part of cause of action arising in jurisdiction—Suit on agreement executed within jurisdiction—Place for payment of money under deed—Costs of preparing a deed—Stamp duty.*—In December 1892, the plaintiffs agreed to supply the defendants with machinery for their mill near Calcutta. The defendants, being unable to pay for it in accordance with that agreement, entered into a supplementary agreement with the plaintiffs on the 10th August 1894, whereby it was arranged that the plaintiffs should accept shares in the defendants' company and debentures charged on the property in satisfaction of their claim. The agreement provided that the defendant company should forthwith execute an indenture of trust, in favour of trustees to be named by the plaintiffs, for the purpose of securing the said debentures, such indenture to be prepared by the plaintiffs' solicitors together with the debentures at the expense of the company and to be approved by the company's solicitors. It was lastly provided that this agreement should be treated as forming part of, and supplemental to, the agreement of December 1892. This agreement was signed in Bombay by J. Marshall on behalf of the plaintiffs. The indenture and debentures were duly prepared by the plaintiffs and approved by the defendants' solicitors in Bombay. The plaintiffs, having paid in Bombay the solicitor's bill of costs in respect of the preparation of the indenture and debentures, now sued to recover the amount from the defendants under the terms of the above agreement of 1894. The defendants contended that the Court had no jurisdiction, on the ground that they did not reside or carry on business in Bombay, and that no part of the cause of action arose in Bombay. *Held* that the Court had jurisdiction. The agreement of August 1894 was signed in Bombay by the plaintiffs' agent on their behalf, and therefore part of the cause of action arose within the jurisdiction. Further, it appeared that it was intended that the

JURISDICTION—*continued.*

2. CAUSES OF JURISDICTION—*continued.*

payment to be made by the plaintiffs should be made in Bombay where both the plaintiffs' agent and solicitors resided. *Held* also that the plaintiffs were entitled to include in their claim the stamp duty paid on the trust-deed. The agreement contemplated that the defendants should pay all the costs incidental to the execution of the deed. DOBSON AND BARLOW *v.* BENGAL SPINNING AND WEAVING CO.

[I. L. R., 21 Bom., 126

107. ———— **Bond, Suit on**—*Immediate cause of suit—Civil Procedure Code, 1859, s. 5.*—S. 5 of Act VIII of 1859 gave jurisdiction to the Court where the cause of action shall have arisen, or in other words, where the facts which immediately confer the right to sue have occurred. Where the immediate cause of the suit was the non-payment of money due on a bond,—*Held* that the Court of the place where default had been made in payment had the jurisdiction to try the suit, and not the Court within the jurisdiction of which the bond was made. PREM SHOOK *v.* BHEEKOO

[3 Agra, 242: Agra, F. B., Ed. 1874, 149

108. ———— *Residence.*—A bond was executed at Arrah, and provided that payment should be made to plaintiff in person, and though it described plaintiff and defendant as inhabitants of Patna, yet the plaintiff having been admittedly a resident at Arrah, at the time the bond was executed and for some years previously,—*Held* that the intention of the parties was to make the money payable at Arrah, and that consequently the Judge of Shahabad had jurisdiction. NIRBAN SINGH *v.* KUMLA SAHOY . . . **17 W. R., 345**

109. ———— **Breach of contract**—*Contract for sale and delivery of goods at fixed price—Suit for price—Place of suing—Act X of 1877 (Civil Procedure Code), s. 17 (a).*—*C* and *L* entered into an agreement at a place in the Sarun district, in which the latter resided and carried on business, whereby *C* promised to sell and deliver to *L* at a place in the Sarun district certain goods, and *L* promised to pay for such goods on delivery, "by approved draft on Calcutta or Cawnpore (where *C* carried on business), payable thirty days after the receipt of the goods or by Government currency notes." *C* delivered the goods according to his promise, but *L* did not pay for the same, and *C* therefore sued *L* for the price of the goods, suing him at Cawnpore. *Held* that the "cause of action," within the meaning of s. 17 of the Civil Procedure Code, was *L's* breach of his promise to pay for the goods; that the parties intended that payment should be made at Cawnpore, and the cause of action therefore arose there; and that therefore the suit had been properly instituted there. LLEWHELLIN *v.* CHUNNI LAL

[I. L. R., 4 All., 423

110. ———— *Civil Procedure Code, 1882, s. 17—Place of making of contract.*—The expression "cause of action," as used in s. 17 of the Civil Procedure Code, does not mean whole cause of action, but includes material part of the cause of action. In a suit for compensation for breach of a contract, the making of the contract is a material part of the cause of action. *Held* therefore, where a contract was made at C and broken at A, that the Court at C had jurisdiction to try the suit for compensation for the breach of such contract. *Llewhellin* v. *Chunni Lal, I. L. R., 4 All., 423,* and *Gopikrishna Gossami* v. *Nilkomul Banerjee, 13 B. L. R., 461,* followed. *DeSouza* v. *Coles, 3 Mad., 384,* and *Jumoonah Pershad* v. *Zaibunnissa, 5 C. L. R., 268,* dissented from. BISHUNATH *v.* ILAHI BAKHSH . . **I. L. R., 5 All., 277**

111. ———— *Performance of contract—Making of contract—Goods to be shipped at Bombay to the plaintiff at Karwar—Place where cause of action arose.*—The plaintiff residing at Karwar sent a sum of money to *K & Co.* (defendant No. 1), a firm at Bombay, asking them to send him certain goods. *K & Co.* informed the plaintiff that they had not the goods required by him. The plaintiff thereupon telegraphed to them to pay the amount to defendant No. 2, a resident of Bombay, provided he shipped the goods. On the failure of defendant No. 2 to ship the goods, the plaintiff brought a suit against the defendants in the Court at Karwar to recover the amount. He claimed against *K & Co.* (defendant No. 1) because they had paid the money to the second defendant before the goods were shipped, and against the second defendant because he had not shipped the goods, although he had received the money. The Court at Karwar was of opinion that Karwar was the place where the contract was to be performed, and that therefore it had jurisdiction to entertain the suit, and it passed a decree against defendant No. 2. The claim as against defendant No. 1 was dismissed. *Held,* reversing the decree, that the understanding on which the money was paid to defendant No. 2 by *K & Co.,* and which was the agreement on which the plaintiff sued, was that the second defendant would ship the goods at Bombay to the plaintiff at Karwar. The contract, therefore, as between defendant No. 2 and *K & Co.,* acting on behalf of the plaintiff, was both entered into and intended to be performed at Bombay. The cause of action arose therefore in Bombay, and the Court at Karwar had no jurisdiction. DADABHAI DAJIBHAI *v.* DIOGO SALDANHA

[I. L. R., 18 Bom., 43

112. ———— *Consignment and sale of goods—Suit on failure to sell where agreed.*—When goods were consigned for sale to Cawnpore and the consignors sued for damages because the goods were sold elsewhere, the cause of action arose at Cawnpore on failure to sell them there, and not at the place from which they were consigned. DEOKEE NUNDUN *v.* OOMRAO SINGH . **2 Agra, 248**

113. ———— *Non-delivery of goods.*—The defendant at Purola agreed to sell and deliver to the plaintiff certain goods for which the plaintiff then paid in advance. By the terms of the agreement, the goods were to be measured at Mazrod and delivered at Padshu. In default of delivery, it was stipulated that the value of the goods should be paid for at the market rate at Purola. The goods were not delivered in pursuance of the agreement. *Held,* in an action brought to recover their value at the market rate at Purola, that the cause of action arose at Padshu, where the goods ought to have been delivered. CHUNILAL MANIKLALBHAI *v.* MAHIPATRAV VALAD KHUNDU . **5 Bom., A. C., 33**

114. ——— *Goods delivered through carrier—Delivery at consignor's risk.*—*A* sued *B* for goods sold in Madras and delivered to *B* personally outside the local limits of the High Court's original jurisdiction. *B* dwelt outside those limits, the goods were sent to him at his request, sometimes by sea, sometimes through the post office, but always at *A*'s risk during the journey. *Held* that the suit must be dismissed for want of jurisdiction. So long as goods, though delivered to a common carrier appointed by the consignee, remain at the risk of the consignor, they are not delivered to the consignee. WINTER *v.* WAY . . . **1 Mad., 200**

115. ——— *Letters Patent, cl. 12—Non-delivery of goods.*—Plaintiffs contracted at Cawnpore with the East Indian Railway Company to deliver goods in Madras. The East Indian Railway does not run into the jurisdiction of the Madras High Court. The Railway Company made default in delivery of the goods, and the plaintiffs sued them in the Madras High Court for damages for the breach of contract. No leave to sue (under cl. 12 of the Letters Patent) was obtained. The Court of first instance dismissed the suit for want of jurisdiction. *Held,* on appeal, following *Gopikrishna Gossami* v. *Nilkomul Banerjee, 13 B. L. R., 461,* and *Vaughan* v. *Weldon, L. R., 10 C. P., 47,* that the breach of contract having taken place at Madras, the cause of action had wholly arisen within the jurisdiction of the High Court. MUHAMMAD ABDUL KADAR *v.* E. I. RAILWAY COMPANY **[I. L. R., 1 Mad., 375**

116. ——— *Part of cause of action in jurisdiction.*—Where defendant, in an action for goods sold and delivered, pleaded want of jurisdiction, inasmuch as the whole cause of action did not arise within the jurisdiction, the Court found that a material part of the cause of action had arisen within the jurisdiction, and gave a decree for plaintiff, leaving it to defendant to dispute execution if so advised. DOORGAPERSAD BOSE *v.* WATERS **[1 Ind. Jur., N. S., 191**

117. ——— *Civil Procedure Code, 1859, s. 5.*—By a contract entered into at Beerpore, in the district of Nuddea, the plaintiff agreed to supply indigo seed to the defendant, the seed to be paid for on delivery by an order to be sent to the plaintiff on receipt of the seed. The plaintiff resided at Berhampore, in the district of Moorshedabad, and the defendant carried on business at Beerpore, in the district of Nuddea, where delivery was to be made. The seed was delivered by the plaintiff as agreed, but the defendant refused to pay for it. In an action brought in the Moorshedabad Court to recover the price of the seed,—*Held* that the Moorshedabad Court had jurisdiction to entertain the suit. The refusal of payment by the defendant, which was to have been made in the district of Moorshedabad, was a sufficient cause of action under s. 5, Act VIII of 1859, to enable the plaintiff to sue in that Court. *Semble*—The words "cause of action" in that section do not mean the whole cause of action. HILLS *v.* CLARK **14 B. L. R., 367 : 23 W. R., 63**

118. ——— *Place of performance of contract—Suit for price of seed.*—Plaintiff delivered to the defendant at the latter's factory at Cossipore fifty maunds of indigo seed. It was agreed that payment should be made at plaintiff's place of business within the limits of the Munsif's Court at Krishnagur. *Held* that the latter Court had jurisdiction to entertain a suit for the price of the seed. HURRI MOHUN MULLICK *v.* GOBURDHUN DASS **[3 C. L. R., 459**

119. ——— *Whole cause of action—Contract—Place of performance of contract where no stipulation in contract—Leave to sue under cl. 12 of Letters Patent.*—By a contract executed in Bombay on the 19th December 1885, the defendant promised to pay the plaintiff R9,152, of which amount the sum of R4,752 was to be paid by monthly instalments of R132 extending over a period of three years, and the remainder, *viz.,* R4,400, in a lump sum at the end of the three years. It was provided that, in case of default being made in payment of any of the instalments, the whole of the amount then due should be paid forthwith. The plaintiff, alleging that the defendant had only paid eight of the instalments, brought this suit for the balance. The defendant, who did not dwell or carry on business in Bombay, pleaded (*inter alia*) that the High Court of Bombay had no jurisdiction, as the whole cause of action had not arisen in Bombay, and no leave to sue had been obtained by the plaintiff under cl. 12 of the Letters Patent. The written contract, which was admittedly executed in Bombay, contained no stipulation as to where the instalments or the final balance was to be paid. *Held* that, in the absence of stipulation in the contract itself, the intention of the parties to it was to guide the Court in determining the place of its performance. From the facts and acts of the parties it appeared that their intention was that payments under the contract should be made at Surat. The breach of contract consequently took place at Surat and not in Bombay, and the High Court of Bombay had no jurisdiction to try the suit, the plaintiff having omitted to obtain leave to sue under cl. 12 of the Letters Patent. In the case of an action on a contract the "cause of action" within the meaning of cl. 12 of the Letters Patent means the whole cause of action, and consists of the making of the contract and of its breach in the place where it ought to be performed. To give jurisdiction to the High Court of Bombay, the plaintiff must show that the contract was to be performed, and that its breach took place there. DHUNJISHA NUSSERWANJI *v.* FFORDE . . . **I. L. R., 11 Bom., 649**

120. ———— *Sale of goods.—Payment of proceeds.*—Where the plaintiffs and defendants made consignments of a certain number of bales of cotton belonging to each for the Mirzapore market, and the cotton was unloaded and sold at Cawnpore by direction of the latter, and the proceeds were received by them at Meerut, where they all but one resided, and credited to their accounts,—*Held,* in a suit for damages, that the defendants, who ordered the sale at Cawnpore and profited by the proceeds, and not a defendant who resided at Cawnpore and acted under instructions from the other defendants, were primarily liable, and that the suit was cognizable in the Meerut Court. LUCKHEE RAM *v.* MAHANI RAM . . . . **1 Agra, 10**

121. ———— *Advances made for delivery of wood.*—Where the suit was brought upon the defendant's breach to deliver wood in pursuance of the terms of the contract,—*Held* that the mere fact that an advance was made within the local jurisdiction of a Court would not give that Court jurisdiction in such suit. AJOODHYA PERSHAD *v.* GOBIND RAM . . . . . **2 Agra, 188**

122. ———— *Contract for sale of land—Suit for purchase-money.*—Where there is a contract of sale of land, an action can ordinarily be brought by the vendor for the purchase-money, whether or not the Court in which the action is brought has jurisdiction over the seat of the obligation which it is sought to enforce. YOUNG *v.* MANGALAPILLY RAMAIYA . . . . **3 Mad., 125**

123. ———— *Suit for specific performance or return of money—Land situated without local limits of jurisdiction.*—In consideration of the loan of R4,000, the defendant agreed to execute a mortgage of certain land beyond the jurisdiction of the High Court to the plaintiff, and agreed to produce his title-deeds, and to make a good title. In the agreement the plaintiff was described as "of Durmahatta in the town of Calcutta, merchant," and the defendant as "of Panchthopy in Zillah Beerbhoom, at present of Coomertooly in Calcutta." In a suit for specific performance of the agreement to execute the mortgage and in the alternative for the return of the R4,000,—*Held* that, as the plaintiff was described as of Calcutta, the defendant would be entitled to redeem by paying the mortgage-money in Calcutta, and that a money-decree could be made. SREENATH ROY *v.* CALLY DOSS GHOSE . **I. L. R., 5 Calc., 82**

124. ———— *Contract, Ratification of—Contract relating to lands.*—*A*, on behalf of her infant son *B*, contracted with *C*, that he should be allowed, for the maintenance of her daughter whom he was about to marry, land situate at X, that should yield annually R900. *B*, after coming of age, contracted at Y to pay *C* the annual allowance, and ratified the contract which had been made by his mother. *Held,* first, that, although the contract with *B* was entered into at Y, yet, as by that contract he ratified the contract entered into by his mother, and which related to lands at X, the Court of X had jurisdiction in a suit for recovery of certain of the yearly payments. KISHEN KINKUR GHOSE *v.* BORODAKANTH ROY

[**Marsh., 533 : 2 Hay, 656**

125. ———— **Compromise**—*Letters Patent, cl. 12—Compromise outside of decree obtained within jurisdiction.*—Where *A* obtained a decree in the late Supreme Court, and subsequently resided out of the local limits, and then executed a compromise in an action brought by *B* to prevent *A* from proceeding upon the decree of the Supreme Court,—*Held* that the whole cause of action did not arise within the local limits provided by the Letters Patent, and that the Court had no jurisdiction. FEDA HOSSEIN *v.* SYEDOONISSA . . **1 Ind. Jur., N. S., 80**

126. ———— **Dower**—*Suit for dower debt—Civil Procedure Code (1882), s. 17—Mahomedan law, Dower—Suit for recovery of dower debt from the assets of a deceased Mahomedan.*—A suit for the recovery of a dower debt from the assets of a deceased Mahomedan being a suit on a contract is subject to the provisions as to jurisdiction contained in s. 17 of the Code of Civil Procedure, 1882. Where, therefore, none of the requisites for jurisdiction given in that section existed within the jurisdiction of the Court in which such a suit was brought, that Court had no jurisdiction to entertain it. SHANKAR DIAL *v.* MUHAMMAD MUJTABA KHAN

[**I. L. R., 18 All., 400**

127. ———— **Foreign judgment, Suit on**—*Letters Patent, cl. 12—Company—Service of balance order on defendant—Winding up.*—The defendant, who resided outside the jurisdiction of the High Court, was sued at Bombay as a contributory upon a balance order made by the Court of Chancery in England in the winding up of the plaintiffs' bank. It was contended on his behalf that no part of the cause of action had arisen within the jurisdiction, and that the suit was therefore not maintainable. The plaintiffs contended that service of the balance order upon the defendant was necessary, and constituted part of the cause of action, and that, as such service had been effected upon the defendant in Bombay, the Court has jurisdiction. *Held* that service of the balance order upon the defendant was not necessary; and that, as no part of the cause of action had arisen within the jurisdiction, the suit should be dismissed. LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* BADEE BEEBEE

[**I. L. R., 5 Bom., 49**

128. ———— **Fraud**—*Suit for goods obtained by fraud—Letters Patent, cl. 12.*—*G* went to the plaintiff's place of business in Calcutta, and representing to him that he wanted some jewellery on inspection, and would purchase it if he did not return within ten days, obtained from the plaintiff a quantity of jewellery, depositing as security R2,000 with the plaintiff. *G*, having thus obtained the jewellery, took it to *K*, at his residence, which was out of the local limits of the jurisdiction of the Court, and pledged the jewellery to *K* for R6,000. In a suit brought against *G* and *K* to recover the jewellery or its value, *G* did not appear, and *K* alone defended the suit. *Held* that it being, with reference to s. 178 of the Contract Act, an essential element in the plaintiff's case that the jewellery had been obtained from the plaintiff by fraud in Calcutta, part of the cause of action against *K* arose in Calcutta, so as to enable the Court, leave having been obtained under cl. 12 of the Charter, to entertain the suit against him. KARTICK CHURN SETTY *v.* GOPALKISTO PAULIT . . . . **I. L. R., 3 Calc., 264**

129. ———— **Legacy, Suit for**—*Place of residence of legatee and of heir.*—A suit for a legacy must be brought, not within the jurisdiction where the legatee resides, but within the jurisdiction where the heir resides. ASHOOTOSH BOSE *v.* HUREE CHURN NAG . . . . **16 W. R., 305**

130. ———— **Lost property**—*Property lost in one district and found in another.*—A suit to recover property lost in one district and found in another must be instituted in the Court of the district in which it is found. RAM PARTAB SINGH *v.* BHOLABUTTY KOONWAR . . **9 W. R., 586**

131. ———— **Maintenance, Suit for**—*Letters Patent, 1865, cl. 12.*—The plaintiff's father left various properties partly within and partly outside Calcutta. The plaintiff instituted this suit, as an indigent sonless widowed daughter, against the defendants for the recovery of her maintenance out of the estate inherited by them from her father, and prayed that her maintenance might be declared a charge upon the property situated within the limits of Calcutta. Some of the defendants lived within and some outside Calcutta. Leave was obtained under cl. 12 of the Letters Patent. It was held that, under the abovementioned circumstances, the High Court had jurisdiction to try the action. MOKHODA DASSEE *v.* NANDO LALL HALDAR

[I. L. R., 27 Calc., 555
4 C. W. N., 669

132. ———— **Malicious prosecution, Suit for**—*Letters Patent, 1865, cl. 12—Jurisdiction.*—Where the plaintiff, in an action for malicious prosecution, alleged that the defendant had instituted criminal proceedings against him before the Magistrate of Moradabad, causing a warrant to be issued by the Magistrate, and having him arrested under that warrant in Calcutta,—*Held* the whole cause of action did not arise at Moradabad; that part of the cause of action arose in Calcutta, so as to entitle the plaintiff, with leave of the Court, to bring an action in the High Court. LUDDY *v.* JOHNSON

[6 B. L. R., 141

133. ———— **Misrepresentation**—*Information as to carriage of goods by railway.*—Where the defendants at C were asked to obtain information from a railway company as to the cost of carriage of coal from R to C which they were about to sell to the plaintiff at C, and they did so communicating in good faith the result to the plaintiff, and the plaintiff was ultimately compelled to pay to the railway company a much larger sum than the defendant had represented,—*Held*, assuming there was a right of suit, the cause of action must be held to have arisen at C, where the alleged representation must be deemed to have been made. BENGAL COAL COMPANY *v.* ELGIN COTTON COMPANY

[2 N. W., 13

134. ———— *Letters Patent, cl. 12—Suit to set aside decree of High Court on ground of misrepresentation.*—It is not necessary to obtain the leave of the High Court under cl. 12 of the Letters Patent to sue to set aside a decree of that Court made upon a compromise to which the plaintiff has been induced by the misrepresentations of the defendant to agree, even when it appears from the plaint that the defendants are outside the jurisdiction of the Court. SOLOMON *v.* ABDOOL AZIZ

[4 C. L. R., 366

135. ———— **Money had and received, Suit for**—*Place of estate sold and place of receipt of money.*—*R*, having a right to an estate in P, then in the hands of *B*, sold it to *S*. Contemporaneously with the sale, *R* and *S* by deed bound themselves in common to take all needful steps to obtain possession of the estate from *B R* by a suit in the Supreme Court against *B*, recovered the estate and mesne profits which were paid to him in Calcutta. In a suit instituted in P by the representative of *S* against *R* for the amount so realized by him, it was held that the plaintiff was entitled to recover, and that the cause of action arose in P. SHARODAPERSAD MOOKERJEE *v.* BENGAL INDIGO COMPANY

[1 Ind. Jur., N. S., 32

136. ———— *Money in Government Treasury—Suit for sum held in deposit by Government for collections made by it.*—Where a suit was brought for the surplus collections of the proprietary profits of an estate made by Government during a period when it was held as Koork tahsil, and it appeared that the Terai District, within which the said estate was situated, had been several times transferred from the Bareilly Division, in which it originally lay, to that of Kumaon, and back again, but that at the time of the institution of the suit it was included within the Kumaon Division, and it further appeared that no portion of the collections in question were in deposit in the Bareilly Treasury,—*Held* that the Bareilly Court had no jurisdiction to entertain the suit. HEARSEY *v.* SECRETARY OF STATE FOR INDIA . . . . **6 N. W., 47**

137. ———— **Negotiable instruments**—*Suit on bill of exchange.*—Where a bill of exchange was drawn at Banda, and made payable and dishonoured at Benares, and the defendant also had his dwelling at Banda,—*Held* that the cause of action did not arise at Agra, merely on account of the bill of exchange having been sold at the latter place by a third party, purchaser from defendant. KISHEN CHUND *v.* KISHEN LALL . **2 Agra, 123**

138. ———— *Hundi—Whole cause of action—Letters Patent, cl. 12.*—Where plaintiff brought an action to recover money paid by him in Calcutta, on hundis drawn by defendant beyond the local limits, but sent by him to Calcutta, and there accepted and paid by the plaintiff,—*Held* that the whole cause of action arose within the local limits of Calcutta, so as to give the High Court jurisdiction under the 12th clause of the Charter. JOAN MULL *v.* MUNNOOLOLL . **1 Ind. Jur., N. S., 219**

139. ———— *Hundi—Letters Patent, cl. 12.*—*A*, who resided and carried on business in the Upper Provinces, sent cotton for sale to *B* in Calcutta, and drew hundis against it upon *B*, payable in Calcutta. The hundis were negotiated, and afterwards presented to *B*'s gomastah in Calcutta and there accepted and paid by him for *B*. In a suit by *B* against *A* for balance of account, —*Held* that the whole cause of action arose in Calcutta within the meaning of cl. 12 of the Letters Patent. DHUNRAJ *v.* GOVINDARAM [**1 B. L. R., O. C., 76**

140. ———— *Hundi—Suit on hundi.*—A suit for recovery of the amount of a dishonoured hundi drawn at Shekoabad and payable at Furruckabad cannot be brought in the Court of the Munsif of Shahjehanpore, the abode of the endorsee of the dishonoured hundi, but where none of the drawers or endorsers resided. RAGHOOBUR DYAL *v.* DWARKA DASS . . . . **3 N. W., 343**

141. ———— *Hundi—Whole cause of action—Suit on hundi made out of jurisdiction—Letters Patent, cl. 12.*—The contract that the endorser of a hundi enters into is to pay the amount of the hundi to the holder (in case the drawee makes default) in the place where the hundi has been endorsed by him, and not in the place where it is made payable. Where, therefore, a hundi endorsed and delivered in Ajmere was payable in Bombay, where it was dishonoured, it was held that the cause of action of the holder against the endorser did not arise wholly in Bombay. *Quære*—Whether it arose in part in Bombay. SUGANCHAND SHIVDAS *v* MULCHAND JOHARIMUL . . **2 Bom., 270**

142. ———— *Hundi—Suit on hundis.*—The defendant, who resided in the district of M, but carried on business through an agent at Calcutta, by a letter, dated 4th August 1874, signed by such agent, authorized the plaintiff to advance money to *H K*, at M, on hundis drawn there by him upon defendant's firm at Calcutta, the hundis to be accepted and paid at maturity at Calcutta. Hundis were so drawn and accepted, but the money advanced was not paid at maturity. In a suit at M against the defendant as drawer or acceptor, it was held that the Court at M had no jurisdiction to try the case. *Per* BROUGHTON, *J.*—If the letter of 4th August 1874 amounted to a request to the plaintiff in M to pay money at M to be repaid at Calcutta, no cause of action, upon which a suit would lie against the defendant in the district of M, could arise upon it. JUMOONA PERSHAD *v.* ZAIBUNNISSA [**5 C. L. R., 268**

143. ———— *Hundi—Suit on hundi—Letters Patent, cl. 12.*—Where a hundi had been drawn out of the jurisdiction, upon a person within the jurisdiction, endorsed and delivered, out of the jurisdiction to one who, out of the jurisdiction, endorsed the same, and sent it to a person who, within the jurisdiction, received it, got it accepted, and presented it for payment to the drawee, by whom it was dishonoured within the jurisdiction,—*Held* that the dishonour of the hundi by the drawee within the jurisdiction was a material part of the cause of action by the holder against the first endorser, and consequently that such material part of the cause of action having arisen within the jurisdiction, and the holder having obtained leave to bring his suit under cl. 12 of the Letters Patent, 1865, the Court had jurisdiction. MULCHAND JOHARIMAL *v.* SUGANCHAND SHIVDAS . . . **I. L. R., 1 Bom., 23**

Affirming the decree of the Court below in SUGANCHAND SHIVDAS *v.* MULCHAND JOHARIMAL [**12 Bom., 113**

144. ———— *Agreement at Delhi to pay money in Bombay—Hundi—Acceptance, What amounts to—Communication of acceptance to holder—Communication of acceptance to drawer—Omission by drawee to notify non-acceptance—Absence of entry of acceptance in drawee's book.*—The plaintiffs, who traded in Bombay, had dealings with certain firms at Delhi. In December 1884, it was agreed at Delhi between the plaintiffs and the defendant that, in consideration of the plaintiffs accepting a composition of eight annas in the rupee upon the debt due to them by a certain insolvent firm, which amounted to R11,101-2, the defendant would pay the amount of such composition to the plaintiffs. The plaintiffs in this suit claimed R5,530-9, being the amount of such composition. The defendant denied the jurisdiction of the Court, contending that no part of the cause of action had arisen within its jurisdiction. He alleged that the terms of the agreement were contained in a composition-deed which was executed at Delhi, etc. At the hearing, the Court found that subsequently to the execution of the composition-deed the plaintiffs' munim, who was anxious to return to Bombay, had a conversation with the defendant at Delhi with reference to the plaintiffs' claim upon the insolvent firm, at which the defendant proposed that he should give a letter to the plaintiffs' said munim with reference to the claim, and that the munim should give one to him; that the latter should, upon such letters being exchanged, return to Bombay, and that the defendant should remit the amount found due to the plaintiffs when the accounts had been made up. The following letter was accordingly written by the defendant and handed to the plaintiffs' munim: "Peace, prosperity. To Shripast Shah Ganeshdas Thakurdas at that auspicious place the seaport (town) of Bombay. From Delhi written by Dowlatrai Shriram, whose (salutations) victory (to the deity) Gopal do you be good enough to read. Further, do you be pleased to notice one (piece of) intelligence (as follows): You had an account with Bhai Fatechand and Kanyalal Jugalkissan. I have paid off their debts at the rate of eight annas in the rupee. Therefore, as to whatever (amount) may be found (due) by your account on our making up the account according to the practice of the merchants, the same I will pay you at the rate of eight annas in the rupee. This chitti is written 21st December 1884." The plaintiffs' munim handed the following letter to the defendant: "To Shah Dowlatrai Shriram at that auspicious place, Delhi. From the seaport (town) of Bombay, written by Ganeshdas Thakurdas, whose salutations of victory * * *, etc. Do you be pleased to read * * *. I have an account with Shah Fatechand Kanyalal Jugalkissan, wherein R are claimable by me. On account of those rupees I will receive payment from you at the rate of eight annas in the rupee. A chitti in respect thereof I have obtained in writing from you 21st December 1884." These letters were exchanged at Delhi, and the plaintiffs' munim then returned to Bombay. *Held* that the Court had jurisdiction. If the oral agreement between the defendant and the plaintiffs' munim were taken as the basis of the plaintiffs' claim, it was clear that part of the cause of action arose in Bombay, as payment to the plaintiffs was to be made in Bombay. The exchange of letters was a carrying out in part of the oral agreement. When that agreement was made, the defendant was under a legal obligation to pay the plaintiffs' claim upon the insolvent firm. The oral agreement varied the time, place, and mode of payment, as it was competent for the parties to vary them (Contract Act IX of 1872, ss. 73, 74). If the letters had varied the terms of the oral agreement, the latter would be modified by the later expressions of the will of the contracting parties; but they did not do so, and the oral agreement remained in force and unvaried. If, on the other hand, the letters were regarded as containing the contract, they were not of such a character as to exclude the proof, under s. 92 of the Evidence Act (I of 1872), of a separate oral agreement completely consistent with their terms, namely, that the payment they provided for should be made in Bombay. *Held* also that, having regard to the circumstances under which they were written, that a promise to pay in Bombay might fairly be inferred from the terms of the letters themselves. The defendant addressed the plaintiffs at Bombay from Delhi, and the plaintiffs addressed the defendant at Delhi from Bombay, and it might be concluded from this that the parties intended that the letters should have the same contractual effect as if they had been respectively written to and from the places to and from which they purported to be written. *Held* also that the fact that the debt due from the insolvent firm to the plaintiffs, which the defendant had agreed to satisfy, had been contracted in Bombay would not give the Court jurisdiction independently of the stipulation, oral or documentary, by the defendants to pay in Bombay. It would be necessary for the plaintiffs to prove the existence of such debt as showing the nature and extent of the defendant's promise, but the existence of the debt would not constitute a part of the plaintiffs' cause of action. PRAGDAS THAKURDAS *v.* DOWLATRAM NANURAM . . . **I. L. R., 11 Bom., 257**

145. ———————— *Leave to sue under cl. 12 of the Letters Patent, 1865—Amendment of plaint in cases in which leave to sue under cl. 12 is necessary—Part of cause of action arising outside the jurisdiction—Hundi, Suit on—Suit by drawee within the jurisdiction against the drawer outside the jurisdiction.*—In suits for which leave to sue under cl. 12 of the Letters Patent, 1865, is necessary, the plaint cannot be afterwards amended. The grant of leave must be taken to relate to the suit as put forward in the plaint on which leave is endorsed by the Judge accepting it. The grant of leave under cl. 12 of the Letters Patent, 1865, is a judicial act which must be held to relate only to the cause of action contained in the plaint, as presented to the Court at the time of the grant. Such leave, which affords the very foundation of the jurisdiction, is not available to confer jurisdiction in respect of a different cause of action which was not judicially considered at the time it was granted. In respect of such a different cause of action, leave under cl. 12 cannot be granted after the institution of the suit; and therefore the Court cannot try such different cause of action, except in another suit duly instituted. In suits upon hundis drawn outside the jurisdiction upon drawees within the jurisdiction, part of the cause of action arises outside the jurisdiction, and leave to sue under cl. 12 of the Letters Patent, 1865, is therefore necessary for such suits. RAMPURTAB SAMRUTHROY *v.* PREMSUKH CHANDAMAL **I. L. R., 15 Bom., 93**

In a later case the plaint was amended by the addition of another defendant after the leave to sue had been granted, and an appeal by the original defendant from that order was dismissed. FOOLIBAI *v.* RAMPRATAB SAMRATRAI

[I. L. R., 17 Bom., 466

146. ———————— *Suit on hundi—Endorsement by payee.*—A hundi, drawn at Benares on the drawer's firm at Bombay in favour of a firm at Mirzapur and Calcutta, was endorsed at Calcutta by the payee to a firm at Calcutta, and dishonoured by the drawer's firm at Bombay. In a suit brought in Calcutta by the endorsee to recover the value of the hundi, the defence was raised that the Court had no jurisdiction to entertain the suit. *Held* that, the endorsement having taken place in Calcutta, part of the cause of action arose in Calcutta, so as to give the Court jurisdiction. *Kellie* v. *Fraser, I. L. R., 2 Calc., 445,* and *Daya Narain Tewary* v. *Secretary of State, I. L. R., 14 Calc., 256,* approved. ROGHOONATH MISSER *v.* GOBINDNARAIN

[I. L. R., 22 Calc., 451

147. ———————— *Letters Patent, High Court, cl. 12—Suit on hundi payable at fixed date—Dishonour by non-acceptance—Negotiable Instruments Act (XXVI of 1881).*—On the 14th April 1889, the defendant at Gwalior drew a hundi for R2,500 on his firm at Bombay in favour of *D*, payable forty-five days after date. It was subsequently endorsed at Gwalior by *D* to the plaintiff at Cawnpore, who sent it to the Bank of Bombay at Bombay for collection. It was to become payable on the 1st June 1889, but on the 23rd April 1889 the Bank presented it to the defendant's firm at Bombay for acceptance, which was refused. The Bank thereupon returned it to the plaintiff at Cawnpore, and it was never presented for payment. On the 16th June 1891, the plaintiff filed a suit upon the hundi against the defendant at Cawnpore, but on the 18th March 1893 the plaint was returned to him, the Court holding that it had no jurisdiction. On the 16th April 1893, the plaintiff filed this suit in the High Court of Bombay. Previously to the filing of the suit, the defendant had ceased to carry on business at Bombay. The defendant contended that the Court had no jurisdiction, inasmuch as (*a*) the defendant was a foreigner, and at the date of suit did not carry on business in Bombay; and (*b*) no part of the cause of action (if any) had arisen in Bombay. *Held* (1) that, under the Negotiable Instruments Act (XXVI of 1881), the dishonour of a hundi, by non-acceptance, constitutes now, as it has always done, part of the cause of action in a suit against the drawer; (2) that the Court had jurisdiction under cl. 12 of the Letters Patent, 1865. RAM RAVJI JAMBHEKAR *v.* PRALHADDAS SUBKARN . . **I. L. R., 20 Bom., 133**

148. ——— *Promissory note made and delivered within jurisdiction—Letters Patent, cl. 12.*—Where a promissory note payable within the jurisdiction is also in the first instance delivered within it, the cause of action arises within the jurisdiction. ISSER CHUNDER SEIN *v.* CRUZ **[1 Ind. Jur., N. S., 233**

149. ——— *Promissory note made out of jurisdiction—Defendant out of jurisdiction.*—The proclamation of the Governor General in Council, dated 26th August 1865, did not revive the jurisdiction of the late Supreme Court or affect the local limits under the Letters Patent; therefore the High Court had no jurisdiction to entertain a suit on a promissory note made at Allyghur, but payable in Calcutta, the defendant residing at Allyghur. INDIAN CARRYING COMPANY *v.* MCCARTHY **[1 Ind. Jur., N. S., 61**

150. ——— *Promissory note.*—In an action on a promissory note, when the note was made payable to *A*, who resided in Calcutta, and was executed and delivered to him in Calcutta,—*Held* the whole cause of action arose in Calcutta. RAMGOPAL LAW *v.* BLAQUIERE . **1 B. L. R., O. C., 35**

151. ——— *Promissory note—Letters Patent, 1865, cl. 12.*—The High Court has no jurisdiction to entertain a suit brought upon a promissory note made without, but payable within, the local limits of his jurisdiction, leave to institute the suit not having been first obtained. MOTHOORMOHUN ROY *v.* JADOOMONEY DOSSEE **[10 B. L. R., 122**

152. ——— *Promissory note, Suit on—Delivery of note.*—Where the payee sued the maker of a note which was dated " Madras, 27th September 1860," and delivered to the plaintiff at Madras,—*Held* that the High Court had jurisdiction to entertain the suit, though the defendant had signed the note at Secunderabad, whence he had sent it by post to the plaintiff. The making of a promissory note is altogether the act of the maker, and delivery according to the promise is required to make it complete. WINTER *v.* ROUND . **1 Mad., 202**

153. ——— *Promissory note, Suit on—Maxim " Debitum et contractus sunt nullius loci."*—The High Court has no jurisdiction to entertain a suit on an instrument stipulating for the payment of money generally when the defendant resides beyond the local limits, and such instrument was signed by him beyond those limits. Jurisdiction to entertain a suit on a promissory note is *primâ facie* shown upon a plaint alleging that the note was delivered by the defendant at Madras, and that he thereby promised to pay at Madras. Remarks on the maxim *" Debitum et contractus sunt nullius loci."* RAJENDRA RAU *v.* SAMA RAU . **1 Mad., 436**

154. ——— *Promissory note—Place of performance—Code of Civil Procedure (Act X of 1877), s. 17, Illus.*—Where a promissory note is executed in one district, and it is agreed that the amount of the note shall be paid in another, the Courts of the latter district have jurisdiction to entertain a suit on the note. The illustrations to s. 17 of the Code of Civil Procedure afford no safe guide as to what is meant in the Code by the term "cause of action." *Gopi Krishna Ghossami* v. *Nil Komul Banerjee, 13 B. L. R., 461; Muhammad Abdul Kadar* v. *E. I. Railway Co., I. L. R., 1 Mad., 375;* and *Vaughan* v. *Weldon, L. R., 10 C. P., 47,* followed. LALJEE LALL *v.* HARDEY NARAIN **[I. L. R., 9 Calc., 105 : 11 C. L. R., 125**

155. ——— **Partnership**—*Place of conduct of partnership transactions—Suit for balance due.*—A contract was entered into at Rutlam for the establishment of a partnership to be carried on principally at Muttra, where all the transactions were to be conducted by means of the capital embarked in the concern at that place. *Held* that the cause of action in a suit for the balance resulting from these partnership transactions arose at Muttra. LUCHMEE CHAND RADHAKISHEN *v.* ZORAWAR MULL **[1 W. R., P. C., 35 : 8 Moore's I. A., 291**

156. ——— *Letters Patent, cl. 12—Suit against non-resident foreigners.*—Where an agreement in writing was signed by the plaintiff and the defendants at Secunderabad, in the territories of the Nizam, for a partnership in a tannery business to be carried on at Bakuram, near Hyderabad, and by the terms of the agreement the tanned skins were to be sent to the plaintiff at Madras, for sale or shipment to England, and hundis in respect of the goods sent to Madras were to be drawn upon the plaintiff at Madras and paid by him, and accounts of the partnership transactions were to be sent to the plaintiff once in eight days,—*Held*, in a suit for an account of the partnership dealings, that the cause of action had arisen in part within the original civil jurisdiction of the High Court, and, the leave of the Court to bring the suit having been obtained under cl. 12 of the Letters Patent of 1865, that the Court had jurisdiction to entering the suit. *Held* also that the jurisdiction of the Court was not affected by the circumstance that the defendants were non-resident foreigners. BAVAH MEAH SAIB *v.* KHAJEE MEAH SAIB . . . . . . **4 Mad., 218**

157. ——————— *Letters Patent, High Court, cl. 12—Part of cause of action arising on jurisdiction—Death of partner—Subsequent recovery of assets by surviving partner—Suit by administrator of deceased partner against surviving partner for recovered assets—Suit for partnership account.*—In 1889 one *H*, a widow and a partner in a firm carrying on business in partnership with two persons, *viz.*, *G* and *B* (defendants Nos. 1 and 2), in Sind and at Behrin in the Persian Gulf, died, and the partnership was then dissolved. *H* had no children, but it was alleged that she had adopted one *P*, the brother of the second defendant. On the 13th February 1890, the guardian of one *K*, a minor (*H*'s husband's nephew), applied to the High Court of Bombay for letters of administration to her estate, alleging that *K* was her heir and next of kin. A caveat was filed by her father and others, in which they denied that *K* was her heir, and alleged that *P* had performed her funeral ceremonies. The matter came on as a suit on the 19th February 1894, when an order was made, without prejudice to any of the questions raised by the issues, dismissing the application and ordering letters of administration to *H*'s estate to issue to the Administrator General of Bombay. Letters of administration were accordingly granted to him on the 30th March 1894. In the meantime, however, *viz.*, on the 12th April 1893, *B* (defendant No. 2) had filed three suits in the High Court of Bombay, in the name of himself and *G* (defendant No. 1), as surviving partners of *H*'s firm, to recover certain debts due to that firm. Disputes subsequently arose between *B* and *G*, and by a consent order of the 22nd July 1893 it was ordered that any moneys recovered in the said three suits should be paid over to a receiver (defendant No. 3), to be held by him until further order. On the 1st August 1893, consent decrees were passed in the above three suits for a total sum of R28,335, which was forthwith handed over to the receiver. On the 22nd April 1894, the suit was filed by the Administrator General of Bombay as administrator of *H* appointed as above stated. He claimed to recover the whole sum paid to the receiver, alleging that the first and second defendants as her partners were largely indebted to the firm, and that the money really belonged to her estate. He prayed that the receiver might be directed to pay over the money to him, and that, if necessary, the partnership accounts should be taken. The second defendant (*inter alia*) pleaded that the suit was one for partnership accounts, and was barred by limitation, and also that the High Court of Bombay had no jurisdiction to try it. *Held* that the Court had jurisdiction to hear the suit. The cause of action alleged was that the second defendant was endeavouring, under cloak of his position as surviving partner, to get into his hands a sum of money within the jurisdiction of the Court, with a view to deprive the representatives of his deceased partner of it, and to employ it for his own purposes. That was, at all events, part of the cause of action, and leave to sue had been obtained under cl. 12 of the Letters Patent, 1865. RIVETT-CARNAC *v.* GOCULDAS SOBHANMULL . **I. L. R., 20 Bom., 15**

Affirmed by the Privy Council in, BHAGWANDAS MITHARAM *v.* RIVETT-CARNAC

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3 C. W. N., 186

158. ——— **Principal and agent**—*Principal residing out of jurisdiction.*—*Held* that the Court at Furruckabad had no jurisdiction to entertain a suit against principals residing elsewhere, brought by the agents at Furruckabad. KHOOSHAL CHUND *v.* PALMER . . . **1 Agra, 280**

159. ——— **Registration**—*Suit to compel registration—Registration Act, 1864, s. 21—Civil Procedure Code, 1869, s. 5.*—Defendant executed in favour of plaintiff at Combaconum, in the zillah of Tanjore, a deed of mortgage of lands situated at a place within the jurisdiction of the District Munsif of Perambalur, in the Trichinopoly zillah. The deed, to make it enforceable, required registration, the place of registry (from the situation of the lands) being Perambalur. Plaintiff appeared at the registry office, but defendant did not. In consequence, the Sub-Registrar refused to register the deed. The present suit was brought to compel defendant to join in registering it. The District Munsif of Perambalur dismissed the suit upon the ground that the cause of action did not arise within his jurisdiction, but at Combaconum. The Civil Judge confirmed this decision, as he found that the defendant was a permanent resident of Combaconum. Upon special appeal,—*Held*, reversing the decree of the Civil Judge, that as s. 21 of the Registration Act (XVI of 1864), which governed this case, rendered it necessary that the deed should be registered in Perambalur, the defendant was under an obligation to plaintiff to get the document registered at that place; that the breach of the obligation was the cause of action, and that consequently the Court at Perambalur had jurisdiction, as it was the place of the fulfilment of the obligation. SAMI AYYANGAR *v.* GOPAL AYYANGAR . . . **7 Mad., 176**

160. ——— **Release**—*Suit to set aside release—Letters Patent, 1865, cl. 12.*—The plaintiff, resident in Calcutta, sued *H*, resident in Bombay, but carrying on business by his gomastah in Calcutta, and others resident in Bombay, to set aside a release executed in Calcutta of his interest in certain property situate in Bombay, on the allegation that it had been obtained from him by false representations made by *H*. The plaint prayed that the release might be declared void and cancelled; that a certain inventory and account relating to the said property, which the plaintiff alleged he had been induced to file in Bombay by the false representations of *H*, might be declared not binding on the plaintiff; for an account; and for the appointment of a receiver. *Held* that

2. CAUSES OF JURISDICTION—*concluded.*

the whole cause of action did not arise in Calcutta so as to enable the plaintiff to sue in Calcutta without leave of the Court under cl. 12 of the Letters Patent. The word "defendant" in that clause means all the defendants, if there are several defendants to a suit. It is not sufficient that one of the defendants should dwell or carry on business within the jurisdiction. ISMAIL HADJEE HUBBEEB *v.* MAHOMED HADJEE JOOSUB. ROHIMA BYE *v.* MAHOMED HADJEE JOOSUB . **13 B. L. R., 91 : 21 W. R., 303**

161. ———— **Representative of deceased person**—*Suit against representative.*—The representative of a deceased person may be sued in that Court within the jurisdiction of which the cause of action with the deceased person arose. LADD *v.* PARBUTTY DOSSEE . . . . **2 Hyde, 18**

162. ———— **Restitution of conjugal rights**—*Husband and wife.*—The plaintiff sued his wife for restitution of conjugal rights in the Court of the Subordinate Judge of Borsad, within whose local jurisdiction the plaintiff resided. The defendant contended (*inter alia*) that the Subordinate Judge of Borsad had no jurisdiction to entertain the suit on the ground that she was living outside his jurisdiction. The Subordinate Judge dismissed the suit for want of jurisdiction. On appeal by the plaintiff, the decree was confirmed. On second appeal,—*Held*, reversing the decree, that the Court of Borsad had jurisdiction. The cause of action, in a suit by a husband for restitution of conjugal rights, consists in the wife's absenting herself from her husband's house without his consent, and it must therefore be deemed to arise at his house. LALITAGAR *v.* BAI SURAJ [**I. L. R., 13 Bom., 316**

3. SUITS FOR LAND.

(*a*) GENERAL CASES.

163. ———— **General cases of suits for land**—*Land partly in, and partly out of, jurisdiction—Letters Patent, cl. 12.*—Some of the property being situated in, and some out of, the jurisdiction of the Court,—*Held* that the Court had jurisdiction to try the suit according to the true construction of cl. 12 of the Charter, 1865, in reference to the whole of the property. PRASANNAMAYI DASI *v.* KADAMBINI DASI . . **3 B. L. R., O. C., 85**

164. ———— *Letters Patent, High Court, cl. 12—Leave to sue—Immoveable property situated outside jurisdiction—Moveable property situated within the jurisdiction—Power to give leave to sue.*—Where the plaintiffs brought a suit for their share of family property consisting of land situated outside the jurisdiction of the High Court, and for moveables situated within, leave having been granted by the Registrar,—*Held* that the High Court had no jurisdiction as to the lands, and that the suit must be dismissed as to them. *Held*, further, that leave to sue had been wrongly granted by the Registrar. SESHAGIRI RAU *v.* RAMA RAU . . . . **I. L. R., 19 Mad., 448**

3. SUITS FOR LAND—*continued.*

165. ———— *Land partly in, and partly out of, jurisdiction—Letters Patent, cl. 12.*—Under cl. 12 of the Letters Patent, the High Court has jurisdiction to entertain suits for land, whether the land is situated wholly or in part only within the local limits of its ordinary original jurisdiction, leave of the Courts having been first obtained in the latter case. JAGADAMBA DASI *v.* PADMAMANI DASI . . . . . . **6 B. L. R., 686**

166. ———— *Suit for land in territories of Raja of Pudukotta—Trichinopoly Court, Jurisdiction of.*—In a suit for the recovery of land situated within the territories of the Raja of Pudukotta,—*Held* that the Civil Court of Trichinopoly had no jurisdiction. RANGAIYAN *v.* HARI KRISHNA AIYAN . . . . . . **2 Mad., 437**

167. ———— *Land in possession of receiver.*—The High Court cannot exercise jurisdiction in respect to land which is situate out of its local limits, even though it be in possession of the receiver. DENONAUTH SREEMANY *v.* HOGG [**1 Hyde, 141**

168. ———— **Administration suit**—*Acts of maladministration regarding immoveable property outside jurisdiction—Power of Court to set aside leases of immoveable property outside its jurisdiction—Letters Patent, High Court, cl. 12—Leave to sue.*—In an administration action the fact that amongst other things leases of immoveable property granted by the executors to themselves are sought to be set aside on the ground that such leases are acts of maladministration does not make the action one for the recovery of immoveable property, and leave under s. 44, Rule A, is not necessary. If the High Court has jurisdiction to entertain such an administration action, the fact that the property comprised in the leases complained of is wholly outside the limits of its ordinary original civil jurisdiction does not preclude it from setting aside such leases, and leave for that purpose under cl. 12 of the Charter is not necessary. The Court assumes jurisdiction in regard to immoveable properties situate outside the jurisdiction in cases where it can act *in personam* either to compel the owner to give effect to legal obligations into which he has entered or to a trust reposed in him. NISTARINI DASSI *v.* NUNDO LALL BOSE . . . . **I. L. R., 26 Calc., 891** [**3 C. W. N., 670**

169. ———— **Award**—*Application to file award—Cause of action—Civil Procedure Code, 1859, s. 327.*—The plaintiff and defendant entered into partnership for the purpose of carrying on the cultivation and manufacture of tea on a tea estate at Darjeeling, of which they were the owners in certain shares. The deed was executed and registered in Calcutta, but both parties resided out of the jurisdiction. The deed contained provisions for a reference to arbitration in case of difference or dispute in any matters relating to the partnership. Differences having arisen, arbitrators were appointed in accordance with the clause in the deed. The arbitrators subsequently made their award in Calcutta to the following effect: That the defendant's share in the partnership property should stand charged with the payment of a certain sum found to be due by him to the plaintiff, and that the defendant should execute a mortgage of his share to the plaintiff as security for such payment; that the partnership should be dissolved on certain terms, and that the tea garden at Darjeeling should be sold in Calcutta. In an application under s. 327, Act VIII of 1859, to file the award,—*Held*, affirming the decision of the Court below, that the High Court at Calcutta had jurisdiction to file the award. S. 327 gives jurisdiction to file an award to any Court in which a suit in respect of the subject-matter of the award might be instituted. A suit in respect of the subject-matter of this award would not be a suit for land, but a suit in which, by reason of the execution of the deed of partnership in Calcutta, a part of the cause of action arose there; such a suit could, with leave, have been instituted in the High Court: that Court, therefore, had jurisdiction to file the award. KELLIE *v.* FRAZER

[I. L. R., 2 Calc., 445

170. ———— **Claim to attached property**—*Claim under Civil Procedure Code, 1859, s. 246.*—A claim to property under s. 246, Act VIII of 1859, is virtually a suit for land. SAGORE DUTT *v.* RAMCHUNDER MITTER . . **1 Hyde, 136**

171. ———— **Foreclosure**—*Lex loci rei sitæ.*—When land forms the subject-matter of the suit, the *lex loci rei sitæ* applies. A suit for foreclosure is a suit for land. BLAQUIERE *v.* RAMDHONE DOSS . . . **Bourke, O. C., 319**

172. ———— *Foreclosure of property out of jurisdiction—Practice.*—A suit for foreclosure of land out of the jurisdiction is a "suit for land," and cannot be brought in the High Court at Calcutta on the ground that defendant is living in Calcutta. In such cases the Court will return the plaint. BIBEE JAUN *v.* MAHOMMED HADEE

[1 Ind. Jur., N. S., 40

173. ———— *Cause of action—Property out of jurisdiction.*—A suit by a mortgagee for foreclosure must be brought in the district where the land is. In like manner, a suit by a mortgagee who is entitled, not to a foreclosure, but to a decree to establish his charge and for the sale of the specific property charged, must be brought in the Court within the legal limits of whose jurisdiction the property is. The remedy against the borrower personally under a mortgage-deed must be pursued in the district in which the cause of action arose. But when the object of the lender is to proceed to enforce his charge against the property (such property being immoveable), his suit must be brought in the district where the property is situated. BULDEO DOSS *v.* MOOL KOOER . . . . . **2 N. W., 19**

174. ———— *Portion of property in mofussil.*—Where a plaint prayed for foreclosure of a mortgage in the English form of certain land situated partly in Calcutta and partly in the mofussil, and for an account,—*Held* that leave to sue having been obtained under cl. 12 of the Letters Patent, the Court had power to make a decree with respect to the whole of the property. BANK OF HINDUSTAN, CHINA, AND JAPAN *v.* NUNDOLALL SEN . . . . . **11 B. L. R., 301**

175. ———— *Letters Patent 1865, cl. 12—Foreclosure, Suit for.*—A suit for foreclosure is not a suit for land within the meaning of cl. 12 of the Letters Patent, 1865, and the High Court of Bombay on its original side has jurisdiction to entertain such suits, although the property in question is situate outside the town and island of Bombay. *Holkar* v. *Dadabhai C. Ashburner, I. L. R., 14 Bom., 353,* followed. SORABJI CURSETJI SETT *v.* RATTONJI DOSSABHOY . **I. L. R., 22 Bom., 701**

176. ———— **Injunction**—*Civil Procedure Code, s. 5—Suit in personam—Suit for injunction to restrain nuisance.*—The plaintiffs, the owners and occupiers of a house and premises in Howrah, sued for an injunction to restrain a nuisance caused by certain workshops, forges, and furnaces erected by the defendants, and for damages for the injury done thereby. The defendants were a railway company incorporated under an Act of Parliament for the purpose of making and maintaining railways in India, and by an agreement (entered into under their Act of Incorporation) between them and the East India Company, they were authorized and directed to make and maintain such railway stations, offices, machinery, and oher works (connected with making, maintaining, and working the railways) as the East India Company might deem necessary or expedient. The workshops complained of were erected in 1867, under the sanction of the Bengal Government, on land purchased by the Government in 1854 for the purposes of the railway under Reg. I of 1822 and Act XLII of 1850, and which had been made over to the defendants. *Held* that the suit was *in personam,* and not a suit "for land or other immoveable property" within the meaning of cl. 12 of the Letters Patent, 1865, or of s. 5 of Act VIII of 1859. RAJMOHUN BOSE *v.* EAST INDIAN RAILWAY COMPANY

[10 B. L. R., 241

177. ———— *Letters Patent, cl. 12—Suit to restrain working of mine.*—In a suit brought against the owners of a mine adjacent to a mine belonging to the plaintiffs, the plaint alleged that a certain boundary line existed between the two mines, and prayed for a declaration that the boundary line was as alleged, and that the defendants might be restrained by injunction from working their mine within a certain distance from such boundary line. The defendants in their written statement disputed the plaintiffs' allegation as to the course of the boundary line. The mines were situated out of the jurisdiction of the High Court, but both the plaintiffs and defendants were personally subject to the jurisdiction. *Held* that the suit was a suit for land within cl. 12 of the Letters Patent, and therefore one which, the land being in the mofussil, the Court had no jurisdiction to try. On the facts stated in the plaint and before the filing of the defendants' written statement, the Court granted an interim injunction, and refused an application to take the plaint off the file. EAST INDIAN RAILWAY COMPANY *v.* BENGAL COAL COMPANY [**I. L. R., 1 Calc., 95**

178. ———— **Lien**—*Letters Patent, cl. 12—Leave to institute suit in High Court—Suit to have maintenance declared a charge on property in the mofussil.*—The widow of one *A D* applied under cl. 12 of the Charter for leave to bring a suit in the High Court against the administrator of her husband's estate to have it declared that the maintenance allowed her was insufficient and to have it enhanced, and declared as a charge on the said estate. She prayed also for an account and the appointment of a receiver. It appeared that all the moveable property and the greater part of the immoveable was in Benares, a portion only of the latter being within the ordinary original civil jurisdiction of the High Court. The application was granted on 31st May 1873, leave being reserved to the defendant to move to have this order set aside. The plaint was then filed. When the case came on for settlement of issues, the defendant questioned the jurisdiction of the High Court, and the Judge of the Court of original jurisdiction, who found that the defendant was in no way subject personally to its jurisdiction, withdrew the permission which had been granted to the plaintiff to institute the suit. *Held* that, as the parties and witnesses resided in Benares, there was no reason why the suit should be tried in Calcutta, and as there was ample property within the jurisdiction of the Court at Benares to satisfy the maintenance, there was no necessity for its being declared to be a charge on the Calcutta property. RADHA BIBEE *v.* MUCKSOODUN DASS . . . . **21 W. R., 204**

179. ———— *Suit to have lands declared liable in satisfaction of bond.*—A suit to have certain lands declared liable for the satisfaction of an instalment bond is substantially a suit for an interest in land, and as such cognizable by the Courts within whose jurisdiction the property is situated, even though the cause of action has not arisen there and the defendants reside elsewhere. RAM LALL MOOKERJEE *v.* CHITTRO COOMAREE [**15 W. R., 277**

180. ———— *Suit to enforce mortgage lien on land.*—A suit for the enforcement of a mortgage lien and for a decree that the money due be realized from the property is a suit for immoveable property, and must be brought in the Court within the jurisdiction of which the property is situated. AHMEDEE BEGUM *v.* DABEE PERSAUD [**18 W. R., 287**

MAHOMED KHULEEL *v.* SONA KOOER [**23 W. R., 123**

181. ———— *Suit to enforce mortgage lien on land.*—A suit brought upon a mortgage, praying for a decree for the amount due thereunder, and that in default of payment the land mortgaged may be sold, is a suit for land within the meaning of s. 5 of Act VIII of 1859, and is rightly brought in the Court of the district within which the land is situate. IN THE MATTER OF THE PETITION OF LESLIE . . . . **9 B. L. R., 171**

S. C. LESLIE *v.* LAND MORTGAGE BANK OF INDIA . . . . . . **18 W. R., 269**

182. ———— *Mortgage lien—Suit to recover mortgage-debt by sale of mortgaged property out of jurisdiction.*—A suit by a mortgagee to recover the mortgage-debt from the mortgagors personally, as well as by sale of the mortgaged property, is one falling within cl. (*c*) or (*d*) of s. 16 of the Code of Civil Procedure (Act XIV of 1882), and can only be instituted in that Court within the local limits of whose jurisdiction the motgaged property is situate. A Court has no jurisdiction to entertain such a suit relating to property situate outside the local limits of its jurisdiction. VITHALRAO *v.* VAGHOJI . . **I. L. R., 17 Bom., 570**

183. ———— *Letters Patent, High Court, cl. 12—Suit for land out of jurisdiction—Suit to declare interest on land—Suit to have land discharged from mortgage.*—Where the plaintiff alleged that he executed a mortgage of certain land to the defendant for R10,000, that the defendant only paid him R1,000 and refused to pay the balance, and prayed that the mortgage contract might be declared void and the mortgage set aside and cancelled, or for damages,—*Held* that, so far as the suit sought to discharge the land from the obligation imposed on it by the mortgage, it was a suit for land within cl. 12 of the Letters Patent, and the land being situate outside the local limits of the jurisdiction of the Court, the Court had no jurisdiction to try it. KANTI CHUNDER PAL CHAUDHRY *v.* KISSORY MOHUN ROY **I. L. R., 19 Calc., 361 note**

184. ———— *Suit to recover mortgage-debt by sale of mortgaged property out of the jurisdiction.*—A suit for the recovery of a mortgage-debt by the sale of the mortgaged property is not a suit for land within the meaning of s. 5 of the Code of Civil Procedure. A Court may decree the sale of mortgaged immoveable property, though situated beyond its jurisdiction. YENKOBA BALSHET KASAR *v.* RAMBHAJI VALAD ARJUN . **9 Bom., 12**

185. ———— **Partition**—*Letters Patent, cl. 12.*—A suit for partition of land is a suit for land within the meaning of cl. 12 of the Letters Patent. PADAMANI DASI *v.* JAGADAMBA DASI [**6 B. L. R., 134**

186. ———— *Suit for partition where moveables are within, and immoveables outside, the jurisdiction—Practice—Leave to sue under cl. 12 of Letters Patent—Leave to sue as a pauper.*—The plaintiff sued the defendant for partition of family property, which consisted both of moveable and immoveable property. The moveable property was within the jurisdiction, but all the immoveable property was outside the jurisdiction of the Court. *Held* that the case did not fall within the provisions of cl. 12 of the Letters Patent, 1865, and that the Court had no jurisdiction to hear the suit. The fact that his suit included a claim for moveables, which were within the jurisdiction, did not entitle the plaintiff to sue in the High Court, nor could he obtain leave for that purpose under cl. 12 of the Letters Patent. The words "all other cases" in cl. 12 of the Letters Patent, 1865, do not include cases of suits for immoveable *plus* moveable property. They refer to cases in which immoveable property is not involved. Leave to sue under cl. 12 of the Letters Patent, 1865, cannot be implied from the fact that leave to sue as a pauper has been granted to a plaintiff. Leave for the former purpose must be distinctly sought and obtained. JAIRAM NARAYAN RAJE *v.* ATMARAM NARAYAN RAJE . . . . **I. L. R., 4 Bom., 482**

187. ———— **Redemption**—*Letters Patent, cl. 12.—Held* that a suit for redemption is a suit for land; therefore if the land, the subject of the mortgage, is beyond the local limits, the High Court has no jurisdiction under the 12th clause of the Charter. LALLMONEY DASSI *v.* JUDDOO NAUTH SHAW . . . . **1 Ind. Jur., N. S., 319**

188. ———— *Suit for redemption where mortgage includes other lands out of jurisdiction—Account of all the mortgaged lands.*—In a suit for redemption of lands lying within the district of Mirzapur, but included in the same mortgage with other lands lying within the domains of the Maharaja of Benares, the Subordinate Judge of Mirzapur took an account of the sums realized by the mortgagee from all the lands mortgaged, and finding that these sums were sufficient to discharge the entire mortgage debt, gave the plaintiff the decree sought; the lower Appellate Court dismissed the suit on the ground that such account could not be taken without deciding questions lying *ultra vires* of the Mirzapur Court. *Held* that the Mirzapur Court might take such account for the purpose of deciding whether the entire mortgage-debt had been satisfied, and might give the plaintiff a decree for the redemption of the property lying within the local limits of its jurisdiction, notwithstanding that in doing so it would have incidentally to determine questions relating to lands lying within the domains of the Maharaja. GIRDHARI *v.* SHEO RAJ

[I. L. R., 1 All., 431

189. ———— **Rent**—*Suit for rent—Civil Procedure Code, 1859, s. 5—Residence of defendant—Title to land incidentally raised.*—A suit to recover the rents of land situated in district J may be brought in district S, where the defendant is residing, although in such suit the plaintiff's title to the land in respect of which the rent is sought to be recovered may incidentally come in question. CHINTAMAN NARAYAN *v.* MADHAVRAV VENKATESH

[6 Bom., A. C., 29

190. ———— *Suit for arrears of rent—Letters Patent, cl. 12.—A* leased to *B* for 25 years, commencing from October 1855, certain aurengs or pieces of ground situated in the zillah of Beerbhoom in Bengal at a certain rent payable monthly, *B* entering into a covenant to pay the rent. The property leased was a "loha mehal," or iron mine, and the lessee used it as such and erected smelting furnaces. *B* resided in Calcutta. *Held,* in a suit by *A* against *B* on the covenant for arrears of rent, that the suit was properly brought in the High Court, as it was not a "suit for land" under cl. 12 of the Letters Patent of the High Court, 1865, and the defendant dwelt in Calcutta. KHALUT CHUNDER GHOSE *v.* MINTO

[1 Ind. Jur., N. S., 426

191. ———— *Suit for rent of land, with alternative claim for compensation for use and occupation—Land situated outside jurisdiction of High Court.*—A suit by a landlord against a tenant for rent at a rate agreed upon for one period, and for rent on the basis of use and occupation for a subsequent period, is not a suit for land; and therefore the High Court may have jurisdiction to try such a suit even when the land is situate outside the local limits of its jurisdiction. RUNGO LALL LOHEA *v.* WILSON . . . **I. L. R., 26 Calc., 204**

[2 C. W. N., 718

192. ———— **Specific performance**—*Letters Patent, cl. 12—Land situated without local limits of jurisdiction.*—In consideration of the loan of R4,000, the defendant agreed to execute a mortgage of certain land beyond the jurisdiction of the High Court to the plaintiff, and agreed to produce his title-deeds and to make a good title. In the agreement the plaintiff was described as "of Durmahatta in the town of Calcutta, merchant," and the defendant as "of Panchathopy in Zillah Beerbhoom, at present of Coomertooly in Calcutta." In a suit for specific performance of the agreement to execute the mortgage and in the alternative for the return of the R4,000,—*Held* that, so far as the suit was a suit for specific performance, the Court had no jurisdiction. SREENATH ROY *v.* CALLY DOSS GHOSE

[I. L. R., 5 Cal., 82

193. ———— *Contract in Calcutta for lands outside.*—Defendant executed an agreement in Calcutta to sell plaintiff certain lands out of Calcutta. In a suit for specific performance,—*Held* that the Court had jurisdiction to entertain a suit upon the contract, it having been made in Calcutta. RAM DHONE SHAW *v.* NOBEENMONY DOSSEE . . . . **Bourke, O. C., 218**

Upheld on appeal.

194. ———— *Letters Patent, High Court, cl. 12—Suit for land out of jurisdiction—Suit for specific performance.*—A vendor, having obtained leave to sue under cl. 12 of the Letters Patent of 1865, sued in the High Court to enforce *inter alia* the specific performance of a contract entered into by the defendant for the purchase of certain land situated in the district of Burdwan, and in the alternative for damages. *Held* that, as far as the abovementioned objects of the suit were concerned, the suit was not one for land within the meaning of that clause. LAND MORTGAGE BANK *v.* SUDURUDEEN AHMED **I. L. R., 19 Calc., 358**

JURISDICTION—*continued.*

3. SUITS FOR LAND—*continued.*

195. ———————— *Power of High Court to order sale of land situate outside jurisdiction—Mortgage of land outside jurisdiction—Suit for specific performance relating to land outside jurisdiction—Letters Patent, 1865, cl. 12.*—In a suit for specific performance of an agreement made in Bombay, but relating to land situate outside the original jurisdiction of the High Court, and to realize a mortgage-debt by sale of the said land,—*Held* that the Court had jurisdiction to try the suit and to order a sale of the mortgaged land. YASHVANTRAV HOLKAR *v.* DADABHAI CURSETJI ASHBURNER . . . **I. L. R., 14 Bom., 353**

196. ———— **Title-deeds**—*Suit to recover title-deeds—Letters Patent, cl. 12.*—A suit to recover title-deeds, although it may involve a question of title, is not a suit to obtain possession of land or to deal in any way with the land itself within the meaning of s. 12 of the Letters Patent. JUGGERNATH DOSS *v.* BRIJNATH DOSS

[I. L. R., 4 Calc., 322 : 3 C. L. R., 375

197. ———— **Trusts**—*Suit for land subject to a trust—Trustees personally subject to jurisdiction.*—Although the High Court, in the original jurisdiction, has no jurisdiction over land or other immoveable property situate beyond the limits of Calcutta, and can make no adjudication of the right and title to such land, yet where a party is personally subject to the jurisdiction, the Court has power to declare whether or not such party holds such land subject to a trust. BAGRAM *v.* MOSES

[1 Hyde, 284

198. ———————— *Trust estate—Receiver—Account.*—The plaint, in a suit brought by some of the persons appointed trustees under a deed of endowment of certain land against their co-trustees who were in possession, alleged that the defendant-trustees had ousted the plaintiffs and had committed breaches of trust, and prayed that the deed might be construed and given effect to, and for a declaration that the plaintiffs were entitled to be sebaits jointly with the defendants, for the settlement of a scheme for the performance of the worship, for the appointment of a receiver, for an injunction to restrain the defendants from interfering with the property, and for an account. By the deed the land was given to idols named therein, and the plaintiffs and defendants were appointed sebaits and managers of the property, and were directed to accumulate for the benefit of the idols any surplus over and above the expenses of management, but were themselves to have no beneficial interest in the property. The land, the subject of the deed, was situated out of Calcutta, but all the parties to the suit resided within the local limits of the High Court's jurisdiction. *Held* that the suit was not a suit for "land or other immoveable property" within cl. 12 of the Letters Patent, and therefore the Court had jurisdiction to entertain it without leave to sue being obtained. The Court might, if necessary, appoint a receiver of such property and direct an account. JUGGODUMBA DOSSEE *v.* PUDDOMONEY DOSSEE . . . . . **15 B. L. R., 318**

199. ———————— *Deed of trust giving trustees power of sale of land in the mofussil—Suit by creditor to have trusts carried out.*—*M* and *L* were the joint absolute owners of certain land in the mofussil, *M* having a 14-anna share and *L* the remaining 2-anna share therein. During the absence of *L* in England, *M* executed, on behalf of himself and *L*, a deed of assignment of the whole of the property to trustees for the benefit of the creditors of the estate, which was heavily encumbered, on trust to sell the land and distribute the assets to the creditors. The trustees accepted the trust, but difficulties afterwards arose in carrying them out. A suit was thereupon instituted by the plaintiff, a creditor, on behalf of himself and the other creditors, the plaint in which alleged that the trustees were desirous of being discharged, and prayed that the trusts might be carried into effect; that the trustees might be removed; and that a receiver might be appointed to carry out the trusts. To this suit the trustees and *M* and *L* were made defendants. *L*, who was in England, denied any power in *M* to execute the deed on his behalf: the trustees and *M* were personally subject to the jurisdiction. *Held per* PHEAR, *J.*, in the Court below, that the plaint disclosed a good cause of action, as the Court, if it had jurisdiction, would have power to make a declaration binding against *L* as to the validity of the deed of trust, to appoint a receiver of the estate, and to direct a sale which would be binding on *M* and *L*; but that the suit being one "for land" within the meaning of cl. 12 of the Letters Patent, the Court had no jurisdiction to try it. *Held* on appeal that the suit, having for its object to compel a sale of the whole of the land, including *L's* share, the title to which was disputed, was a "suit for land" within the meaning of cl. 12 of the Letters Patent, and that the Court had no jurisdiction to try it. DELHI AND LONDON BANK *v.* WORDIE

[I. L. R., 1 Calc., 249 : 25 W. R., 272

(*b*) PROPERTY IN DIFFERENT DISTRICTS.

200. ———— **Partition, Suits for**—*Separate suits when property is in different districts—Civil Procedure Code, 1859, s. 12.*—A plaintiff may maintain separate suits for partition of immoveable family property where the property is situate within the limits of different districts, and is not bound to try to proceed in one suit in the manner pointed out in s. 12, Act VIII of 1859. SUBBA RAU *v.* RAMA RAU . . . **3 Mad., 376**

201. ———— **Foreclosure, Order for**—*Mortgaged property situated beyond limits of ordinary original civil jurisdiction—Civil Procedure Code, 1859, s. 12.*—The Court at the hearing of a suit, ordered foreclosure of mortgaged property situate beyond the limit of its ordinary original civil jurisdiction under the powers conferred on it by s. 12 of Act VIII of 1859. KHETTRO MOHUN DOSS *v.* CHUNDRA MONEY DABEE . . **Cor., 125**

JURISDICTION—*continued.*

3. SUITS FOR LAND—*continued.*

202. ———— **Possession, Suit for**—*Suit for property in different districts.*—In a suit to establish a claim against three properties mortgaged to the plaintiff, but situate in different districts, where one of the defendants (the appellant to the High Court) was interested in that only which lay in the district of Moorshedabad,—*Held* that causes of action against different defendants had been joined in the same suit contrary to the provisions of s. 12, Act VIII of 1859; but as the cause of action against the appellant was one which the Subordinate Judge of Moorshedabad was legally competent to try without the permission of the High Court, the appellant could not object to that Judge having tried it. Khetoosee Cheroobia *v.* Banee Madhub Doss

[12 W. R., 114

203. ———————— *Civil Procedure Code (1882), ss. 16, 19, and 45—Joinder of causes of action—Suit for recovery of possession of immoveable property within the territorial jurisdiction of different Courts.*—Where certain plaintiffs claimed possession of separate portions of land situated in two different districts on the same title against the same defendants alleging a dispossession on one day from part of the property claimed in district A, and from the whole in district B, and on another day from the rest of the property in district A,—*Held* that the plaintiffs could bring one suit for recovery of the whole property in both districts, and that such suit was properly brought in a Court in district A. *Katija* v. *Ismail, I. L. R., 12 Mad., 380,* referred to. Harchandar Singh *v.* Lal Bahadur Singh

[I. L. R., 16 All., 359

204. ———— **Rent**—*Suit for rent of a fishery—Uncertainty as to jurisdiction—Code of Civil Procedure (1882), s. 16A—Immoveable property.*—A suit for rent of a fishery is a suit for immoveable property within the meaning of s. 16A of the Code of Civil Procedure. *Fadu Jhala* v. *Gour Mohun Jhala, I. L. R., 19 Calc., 544,* referred to. A suit for rent of a fishery was brought in a certain Court, and there was reasonable ground of uncertainty as to the jurisdiction of that Court to entertain the suit. On an objection that the suit ought to fail for want of jurisdiction,—*Held* that the conditions required by s. 16A of the Civil Procedure Code had been satisfied in the case, and that the objection as to jurisdiction ought not to be entertained. Shibu Haldar *v.* Gupi Sundari Dasya

[I. L. R., 24 Calc., 449
2 C. W. N., 169

205. ———— **Sale under mortgage**—*Tarai Regulation (IV of 1876)—Civil Procedure Code (1882), ss. 1, 2, 19, and 24—Mortgage of property situated partly in the district of Moradabad and partly in the Tarai—Suit for sale in Moradabad Court—Transfer of Property Act (IV of 1882), s. 88.*—*Held* that the Courts of the Moradabad district had no jurisdiction to pass a decree in a suit for sale on a mortgage, for sale of land situated in the Tarai, to which at the time of the mortgage and of the suit thereon Regulation IV of 1876 applied, by reason merely of a portion of the property mortgaged being situate in the Moradabad district. Ram Ratan *v.* Lalta Prasad

[I. L. R., 17 All., 483

206. ———— **Decree, Effect of**—*Property in two different districts—Leave of Court.*—Where property was situated in Bhagulpore and other property in Tirhoot, and no leave had been obtained to include the property in Bhagulpore,—*Held* a decree in the Tirhoot Court could have no effect as against the property in Bhagulpore. Bungsee Singh *v.* Soodist Lal

[I. L. R., 7 Calc., 739 : 10 C. L. R., 263

207. ———— **Power of Appellate Court to give leave**—*Civil Procedure Code, 1859, s. 12—Remand, Order in nature of—Property in different districts—Decrees of District Courts—Power of Appellate Court to amend.*—Neither under s. 12 of Act VIII of 1859 nor in any other way has the High Court in its appellate capacity power to give jurisdiction to a District Court to enquire into facts, as upon a remand, in a suit decided in the Court of another district, and relating to lands in the latter. Of two mortgages between the same parties, the first comprised four villages, of which three were in district A and a fourth property was in district B. The second mortgage comprised, in addition to the above, three other villages in district B. Suits brought in both districts by the assignee of the mortgagee against the mortgagor were thus framed, *viz.*, in the suit in district A for possession upon foreclosure of both mortgages, and for a declaration of the plaintiff's right as purchaser of one of the properties; and in the suit in district B, for payment of the debt on the second mortgage. Both suits were dismissed. The High Court, hearing appeals in both suits together, affirmed the dismissal of the suit in district B, and remanded the other to the Court of first instance in district A, to have the proportionate value of the properties determined, with a view to the apportionment of the liabilities of the parties by way of contribution. As the defendant, who succeeded in both suits in the District Courts, raised no question of jurisdiction, each of them might be taken to have had the consent of parties to its hearing the whole suit before it. But no such consent could be deemed to have been given to the order of the High Court made as above stated on contested appeals. This order was accordingly unauthorized. Although wide powers of amendment, of framing new issues, and of modifying decrees are conferred upon the High Court by provisions in the Code, of which the plain meaning is not to be narrowed by judicial construction, these powers were exceeded in the change of the suits by the order in question into a suit of a description differing totally from that of either of them, as originally decreed; and this without the consent of the parties. Kamini Sundari Chaodhrani *v.* Kali Prossunno Ghose

[I. L. R., 12 Calc., 225 : L. R., 12 I. A., 215

208. ———— **Power of High Court to sanction trial in Sonthal Pergunnahs**—

JURISDICTION—*continued.*

3. SUITS FOR LAND—*concluded.*

Civil Procedure Code, 1859, ss. 12 and 386—Suit for land above R1,000—Beng. Reg. III of 1872, s. 2—Bengal Civil Courts Act (VI of 1871).—Act VIII 1859 was in force in 1876 in the Sonthal Pergunnahs under s. 2, Bengal Regulation III of 1872, as regards suits triable in Courts constituted under Act VI of 1871. S. 4 of that Regulation (read with the notification of the Lieutenant-Governor, dated 4th August 1873) vesting the Deputy Commissioner of the district of the Sonthal Pergunnahs with the powers of a District Judge as described in Act VI of 1871 had the effect of making the Sonthal Pergunnahs a district as defined by s. 386 of Act VIII of 1859; and therefore, under s. 12 of Act VIII of 1859, the High Court had power to sanction the trial of a suit for land situated in the Sonthal Pergunnahs, in which the value of the subject-matter exceeds R1,000, in the Civil Court competent to try it. KALIPROSAD RAI *v.* MEHER CHANDRO ROY

[I. L. R., 4 Calc., 222 : 2 C. L. R., 478

209. ——— Execution of decree made by Court without jurisdiction—*Place of suing—Suit for sale of mortgaged property—Civil Procedure Code, ss. 16, 20.*—In 1879 *R* gave *J* a bond containing a simple mortgage of immoveable property. Subsequently *R* and *P* jointly gave *D* a bond containing a simple mortgage of the same property. In 1881 *D* obtained a decree for the sale of the property under his mortgage, and it was put up for sale and purchased by the plaintiffs. In 1882 *J* obtained a decree in the Court of the Munsif of G (within the local limits of whose jurisdiction the property was not situated) for enforcement of his mortgage-bond by sale of the property. The plaintiffs objected to the sale, and, their objection having been disallowed, brought a suit for cancellation of *J's* decree, so far as it ordered the sale. *Held* that *J's* decree could only be regarded as a simple money decree, because, as shown by s. 16 of the Civil Procedure Code, the Munsif had no power under the law to direct enforcement of hypothecation against immoveable property situate beyond the local limits of his jurisdiction; and nither the proviso to s. 16 nor s. 20 of the Code met the circumstances. *Held* therefore that the plaintiffs were entitled in this suit to have it declared that *J's* decree was a simple money-decree only, on the basis of which no process in execution could issue in respect of the property in dispute to oust the plaintiff's possession from any part of it. GUDRI LAL *v.* JAGANNATH RAM

[I. L. R., 8 All., 117

4. ADMIRALTY AND VICE-ADMIRALTY JURISDICTION.

See MERCHANT SHIPPING ACT, 1875, s. 3.

[I. L. R., 5 Calc., 453

210. ——— Supreme Court, Bombay, Charter of—*English Admiralty rules.*—The Bombay Charter, December 1823, established the Admiralty jurisdiction of the Supreme Court, "as the same is used and exercised in that part of Great Britain called England, together with all and singular their incidents, emergents, and dependencies annexed and connexed causes whatsoever; and to proceed summarily therein with all possible despatch, according to the course of our Admiralty in that part of Great Britain called England." *Held* on a construction of the Charter that the rules and practice of the High Court of Admiralty in England prevailed and governed the proceedings in the Supreme Court at Bombay in maritime causes. LOUGHNAN *v.* JOOSUB BHULLADINA . . . **5 Moore's I. A., 137**

211. ——— High Court, Bombay—*Stat. 3 & 4 Vict., c. 65, s. 6—Stat. 24 Vict., c. 10.*—The Stat. 3 & 4 Vict., c. 65, s. 6, does not confer jurisdiction upon the High Court of Bombay on its Admiralty side to entertain causes for necessaries supplied to foreign ships, that statute not extending to India. The Stat. 24 Vict., c. 10 (Admiralty Act of 1860), does not extend to India. The jurisdiction of the High Court on its Admiralty side is the same as that exercised in the Court of Admiralty in England prior to the passing of the above statutes. The extent and nature of that jurisdiction considered and explained. IN RE THE PROCEEDS OF THE "ASIA." EX-PARTE HORMASJI

[5 Bom., O. C., 64

212. ——— *Stats. 3 & 4 Vict., c. 65, 24 Vict., c. 10, and 26 & 27 Vict., c. 24.*—The Imperial Stat. 3 & 4 Vict., c. 65, 24 Vict., c. 10, and 26 & 27 Vict., c. 24, do not apply to the Admiralty or Vice-Admiralty jurisdiction of the High Court. On that point, *The Asia, 5 Bom., O. C., 64,* followed. *The Portugal, 5 B. L. R., 323, 330, 331,* disapproved of. The High Court, as now existing, was continued, not created, by the Letters Patent of 1865. The High Court has jurisdiction, under the common maritime law, to entertain a suit in respect of a collision upon the high seas between two foreign vessels, although that collision may not have occurred in British or Anglo-Indian waters, and notwithstanding the opposition of the Consul of the State to which the defendant belongs. Whether the High Court has a discretion to decline to entertain such a suit—*Quære.* Even if there be such a discretion, the Court will ordinarily allow a suit of that nature to proceed. BARDOT *v.* THE "AUGUSTA" . . . **10 Bom., 110**

213. ——— Collision—*Collision between foreign vessels at sea—Jurisdiction of High Court, Calcutta.*—A collision had taken place at sea in the Bay of Bengal off Juggernauth Pagoda, between the ship *Garland* and the ship *Dragon,* both foreign vessels, which afterwards came within the jurisdiction of the Court. *Held* that the High Court at Calcutta had jurisdiction to try an action in respect of such collision. THE "GARLAND" *v.* THE "DRAGON"

[1 Hyde, 275

214. ——— *Suits for damages for collision—Cross-suit—Residence out of jurisdiction.*—One who has sued for damages caused by a collision at sea, and out of the jurisdiction of the High Court, subjects himself to a cross-

4. ADMIRALTY AND VICE-ADMIRALTY JURISDICTION—*concluded.*

suit for damages caused by the same collision, although himself residing out of the jurisdiction of the Court. An order rejecting, for want of jurisdiction, a plaint brought under such circumstances was set aside on appeal, and the costs of the appeal ordered to be costs in the suit. BOMBAY COAST AND RIVER STEAM NAVIGATION COMPANY v. HELEUX **[4 Bom., O. C., 149**

215. ———— **High Court, Jurisdiction of**—*Power to arrest ship for repairs.*—The High Court has no power in its Vice-Admiralty jurisdiction to arrest a British-owned ship for repairs. HOWRAH DOCKING COMPANY v. THE "JEAN LOUIS" **[Cor., 113: 2 Hyde, 255**

216. ———— *24 Vict., c. 10 (Admiralty Act, 1861)—26 Vict., c. 24 (Admiralty Act, 1863).*—24 Vict., c. 10 (The Admiralty Act, 1861), and 26 Vict., c. 24 (The Vice-Admiralty Act, 1863), extend to India. The High Court, as constituted by the Charter of 1862, had not, by virtue of the Admiralty Act, 1861, or otherwise, any jurisdiction over claims for disbursements by the master. But after the passing of the Charter of 1865, the Vice-Admiralty Act, 1863, applied to the High Court, as being "a Vice-Admiralty Court established after the passing of that Act on a British possession." *Held* therefore that the High Court had jurisdiction, as a Vice-Admiralty Court, to entertain the claim of the master for wages and disbursements on account of the ship. IN THE MATTER OF THE SHIP "PORTUGAL" . . **6 B. L. R., 323**

217. ———— **Judge of Moulmein, Jurisdiction of**—*Suit on bottomry bond.*—A suit will not lie on an ordinary bottomry bond given by the master of a vessel against the owner to recover the amount thereof. Such a suit cannot be brought in the Court of the Judge of the town of Moulmein, which has no Admiralty jurisdiction against the owner personally; and the vessel cannot be declared to be primarily liable or be sold to satisfy the amount of the bond. GLADSTONE, WYLLIE & Co. v. HARRISON . . . **24 W. R., 50**

218. ———— **Vice-Admiralty jurisdiction**—*Vice-Admiralty Regulations of 1862—Practice under Code of Civil Procedure—Procedure—Pleadings.*—In Vice-Admiralty cases, the effect of appearance, the mode of objecting to the jurisdiction, and the mode of questioning the validity of a pleading, are matters governed by a settled practice under the Code of Civil Procedure. The Privy Council rules issued under 2 & 3 Will. IV, c. 51, have no operation, except in case of suits *in rem* in which no appearance has been entered, and other matters to which the Procedure Code cannot be applied. The enactments and rules affecting the Vice-Admiralty jurisdiction reviewed and examined. *In the matter of the ship "Champion," I. L. R., 17 Calc., 66,* referred to. IN THE MATTER OF THE SHIP "FANNIE SKOLFIELD" . **I. L. R., 17 Calc., 337**

5. MATRIMONIAL JURISDICTION.

See CASES UNDER DIVORCE ACT, s. 2.

219. ———— **High Court, Calcutta**—*Parties resident within jurisdiction.*—The High Court at Calcutta, in its matrimonial jurisdiction, had before the Divorce Act, 1869, jurisdiction only over parties actually resident within its local limits. THOMPSON v. THOMPSON . **Bourke, Mat., 1**

220. ———— **Supreme Court, Bombay, Ecclesiastical side**—*Suit for restitution of conjugal rights—Parsis.*—The Supreme Court of Bombay on its Ecclesiastical side declared incompetent to entertain a suit for the restitution of conjugal rights at the instance of a Parsi wife against her husband. ARDASEER CURSETJEE v. PEROZEBOYE **[4 W. R., P. C., 91: 6 Moore's I. A., 348**

221. ———— **Civil Court, Jurisdiction of**—*Suit by Mahomedan husband for restitution of conjugal rights.*—A Mahomedan husband may sue in the Civil Courts of India to enforce his marital rights by compelling his wife to return to cohabitation with him, and such suit must be determined according to the principles of Mahomedan law in such a case. Bengal Regulation IV of 1793, s. 15. BUZLOOR RUHEEM v. SHUMSOONISSA BEGUM. JUDOONATH BOSE v. SHUMSOONISSA BEGUM **[8 W. R., P. C., 3: 11 Moore's I. A., 551**

6. TESTAMENTARY AND INTESTATE JURISDICTION.

222. ———— **High Court, Jurisdiction of**—*Appeals.*—The High Court has jurisdiction to hear appeals in testamentary cases. SARODASOONDERY v. TINCOWRY NUNDY . . **1 Hyde, 70**

223. ———— *Power to compel native to prove will.*—The High Court cannot compel a native to prove a will in solemn form, unless he have applied for probate, and thus submitted himself to the jurisdiction. IN THE MATTER OF TIRUVALUR KIRUSTNAPPA MUDALI . . **1 Mad., 59**

224. ———— *Probate or letters of administration of British-born subject dying in Moulmein.*—In the case of a British-born subject dying and leaving assets in Moulmein, but no assets in Calcutta, and a will, dated 5th August 1865, before Act X of 1865 came into effect,—*Held* that the executrix could not obtain probate or letters of administration, with the will annexed, from the High Court in Bengal. SAUNDERS v. NGA SHOAY GEEN . . . . . . **8 W. R., 3**

225. ———— *Reference by executor and caveator to arbitration of question as to due execution of will—Effect of award—Jurisdiction of testamentary Court to recognize arbitration proceedings and award—Application for probate of will.*—In a suit on the testamentary side of the High Court, the parties can refer any matter in dispute (as the due execution of a will) to arbitration, and the Court will recognize such reference and the award made on it. An executor having propounded a will and applied for probate, a caveat was

JURISDICTION—*concluded.*

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filed denying the execution of the alleged will, and the matter was duly registered as a suit. The executor and the caveatrix subsequently referred "the dispute" to arbitration, and an award was made that the alleged will had not been duly executed. The executor nevertheless subsequently continued the suit. At the hearing the caveatrix pleaded the award and contended that it was binding on the plaintiff (executor). The plaintiff (executor) contended that the Court as a Court of probate had no jurisdiction to try any question as to the award, but was limited only to the question of the execution of the will. *Held* by CANDY, *J.*, that the Court had jurisdiction to determine the question as to the award. *Held* also that the award was binding on the executor. GHELLABHAI ATMARAM *v.* NANDUBAI

[I. L. R., 20 Bom., 238

This case was reversed on appeal, the Court (FARRAN, *C.J.*, and STRACHEY, *J.*) being of opinion, though holding that it was unnecessary to decide it, that an executor against whose application for probate a caveat has been entered cannot submit to arbitration the question whether the will propounded by him was duly executed by the deceased. GHELLABHAI ATMARAM *v.* NANDUBAI

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JURISDICTION OF CIVIL COURT.

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JURISDICTION OF CIVIL COURT —*continued.*

1. ABUSE, DEFAMATION, AND SLANDER.

1. ———— **Abuse**—*Suit for damages.*—A suit will lie in the Civil Court to recover damages for abuse. KALI KUMAR MITTER v. RAMGATI BHUTTACHARJI . . . . **6 B. L. R., Ap., 99** **[16 W. R., 84 note**

SREENATH MOOKERJEE v. KOMUL KURMOKAR **[16 W. R., 83**

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2. ———— *Suit for damages for verbal abuse—Hindus in mofussil of Bombay—Special damage.*—In a suit between Hindus in the Bombay mofussil damages may be recovered for mere verbal abuse, without proof of actual damage resulting therefrom to the plaintiff. KASHIRAM VALAD KRISHNA v. BHADU BAPUJI . **7 Bom., A. C., 17**

3. ———— *Suit for damages —Absence of special damage.*—An action will lie for damages on account of abuse received, even though plaintiff's professional position and gains are not injured thereby. GOUR CHUNDER PUTEETUNDEE v. CLAY . . . . **8 W. R., 256**

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4. ———— *Action for abuse without proof of special damage—Malicious defamation.*—The rule of English law which prohibits, except in certain cases, an action for damages for oral defamation unless special damage is alleged, being founded on no reasonable basis, should not be adopted by the Courts of British India. *Semble*—An action will not lie for vulgar abuse or hasty expressions, but for malicious or culpable oral defamation an action will lie. PARVATHI v. MANNAR **[I. L. R., 8 Mad., 175**

5. ———— **Defamation**—*Slander—Defamation—Verbal abuse—Special damage.*—A suit to recover damages for verbal abuse of a gross character may be maintained without proof of consequential damage. IBIN HOSEIN v. HAIDAR **[I. L. R., 12 Calc., 109**

6. ———— *Slander—Damages —Consequential damage.*—A suit for damages for defamation of character involving loss of social position and injury to reputation will lie without proof of special damage. *Parvathi* v. *Mannar, I. L. R., 8 Mad., 175,* and *Srikant Rai* v. *Satcouri Saha, 3 C. L. R., 181,* followed. TRAILOKYA NATH GHOSE v. CHUNDRA NATH DUTT **I. L. R., 12 Calc., 424**

JURISDICTION OF CIVIL COURT —*continued.*

1. ABUSE, DEFAMATION, AND SLANDER —*concluded.*

7. ———— *Cause of action—Damages for insult, loss of reputation, and mental pain, by the use of abusive language—Suit for libel and slander—Special damage.*—*Held* by the majority of the Full Bench (MACLEAN, *C.J.*, MACPHERSON, HILL, and JENKINS, *JJ.*, GHOSE, *J.*, dissenting) that the mere use of abusive and insulting language, such as sala (wife's brother), haramzada (base born or bastard), soor (pig), baper beta (son of the father, that is, ironically, bastard), apart from defamation, is not actionable irrespective of any special damage. *Per* GHOSE, *J.*—A case like the present should be decided according to the principles of justice, equity, and good conscience, and therefore it is but just and right that a person thus vilified, who has suffered from insult and mental pain, should be entitled to maintain an action irrespective of any special damage. GIRISH CHUNDER MITTER v. JATADHARI SADUKHAN . **I. L. R., 26 Calc., 653** **[3 C. W. N., 551**

2. CASTE.

8. ———— **Suits as to caste questions**—*Suit for restoration to caste and for damages and compensation for cost of restoration.*—A suit will lie for a declaration of right to restoration to caste, and for damages and compensation for cost of restoration to caste. When the defendant denies that he made any accusation, and it is proved that he did make one, and that it alone led to the excommunication of the plaintiff, the defendant should be allowed an opportunity of proving that the accusation was not false, before a decree for damages is passed against him. GOPAL GURAIN v. GURAIN . **7 W. R., 299**

See SUDHARAM PATAR v. SUDHARAM **[3 B. L. R., A. C., 91**

9. ———— *Bom. Reg. II of 1827, s. 1—Suit for certain fees as mehtars.*—The plaintiffs sued to recover from the defendant certain fees alleged to be due to them, as mehtars of the caste, on the marriage of the daughter of the defendant. The defendant denied that the plaintiffs were his mehtars. *Held* that the question between the parties was a caste question with which the Courts were precluded from interfering by Bombay Regulation II of 1827, s. 21. MURAR DAYA v. NAGRIA GANESHIA **[6 Bom., A. C., 17**

AMBU VALAD APPAJI v. KHANU SAKHARAM **[6 Bom., A. C., 19 note**

10. ———— *Dispute as to right to gifts for services as Maha Brahmins—Suit on award setting rights.*—The plaintiff and the defendants were Maha Brahmins and members of one family. Disputes having arisen as to the gifts made to them on account of their services, the matter was referred to arbitration, and the arbitrators awarded that each principal member of the family should, in

turn, for periods of fifteen days, take, respectively, gifts made during such period. The plaintiff claimed and sued to recover a gift presented to some of the defendants during a period at which, under the terms of the award, he was entitled to the family gains. *Held* that the claim made in the suit differed *in toto* from a claim to a voluntary or a personal offering, and that it was entertainable in a Civil Court. DOORGA PERSHAD *v.* BUDREE . . . . **6 N. W., 189**

11. ———————— *Suit for recovery of money value of holy cakes—Question of religious character.*—The plaintiffs, members of the Tengalai sect of Brahmins, sued the defendants, the trustees of a temple at Conjeveram, for the recovery of the money value of certain holy cakes which they alleged they were entitled to receive from the defendants for commencing the recital of a Sanscrit verse and reading a certain Tamil chant, which offices they (plaintiffs) had the hereditary right of performing in the said temple. The Munsif decreed in favour of some of the plaintiffs. The defendants appealed. The Civil Judge dismissed the suit on the ground that the question incidentally involved was one of a religious character. *Held* that the Civil Judge was wrong; that the claim was for a specific pecuniary benefit, to which plaintiffs declared themselves entitled on condition of reciting certain hymns; and that undoubtedly the right to such benefits is a question which the Courts are bound to entertain. NARASIMMA CHARIAR *v.* KRISTNA TATA CHARIAR . . . . . . **6 Mad., 449**

12. ———————— *Suit as to religious rights and ceremonies—Suit by Temple Committee against poojaris—Civil Procedure Code, 1877, s. 11.*—Suits as to religious rights or ceremonies, which involve no question of the right to property or to an office, are not suits of a civil nature, nor are they intended to be brought within the jurisdiction of the Civil Courts. A suit, therefore, by the plaintiffs, as members of a committee of management of a Hindu temple, to compel the hereditary priests of the temple to take out certain ornaments from the treasury of the managing committee, and to place them upon the image of the god, on such high days and holidays as might from time to time be appointed by the managing committee, and to obtain a declaration that the said ornaments, after they had been so taken out of the treasury, were in the custody of the priests, and that they were responsible for their safe custody, was held unsustainable. S. 11 of the Civil Procedure Code (Act X of 1877) introduces no new law, but merely declares the law as it has always been administered. VASUDEV *v.* VAMANJI **[I. L. R., 5 Bom., 80**

13. ———————— *Jurisdiction in matters of religion—Cause of action—Dancing-girl's offerings rejected by priest—Disturbance of right of public worship.*—A dancing-girl's offerings to the idol having been rejected by the officiating priest of the temple, on the ground that she had been guilty of misconduct, *Held* that, if the former had been wrongfully prevented from taking part in the public worship, she was entitled to relief from a Civil Court. VENGAMUTHU *v.* PANDAVESWARA GURUKAL **[I. L. R., 6 Mad., 151**

14. ———————— *Suit to recover cooking-vessels—Bom. Reg. II of 1827, s. 21.*—A claim by the members of one division of a caste against the members of the other division of that caste, for recovery of half of certain vessels belonging to the caste or their value, is a caste question within the meaning of s. 21 of Regulation II of 1827, and cannot be made the subject-matter of a suit cognizable by a Civil Court. GIRDHAR *v.* KALYA **[I. L. R., 5 Bom., 83**

NEMCHAND *v.* SAVAICHAND **[I. L. R., 5 Bom., 84 note**

15. ———————— *Bom. Reg. II of 1827, s. 21—Suit for fees appurtenant to the office of guru.*—A claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy privileges and honours at the hands of the members of the caste in virtue of that office is a caste question, and not cognizable by a Civil Court. The same rule applies where there are fees appurtenant to the office. The plaintiff belonged to the Mahar caste and sued to recover from the defendants certain fees which, he alleged, were appurtenant to the office of guru to the members of the Mahar caste living in a certain village. The defendants denied that the plaintiff was their guru. Both the lower Courts dismissed the suit on the ground that it involved a caste question. The High Court, on second appeal, confirmed the decrees of the Courts below. MURARI *v.* SUBA . . . . **I. L. R., 6 Bom., 725**

16. ———————— *Dispute as to right to office of khatib—Mahomedan law—Bom. Reg. II of 1827, s. 21.*—S. 21 of Regulation II of 1827 has no application to suits between Mahomedans. A dispute as to the right to an office, such as the office of khatib (or preacher) is said to be among Mahomedans, is not a caste question within the meaning of the terms as used in the section: a suit to establish the right to such an office will therefore lie in a Civil Court. HASHIM SAHEB VALAD AHMED SAHEB *v.* HUSEINSHA VALAD KARIMSHA FAKIR . . . . **I. L. R., 13 Bom., 429**

17. ———————— *Powers of the head of a caste in respect of caste customs.*—In a matter relating to caste customs over which the ecclesiastical chief has jurisdiction, and exercises his jurisdiction with due care and in conformity to the usage of caste, the Civil Courts cannot interfere. A guru as head of a caste has jurisdiction to deal with all matters relating to the autonomy of caste according to recognized caste customs. *Queen* v. *Sankara, I. L. R., 6 Mad., 381,* and *Murari* v. *Suba, I. L. R., 6 Bom., 725,* cited and followed. GANAPATI BHATTA *v.* BHARATI SWAMI **[I. L. R., 17 Mad., 222**

18. ———————— *Suit for right to exclusive worship—Bom. Reg. II of 1827, s. 21—*

Right of suit.—Four persons of the Chitpavan caste brought a suit in 1876, alleging that they and the members of their caste, in common with certain other castes, possessed the exclusive right of entry and worship in the sanctuary of a temple, and that the defendants, members of the Palshe caste, not being of the privileged castes, infringed that right in 1871 and thereafter by entering the sanctuary and performing worship therein. They prayed for a declaration of their right and an injunction restraining the defendants from interfering with it. The defendants contended (*inter alia*) that the suit as constituted was not maintainable; that the question was a caste question within the meaning of s. 21 of Regulation II of 1827, and not therefore within the cognizance of the Civil Courts; and that the suit was barred by the law of limitation. *Held* that this case was within the cognizance of the Civil Courts. The right of exclusive worship of an idol at a particular place set up by a caste is a civil right for adjudication by the Civil Court, and not a caste question. The meaning of s. 26 of Regulation II of 1827 is that the internal economy of a caste is not to be interfered with by the Courts, not that no possible matter of litigation in which a question of caste usage, or right, or privilege may arise can be taken cognizance of. ANANDRAV BHIKAJI PHADKE *v.* SHANKAR DAJI CHARYA **[I. L. R., 7 Bom., 323**

19. ———————— *Bom. Reg. II of 1827, s. 21—Resolution of caste excluding Brahmans from caste feasts—Majority of caste, Right of.*—The plaintiffs and defendants were members of the Kutchi Dossa Oswal caste of Hindus residing in Bombay. The plaintiffs alleged that by a resolution of the caste unanimously passed at a caste meeting held on the 19th September 1893, a committee, of which they were members, was appointed on behalf of the caste for the purpose of preventing Brahmans from attending the feasts of the caste in the caste oart in Bombay, and that, on the 16th and 18th July 1894, by resolutions unanimously passed, the members of the caste were strictly prohibited from feasting any Brahman in the caste oart, and the committee was authorized not to allow any casteman, wishing to feast Brahmans in the oart, to use the caste oart and caste vessels, and, if necessary, to take legal steps in the matter. The plaint alleged that the defendants proposed to give a feast in the caste oart, to which they had invited Brahmans, and prayed for an injunction, and for a declaration that the above resolutions were validly passed and were binding upon the defendants and on the caste. The defendants contended that the subject-matter of the suit was a caste question and not cognizable by a Civil Court, and further that the meetings referred to in the plaint had not been duly convened, and that the resolutions were invalid and not binding on those who were not present and who did not consent to them. They alleged that Brahmans had from time immemorial as a matter of course attended the caste feasts, and they denied that the plaintiffs or any members of the caste had now a right to exclude them The Court found as a fact that a large majority of the caste were in favour of excluding Brahmans from caste feasts. *Held* that the majority of the caste having arrived at a *bonâ fide* decision that the convenience and comfort of the caste were best advanced by the exclusion of the Brahmans from their oart, it was not a case in which the Court could say that the decision was so subversive of the interest of the minority as to amount to a practical confiscation of their property or denial of their rights, and that the Court ought to give effect to it. The Court accordingly passed a decree in terms of the prayer of the plaint prohibiting the defendants from bringing Brahmans into the oart to dine so long as the resolution of the caste prohibiting the practice continued in force. The Court does not decline to give effect to the expressed wishes of the majority of a caste as to the management and custody of caste property, which the minority seek to set at naught, by reason of the suit involving a caste question. In matters relating to the management of caste property and the administration of its affairs, the majority of the caste has authority to control the minority. But the Court will not by its decree enable the majority to make a tyrannical use of its power. It would not assist the majority to deprive without cause the minority of their right to use what is the common property of all, or give effect to a resolution passed in violation of the rules of natural justice or of a directly confiscatory nature. LALJI SHAMJI *v.* WALJI WARDHMAN . . . **I. L. R., 19 Bom., 507**

20. ———————— *Bom. Reg. II of 1827, s. 21—Arrangement between members of the caste for the purpose of paying off the debts of the caste—Mahomedans.*—The term "caste" in s. 21 of Regulation II of 1827 is not necessarily confined to Hindus, but comprises any well-defined native community governed for certain internal purposes by its own rules and regulations. An agreement embodying an arrangement come to between members of the caste for the purpose of paying off the debts of the caste, out of certain contributions to the caste funds, involves a caste question, and a suit on such agreement is not maintainable in the Civil Courts. ABDUL KADIR *v.* DHARMA . . . **I. L. R., 20 Bom., 190**

21. ———————— *Mochi caste at Surat—Dismissal of delegates by the caste—Suit for injunction and damages.*—The hereditary priests of the Mochi caste deputed certain persons to perform religious ceremonies for the caste. The caste, however, dismissed these delegates, and the defendants, who were members of the caste, employed other persons to perform certain religious ceremonies for them. The plaintiffs sued for an injunction and damages, alleging that they were entitled to perform these ceremonies and to receive the fees. *Held* that the Court had no jurisdiction. The Civil Court could not enquire into the validity or otherwise of the decision of the caste in the matter. The parties were bound by it, and the

JURISDICTION OF CIVIL COURT —*continued.*

2. CASTE—*continued.*

plaintiffs could not legally complain of the action of the defendant, who had done no more than obey that decision. DAYARAM HARGOVAN *v.* JETHABHAT LAKHMIRAM . . **I. L. R., 20 Bom., 784**

22. ———— *Bom. Reg. II of 1827, s. 21—Suits to recover caste property from a member of the caste.*—S. 21 of Regulation II of 1827 does not debar a Civil Court from taking cognizance of a suit in which a question of a caste rule or of membership of a caste may be raised by way of answer to a claim for property or on a breach of contract. The section provides that there shall be no interference on the part of the Court in caste questions. But to take evidence of the customary law of a caste, to recognize the law and the vote of a majority as given effect to by the law, is not to interfere in caste questions; it is simply to recognize the existence of caste as corporations with civil rights and an autonomy suitable to the purposes of their existence. Certain members of one division of a caste borrowed vessels for use from the priest of that division, and then seceding to the other division refused to return them. A suit was brought to recover possession of the vessels in question. *Held* that the suit was cognizable by the Civil Court, notwithstanding that incidentally a question as to the relations of the caste divisions might arise for decision. PRAGJI KALAN *v.* GOVIND GOPAL . . **I. L. R., 11 Bom., 534**

23. ———— *Secession from a caste—Property purchased by seceding section during period of secession—Reunion of section with the caste—Suit by caste to recover from a seceding member property purchased by seceding section.*—The plaintiff and the defendant belonged to the caste of Visnagra Brahmans, which in 1841 divided into two sections known as the big and little sections. While this division continued, *viz.*, in the year 1868, certain lands were purchased by the small section in the names of the plaintiff, the defendant, and three other persons. In 1873 the members of the small section, with the exception of the defendant, reunited with the other members of the caste. The lands, however, remained in the possession of the defendant. The plaintiff, on behalf of the caste, brought this suit to recover the lands from the defendant. Both the lower Courts held that the case was not cognizable by the Civil Courts, as it involved a caste question. On appeal by the plaintiff, the High Court reversed the decrees of the Courts below and sent back the case for re-trial. The lands in question had been admittedly purchased out of their own funds and for their own purposes by the members of the caste who had seceded; and the question as to whom those lands now belonged to, being one between the caste and one of the seceding members who had purchased them, could not be a caste question, unless the small seceding section itself could be regarded (and it was not so contended) as a separate and distinct caste. Under these circumstances, it was for the Civil Court alone to determine who was entitled to the property, although it might be incidentally necessary for that purpose to enquire into the usage and practice (if any) of caste sections, situated as the seceding section of this caste had been with respect to the property in question. If the lands had been originally the property of the caste, the question would have been between the caste and a section of it, and would have been a caste question, and not cognizable by the Civil Court. MEHTA JETHALAL *v.* JAMIATRAM LALUBHAI . . . **I. L. R., 12 Bom., 225**

24. ———— *Civil Procedure Code, s. 11—Hindu Marriage Act (XV of 1856), s. 5—Hindu law, marriage—Widow remarriage—Exclusion from temple—Excommunication.*—The plaintiff, who was a Smarta Brahman, but had married a widow (whose first marriage had not been consummated), alleged that he had made a vow to present an offering in a certain temple, and that the defendants, who were the committee of the temple, had obstructed and prevented him from entertaining the inner shrine (where orthodox Brahmans usually make their offerings), asserting that he was disqualified to enter by reason of his having married a widow contrary to Hindu shastras; and he sued for damages for the above obstruction and imputation, for a declaration that he was entitled to enter the shrine as a Brahman, and for an injunction restraining the defendants from interfering with his exercise of this right. *Held* (1) that the right claimed was of a civil nature and within the cognizance of the Civil Courts; (2) that the question to be determined was not a question of the plaintiff's legal status, since a Brahman widow is at liberty to re-marry under Act XV of 1856, but it was a question of caste status in respect of a caste institution; (3) that in order to determine the above question, the Courts must inquire (*a*) what was the usage of the temple as regards admission into the inner shrine for the purposes of worship at the date of the suit, or the presumable intention of the religious foundation as regards such admission, and (*b*) whether, according to such usage or presumable intention of the foundation, those who secede from the caste custom as to re-marriage of women are outside the class of beneficiaries as regards the right of admission into the inner shrine as above. VENKATACHALAPATI *v.* SUBBARAYADU . **I. L. R., 13 Mad., 293**

25. ———— *Right of suit by bhakats of religious fraternity expelled by other members for re-admission into fraternity—Powers of fraternity to impose fine and cause expulsion until fine is paid—Cause of action.*—The plaintiffs were some of the bhakats or members of a satra or religious fraternity, and they claimed the right to enter the kirtanghar or prayer-hall, and perform their prayers and other rights therein. They alleged in the plaint that the management of the affairs of the satra, "including the distribution of honorarium and offerings and the appointment and dismissal of the satria," or head of the fraternity, was vested in the samuha, or entire body of bhakats, and that they and their forefathers had been from generation to generation in receipt of the honorarium and offerings, and had been performing the rites and ceremonies according to the custom of the satra until they had been obstructed and interfered with by the defendants in such performance, and had been expelled from the kirtanghar. The prayer of the plaint was that the plaintiff's right to enter the kirtanghar to perform the said rites and ceremonies and to receive their share of the offerings might be established; that the kirtanghar from which they had been dispossessed might be made over to them for the purpose of such performance, and that a prohibitory injunction might be granted enjoining the defendants not to obstruct them in such performance. The defendants, who were the satria and the other members of the fraternity forming the majority of the entire body of bhakats, denied the rights claimed by the plaintiffs as bhakats, and stated that the satra was governed by the satria and a select body of bhakats, that the plaintiff No. 1 had received mantra or spiritual initiation from one Saruram, contrary to the rules of the fraternity, and had been convicted, moreover, of a criminal offence, and a fine of R100 had accordingly been imposed on him and his partizans by the governing body of the satra, whose orders they had disobeyed by refusing to pay the fine, and they had therefore been excluded from entering the kirtanghar; and the defendants contended that the Civil Court had no jurisdiction in the matter, and that the suit was therefore not maintainable. The lower Courts held that the Civil Court could entertain the suit, and they made decrees practically ordering the admission of the plaintiffs to the kirtanghar on their complying with the order imposing the fine. *Held* that the rules laid down in the English cases as to expulsion from clubs or voluntary associations which people are free to join or not, and where any one who joins may well be taken to be bound not only by its general rules, but also by any special orders made by its members with regard to him in accordance with those rules, are not applicable with regard to caste unions or religious fraternities in India, to which people belong not of choice, but of necessity, being born in their respective castes, or sects, and the consequences of exclusion from which are far more serious and affect a person's status in a far greater degree than those of expulsion from a club. In such religious castes or fraternities the protection of Courts of justice, even though presided over by Judges of a different religious persuasion, against expulsion, is much more needed than in clubs or voluntary associations. Cases of expulsion from them were therefore cognizable by the Civil Courts. *Sudharam Patar* v. *Sudharam, 3 B. L. R., A. C., 91 : 11 W. R., 457 ; Hopkinson* v. *Marquis of Exeter, L. R., 5 Eq., 63 ;* and *Dawkins* v. *Antrobus, L. R., 17 Ch. D., 615,* distinguished. *Gopal Gurain* v. *Gurain, 7 W. R., 299,* and *Ramkant* v. *Ram Lochan, S. D. A., 1859, p. 535,* followed. *Advocate General of Bombay* v. *Haim Devakar, I. L. R., 11 Bom., 185,* not followed. *Held,* further, that even if the rules laid down in the English cases were applicable, they were subject to a qualification which leaves it open to a Court of Justice to interfere with he decision of a private association on grounds, one of which is that the decision is contrary to natural justice. The decision of the lower Courts, therefore, ordering the re-admission of the plaintiffs to the kirtanghar, on their complying with the order imposing the fine, was not such an interference with the decision of the domestic tribunal of the parties as is opposed to the cases cited as to clubs, etc., as it would have been contrary to natural justice for the fraternity to enforce such exclusion after the reason for it had ceased, and make the disqualification of the plaintiffs permanent. *Held,* on the statements in the plaint, that the plaintiffs had a cause of action, and the suit could not have been properly dismissed on the finding of fact by the lower Appellate Court that the plaintiffs' exclusion from the kirtanghar was justified by their refusal to pay the fine imposed on them. JAGANNATH CHURN *v.* AKALI DASSIA

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26. ———————— *Infringement of caste rule—Defamation by caste resolution—Truth of allegation—A defence to civil suit for defamation —Privilege—Caste resolution depriving a member of caste of man-pan invitation—Sumptuary law enforced by caste—Bom. Reg. II of 1827, cl. 21, s. 1—Cause of action—Right of suit—Onus probandi.*—In the year 1887, some members of the Pathare Kshatria caste considered that the outlay in connection with the munj, marriage and other ceremonies, by the members of the caste, were unnecessarily and unreasonably large, and that this was the cause of ill-feeling in the caste. A meeting, purporting to be a meeting of the whole caste, was held at Malad in Salsette on the 5th June 1887. Several rules framed with the view of lessening these expenses were then passed. The fourth rule was as follows: "The practice of bringing a naikin to sing in the mundup on the day of munj or marriage ceremony is to be put a stop to." The preamble to the rules contained the following clause: "Every family in the caste is to act according to these rules, and if any transgression of these rules on the part of any one be proved, he shall be considered as an offender of the caste." Copies of these rules and their preamble, together forming "the resolution," were printed and sent to the various divisions of the caste with a letter. The letter expressed the hope that the various sections would take steps to prevent the rules being transgressed. The plaintiff and the defendants belonged to the Girgaum section of the caste. This section approved of the resolution and acted on it. In May 1888, the plaintiff's grandnephew's munj was celebrated at the plaintiff's house, and the plaintiff, in breach of the above rules, employed a naikin to sing at it. On the 9th March 1889, *D* (defendant No. 6), who was secretary of the Girgaum section of the caste, wrote to the plaintiff, drawing his attention to his breach of the rules, and calling upon him to show cause, before the Girgaum section of the caste, why he should not be liable to censure, and why the man-pan invitation to him by the caste should not be stopped. A correspondence then took place between the plaintiff and *D,* in which the plaintiff alleged that the rules in question had not been laid down by the whole body of the caste, and that they were frequently transgressed. He declined to pay any attention to communications on the subject. A meeting of the Girgaum section of the caste was then held, at which twenty-two members were present, and a resolution was passed, declaring that the plaintiff had transgressed the caste rules, and depriving him of the man-pan invitation by the caste until a contrary resolution should be arrived at by the Chargaum and Desh. It was also ordered that this resolution should be communicated to the Chargaum (local divisions of the caste) and Desh (head-quarters of the caste), which subsequentty accepted and approved of the resolution, which thus became known to the whole caste. The defendants were among the twenty-two members of the Girgaum section of the caste who passed the resolution. The plaintiff sued them claiming R5,000 damages, alleging that they had passed the said resolution and circulated it among the caste, and complaining that they had "attempted to carry out the said resolution by preventing the usual man-pan invitation being sent to the plaintiff, and the depriving of the plaintiff of this invitation is equivalent to excommunicating him from his community." *Held* that the circumstances, even assuming that the defendants were actively instrumental in getting the resolution carried, did not constitute a cause of action of which the Court could take cognizance. The plaintiff had not been libelled by the publication of the resolution. The facts stated in the resolution were all true, and the publication of true statements regarding an individual does not constitute a cause of action in a Civil Court, though, if the publication be unjustifiable, it may be an offence against the provisions of the Penal Code. The occasion also of the publication was privileged. The defendants were justified in informing the caste-fellows of the matter relating to the caste, which it was for the common interest of the caste to know. So far, therefore, as the suit was a suit for libel or defamation, it failed. *Held* also that the fact that the defendants had been actively instrumental in passing the resolution depriving the plaintiff of his man-pan did not constitute a cause of action. The right to the invitation was not a legal right. It was a social privilege which caste usages only entitled a casteman to receive, and the caste was the only tribunal to which a casteman deprived of that privilege could resort. The question was a caste question unconnected with property or legal right. *Held* also that the fact that the rule which the resolution enforced might be in fact *ultra vires* and one which the caste could not validly pass, did not operate to give the Court jurisdiction. As long as a caste in passing a rule confines the enforcement of it to social caste sanctions, and does not seek to deprive a man of property or legal rights for disobeying it, the Court has no jurisdiction to enquire into the nature of the rule. The Court cannot dictate to the caste what rules it shall and what it shall not lay down for its guidance. The rule in question was a sumptuary rule, and there was no reason why the caste should not enact it if it pleased. Among the issues raised by the defendant on the pleadings were the following, *viz.,* (3) whether the rules were not duly approved and adopted by the caste, and (6) whether the publication of the resolution was not privileged. It was contended for the plaintiff that the burden of proving these issues was on the defendant, and that he (the plaintiff) might reserve his evidence on them until the defendant had given evidence upon them. *Held* that the onus of showing that the rules were not properly passed lay on the plaintiff. RAGHUNATH DAMODHAR *v.* JANARDHAN GOPAL . . **I. L. R., 15 Bom., 599**

27. ——————— *Excommunication —Court's power to inquire into the validity of the order of excommunication—Burden of proof.*—The plaintiff, who was pujari of a Jain temple, sued for an injunction to restrain the defendants from entering the temple and worshipping the idol on the ground of their excommunication by the Swami for misconduct. Defendants pleaded that they had been guilty of no offence for which a sentence of excommunication could properly be passed, and that the inquiry into their conduct was held by the Swami *ex-parte* and without any notice being given to them. *Held* that the Civil Courts had jurisdiction to inquire into the validity of the sentence of excommunication, and that it lay on the plaintiffs, who sought to enforce the sentence and by virtue of it to deprive the defendants of their civil rights, to prove that it was passed on justifiable grounds and after a fair and proper inquiry. APPAYA *v.* PADAPPA

I. L. R., 23 Bom., 122

28. ——————— *Excommunication of member from caste—Presumption of good faith.*—The caste having presumably acted in good faith and proceeded regularly according to the custom in excommunicating a member, it was held that the Civil Court could not interfere with its action or examine the question on its merits. KESHAVLAL *v.* BAI GIRJA . . . **I. L. R., 24 Bom., 13**

3. COURT OF WARDS.

29. ——————— **Suit against Court of Wards**—*Superintendence over minor.*—No civil action will lie against the Court of Wards in respect of anything done by it regarding the person and education of any minor entrusted to its superintendence. COLLECTOR OF BEERBHOOM *v.* MUNDAKINEE DEBIA . . . . . **W. R., 1864, 332**

The Court subsequently in this case declined to pass an order to stay the minor's removal under an order of the Board of Revenue directing such removal to the Ward's Institution in Calcutta, pending an appeal to the Privy Council, holding that it had no power to make such order. COLLECTOR OF BEERBHOOM *v.* MUNDAKINEE DEBEE . **1 W. R., Mis., 7**

And afterwards held that the Civil Court was competent to carry out an order that the Court of

JURISDICTION OF CIVIL COURT —*continued.*

3. COURT OF WARDS—*concluded.*

Wards was entitled to the custody of the minor. MUNDAKINEE DEBEE *v.* COLLECTOR OF BEERBHOOM

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30. ——— **Power of High Court**—*Restraining Court of Wards from bestowing minor in marriage.*—The High Court cannot restrain the Court of Wards, whether acting with or without jurisdiction, from interference in the bestowal in marriage of a minor. GUJADHUR PERSHAUD *v.* NARAIN SINGH . . . **5 W. R., Mis., 41**

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31. ——— **Vatandar kulkarni and raiyat**—*Bombay Hereditary Office Act (III of 1874)—Perquisites, Right to.*—Bombay Act III of 1874 does not deprive the Civil Court of its jurisdiction to try the question whether a vatandar kulkarni is entitled to receive perquisites from his raiyat. VISHNU HARI KULKARNI *v.* GANU TRIMBAK

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7. FEES AND COLLECTIONS AT SHRINES.

37. ——— **Suit for collections of a shrine**—*Right of property in site—Right of office.*—A suit will lie for the collections of a shrine, either in right of property in the place or of lawful and established office attached to it. SHEO SUHAYE DHAMEE *v.* BHOOREE MAHTOON . . **3 W. R., 33**

38. ——— **Suit for share of collections in return for spiritual instruction.**—*Held* that a suit for a share of the collections made from "jujmans in return for spiritual instruction" is not cognizable in the Civil Courts. CHOONNEE LAL *v.* GOUREE SHUNKUR . . . . **1 Agra, 84**

7. FEES AND COLLECTIONS AT SHRINES —*concluded.*

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9. FISHERY RIGHTS.

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47. ———— **Suit against ex-King of Oudh**—*Act VIII of 1862, s. 4.*—S. 4, Act VIII of 1862, did not prevent the Civil Courts from entertaining a suit against the ex-King of Oudh without the consent of the Government. IN THE MATTER OF THE PETITION OF BEGUM BIBEE . . . **7 W. R., 168**

48. ———— **Suit against Tipperah Rajah**—*Sovereign Prince—Zamindari in British territory.*—The succession to the raj of Tipperah being of itself beyond the jurisdiction of British Civil

Courts, it would be out of their power, in a suit relating solely to the title of the Rajah to a zamindari in British territory, to go into the question of the Rajah's title to the raj. The Rajah being a foreign power, the Courts would accept the title to the raj of the person recognized as Rajah by the British Government. But where a zamindari lying within British territory, and not shown to be an appanage of the raj, formed the subject of a suit,—*Held* that, since the right to the raj had, by a long course of litigation, been made by the parties themselves to depend, as it were, upon the right to his zamindari, the Civil Courts had jurisdiction to deal with the title to the latter; and that the law applicable to the suit would be the Hindu law modified by the kulachar or local custom regulating succession and inheritance in the Tipperah family. The recognition of the Rajah by the British Government is less a matter of right than one of discretion, his position being that of a petty Rajah of a hill district, rather than that of a sovereign power. *Held* in concurrence with the first Court, upon a consideration of the whole evidence and the conduct of the late Rajah, as well as that of the plaintiff and the Ranis of the late Rajah, that though the legitimacy of the plaintiff had been satisfactorily established, and it was shown that his mother had been married to the late Rajah in the shantigrihita form, yet it was clear that defendant had been created Jubaraj by the late Rajah, and the plaintiff's claim must accordingly be dismissed with costs. RAJKUMAR NOBODIP CHUNDRO DEB BURMUN *v.* BIR CHUNDRA MANIKYA BAHADOOR

[25 W. R., 404, 407 note

49. ———————— *Zamindari in British territory—Civil Procedure Code, 1877, s. 433.*—Save in respect of his zamindari in British territory, the Rajah of Tipperah is not subject to the jurisdiction of the Courts in British India, except in cases mentioned in cls. (*a*), (*b*), (*c*), s. 433, Act X of 1877. *Nil Kristo Deb Barmano* v. *Bir Chunder Thakur, 3 B. L. R., P. C., 13,* and *Rajkumar Nobodip Chundro Deb Burmun* v. *Bir Chundra, 25 W. R., 407,* cited. BIR CHUNDER MANICKYA BAHADUR *v.* ISHAN CHUNDER THAKUR . **3 C. L. R., 417**

50. ———————— *Sovereign prince —Suit against sovereign prince with respect to land owned by him, and situate in British India—Maintenance—Charge on immoveable property—Benefits to arise out of land—General Clauses Consolidation Act (I of 1868), s. 2, cl. 5—Civil Procedure Code (Act X of 1877), Ch. XXVIII, s. 433.* —The Rajah of Hill Tipperah is a sovereign prince within the meaning of Ch. XXVIII of Act X of 1877, and cannot be sued personally in the Courts of British India except under the conditions specified in s. 433 of that Act. The fact of a defendant not subject to the jurisdiction of a Court having waived his privilege in previous suits brought against him does not give the Court jurisdiction to entertain a suit against him in which he pleads that he is not subject to such jurisdiction. A suit for maintenance which seeks to have the maintenance made a charge on immoveable property is not a suit for immoveable property within the meaning of cl. (*c*), s. 433, Act X of 1877, nor is it a suit for "benefits to arise out of land" within the meaning of the definition of the words "immoveable property" contained in Act I of 1868, s. 2, cl. 5. A claim for maintenance is not a charge upon immoveable property. A member of the royal family of Hill Tipperah brought a suit against the Rajah to have it declared that with respect to certain land situate within British India and forming portion of the possessions of the Rajah, he was entitled to the post of Jubaraj and to succeed to such land on the death of the Rajah, and also claimed maintenance and sought to have it declared that such maintenance should be a charge on the revenues of the land situate in British India. *Held* that the British Courts had no jurisdiction to entertain the suit, it not being one for immoveable property. BEER CHUNDER MANIKKYA *v.* RAJ COOMAR NOBODEEP CHUNDER DEB BURMONO

[I. L. R., 9 Calc., 535 : 12 C. L. R., 465

51. ———————— *Civil Procedure Code, 1877, s. 433—Suit for charge for maintenance on independent Sovereign State.*—In a suit against the Maharajah of Hill Tipperah, which is an independent Sovereign State, for maintenance, it appeared that, in a former suit tried in British India in respect of the same claim, the Court had ordered the amount of the maintenance for which he gave a decree to be paid by the defendant Maharajah and from his estate of R, which was in British India. *Held* that the suit, not being a suit for immoveable property, would not lie, and, further, that the decree in the former suit was not *res judicata* to show that the maintenance claimed in the present suit was a charge upon the zamindari of R, so as to give the Court jurisdiction under cl. (*c*) of s. 433 of the Civil Procedure Code. BIR CHUNDER MANIKHYA *v.* ISHAN CHUNDER TAGORE . . . . . . **12 C. L. R., 473**

52. ———————— **Suit against the Desai of Patadi**—*Ruling Chief—Code of Civil Procedure (XIV of 1882), ss. 432 and 433.*—The Desai of Patadi, a talukhdar of the fifth class in the province of Kathiawar, in virtue of his being the proprietor of seven villages within the British Political Agency of Kathiawar, is a ruling chief within the meaning of ss. 432 and 433 of the Code of Civil Procedure (XIV of 1882), and can only be sued with the consent of the Government in a competent Court not subordinate to the District Court. KAMBHAI *v.* HIMATSINGJI

[I. L. R., 8 Bom., 415

11. HÂT.

53. ———————— **Suit to determine right of person to hold market on certain days.**—The Civil Courts have jurisdiction to determine whether or no a person has a right to hold a market on certain days. THAKOOR SINGH *v.* SHEOPERSHAD OJHAR

[5 N. W., 8

JURISDICTION OF CIVIL COURT
—*continued.*

12. MAGISTRATE'S ORDERS, INTERFERENCE WITH.

54. ——— **Suit to set aside order of Magistrate opening a road.**—The Civil Courts have jurisdiction to set aside an order by a Deputy Magistrate to open a road over lands. Kadir Mahomed *v.* Mahomed Safir . . **1 W. R., 277**

55. ——— **Interference of Magistrate with private right of way.**—The interference of a Magistrate with a private right of way, being an act beyond his jurisdiction, may be remedied by suit in the Civil Courts. Sham Doss *v.* Bhola Doss . . . . . . **1 W. R., 324**

56. ——— **Order of Magistrate to remove encroachment.**—A regular suit lies in the Civil Court from the proceedings of a Magistrate ordering the removal of an encroachment not treated as a local nuisance. Anund Chunder Chatterjee *v.* Rokho Tarun Chatterjee . . **2 W. R., 287**

57. ——— **Suit to set aside order of Magistrate declaring road public**—*Removal of obstruction to road.*—The Civil Courts have jurisdiction to entertain a suit, which, if successful, would have the effect of setting aside and rendering inoperative an order of a Magistrate declaring a road to be a public one, and directing the removal of bamboo posts across the road as an obstruction. Ram Shodoy Ghose *v.* Juttadharee Haldar
[7 W. R., 95

58. ——— **Suit to set aside order of Magistrate removing obstruction**—*Criminal Procedure Code, 1861, s. 308.*—Where a Magistrate made an order for the removal of a shed as being an obstruction to a thoroughfare under s. 308 of the Code of Criminal Procedure, and the owner of the shed on disobeying the order was fined under s. 291 of the Penal Code,—*Held* that a suit would not lie in the Civil Court to establish the owner's right to keep up the shed. Bakas Ram Sahoo *v.* Chummun Ram . . . . **7 W. R., 11**

59. ——— **Suit for declaration of right to land encroached on by road.**—A plaintiff is not debarred from suing in the Civil Courts for a declaration of his rights to land encroached upon by the widening of a road, on the ground that the order of the Magistrate directing the road to be kept up as widened is liable to be reversed as illegal. Azeezoollah Gazee *v.* Bunk Beharee Roy . . . . **7 W. R., 48**

60. ——— **Suit to set aside order of Magistrate as to private property**—*Criminal Procedure Code, 1861, s. 308.*—S. 308 of the Code of Criminal Procedure referred to nuisances in a thoroughfare or public place and had nothing to do with the interior of private houses, and therefore did not bar the jurisdiction of the Civil Courts in a suit brought to set aside an order of a Deputy Magistrate restricting some of the owners and occupiers of a house from the free use of their own portion of joint property. Eshan Chunder Banerjee *v.* Nund Coomar Banerjee . **8 W. R., 239**

JURISDICTION OF CIVIL COURT
—*continued.*

12. MAGISTRATE'S ORDERS, INTERFERENCE WITH—*continued.*

61. ——— **Obstructing public road**—*Criminal Procedure Code (Act XXV of 1861), s. 320.*—A Magistrate found, under s. 320 of the Criminal Procedure Code, on a dispute between *R* and *P* that the public had been in the habit of using a certain road over *P*'s land for carts, etc., and accordingly directed it to be opened (*i.e.*, by removal of obstructions). *P* brought a regular suit against *R*, in which the issue was, whether the road was public or not: this was found in the negative, except as to a footpath; costs were apportioned, and the cart-way was ordered to be stopped. *R* appealed on the merits, and *P* filed a cross-objection: the first judgment was affirmed. On special appeal by *R* as to the mode of dealing with the proofs,—*Held* the finding of the Civil Court was beyond its competence, and the suit was not such as contemplated by s. 320, *viz.*, to test the right of "exclusive possession." Pyari Lal *v.* Rookee
[3 B. L. R., A. C., 305 : 12 W. R., 199

Upholding on review, Rooke *v.* Pyari Lal
[3 B. L. R., Ap., 43 : 11 W. R., 434

62. ——— **Suit to restrain order of Magistrate as to nuisance**—*Suit to set aside order of Magistrate under s. 308, Code of Criminal Procedure (Act XXV of 1861)—Nuisance.*—No suit will lie in a Civil Court to set aside an order duly made by a Magistrate under Ch. XX, s. 308 of the Code of Criminal Procedure, relating to nuisances, or to restrain him from carrying such order into effect. Ujalamayi Dasi *v.* Chandra Kumar Neogi . . **4 B. L. R., F. B., 24**

S. C. Oojulmoye Dossee *v.* Chunder Koomar Neogee . . . **12 W. R., F. B., 18**

63. ——— **Order of Magistrate as to right to use of water**—*Suit to set aside Magistrate's decision under s. 320, Criminal Procedure Code, 1861.*—A suit to get rid of the effect of an order passed by a Deputy Magistrate under s. 320, Code of Criminal Procedure, declaring a certain river to be a public thoroughfare, and to have it declared that plaintiffs are entitled with others to use the water of the said river by raising bunds or dams in the bed of the stream as heretofore, will not lie in the Civil Court, the only way in which the Deputy Magistrate's order can be got rid of in the Civil Court being by distinct proof of plaintiff's title to exclusive possession of the right of water claimed. Ram Kristo Sircar *v.* Kaloo . **18 W. R., 284**

64. ——— **Suit for possession and damages after order of Magistrate for removal of hut**—*Criminal Procedure Code (Act VIII of 1869), ss. 308-310, 311—Removal of house by order of Magistrate—Suit for possession and for damages.*—A Magistrate issued an order under s. 308 of Act VIII of 1869, calling upon *A* to remove his hut as being an obstruction to a public highway. *A* claimed a jury under s. 310, the majority of whom found that the Magistrate's order was reasonable and proper. *A* refused to obey the order, and

his hut was removed under s. 311. *A* sued the Magistrate for possession of the land and for damages. *Held* that such suit would not lie. MEECHOO CHUNDER SARCAR *v.* RAVENSHAW [11 B. L. R., 9 : 19 W. R., 345

65. ——— Suit for possession after order of Criminal Court—*Suit to set aside order of Magistrate under s. 318, Criminal Procedure Code, 1861 – Suit for possession.*—An award of a Magistrate under the Criminal Procedure Code, 1861, s. 318, cannot be set aside by a decree of the Civil Court for possession, but is good to retain the party in whose favour it is passed in possession of the land, until the opposite party has established his right thereto by civil suit for exclusive possession. KALEE NARAIN BOSE *v.* ANUND MOYEE GOOPTA [21 W. R., 79

66. ——— Suit for ejectment after dispossession of plaintiff under order of Magistrate.—An ejectment suit on the allegation that the defendants had, under colour of an order of the Magistrate, dispossessed the plaintiff of private property belonging to him, was held to be cognizable by the Civil Court. DEB CHUNDER DOSS *v.* JOY CHUNDER PAL . . 22 W. R., 461

67. ——— Suit to cancel order of Magistrate—*Criminal Procedure Code, 1861, s. 62 (Act X of 1872), s. 518—Right to hold market on certain days.*—Any person is entitled to establish a market on his own land, and the owner of a neighbouring market has no right of suit for the loss which may ensue from the establishment of the new market. The legality of an order made by a Magistrate, under s. 62 of Act XXV of 1861 (s. 518 of Act X of 1872), can be questioned in the Civil Court. The Civil Courts are, however, bound to respect an order passed by a Magistrate when he is acting within his jurisdiction, *i.e.*, within the powers conferred on him by law; and if his proceedings show due diligence in satisfying himself of the necessity of the order, they cannot question his discretion. In a suit to establish a right to continue a market and to hold it on certain fixed days by cancelment of the order of a Magistrate directing that it should not be held on those days for fear of riot, and of loss to the owner of another market, the plaintiff's right to hold the market on the days named in the plaint was decreed, subject to the prohibition created by the order of the Magistrate. KEDARNATH *v.* RUGHONATH . 6 N. W., 104

68. ——— *Right of way—Criminal Procedure Code, 1872, ss. 521, 523—Estoppel.*—A Civil Court is not competent to set aside the order of a Magistrate made under s. 521 of the Code of Criminal Procedure, on the ground that such order was made without jurisdiction, because the land in respect of which the order was made is private property, and not a thoroughfare or public place. A Civil Court can, however, irrespective of an order made under s. 521 by a Magistrate, try the question whether the land which formed the subject of such order is private property, and not a thoroughfare or public place, as between the parties to such suit and those who claim under them. *Per* FIELD, *J.*—A person who, on receipt of an order made by a Magistrate under s. 521 of the Code of Criminal Procedure, declaring the existence of a right of way over such person's lands, demands, under s. 523 of the same Code, the appointment of a jury to try whether such order was reasonable, is not by such action estopped from afterwards bringing a suit in a Civil Court, seeking to establish his right to the exclusive enjoyment of the same lands. MUTTY RAM SAHOO *v.* MOHI LALL ROY . I. L. R., 6 Calc., 291 : 7 C. L. R., 433

69. ——— Suit for declaration of right and confirmation of possession—*Criminal Procedure Code (Act X of 1882), s. 133—Removal of nuisance—Public way—Cause of action.*—On the 6th of July 1882, the Joint Magistrate of Krishnagur, on a complaint made by *A*, ordered *B* to demolish a cow-shed which he had built some months previously, the land on which the cow-shed had been built being part of a public way. Thereupon *B* brought a suit against *A* for a declaration of his right to enjoy the land as his private property and for confirmation of possession. The plaint did not allege that *B*, in causing the Magistrate to initiate proceedings against *A*, had been actuated by malicious motives and had acted with the intention of wrongfully injuring the plaintiff. *Held* that the suit would not lie. *Mutty Ram Sahoo* v. *Mohi Lai Roy, I. L. R., 6 Calc., 291,* dissented from. KHODABUKSH MUNDUL *v.* MONGLAI MUNDUL . . . I. L. R., 14 Calc., 60

70. ——— Suit for declaration of title to lands claimed as public road—*Criminal Procedure Code, s. 137, Order under.*—An owner of land has a right to bring a suit for declaration of his right against any one of the public who formally claims to use such lands as a public road and who has thereby endangered the title of the owner. Such a suit is not barred by an order of a Criminal Court under s. 137 of the Criminal Procedure Code. *Khodabuksh Mundul* v. *Monglai Mundul, I. L. R., 14 Calc., 60,* overruled. CHUNI LALL *v.* RAMKISHEN SAHU . . . . I. L. R., 15 Calc., 460

71. ——— Declaration of title to land—*Specific Relief Act (I of 1877), s. 42—Criminal Procedure Code (Act X of 1882), s. 133—Order by Magistrate under s. 133 of the Criminal Procedure Code for removal of an obstruction standing upon certain land.*—A Magistrate made an order against the plaintiff, under s. 133 of the Criminal Procedure Code (Act X of 1882), for the removal of a certain otta standing in front of the plaintiff's shop as an obstruction to the public way. The plaintiff thereupon brought this suit against the Secretary of State for India in Council for a declaration that the land on which the otta stood was his property and not that of the Government. It was contended that the

12. MAGISTRATE'S ORDERS, INTERFERENCE WITH—*concluded.*

jurisdiction of the Court to make the declaration prayed for was taken away by the last clause of s. 133, which provides that "no order made by a Magistrate under this section shall be called in question in any Civil Court." *Held* that the Magistrate's order under this section was not a conclusive determination of the question of title. SECRETARY OF STATE FOR INDIA *v.* JETHABHAI KALIDAS

[I. L. R., 17 Bom., 293

13. MARRIAGES.

72. ———— **Suit to declare Hindu marriage invalid.**—A suit for a declaration that an alleged Hindu marriage is invalid is a suit of a civil nature, and will lie in the ordinary Civil Courts. AUNJONA DASI *v.* PRAHLAD CHANDRA GHOSE

[6 B. L. R., 243 : 14 W. R., 403

Reversing S. C. . . . . **14 W. R., 132**

73. ———————— A suit to have a Hindu marriage declared invalid, or otherwise, where no rights of property depend on the validity or invalidity of the marriage, cannot be maintained in the Civil Courts under Act VIII of 1859. RAMSARAN MITTER *v.* RAKHAL DASS DUTT

[6 B. L. R., 244 note : 11 W. R., 412

74. ———— **Suit to enforce contract of marriage.**—A suit to enforce a contract of marriage cannot be entertained in the Civil Courts of this country. BHUGUN *v.* RUNJAN . **24 W. R., 380**

75. ———— **Suit for breach of contract to give in marriage**—*Consideration—Promise by brother to give sister in marriage.*—A certain amount of money had been paid by a Hindu to another in consideration of a promise by the latter that he would give his sister in marriage to the former. The girl's mother was alive. In a suit for recovery of the amount on the ground that the latter had failed to fulfil his promise,—*Held* that the suit would lie. JOGESWAR CHAKRABATTI *v.* PANCH KAURI CHAKRABATTI . . **5 B. L. R., 395 : 14 W. R., 154**

See RAM CHAND SEN *v.* AUDAITO SEN

[I. L. R., 10 Calc., 1054

And LALLUN MONEE DOSSEE *v.* NOBIN MOHUN SINGH . . . . . . **25 W. R., 32**

76. ———— **Suit for jactitation of marriage**—*Jurisdiction of Courts in British India to entertain such a suit between Mahomedans.*—*Held* that a suit for jactitation of marriage will lie in a Civil Court in British India, and is not within the ruling of the Privy Council in *Nilmony Singh* v. *Kally Churn Bhattacharjee, 14 B. L. R., 382 : L. R., 2 I. A., 83.* AZMAT ALI *v.* MAHMUD-UL-NISSA . . . . . **I. L. R., 20 All., 96**

77. ———— **Suit for restitution of conjugal rights.**—A suit for restitution of conjugal rights by the husband against the wife will lie in the Civil Courts. JHOTUN BIBEE *v.* AMEER CHUND

[1 Ind. Jur., N. S., 317 : 5 W. R., 105

HUR SOOKHA *v.* POORAN . . **2 Agra, 115**

78. ———————— *Supreme Court, Bombay, Ecclesiastical side—Parsis.*—The Supreme Court of Bombay, on its ecclesiastical side, was declared incompetent to entertain a suit for the restitution of conjugal rights at the instance of a Parsi wife against her husband. ARDASEER CURSETJEE *v.* PEROZEBOYE

[4 W. R., P. C., 91 : 6 Moore's I. A., 348

14. MUNICIPAL BODIES.

79. ———— **Municipal body acting in excess of its jurisdiction**—*Control over municipal bodies.*—Municipal as well as other public boards are included within the restraining and regulating jurisdiction of the Civil Courts of the country which are competent to inquire into and control the action of public bodies when they have acted in excess or contravention of the powers conferred upon them. BRINDABUN CHUNDER ROY *v.* MUNICIPAL COMMISSIONERS OF SERAMPORE . . **19 W. R., 309**

80. ———— **Suit to set aside order as to assessment of rates**—*Beng. Act III of 1864, s. 33—Municipal Commissioners—Appeal against assessment.*—A suit to set aside an order made on an appeal under s. 33 of Bengal Act III of 1864 to the Municipal Commissioners against a rate assessment, and to reduce the tax levied by them under that Act, on the ground that they have tried the appeal in an improper way, and have exceeded their powers and acted contrary to the provisions of the Act, cannot be maintained in the Civil Courts. The decision of the Commissioners in such an appeal is absolutely final. MANESSUR DASS *v.* COLLECTOR AND MUNICIPAL COMMISSIONERS OF CHAPRA

[I. L. R., 1 Calc., 409

81. ———— **Question of liability to pay tax**—*Suit to recover Municipal tax—Tax levied under erroneous supposition.*—A suit was brought in the Court of the District Munsif of Guntur to recover the amount of a profession tax for 1876 levied by the Municipal Commissioners of Guntur on the plaintiff upon the supposition that he carried on business as an agent, while in fact he carried on no such business. The defendant pleaded that the Court had no jurisdiction. Upon reference,—*Held* by the High Court (INNES, *J.*, and MUTTUSAMI AYYAR, *J.*) that the Court had not jurisdiction to adjudicate on the matter in contest. *Leman* v. *Damodaraya, I. L. R., 1 Mad., 158,* distinguished. KAMAYYA *v.* LEMAN

[I. L. R., 2 Mad., 37

82. ———— **Election of Municipal Commissioners**—*Civil Procedure Code (1882), s. 11—Bengal Municipal Act (Bengal Act III of 1884)—Right to vote and stand as candidate at an election—Suit for declaratory decree—Form of decree—Parties to suit—Magistrate.*—At an election of

Municipal Commissioners held under the Bengal Municipal Act (Bengal Act III of 1884) *S*, one of the candidates, was declared to have been elected: a poll was demanded and *S* was again declared by the presiding officer to have been duly elected. An objection was then taken by the defeated candidates before the Magistrate of the district on the ground that some of the voters gave more votes than there were vacancies, and also on the ground that *S* was not qualified to be registered as a voter and to stand as a candidate for election. The Magistrate set aside the election on both grounds; and *S* brought a suit in the Civil Court for a declaration of his right to vote and stand as a candidate, and for a declaration that he was duly elected. *Held* that the suit was one of a civil nature, and under s. 11 of the Code of Civil Procedure (Act XIV of 1882) such a suit would lie in the Civil Court. *Held* also that the Magistrate should not have been made a defendant in the suit, and that the plaintiff was not entitled to a declaration that the election of the plaintiff was good and valid; but that the decree of the first Court granting a declaration of plaintiff's right to vote and stand as candidate was correct. SABHAPAT SINGH *v.* ABDUL GAFFUR . . . . **I. L. R., 24 Calc., 107**

See ABDUR RAHIM *v.* MUNICIPAL BOARD OF KOIL **[I. L. R., 22 All., 143**

83.————Acts done in accordance with ss. 245 and 246, whether subject to the jurisdiction of a Civil Court—*Bengal Municipal Act (Bengal Act III of 1884), ss. 224, 245, and 246—Notice under s. 246 whether sufficient for the purpose of the removal of huts in a basti, as well as a pucca privy.*—Where a Municipality, having proceeded in accordance with ss. 245 and 246 of the Bengal Municipal Act, decide that certain works are necessary, that conclusion in the absence of *mala fides* or fraud or considerations of that nature cannot be questioned in a Civil Court. The action of the Municipality, so far as a privy was concerned, was held not to be *ultra vires*, although in the notice issued in accordance with s. 246 of the Bengal Municipal Act, they directed the plaintiff to remove not only certain huts, but also a pucca privy, inasmuch as the Municipality had a right to require him to remove the privy under s. 224 of the Act. DUKE *v.* RAMESWAR MALIA . . . . **I. L. R., 26 Calc., 811**
[3 C. W. N., 508

84.———— Suit to set aside illegal assessment—*Bengal Municipal Act (Bengal Act III of 1884), ss. 85, 93, 113, 116.*—There is nothing in the Bengal Municipal Act to prevent a ratepayer from seeking in a Civil Court a decision that the assessment made by a municipality is *ultra vires*, and not binding upon him. So where the plaintiff was the owner of a granary and a threshing floor, which were both assessed as one holding at R12 in the year 1893, which was the time at which the last triennial assessment was made, and afterwards in the year 1894 the municipality treated the granary and threshing floor as separate holdings, and they assessed the granary at R12 and assessed the threshing floor separately at 9 annas,—*Held* that this was not a case of enhancement of assessment, but of fresh assessment, and so the suit was maintainable. NAVADIP CHANDRA PAL *v.* PURNANANDA SAHA
[3 C. W. N., 73

85.———— Municipal taxation—Assessment—*Bengal Municipal Act (Bengal Act III of 1884 as amended by Bengal Act IV of 1894), ss. 85, cl. (a), 87, 114, 116—Appeal against assessment—Jurisdiction of Civil Court to set aside an assessment—"Circumstances and property within municipality"—Capability and circumstances of the assessee—Specific Relief Act (I of 1877), ss. 42, 45.*—An assessment of tax under s. 85, cl. (*a*), of the Bengal Municipal Act (III of 1884 as amended by Bengal Act IV of 1894), made in consideration of the assessee's "circumstances and property" (altogether or partly) outside the local limits of the municipality is *ultra vires* and illegal, and the Civil Court has jurisdiction to set aside such an assessment. *Manessur Das* v. *Collector and Municipal Commissioners of Chupra, I. L. R., 1 Calc., 409,* distinguished. *Navadip Chandra Pal* v. *Purnanand Saha, 3 C. W. N., 73,* referred to. KAMESHWAR PERSHAD *v.* CHAIRMAN OF THE BHABUA MUNICIPALITY . . **I. L. R., 27 Calc., 849**

86.———— Acquisition of land for widening a street—*Bombay District Municipal Act (Bom. Act VI of 1873), s. 24—Powers of a Municipality—Civil Court's jurisdiction to interfere.*—Where a District Municipality purchased through Government a narrow strip of land at the entrance of a private street for the purpose of widening the street in order to facilitate the effective use of fire-engines,—*Held* that the acquisition of land for such a purpose was within the powers of the municipality, as it was conducive to the promotion of public health, safety, and convenience; and that the Civil Court had no jurisdiction to restrain the municipality from exercising such powers. SHASTRI RAMCHANDRA *v.* AHMEDABAD MUNICIPALITY
[I. L. R., 24 Bom., 600

87.———— House-tax—*Municipal valuation—Civil Court's power to raise such valuation.*—A Civil Court has no power to revise the valuation of houses made by a municipality for the purpose of imposing a house tax. MORAR *v.* BORSAD TOWN MUNICIPALITY . . **I. L. R., 24 Bom., 607**

See MUNICIPALITY OF WAI *v.* KRISHNAJI GANGADHAR . . . . **I. L. R., 23 Bom., 446**

15. OFFICES, RIGHT TO.

88.———— Suit by hereditary purohit for declaration of right to officiate and for damages for loss of fees—*Cause of action.*—The ancestor of the plaintiff was appointed purohit of the town of P by Government, and obtained, prior to 1810, a mirasi inam as the emolument of the office. By an agreement made between the descendants of the original purohit the families in the town of P were divided between them, and that of the defendants fell to the lot of the plaintiff. The plaintiff sued for a declaration of his right to officiate as the purohit of the defendants and for damages for loss of fees caused by the defendants employing another purohit. *Held* that the plaintiff had no cause of action. RAMAKRISTNA *v.* RANGA . . I. L. R., 7 Mad., 424

89. ——— **Suit to obtain declaration of right to perform religious ceremony.**—*Quære*—Whether the Courts in India have any jurisdiction to determine a question involving a mere declaration of a right to perform religious ceremonies. NAMBOORY SEETAPATTY *v.* KANOO COLANOO PULLIA [7 W. R., P. C., 7: 3 Moore's I. A., 359

90.——— **Right of suit**—*Civil Procedure Code, s. 11—Hereditary right to an office—Declaratory decree—Jurisdiction—Emolument.*—A suit for the establishment of a right to the hereditary title of musicians to a satra will lie under s. 11 of the Code of Civil Procedure, notwithstanding that the right sought to be established is one which brings in no profit to those claiming it. MAMAT RAM BAYAN *v.* BAPU RAM ATAI BURA BHAKAT [I. L. R., 15 Calc., 159

91. ——— **Suit for an office to which no fixed fees are attached**—*Civil Procedure Code, 1882, s. 11—Bom. Reg. II of 1827, s. 21—Its application to suits between Mahomedans—Caste question.*—Under s. 11 of the Code of Civil Procedure (Act XIV of 1882), a suit for an office will lie, even though the office be a religious one, to which no fixed fees are attached. S. 21 of Regulation II of 1827 has no application to suits between Mahomedans. A dispute as to the right to an office, such as the office of khatib (or preacher) is said to be among Mahomedans, is not a caste question within the meaning of the term as used in the section. HASHIM SAHEB VALAD AHMED SAHEB *v.* HUSEINSHA VALAD KARIMSHA FAKIR . . . I. L. R., 13 Bom., 429

92.——— **Suit to establish rights of persons managing pagodas**—*Suit for damages for withdrawal of religious observances.*—The Civil Courts will recognize and enforce the rights of persons holding offices connected with the management and regulation of pagodas; and if the holder of such an office were entitled to remuneration for his services in the way of salary or otherwise, he would have a civil right entitling him to maintain a suit, if that remuneration were improperly withheld. A Hindu priest cannot sue in respect of the withholding of religious observances due to his sacred rank, but unconnected with any special office held by him, although the non-performance of such observances may have caused him some ascertainable pecuniary loss. STRIMAN SADA GOPA *v.* KRISTNA TATTACHARIYAR [1 Mad., 301

93. ——— **Suit to establish right to honours of office in temple, and damages for invasion of right.**—A suit to establish the right of the plaintiff to certain honours appertaining to an office in the temple, and to recover damages for an invasion of the right, is one which it is competent to the Civil Courts to entertain—ARCHAKAM SRINIVASA DIKSHATULU *v.* UDAYAGIRY ANANTHA CHARLU [4 Mad., 349

94. ——— **Suit for declaration of right to be priest and collect fees.**—In a suit for "Huk Purohitee,"—*Held* that each "jujman" has a right to select his own priest, and no suit to enforce a right to be priest and collect dues as such would lie in the Civil Court. BEHAREE LAL *v.* BABOO . . . . . . 2 Agra, 80

95. ——— **Suit for a declaration of plaintiff's right to officiate as priest and receive offerings.**—A suit will lie in a Civil Court for a declaration of the plaintiff's right to officiate, in alternate years, as priest in a temple and receive the offerings to the idol. LIMBA BIN KRISHNA *v.* RAMA BIN PIMPLU . . . I. L. R., 13 Bom., 548

96. ——— **Right to an office in a temple**—*Civil Procedure Code, s. 11.*—Plaintiffs sued for an injunction to prevent defendant from interfering with their right to present to certain persons at a certain festival in a certain temple a crown and water. The lower Courts found that plaintiffs possessed the right claimed and granted the injunction. *Held* that the suit was cognizable by a Civil Court under s. 11 of the Code of Civil Procedure, and that the injunction was properly granted. SRINIVASA *v.* TIRUVENGADA . . I. L. R., 11 Mad., 450

97. ——— **Suit for declaration of right to eldership among patils**—*Act XI of 1843.*—In a suit brought for a declaration of right to the vadilki or eldership in a family of patils with a view to prove title to the patalki or office of patil,—*Held* that a Civil Court had no right to entertain such a claim in order to influence the controlling revenue officer, who had the power in certain cases to nominate, from among the sharers of a family of hereditary officers, a representative to discharge the duties of the hereditary office. ABAJI BIN SANKROJI *v.* NILOJI BIN BALOJI . 2 Bom., 362: 2nd Ed., 342

98. ——— **Suit for declaration of right to offices of patil**—*Right to share in management of watan.*—Where the plaintiff sued to be declared entitled to the office of mulki patil in the village of Kotavery, as being the senior of his family, and alleged that the defendant, the actual incumbent of that office, had no right to share in the management of the watan, and had, in fact, until 1866, upon the death of the father of the plaintiff, never done so, it was held that the Civil Courts had jurisdiction to entertain the claim of the plaintiff. *Abaji bin Sankroji* v. *Niloji bin Baloji, 2 Bom., 362 : 2nd Ed., 342,* distinguished. VITHU BIN MANKU *v.* AMRITA BIN JOTI . . . . 7 Bom., A. C., 72

99. ——— *Act XI of 1843.*—Where a plaintiff sued for a declaration of his eligibility to the office of patil, if elected under the provisions of Act XI of 1843, he having been obliged to sue to establish his eligibility in consequence of the defendants' persistent denial of the plaintiff's claim

to such eligibility, whereby the revenue authorities were induced to refuse to recognize it,—*Held* that the suit was recognizable by a Civil Court. *Held* also that such a suit would lie even when the object of it was only to enable the plaintiff to influence the revenue authorities by showing that the Civil Court had declared him eligible for office as patil. *Abaji Sankroji* v. *Niloji Baloji, 2 Bom., 342,* and *Yesaji Apaji* v. *Yesaji Mhaloji, 8 Bom., A. C., 35,* distinguished. NINGANGAVDA PATIL *v.* SATYANGAVDA PATIL
[11 Bom., 232

100. ———— **Suit to establish right to officiate in proportion to shares held.**—Where the plaintiff had two shares and the defendant one in a patilki watan, and the plaintiff brought a suit to establish his right to officiate twice as often as the defendant,—*Quære.*—Whether the Civil Court had jurisdiction to entertain the suit. BHAVANI SADASHIV *v.* BHAVANI MANAJI . **12 Bom., 232**

101. ———— **Suit for declaration of right to officiate as sole representative of a branch of watandar family**—*Bombay Hereditary Offices Act (III of 1874).*—From the date of the coming into force of the Bombay Hereditary Offices Act (III of 1874), it is not competent to the Civil Court to entertain a suit for a declaration of right to officiate as the sole representative of a branch of a vatandar family, the Act constituting the Collector a Judge for this and other purposes of the Act. KHANDO NARAYAN KULKARNI *v.* APAJI SADASHIV KULKARNI
[I. L. R., 2 Bom., 370

102. ————**Suit for declaration of right to officiate as watandar**—*Bombay Hereditary Offices Act (III of 1874).*—Since Bombay Act III of 1874 came into force, no suit will lie in a Civil Court for a declaration that a person is eligible to officiate as a hereditary officer falling within the scope of that Act. Since that Act became law, none but representative vatandars or their deputies or substitutes can officiate; and the duty of determining what persons shall be recognized as representative vatandars is vested in the Collector, whose proceeding is a judicial proceeding. CHINTO ABAJI KULKARNI *v.* LAKSHMIBAI . . . **I. L. R., 2 Bom., 375**

103. ———————— *Bombay Hereditary Offices Act (III of 1874), s. 18—Suit by village mahars to recover aya—Declaratory suit.*—S. 18 as much as s. 25 of the Bombay Hereditary Offices Act (III of 1874) excludes by direct implication any right on the part of the Civil Courts to declare that persons are eligible to serve as hereditary officers under the Act. *Khand Narayan* v. *Apaji Sadashiv, I. L. R., 2 Bom., 370,* and *Chinto Abaji* v. *Lakshmibai, I. L. R., 2 Bom., 375,* followed. *Ramchandra Dabholkar* v. *Anant Sat Shenvi, I. L. R., 8 Bom., 25,* distinguished. The plaintiffs sued, as vatandar mahars of certain villages, to establish their right to receive the aya attached to their office, as against defendants, who were the vatandar mangs of the same villages, and who claimed the right to receive the aya equally with the plaintiffs. *Held* that the suit was not cognizable by a Civil Court. PARSHA *v.* LAGMYA SHAN . **I. L. R., 13 Bom., 83**

104. ———————— *Bombay Hereditary Offices Act (III of 1874), s. 56—Registration of vatandar.*—A decree of the District Court at Sholapore made in 1863 declared the plaintiff to be a hereditary deputy vatandar of a certain deshpandi vatan, vested in the defendants as hereditary vatandar, and as such deputy entitled to receive a certain sum annually out of the income of the vatan. The plaintiff received moneys from time to time under his decree; he was not, however, subsequently to the decree registered and treated as a representative vatandar under Bombay Act III of 1874, s. 56. *Held* that, as plaintiff was not registered and treated as "a representative vatandar" under Bombay Act III of 1874, although the decree of 1863 entitled him to be so registered, a Civil Court had no jurisdiction to register him as such a representative vatandar, or to direct that he should be so registered by the Collector, and that any application for such registration should be made to the Collector. GOPAL HANMANT *v.* SAKHARAM GOVIND . . **I. L. R., 4 Bom., 254**

105. ———————— *Suit in respect of an injury caused by exclusion from an hereditary office—Bombay Hereditary Offices Act (III of 1874), s. 40—Election of an officiator—Free election—Agreement in restraint of free election—Bombay Act X of 1867, s. 4—Its application to suits between private persons.*—The plaintiff and his co-sharers in a kulkarni vatan entered into an agreement in 1869 for the performance of the duties of the vatan by the several sharers in turn. The agreement provided that, if any of the sharers prevented the nomination of a sharer to officiate in his turn, he should pay R100 as damages to the person thus excluded from office. The plaintiff alleged that in 1883 it was his turn to officiate, that the defendants, instead of electing him in accordance with the agreement, nominated another person, who was confirmed in the appointment by the Collector. The plaintiff therefore sued the defendants to recover R100 as damages for breach of the agreement of 1869. *Held* that the agreement could not be enforced by a civil suit, as it was opposed to the policy of s. 40 of Bombay Act III of 1874, which contemplates a free election of an officiator by the whole body of registered representative vatandars to whom the Collector issue his notice—an election unfettered by any promises made beforehand by any of the sharers. *Held* also that a suit in respect of any injury caused by exclusion from office or service is barred by the second paragraph of cl. (*a*) of s. 4 of Bombay Act X of 1876. Having regard to the wording of the several clauses of s. 4, the bar therein provided is not limited to suits against Government. NARO PANDURANG *v.* MAHADEV PURSHOTAM
[I. L. R., 12 Bom., 614

106. ———————— *Suit for lands attached to hereditary office—Mad. Reg. VI of 1831, s. 3.*—A suit in the Civil Courts for "maniam" lands attached to the hereditary office of village carpenter is barred by the operation of s. 3 of Regulation VI of 1831. PALAMALAI PADAYACHI *v.* SHANMUGA AUSARI **I. L. R., 17 Mad., 302**

PICHHUVAYYAN *v.* VILAKKUDAYAN ASARI **[I. L. R., 21 Mad., 134**

107. ———————— *Suit for partition and declaration of right to a specific share in a kulkarni vatan and to officiate—Hereditary office—Vatandar's Act (Bom. Act III of 1874), s. 67—Collector, Duty and functions of.*—In a suit for partition of a kulkarni vatan for a declaration that the plaintiffs were entitled to officiate as kulkarnis and for a third share in the moiety of the vatan belonging to the parties, it was contended that under the Vatandars' Act (Bombay Act III of 1874) the suit was not maintainable in the Civil Court. *Held* that the Vatandars Act does not preclude the Civil Court from declaring the plaintiffs' right to the status of vatandars when the share defined is in respect of a share in the vatan belonging to the branch of the parties, and the declaration does not interfere with the rights of the Collector in any way as given by the Act. In preparing the register, the Collector's duty, as determined by s. 67 of the Act, is confined to specifying the names of the heads of families and the proportionate part possessed by each head, and is in no way concerned with the rights of the members of a particular branch *inter se.* GOVIND SITARAM *v.* BAPUJI MAHADEO . . **I. L. R., 18 Bom., 516**

108. ———————— *Right to hereditary office of guru—Civil Procedure Code (1882), s. 11.*—The plaintiff as Anagundi Raja guru claimed to be entitled and now sued for a declaration of his title to the hereditary office of priest of Samayacharam. The defendants claimed the office and had collected voluntary contributions in the character of the holders of such office. The office was not connected with any particular temple; no specific pecuniary benefit was attached to it, and the alleged duties of the office were to exercise spiritual and moral supervision over persons wearing a certain caste mark in a certain tract of country. *Held* that the suit was not cognizable by a Civil Court THOLAPPALA CHARLU *v.* VENKATA CHARLU . **I. L. R., 19 Mad., 62**

109. ———————— *Suit in which the right to an office and to its emoluments is in dispute.*—A suit in which the only question for decision was whether or not the plaintiff was the aya of a certain muth, and entitled as such to receive certain fees on the occasion of marriages, is a suit of a civil nature in which the right to an office and thereby to certain fees is in contest. Such a suit is cognizable by a Civil Court. Its decision in no way involves any interference in a caste question. GURSANGAYA *v.* TAMANA **[I. L. R., 16 Bom., 281**

110. ———————— *Civil Procedure Code, 1882, s. 11—Suit for right to property and for office or emolument.*—The plaintiffs were some of the bhakats or members of a satra or religious fraternity, and they claimed the right to enter the kirtanghar or prayer hall, and perform their prayers and other rites therein. They alleged in the plaint that the management of the affairs of the satra, "including the distribution of honorarium and offerings and the appointment and dismissal of the satria," or head of the fraternity, was vested in the samuha, or entire body of bhakats, and that they and their forefathers had been from generation to generation in receipt of the honorarium and offerings, and had been performing the rites and ceremonies according to the custom of the satra until they had been obstructed and interfered with by the defendants in such performance and had been expelled from the kirtanghar. The prayer of the plaint was that the plaintiffs' right to enter the kirtanghar to perform the said rites and ceremonies and to receive their share of the offerings might be established; that the kirtanghar from which they had been dispossessed might be made over to them for the purpose of such performance, and that a prohibitory injunction might be granted enjoining the defendants not to obstruct them in such performance. The defendants, who were the satria and the other members of the fraternity forming the majority of the entire body of bhakats, denied the rights claimed by the plaintiffs as bhakats, and stated that the satra was governed by the satria and a select body of bhakats, that the plaintiff No. 1 had received mantra or spiritual initiation from one Saruram, contrary to the rules of the fraternity, and had been convicted, moreover, of a criminal offence, and a fine of R100 had accordingly been imposed on him and his partizans by the governing body of the satra, whose orders they had disobeyed by refusing to pay the fine, and they had therefore been excluded from entering the kirtanghar; and the defendants contended that the Civil Court had no jurisdiction in the matter, and that the suit was therefore not maintainable. The lower Courts held that the Civil Court could entertain the suit, and they made decrees practically ordering the admission of the plaintiffs to the kirtanghar on their complying with the order imposing the fine. *Held* that, having regard to the prayer for possession of the kirtanghar, and to the allegations made in the plaint about the position and privileges of the bhakats and their rights to honorarium and offerings, and to the defendants' denial of those rights and of the plaintiffs' right to enter the kirtanghar, the suit must be regarded as one in which right to property and to an office, within the meaning of the explanation to s. 11 of the Civil Procedure Code, is contested, and therefore, notwithstanding that the honorarium and offerings were of trifling and merely nominal value, one of a civil nature and cognizable by the Civil Court. JAGANNATH CHURN *v.* AKALI DASSIA **[I. L. R., 21 Calc., 463**

111. ———————— **Suit for share in emoluments of vatan**—*Bombay Hereditary Offices Act (III of 1874)—Act X of 1876.*—Neither Bombay Act III of 1874 nor Act X of 1876 contains any provision excluding the jurisdiction of Civil Courts in a

JURISDICTION OF CIVIL COURT —*continued.*

15. OFFICES, RIGHT TO—*continued.*

suit brought to establish a share in the emoluments of a vatan which has ceased to be a service vatan. MOHEYODIN *v.* CHHOTIBIBI . **I. L. R., 5 Bom., 578**

112. ———— Suit for damages for wrongly continuing in office—*Refusal to give up office—Hereditary Offices Act (Bom. Act X of 1876), s. 4, cl. (a), para. 2.*—Under Bombay Act III of 1874, the Civil Courts cannot entertain a suit which seeks to recover damages against the defendant for wrongly continuing in office as patil, instead of resigning in favour of the plaintiff, in obedience to a family custom which entitled the plaintiff to serve as patil every fourth year, whereby the plaintiff lost the emoluments of office. *Quære*—Whether the claims excluded by Act X of 1876 as amended by Act XVI of 1877, s. 1, are limited to claims against Government. VASUDEV VITHAL SAMANT *v.* RAMCHANDRA SAMANT . . . **I. L. R., 6 Bom., 129**

GANPATRAV *v.* RANGRAV
[I. L. R., 6 Bom., 133 note

GAVDAPA *v.* SHIBASANGVADA
[I. L. R., 6 Bom., 133 note

113. ———— Suit to rank as vatandar—*Bombay Hereditary Offices Act (III of 1874).*—Under the Vatandars Act (Bombay Act III of 1874), as under the law antecedent to it, the Civil Court has jurisdiction to entertain a suit to be declared a vatandar. This jurisdiction rests on the simple denial of the plaintiff's right by the defendant, irrespective of the pecuniary loss or other injury caused or likely to arise to the plaintiff by its infraction. When the list of vatandars is either undisputed or settled by the decree of the Civil Court, the Collector derives jurisdiction under the Act to determine which of them shall be their representative. RAMCHANDRA DABHALKAR *v.* ANANT SAT SHENVI
[I. L. R., 8 Bom., 25

114. ———— Suit for a share and entry of name in place of deceased vatandar—*Bombay Hereditary Offices Act (III of 1874), s. 35—Heir—Adopted son.*—S. 35 of the Bombay Hereditary Offices Act (III of 1874) only contemplates the intervention of a Civil Court for the purpose of establishing the right of the claimant to be regarded as the adopted son of the deceased registered vatandar. When the claimant's suit is not limited to that object, but asks for a declaration of his share in the vatan and of his title to have his name entered in the vatan register, the suit is beyond the jurisdiction of the Civil Court. BALKRISHNA CHIMNAJI *v.* BALAJI . . . . **I. L. R., 9 Bom., 25**

115. ———— Suit to recover lands enfranchised—*Hereditary Office—Enfranchised inam—Mad. Reg. VI of 1831—Mad. Act IV of 1866.*—Where a claim to an hereditary village office, falling under Regulation VI of 1831, has been made and rejected by a Collector prior to the abolition of the office and the enfranchisement of the lands which formed the emoluments of the office, a Civil Court cannot take cognizance of a suit by the claimant to recover the lands from the incumbent to whom the lands have been granted by the Inam Commissioner. KAMATCHI AMMAL *v.* AGILAND AMMAL
[I. L. R., 6 Mad., 334

116. ———— Suit for a declaration as to land alleged to be nattamai maniyams—*Mad. Reg. VI of 1831, s. 3—Jurisdiction of Revenue Courts—Res judicata—Civil Procedure Code, 1882, s. 13.*—In a suit to establish plaintiff's title to certain land alleged by the defendants, who were the Secretary of State for India in Council and the nattamaigar of a certain village, to be maniyam land attached to the office of the second defendant, and previously held to be such by a Revenue Court in a suit under Regulation VI of 1831,—*Held* it was not a suit which the Civil Court was precluded from entertaining by Regulation VI of 1831, nor was the decision of the Revenue Court one of a Court competent to decide the matter. The Civil Court therefore was not precluded either by Regulation VI of 1831, s. 3, or by the decision of the Revenue Court from granting the declaration prayed for. RAVUTHA KOUNDAN *v.* MUTHU KOUNDAN
[I. L. R., 13 Mad., 41

117. ———— Suit for declaration of right to represent family—*Vatandar family—Hereditary Offices Act (Bombay Act III of 1874), s. 25.*—The plaintiff sued for a declaration that the branch of the Gavda family which he represented was elder than that represented by one of the defendants. The object which he desired to obtain by a declaration in that form was to influence the Collector in determining whether he should be recognized as the representative vatandar in respect of the four annas share which the Gavda family possessed in a patelki vatan. *Held* that the Civil Court had no jurisdiction to entertain the suit, since the declaration sought, if made, would in effect be a declaration of plaintiff's status as representative vatandar. This, however, equally with the duty of ascertaining the custom of the vatan as to service, was a duty which by s. 25 of the Bombay Hereditary Offices Act (Bombay Act III of 1874) was imposed on the Collector, and not upon the Civil Court. RAOJI *v.* GENU
[I. L. R., 22 Bom., 344

118. ———— Suit to contest resumption of charitable inam—*Mad. Reg. VII of 1817—Act XX of 1863.*—A suit by the grantees to contest the right of the Government to resume an inam granted for the support of a chattram and for feeding Brahmins is cognizable by the Civil Courts. SUBRAMANYA *v.* SECRETARY OF STATE FOR INDIA
[I. L. R., 6 Mad., 361

16. PARTNERSHIP.

119. ———— Suit for accounts and share of profits of partnership.—A suit between copartners for a settlement of accounts and share of the profits is maintainable in the Civil Courts of India, which are Courts both of law and equity. RAM NARAIN *v.* HEERA LALL . . **1 Agra, 226**

JURISDICTION OF CIVIL COURT —*continued.*

16. PARTNERSHIP—*concluded.*

120. ———— **Suit for dissolution of partnership**—*Winding-up—Contract Act (IX of 1872), s. 265—Civil Procedure Code, ss. 11, 213, 215, sch. IV, form No. 113.*—The ordinary Civil Courts have jurisdiction to try a suit for dissolution of a partnership, their jurisdiction to try such suits not being ousted by s. 265 of the Contract Act, 1872. RAMJIWAN MAL *v.* CHAND MAL [**I. L. R., 7 All., 227**

17. PENALTIES.

121. ———— **Imposing penalty without authority**—*Interference with rights of parties by way of penalty.*—Civil Courts have no power to interfere with the vested rights of parties merely by way of penalty, unless they are authorized to do so by positive legislative enactment. RAM SAHOY SINGH *v.* KOLDEEP SINGH . . . **15 W. R., 80**

See RAMNIDHY KOONDOO *v.* AJOODHYARAM KHAN . . . . **11 B. L. R., Ap., 37**

18. POLITICAL OFFICERS.

122. ———— **Act done by political officer**—*Interference with private rights.*—An act done by a political officer interfering with the private rights of parties can be questioned in the Civil Courts. MUKOOND NARAIN DEO *v.* JOY COOMAREE DEBIA [**1 W. R., 16**

123. ———— **Suit for damages against Political Agent at Court of Modhool**—*24 & 25 Vict., c. 104, s. 9—Letters Patent, cl. 13.*—In a suit brought in the High Court at Bombay by the Hindu inhabitants of Mahalingpore, a village in the territories of the Chief of Modhool, against the Political Agent at the Court of Modhool, for damages for injury done to them by certain orders made by him in his executive capacity,—*Held*, even assuming there was a cause of action, the High Court had no jurisdiction to try it either under s. 9, 24 & 25 Vict., c. 104, as a Court of ordinary original civil jurisdiction, or in its extraordinary civil jurisdiction under s. 13 of the Letters Patent. INHABITANTS OF MAHALINGPORE *v.* ANDERSON [**7 B. L. R., 452 note**

19. POTTAHS.

124. ———— **Suit to compel grant of pottah**—*Landlord and tenant—Maurasidars, Right of—Relinquishment of tenure—Grant to maurasidars.*—Where the mirasidars of a village have relinquished their pottah for lands in the village, and thereby given occasion to the revenue authorities to offer pottahs to others, a Civil Court cannot compel the revenue authorities to grant a pottah to the maurasidars in preference to strangers, although the maurasidars may have a preferential claim under the Darkhast rules. SUBBARAYA MUDALI *v.* COLLECTOR OF CHINGLEPUT . **I. L. R., 6 Mad., 303**

JURISDICTION OF CIVIL COURT —*continued.*

19. POTTAHS—*continued.*

125. ———— **Suit for declaration of exclusive possession under pottah from Government**—*Allegation of wrong insertion of name in pottah.*—The plaintiff sued to have it declared that he was entitled to exclusive possession of certain land held under a pottah from the Government, alleging that the name of the defendant had been improperly inserted in such pottah. *Held* that the suit was properly brought in the Civil Court. PURNAMAL DEKA KOHTA *v.* MAYARAM DEKA KOHTA [**10 C. L. R., 201**

126. ———— **Suit to cancel pottah**—*Cause of action.*—Plaintiff sued in a Civil Court to cancel a pottah which he alleged was incorrect and fraudulently antedated by the defendant with a view to prevent plaintiff from taking steps to cancel it in a Revenue Court: a copy of the pottah had been affixed to plaintiff's house. *Held* that the plaintiff had no cause of action cognizable by a Civil Court. NURDIN *v.* ALAVUDIN . **I. L. R., 12 Mad., 134**

127. ———— **Suit in Civil Court to enforce exchange of pottah and muchalka**—*Madras Rent Recovery Act (VIII of 1865)—Declaratory decree—Civil Procedure Code, s. 53—Amendment of plaint.*—A suit in the Court of a District Munsif to enforce acceptance of a pottah and execution of a muchalka by defendant in respect of a holding in a village to which plaintiff claimed title was dismissed as not being maintainable. *Held* that the suit should not have been dismissed, but the plaint should have been amended by the addition of a prayer for a declaration of the plaintiff's title; and that the Court then would have had jurisdiction to grant by way of consequential relief the relief originally sought. NARASIMMA *v.* SARYNARAYANA [**I. L. R., 12 Mad., 481**

128. ———— **Suit to enforce acceptance of improper pottah**—*Madras Rent Recovery Act (Mad. Act VIII of 1865), ss. 3, 7, 87—Decree for rent.*—A landlord sued his tenants in the Court of a District Munsif to enforce acceptance of pottahs and the execution of muchalkas by them, and to recover arrears of rent. The suits were filed more than thirty days after tender of the pottahs which were found to contain certain improper stipulations. *Held* that the Civil Court had jurisdiction to entertain the suit and to modify the pottahs where they were found to be improper and to enforce the execution of corresponding muchalkas. *Held* also that the claim for rent should have been disallowed on the ground that the pottahs as tendered were improper pottahs. *Narasimma* v. *Sarynarayana, I. L. R., 12 Mad., 481,* distinguished. EASWARA DOSS *v.* PUNGAVANACHARI . **I. L. R., 13 Mad., 361**

129. ———— **Suit to enforce exchange of pottah and muchalka**—*Madras Rent Recovery Act (Mad. Act VIII of 1865), ss. 3, 7, 87—Amendment of pottah.*—*Held* by COLLINS, C.J., MUTTUSAMI AYYAR and PARKER, JJ. (SHEPHARD, J., dissenting) that an ordinary Civil Court has jurisdiction to entertain a suit to enforce acceptance of a

19. POTTAHS—*concluded.*

pottah and execution of a muchalka. *Held* further that, if the pottah which has been tendered is found not to be a proper one, such a Court cannot amend it and direct the tenant to execute a muchalka corresponding with it as amended, but can, in a suit properly framed for that purpose, pass a decree declaring what is a proper pottah. RAMAYYAR *v.* VEDACHALLA [I. L. R., 14 Mad., 441

130. ———— **Suit for enforcement of pottah and other relief**—*Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10—Declaration as to enforceable stipulations.*—In a suit brought in the Court of a District Munsif by a zamindar and his lessee against a cultivating tenant to enforce the exchange of pottah and muchalka and for further and other relief,—*Held,* following *Ramayyar* v. *Vedachella, I. L. R., 14 Mad., 441,* that the Civil Court had jurisdiction, and that a decree should be passed containing a declaration as to the terms which the pottah should contain. SATAPPA PILLAI *v.* RAMAN CHETTI . . I. L. R., 17 Mad., 1

131. ———— **Pottah granted by Government**—*Application to Government for waste land—Irregular publication of application—Effect of non-compliance with darkhast rules on title.*—The plaintiff, having obtained an assignment from Government of waste land, was obstructed by the defendants in his attempt to enter into occupation, and he sued for a declaration of his title and for possession. It appeared that his application for the land had not been duly published, and certain other formalities had not been observed, as provided by the darkhast rules, but the land had been assigned to him and a pottah granted by Government. *Held* that the plaintiff's title was not invalidated by reason of the non-compliance with the darkhast rules, and the Civil Court had no jurisdiction to set aside the plaintiff's pottah on that ground. PERIAROYALU REDDI *v.* ROYALU REDDI . . . I. L. R., 18 Mad., 434

20. PRIVACY, INVASION OF.

132. ———— **Suit for injury caused by invasion of privacy.**—The doctrine that the injury caused by invasion of one's privacy is a sentimental grievance, rather than a substantial injury for which relief can be claimed at law, has not received judicial sanction from the Indian tribunals, and is opposed to the feelings and unsuited to the habit of the natives of the country. RAM BUKSH *v.* RAM SOOKH . . . . . . 3 Agra, 253

133. ———— **Invasion of privacy by opening windows.**—The invasion of privacy by opening windows is not treated by the law as a wrong for which any remedy is given. KOMATHI *v.* GURUNADA PILLAI . . . . . 3 Mad., 141

134. ———————— *Easement—Suit for injunction—Right of suit.*—The invasion of privacy by opening windows is not a wrong for which an action will lie. *Komathi* v. *Gurunada Pillai, 3 Mad., 141,* followed. AZUF *v.* AMEERULIBI [I. L. R., 18 Mad., 163

20. PRIVACY, INVASION OF—*continued.*

135. ———— **Suit to have windows closed**—*Invasion of privacy of women.*—The defendants having opened certain windows and erected a verandah in their house which commanded a view of the plaintiffs' female apartments, the plaintiffs brought a suit against them to have the windows closed and the verandah removed. *Held* that no such suit was maintainable. MAHOMED ABDUR RAHIM *v.* BIRJU SAHU [5 B. L. R., 676 : 14 W. R., 103

136. ———— **Suit to have windows removed**—*Invasion of privacy of women.*—In a suit to compel the defendant to remove certain windows in his house which overlooked the apartments occupied by the females of the plaintiff's household,—*Held* that the plaintiff was not entitled to have them closed. KAMLAL *v.* MAHESH BABOO [5 B. L. R., 677 note

KALEE PERSHAD SHAHA *v.* RAM PERSHAD SHAHA [18 W. R., 14

137. ———— **Suit to have doors closed**—*Invasion of privacy of women.*—A suit to close doors recently opened in the house of a neighbour on the ground that such doors overlook the zenana or female apartments of the plaintiff, does not lie. GOLAM ALI *v.* MAHOMED ZAHUR ALUM [6 B. L. R., Ap., 76

See GIBBON *v.* ABDUR RAHMAN KHAN [3 B. L. R., A. C., 411

138. ———— **Raising house to get extended range of vision**—*Invasion of privacy.*—Where a house-owner in a street changed the arrangement or construction of the upper part of his house, so that the alteration gave him a wider range of vision than before, but in a manner otherwise consistent with his rights of enjoyment, no legal right of suit is given to a neighbour living on the other side of the road complaining of loss of privacy. JOOGUL LAL *v.* JASODA BIBEE . . . 3 N. W., 311

139. ———— **Opening new doors or windows**—*Usage of Gujerat—Overlooking neighbour's house.*—*Held* that, in accordance with the usage of Gujerat, an invasion of privacy is an actionable wrong, and that a man may not open new doors or windows in his house, or make any new apertures, or enlarge old ones, in a way which will enable him to overlook those portions of his neighbour's premises which are ordinarily secluded from observation, and so intrude upon his privacy. The doctrine of English law, which has been followed by the High Court of Madras, is different. MANI SHANKAR HARGOVAN *v.* TRIKAM NARSI . . . 5 Bom., A. C., 42

140. ———————— *Usage of Gujerat.*—When in Gujerat a householder's privacy is invaded by the opening of new doors and windows in his neighbour's house, his right of action is not altered by the fact that a public road runs between the dominant and the servient tenements. *Mani Shankar Hargovan* v. *Trikam Narsi, 5 Bom., A. C., 42,* followed. KUVARJI PREMCHAND *v.* BAI JAVER [6 Bom., A. C., 143

JURISDICTION OF CIVIL COURT —*continued.*

20. PRIVACY, INVASION OF—*concluded.*

141. ——— Right to have window opening on to neighbouring house—*Right of privacy.*—Where the plaintiff opened a new window in his house at Dharwar, which rendered the defendant's house less private than before,—*Held* that the plaintiff was not guilty of any tortious act, and should not be debarred from improving his own house, though the effect might be, to some extent, prejudicial to his neighbour. To establish such an exceptional privilege, as is customary in this respect in the towns of Gujerat, evidence of the most satisfactory character is necessary. SRINIVAS UDPIRAV *v.* REID . . . . . . **9 Bom., 266**

142. ——————— *View of open courtyard.*—Where a window opened by the defendant commanded a view, not of the plaintiff's private apartments, but of an open courtyard outside his house, it was held that there had been no invasion of the plaintiff's privacy which would entitle him to have the window closed, according to the custom legally recognized in Gujerat. KESHAV HARKHA *v.* GANPAT HIRACHAND . . . **8 Bom., A. C., 87**

21. PROCESSIONS.

143. ——— Suit for declaration of right to carry religious emblems in a procession and for damages—*Right of suit*—*Public highway.*—A suit for declaration of right to carry religious emblems in a procession through the streets of a village and for damages for preventing the plaintiff from doing so lies in the Civil Court. In a case in which a Mahomedan of the Shea sect, claiming to be a part owner of a village, was prevented by a number of the rival sect of Sunnis from introducing the emblems of a standard and flags and a massak pierced by an arrow in the procession of tazias during the Mohurrum it was held that a suit of this description would lie either on the footing that the roads were roads of which the public had the use or on the footing that the plaintiff had a right as one of the sharers in the village. MOHAMED ABDUL HAFIZ *v.* LATIF HOSEIN . . . . **I. L. R., 24 Calc., 524**

See SUJAUDIN *v.* MADHAVDAS
[I. L. R., 18 Bom., 693

22. PUBLIC WAYS, OBSTRUCTION OF.

144. ——— Erection of building in public road—*Nuisance.*—A person aggrieved by the erection of a building in a public thoroughfare, or on the waste land of a town or village, may institute a suit in a Civil Court for its removal, instead of preferring a complaint to the Magistrate. JINA RANCHOD *v.* JODHA GHELLA . . . **1 Bom., 1**

145. ——— Suit for closing a new road and opening old one.—In a suit for closing a new road opened by the defendant through the land of the plaintiff, and for opening an old road which had been closed by the defendants,—*Held per* MARKBY, *J.*, that the question of opening and closing a public road belongs to the Criminal Court. The Civil Court had no jurisdiction to entertain the suit HIRA CHAND BANERJEE *v.* SHAMA CHARAN CHATTERJEE **3 B. L. R., A. C., 351: 12 W. R., 275**

JURISDICTION OF CIVIL COURT —*continued.*

22. PUBLIC WAYS, OBSTRUCTION OF —*continued.*

146. ——— Obstructing public road, Suit for—*Special inconvenience*—*Dedication to public.*—A suit will not lie for obstructing a public road without showing any particular inconvenience to the plaintiff in consequence of such obstruction. A donor does not, by dedicating a thing to the public, necessarily become a guardian of the public *quoad* that thing. BARODA PROSAD MOSTAFI *v.* GORA CHAND MOSTAFI
[3 B. L. R., A. C., 295: 12 W. R., 160

147. ——————— No suit lies for obstructing a public road, unless the plaintiff can show that he has suffered particular inconvenience from such obstruction. PARBATI CHARAN MUKHOPADHYA *v.* KALINATH MUKHOPADHYA
[4 B. L. R., Ap., 73

148. ——————— *Suit by zamindar for removal of obstruction*—*Special damage*—*Special inconvenience*—*Cause of action.*—No suit lies for the removal of an obstruction to a public way, unless the plaintiff proves special damage from the obstruction; and this equally applies whether the plaintiff is a zamindar or any ordinary member of the community. RAJ NARAIN MITTER *v.* EKADASI BAG . . . . **I. L. R., 27 Calc., 793**

149. ——— Obstructing public road—*Suit for declaration of right of way*—*Special damage.*—A suit for declaration of right of way by a public road will not lie, where there is no allegation of special injury or inconvenience to the plaintiff. RAMTARAK KARATI *v.* DINANATH MANDAL
[7 B. L. R., 184

RAJ LUKHEE DEBIA *v.* CHUNDER KANT CHOWDHRY . . . . . . **14 W. R., 173**

BHAGEERUTH BISHEE *v.* GOKUL CHUNDER MUNDUL . . . . **18 W. R., 58**

BHUGEERUTH DASS KOYBURTO *v.* CHUNDER CHURN KOYBURTO . . . . **22 W. R., 463**

150. ——————— *Criminal Procedure Code, 1872, s. 521.*—No suit for obstructing a public thoroughfare can be maintained in a Civil Court without proof of special injury. KARIM BAKSH *v.* BUDHA . . **I. L. R., 1 All., 249**

151. ——————— *Special damage*—*Abatement of nuisance*—*Criminal Procedure Code (Act X of 1872), s. 518*—*Damages, Right to.*—Where special damage is caused to any person by an obstruction placed upon a public thoroughfare, he is entitled to bring an action in the Civil Court for the purpose of having the nuisance abated, notwithstanding the provisions of s. 518 and the following sections of the Criminal Procedure Code for summary proceedings before a Magistrate, and notwithstanding that he may be entitled to damages. RAJ KOOMAR SINGH *v.* SAHIBZADA ROY
[I. L. R., 3 Calc., 20

152. ———————— *Public thoroughfare—Right to sue—Special damage—Leave—Right of lessee—Trespass.*—The plaintiff, a holder of a ten years' lease of the share and rights of one of the co-sharers of a village, sued for the demolition of certain buildings and constructions on a plot of land within the area of the village on the ground that the public had been very much inconvenienced in going to and coming from the road and in taking carts, carriages, cattle, etc., and that he by reason of his own inconvenience, and also as lessee in possession of the entire rights of his lessor, had legally and justly a right to bring the action. The findings of fact were that by the terms of the lease plaintiff was entitled to maintain the action as representing the zamindari rights of his lessor; that the obstructions complained of existed when the lease was granted; that the roadway mentioned in the plaint was one used by the public in general as a foot-path and also for vehicles, and that the buildings complained of had encroached on the road. The suit was dismissed by the first Court, but decreed on appeal by the lower Appellate Court. *Held* that, in the absence of proof of damage over and above that which in common with the rest of the public the plaintiff has sustained, his action must fail. Public nuisance is actionable only at the suit of a party who has sustained special damage, and the case law of British India in this respect is the same as the rule of English law on the subject. Further, that the lease to plaintiff failed to show either that the land upon which the defendant had built was included in the lease, or that it intended to confer upon the plaintiff any right to question the legality of the erections at the time of the lease. *Satku* v. *Ibrahim Aga, I. L. R., 2 Bom., 457*, and *Karim Buksh* v. *Budha, I. L. R., 1 All., 249*, referred to. RAMPHAL RAI *v.* RAGHUNANDAN PRASAD . . . . **I. L. R., 10 All., 498**

153. ———————— *Obstruction by building—Suit by zamindar for removal of buildings—Special damage—Right to sue.*—The plaintiff, who was the zamindar of the village, brought an action claiming to have a chabutra or building erected by the defendant in one of the village roads removed. The road in question was a katcha road used by the village over which the public had a right of way, and it had been dedicated as a road for the use and convenience of the general public. The plaintiff got a decree for the removal of the chabutra, and the defendant appealed. *Held* that the rule of English law that a member of the public cannot maintain an action for obstruction to a public road without showing special injury to himself beyond that suffered by any member of the public, does not apply to a zamindar who or whose predecessor in title had dedicated to the public the road over his zamindari land. A zamindar in giving the public right of road or way over his land does not give the public or anyone else a right to interfere with the soil of the road as by erecting a building upon it. In such a case the zamindar has in common with the public the right to use the road as a road; over and above it, he has a right to the soil in the road, which he had never given to the public. In an action of this kind, the zamindar does not sue as a guardian of the public, but in respect of an interference with his own rights of property. *Baroda Prosad Mustafee* v. *Gorachand Mustafee, 3 B. L. R., A. C., 295 : 12 W. R., 160*, discussed. *Dovaston* v. *Payne, 2 Smith's L. C., 1st Ed., 154 ; R.* v. *Pratt, 4 E. & B., 860 ; Rolls* v. *Vestry of St. George the Martyr, Southwark, L. R., 14 Ch. D., 785 ;* and *Goodson* v. *Richardson, L. R., 9 Ch. D., 221*, referred to. TOTA *v.* SARDUL SING **[I. L. R., 10 All., 553**

23. REGISTRATION OF TENURES.

154. ———— **Suit to compel registration of tenure**—*Suit to compel Collector to register and assess land transferred in accordance with Mad. Reg. XXV of 1802.*—The Civil Courts have jurisdiction to entertain a suit brought by the alienee to compel the Collector to register and sub-assess a portion of a zamindari transferred in accordance with the provisions of Madras Regulation XXV of 1802. PONNUSAMY TEVAR *v.* COLLECTOR OF MADURA **[3 Mad., 35**

155. ———— **Suit to compel Collector to register**—*Chota Nagpore—Beng. Regs. II of 1793, s. 9, and XIII of 1833.*—A suit will not lie to compel a Collector in Chota Nagpore to register a party as proprietor of an estate. LALLA BISSEN PERSHAD *v.* COLLECTOR OF HAZARIBAGH **[13 W. R., 397**

156. ———— **Right of transferee to have name registered**—*Act X of 1859, s. 27.*—The right given by s. 27 of Act X of 1859 to the transferee of a permanent transferable interest in land to have his name registered in the sherista of the zamindar in the place of that of his vendor is a right of a civil nature, and therefore the Civil Courts have cognizance of all suits necessary for the purpose of enforcing such right. The jurisdiction of the Collector is not exclusive, but concurrent. MADHUB CHUNDER PAL *v.* HILLS **[1 B. L. R., A. C., 175 : 10 W. R., 197**

157. ———— **Right of claimant to have name registered**—*Jurisdiction of Revenue Courts—Question of title—Registration of names—Declaratory decree, Suit for.*—It is not the province of a Revenue Court to decide questions of title between contending claimants, such questions being within the province of the Civil Courts. It is the duty of the latter in suits brought for declaration of a right to registration to declare the rights of parties in order that the revenue authorities may be duly certified as to the persons whom they ought to register. JUGUT SHOBHUN CHUNDER *alias* DOOLAL CHUNDER DEHINGUR GOSSAMY *v.* BINAUD CHUNDER *alias* SODA SHOBHUN CHUNDER DEHINGUR GOSSAMY **[I. L. R., 9 Calc., 925**

JURISDICTION OF CIVIL COURT —*continued.*

23. REGISTRATION OF TENURES—*concluded.*

158. ——— *Land in Assam —Suit for declaration of title to—Jurisdiction of Civil Court.*—A person claiming a right to rent-bearing land in Assam, held under a pottah from Government in the names of the persons against whom he claims, is entitled to sue in the Civil Court for a declaration of his title and right to have his name registered as co-owner in the Collectorate; and the Civil Court has jurisdiction to determine such suits, although the Collector has not been first applied to, but should not pass any order against the Collector in any suit to which he is not a party, but merely declare what the plaintiff's rights are. Bejoy Keot *v.* Boria Keot

[I. L. R., 7 Calc., 437: 9 C. L. R., 218

Kalindri Dabia *v.* Komolokanto Surma

[I. L. R., 7 Calc., 439 note

Hootaboo Ravah *v.* Loom Ravah

[I. L. R., 7 Calc., 440 note: 7 C. L. R., 221

159. ——— **Power to reverse order for registration of name**—*Land Registration Act (Beng. Act VII of 1876), ss. 52, 55—Declaratory decree—Possession, Confirmation of.*—The Civil Courts have no jurisdiction to make a decree reversing an order for the registration of the name of any person made by a registering officer under Bengal Act VII of 1876. All that the Civil Courts can do is to declare the title of an individual or to give him a decree for possession, and then the registration officers would, as a matter of course, proceed to amend their registers in accordance with the rights of the parties as settled by the Civil Courts. Omrunissa Bibee *v.* Dilawar Ally Khan . **I. L. R., 10 Calc., 350**

160. ——— **Right of purchaser to have lands registered in his name in revenue records**—*Vendor and purchaser—Suit for declaration of such right—Bombay Land Revenue Act (Bom. Act V of 1879), ss. 71 and 196—Demand for registration and refusal of Collector as preliminary to right of suit.*—Plaintiffs, having purchased certain lands in 1867, brought this suit in the year 1890 to obtain a declaration of their right, to have the land registered in their name in the revenue records. An objection having been raised in second appeal that the Court had no jurisdiction to entertain the suit, as the plaintiffs had not previously asked the Collector to place them on the register,—*Held* that this circumstance was not necessary to give jurisdiction, although it might be a reason for treating the suit as premature. Bhikaji Baji *v.* Pandu . . **I. L. R., 19 Bom., 43**

24. RELIGION.

161. ——— **Mahomedan religious customs**—*Civil Procedure Code, s. 11—Right of suit—Suit for injunction to restrain reading of the kutbah.*—Certain Moplahs, described as "the Moktessor and Jamats" of a mosque, sued certain other Mahomedans, described as "members of the Puslar caste," alleging that the custom was for the defendants to attend the plaintiffs' mosque on Friday at the reading of the kutbah, and that the defendants had recently built another mosque a short distance off, and had "for two months been attempting to read the kutbah there." It was further alleged in the plaint that such reading of the kutbah was "quite contrary to the Mahomedan religion," and that the defendants nevertheless proposed to have the kutbah read, "whereby the kutbah or adoration conducted in our mosque will, according to religion, be fruitless." The prayer of the plaint was for an injunction, restraining the defendants from reading the kutbah in their mosque. *Held* that the plaint disclosed no cause of action. Maine Moilar *v.* Islam Amanath . **I. L. R., 15 Mad., 355**

25. RENT AND REVENUE SUITS.

(*a*) Bombay.

162. ——— **Suits for immediate possession**—*Jurisdiction of Revenue Court.*—*Held* that the Civil and the Revenue Courts have concurrent jurisdiction to hear and decide suits in regard to immediate possession. Ex-parte Nagova kam Jakan Gauda . . . **3 Bom., A. C., 108**

163. ——— **Suit to rectify assessment of land revenue**—*Bom. Reg. XVII of 1827.*—The jurisdiction of Civil Courts in questions of assessment, as that jurisdiction stood under Regulation XVII of 1827, Ch. I, was confined to cases where the contention was that there is a right on the part of the occupant of the assessed land in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved. Government of Bombay *v.* Sundarji Savram . . . . . **12 Bom., Ap., 275**

See also Gulam Mohidin *v.* Collector of Ahmedabad . . . **12 Bom., Ap., 276**

Vyakunta Bapuji *v.* Government of Bombay

[12 Bom., Ap., 1

And Government of Bombay *v.* Haribhai Monbhai . . . . **12 Bom., Ap., 225**

164. ——— **Suit to recover possession of inam lands**—*Bom. Act III of 1863, s. 3.*—Bombay Act III of 1863, s. 3, deprives the Civil Courts of jurisdiction in respect of all claims against Government on account of inams, in other words, claims referring to total or partial exemption from the payment of Government revenue, but it does not deprive the Civil Courts of jurisdiction in respect of claims to recover possession of inam lands. Shidmal Gura *v.* Anderson . . . . . **11 Bom., 39**

165. ——— **Removal or destruction of boundaries**—*Bom. Act II of 1866—Encroachment.*—Where boundaries are removed or destroyed and when new ones are to be fixed, or where a question arises where boundaries run, the case falls under s. 3 of Bombay Act XI of 1866; but where the question between the parties is whether there has been an encroachment by the defendant on the lands of the plaintiff, the Civil Courts have jurisdiction. BAPUJI BALVANT *v.* RAGHUNATH VITHAL

[6 Bom., A. C., 72

166. ——— **Suit for amount improperly levied as rent**—*Broach Talukhdars' Relief Act (XV of 1871), s. 23—Personal liability of manager of thakur.*—The Broach Talukhdars' Relief Act (XV of 1871) does not bar the cognizance by the Civil Courts of a suit to recover the amount improperly levied as rent of rent-free land and to obtain a declaration that such land is not subject to the payment of rent, albeit that, under s. 23 of the Act, the manager of a thakur's estate is exempt from personal liability for anything done by him *bonâ fide* pursuant to the Act, and is not subject to an action for damages on account of the attachment of the plaintiff's property. ASMAL SALEMAN *v.* COLLECTOR OF BROACH . . . I. L. R., 5 Bom., 135

167. ——— **Inam Commissioner, Investigation of a claim by, under Act XI of 1852, and decision thereon**—*Bombay Revenue Jurisdiction Act (X of 1876), s. 4, cls. (f) and (k)—Government resolution setting aside the Commissioner's decision—"Adjudication"—Claim for interest on mesne profits awarded by Government resolution—Construction.*—In 1859 the plaintiff's claim to hold a certain village as an inam village was investigated by the Inam Commissioner under Act XI of 1852 and rejected, and the plaintiffs were dispossessed of the village. In 1861 Government confirmed the Commissioner's decision on appeal by the plaintiffs. Ultimately, however, in 1882, Government passed a resolution reversing its former decision, and subsequently passed a further resolution allowing the plaintiff's claim to the village and ordering the same to be restored to them. In 1885 the village was restored to the plaintiffs, and the arrears of revenue since 1859 were paid back to them. The plaintiffs then claimed interest on the arrears, and, being refused the same, sued to recover it. The District Judge was of opinion that s. 4, cl. (*f*), of Act X of 1876 barred the cognizance of the suit by the Civil Court, but referred that question under s. 13 of the Act to the High Court. *Held* that the Civil Court had jurisdiction to try the suit. The resolutions of Government amounted to a distinct adjudication by competent officers that the land was exempt from payment of revenue, and was sufficient to give the Civil Courts jurisdiction over the plaintiffs' claim. *Per* BIRDWOOD, *J.*—That the claim of the plaintiffs being to obtain all the advantage flowing from the favourable decision of Government in 1882, cl. (*f*) of s. 4 of Act X of 1876 apparently did not apply. The words "competent officer" as used in prov. (*k*) included the Governor in Council, who is one of the authorities upon whom judicial powers were conferred by Act XI of 1852. JANARDANRAV *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 13 Bom., 442

168. ——— **Suit for redemption of mortgage**—*Bombay Revenue Jurisdiction Act (X of 1876), s. 4, cl. (c)—Sale of mortgaged land by Native Chief for arrears of assessment—Claim by purchaser against mortgagor and mortgagee.*—The plaintiff sued to redeem certain land mortgaged by him to the first defendant. The second defendant claimed the land as owner, alleging that the mortgagor and mortgagee had failed to pay the assessment on the land to the Native Chief to whom it was due. The latter had accordingly sold it by public auction to realize the assessment, and he (defendant No. 2) had bought it. The Court of first instance rejected the plaintiff's claim on the ground that the suit could not be entertained by a Civil Court under the provisions of the Revenue Jurisdiction Act (X of 1876) and the Land Revenue Code (Bombay Act V of 1879). On appeal the District Court reversed the decree and remanded the case for trial on the merits. *Held,* confirming the order of the District Court, that Government having rendered no assistance in the proceedings for the realization of the revenue by the Native Chief on which the defendant relied, the jurisdiction of the Civil Court was not taken away by s. 4 (*c*) of the Revenue Jurisdiction Act. MAHADU *v.* LAKSHMAN . . . I. L. R., 17 Bom., 681

169. ——— **Suit by an inamdar against a khot to recover balance of land revenue**—*Revenue Jurisdiction Act (X of 1876), s. 4, sub-cl. (b)—Bombay Land Revenue Code (Bom. Act V of 1879), s. 216, cls. (a), (b), and (c)—Collector's certificate—Pensions Act (XXIII of 1871), s. 4—Survey by British Government—Change in rate of assessment of revenue.*—In a suit by an inamdar of a village against a khot to recover rent in kind (according to the market rate at the time of payment), the defendant (khot) contended (1) that he was only liable to pay cash assessment as fixed by the survey made by the British Government, which was at a lower rate than he had previously paid; (2) that the suit was barred for want of the Collector's certificate under s. 4 of the Pensions Act (XXIII of 1871); and (3) that the Civil Court had no jurisdiction to entertain the suit under the Revenue Jurisdiction Act (X of 1876), s. 4, sub-cl. (*b*), and the Land Revenue Code (Bombay Act V of 1879), s. 216, sub-cl. (*b*). *Held* that, as there was no objection by either party to the amount or incidence of assessment of land revenue fixed by Government, and the question being whether the khot was liable to pay to the inamdar maktas of assessment, the suit was not taken away from the cognizance of the Civil Courts by the Revenue Jurisdiction Act (X of 1876), s. 4, sub-cl. (*b*). *Held* further that the Court was not precluded from entertaining the suit for want of the Collector's certificate under the Pensions Act (XXIII of 1871), s. 4, because the original grant passed the lands, and because it is the original grant which determines whether the Pensions Act is applicable, and not the actual rights which the grantee, as a matter of fact, may have enjoyed by it. *Held,* further, that the payment which the khot had been making to the inamdar before the time of the British survey was in the nature of assessment or rating by

Government, but *held* also that the plaintiffs were entitled to the old assessment as claimed by them. It was plain that in cases falling within sub-cls. (*a*) and (*e*) of s. 216 of the Land Revenue Code (Bombay Act V of 1879), the inamdar's interest in the assessment would not be affected by the application of Chs. VIII to X of that Act. He would still get the old assessment in the alienated lands in the village in the former case, and the same amount of assessment in the latter, and the same must have been the intention in cases contemplated by sub-cl. (*b*). The "holder of the village" in the concluding paragraph of s. 216 must be read as meaning the "holder of the assessment or any part thereof of an alienated village." GANGADHAR HARI KARKARE *v.* MORBHAT PUROHIT . **I. L. R., 18 Bom., 525**

170. ——— Default in paying assessment of revenue—*Bombay Revenue Jurisdiction Act (X of 1876), ss. 4 (c) and 5 (b)—Payment of assessment by another—Order of Collector transferring lands into name of person paying assessment—Suit by defaulter to recover the land.*—An order made by a Collector removing *A's* lands from his khata, and transferring them to *B's* khata, on the ground that *A* had allowed the assessment thereof to fall into arrears, and that *B* had paid the assessment, does not by itself amount to forfeiture of *A's* interest in the lands. A suit by *A* to recover such land from *B* being simply a suit between private parties for the purpose of establishing a private right, s. 4 (*c*) of Act X of 1876 does not bar the jurisdiction of the Civil Court. BHAU *v.* HARI

I. L. R., 20 Bom., 747

171. ——— Forest Officer—*Bombay Revenue Jurisdiction Act (X of 1876), ss. 3 and 11—Revenue Officer—Forest Act (VII of 1878), s. 81.*—The bar of jurisdiction contained in s. 11 of Act X of 1876 does not apply to cases in which a Collector moves under s. 81 of Act VII of 1878 to recover, at the request of a Forest officer, the price of cut timber sold by the latter under s. 81 of Act VII of 1878, a Forest officer not being a Revenue officer under Act X of 1876. HARIBHAI GANDABHAI *v.* SECRETARY OF STATE FOR INDIA

I. L. R., 20 Bom., 764

172. ——— Free pasturage—*Bombay Revenue Jurisdiction Act (X of 1876), s. 4, cl. (f), and s. 5—Bombay Survey and Settlement Act (Bom. Act I of 1865), s. 32—Land Revenue Code (Bom. Act V of 1879), ss. 38 and 39—Land set apart by Government for grazing—Subsequent sale by Government of part of such land—Right of pasturage by the inhabitants of a village over Government waste lands—Right of Government over such land.*—The land comprised in three survey numbers situate in the village of Mahim were set apart by Government as free grazing land for the cattle of villagers. Out of this land about 2,600 acres was sold by Government to one *M* (defendant No. 2) in 1891. The extent of the area over which village cattle grazed before the sale being thus curtailed, the plaintiff for himself and on behalf of the other villagers brought this suit against the Secretary of State and *M*, alleging that the land left for grazing after the sale of 2,600 acres was insufficient for the pasturage of the village cattle and praying (in the alternative) that Government should set apart so much of the land as might be necessary for free grazing, etc., and that, until such land as was necessary had been set apart, the plaintiff might be declared to have the right of using the land comprised in the three survey numbers as heretofore, and that an injunction might be granted accordingly. Government alleged that the land that was left after the sale to *M* was sufficient for the *bonâ fide* needs of the villagers, and contended (*inter alia*) that the suit was barred under s. 4, cl. (*f*), of the Revenue Jurisdiction Act (X of 1876). *Held*, confirming the decree of the lower Court dismissing the suit, that while the Courts, consistently with the course of legislation, may have jurisdiction to declare that the villagers of a specified village are entitled to rights of free pasturage over Government waste lands within the limits of their village, still they can go on further and enjoin the Collector to pursue any particular course in connection with them while he is acting *bonâ fide* in pursuance of the power which the provisions of the statute confer upon him. The claim being against Government respecting the occupation of waste land belonging to Government, the Civil Courts are precluded from entertaining it under s. 4 of the Revenue Jurisdiction Act. A question relating to the discontinuous occupation of the village wastes by the village cattle is as much a question of land revenue as one relating to the permanent occupation of them or a portion of them by an individual. TRIMBAK GOPAL RAHALKAR *v.* SECRETARY OF STATE FOR INDIA . . . **I. L. R., 21 Bom., 684**

(*b*) MADRAS.

173. ——— Enfranchisement by Inam Commissioner.—Civil Courts have jurisdiction to enquire into the title of lands enfranchised by the Inam Commissioner, and the sanad granted by the Commissioner may be annulled, without destroying its effect as an enfranchisement of the inam. In a suit by the adopted son of the late possessor of inam to recover it,—*Held* that the Court had jurisdiction, notwithstanding the production by the defendant of title-deeds showing that the land had been granted to the defendant by the Inam Commissioner. CHERUKURI VENKANNA *v.* MANTRAVATHI LAKHSMI NARAYANA SASTRULU . . . **2 Mad., 327**

174. ——— Effect of certificate of Inam Commissioner.—*Evidence of title.*—The certificate of the Inam Commissioner does not afford conclusive evidence of the title of the person, nor is his decision one over which the Civil Courts have no jurisdiction. VISSAPPA *v.* RAMAJOGI **2 Mad., 341**

175. ——— Order for execution in suit tried by Village Munsif—*Corruption or partiality of Munsif—Mad. Reg. IV of 1816.*—The

Civil Court has no jurisdiction under s. 29 of Regulation IV of 1816 to make an order for the execution of a decree in a suit tried before a Village Munsif. The section only applies where a Village Munsif has been guilty of corruption or partiality in the decision of a cause tried by him. NARAYANASAMY NAIKAR *v.* VELU PILLAY . **4 Mad., 188**

176. ———— **Suit for produce of land held on service tenure**—*Mad. Reg. VI of 1831.*—Regulation VI of 1831 prohibits the Civil Courts from taking cognizance of a suit brought to recover the value of three years' produce of certain land (held by the plaintiff on service inam tenure), on the ground that the defendant, who held a lease from the plaintiff, wrongfully refused to give up possession on the expiration of his lease, and continued to hold the land and to deprive the plaintiff of the possession and enjoyment thereof. *Bassappah* v. *Kooroovatappa, Mad. S. D., 1858, p. 268,* distinguished. BASAPPAH *v.* YENKATAPPA . . **4 Mad., 70**

177. ———— **Appeal from order of Collector**—*Mad. Act VIII of 1865, ss. 41, 43.*—Certain landholders applied to the Collector for warrants to be put into possession of lands under s. 41 of Madras Act VIII of 1865. The warrants were issued, but certain raiyats appealed under s. 43 by presenting ordinary petitions. In disposing of these petitions, the Collector referred certain questions to arbitrators named by the parties, and then made an order in accordance with the award. The Civil Court heard an appeal from the order. *Held* that the Civil Court had no jurisdiction to hear the appeal. MADAI THALAVAY KUMMARASAMY MUDALIYAR *v.* NALLAKANNU TEVAN . . . **5 Mad., 289**

(*c*) NORTH-WESTERN PROVINCES.

178. ———— **Suits for possession of land**—*Land in Jhansi—Act XVIII of 1867.*—Since Act XVIII of 1867 came into force, suits for possession of land are cognizable in the Civil, and not in the Revenue Courts of the Jhansi Division. HEERA LAL *v.* RUDHOUL . . **2 N. W., 85**

179. ———— **Suit for recovery of proceeds of sale in execution of decree for rent**—*Decree of Revenue Court.*—Where plaintiff held a decree of a Munsif's Court against certain persons who were cultivators, and issued an attachment against their property, and their zamindar subsequently obtained an order for the execution of a decree of a Revenue Court for rent against the same parties, and also attached the same property, which was eventually sold to satisfy both decrees, although the proceeds were handed over to the zamindar only,—*Held* that a suit by the plaintiff against the zamindar for the recovery of such proceeds was cognizable in the Civil Courts. GOKOOL DASS *v.* GUNGESHER SINGH . . . **3 N. W., 164**

See GOGARAM *v.* KARTICK CHUNDER SINGH
[B. L. R., Sup. Vol., 1002
9 W. R., 514

180. ———— **Suit for specific performance of condition of lease.**—A suit to obtain specific performance of the conditions of a lease, and not to cancel the lease or eject the tenant from his holding, is cognizable by a Civil Court, and not by the Revenue Court. ABDOOL GHUNNEE *v.* GOODREE RAI . . . . . **2 Agra, Pt. II, 192**

181. ———— **Suit for declaration of title as holder of revenue-paying estate and for ejectment.**—A suit for a declaration that the defendant holds an estate paying revenue to Government as a manager subject to ejectment at will, and not under a perpetual lease at a fixed rate of rent, and for the defendant's ejectment, is one cognizable by the Civil Courts. MAHAMMAD ABU JAFAR *v.* WALI MAHAMMAD . . . **I. L. R., 3 All., 81**

182. ———— **Suit for mesne profits.**—The jurisdiction in the case of a claim to mesne profits is in the Civil, and not the Revenue Court. SHUNKUR LALL *v.* RAM LALL
[1 N. W., 177 : Ed. 1873, 256

183. ———— **Suit to eject ex-proprietary tenant as trespasser and recover mesne profits.**—A suit to eject from land as a trespasser a person who has entered upon such land asserting his claim to the status of an ex-proprietary tenant, and to recover from him mesne profits, is a suit cognizable by the Civil Court. BAKHAT RAM *v.* WAZIR ALI
[I. L. R., 1 All., 448

184. ———— **Suit to have land restored to original condition after illegal planting of trees by tenant.**—Where the suit was not for ejectment under Act X, but the zamindar claimed to have the land restored to its original condition by the removal of trees illegally planted by the cultivator,—*Held* that such suit was cognizable by the Civil Court and not by the Revenue Court. JHONA SINGH *v.* NEAZ BEGUM . **2 Agra, Pt. II, 183**

185. ———— **Suit for the removal of trees**—*Landholder and tenant—Civil and Revenue Courts—N.-W. P. Rent Act (XII of 1881), s. 93 (b).*—*Held* that a suit by a landholder for the removal of certain trees planted by the defendants upon land held by them as the plaintiff's occupancy-tenants was cognizable by the Civil, and not by the Revenue Court. *Deodat Tiwari* v. *Gopi Misr, Weekly Notes, All., 1882, p. 102,* referred to. GANGADHAR *v.* ZAHURRIYA . . **I. L. R., 8 All., 446**

186. ———— **Suit by landholder for removal of trees planted by tenant**—*Jurisdiction—Civil and Revenue Court—Act XII of 1881, s. 93 (b), (c), (cc).*—*Held* that a suit by a landholder against his tenant for the removal of certain trees planted by the latter on land let to him for cultivating purposes by the former did not fall within s. 93 of the N.-W. P. Rent Act (XII of 1881), and was cognizable by the Civil Courts. *Deodat Tewari* v. *Gopi Misr, Weekly Notes, All., 1882, p. 102,* questioned. PROSONNO MAI DEBI *v.* MANSA
[I. L. R., 9 All., 35

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

187. ———— Suit for removal of trees from tenant's holding—*N.-W. P. Rent Act (XII of 1881), s. 93.*—*Held* that a suit by zamindars for the removal of trees planted by a tenant on his cultivatory holding is not cognizable by a Civil Court. *Deodat Tiwari* v. *Gopi Misr, Weekly Notes, All., 1882, p. 102,* referred to. JAI KISHEN *v.* RAM LAL [I. L. R., 20 All., 519

188. ———— Suit by assignee of interest for share of land.—In a solehnamah between *B*, the assignor of the plaintiff, and the defendant and a third party, it was agreed that, as *B* held less sír land than the other two persons, there should be an equal division between the shareholders within a certain time, and in case no division took place, that *B* should be entitled to damages. The plaintiff sued to recover possession of certain sír land and a certain sum as damages for the breach of the contract. *Held* that, if the suit was regarded as one brought by a proprietor, who had purchased a certain share, the suit was not cognizable in the Civil Courts. JUBBUNDHUN SINGH *v.* SHEORAJ SINGH [5 N. W., 184

189. ———— Suit for possession of land under kabuliat—*Landholder and tenant—Relinquishment by occupancy-tenant of his holding—Effect of relinquishment on co-sharers—Act XVIII of 1873 (N.-W. P. Rent Act), ss. 8, 9, 95—Specific performance of contract.*—*K*, the occupancy-tenant of certain land, to whom the landholder had granted a lease thereof for a certain term, gave the latter a kabuliat containing the following clause: "On the expiration of the term, the landholder shall have the power to keep the said land under my cultivation at the former rent, or at an enhanced rent as may be agreed upon between the parties, or he may make over the land to some other cultivator at an enhanced rent fixed by himself." *K* died before the expiration of the lease, and was succeeded by his sons. On the expiration of the lease, the landholder sued *K*'s sons in the Civil Court for possession of the land, claiming under the kabuliat. *Per* MAHMOOD, *J.*—That, inasmuch as the plaintiff did not seek the determination of the class of the defendants' tenure, and the suit could not be regarded as one for ejectment of a tenant in the manner provided by the Rent Act, but was one for specific performance of a contract, based on the kabuliat, according to the terms of which the plaintiff was entitled, it was alleged, to oust the defendants, the suit was cognizable in the Civil Court. *Per Curiam.*—That whatever might have been the effect of the kabuliat as regards *K*, it could not defeat the rights of his sons, who had become by inheritance co-sharers in the right of occupancy or had succeeded thereto under the provisions of the Rent Act. LALJI *v.* NARAN . . . I. L. R., 5 All., 103

190. ———— Suit for declaration that land is plaintiff's sír and defendant a lessee—*Landholder and tenant.*—A zamindar claimed a declaration that certain land was his sír, and that the defendants were in possession thereof as his lessees.

The defendants resisted the claim on the ground that they were tenants of the land at fixed rates, and not lessees of it as the plaintiff's sír. *Held* that the suit raised the question whether the land was sír, in respect of which no occupancy-rights could be created except by contract, and whether the defendants were the plaintiff's lessees, and that this was a question purely of contract, and one which was cognizable in the Civil Courts. KAULESHAR PANDAY *v.* GIRDHARI SINGH . . . . I. L. R., 7 All., 338

191. ———— Suit for declaration that tenants are shikmis and not occupancy-tenants, and that their holdings are plaintiffs' sír land—*Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 241—N.-W. P. Rent Act (XII of 1881), ss. 10, 95 (a).*—The effect of s. 95 (*a*) and s. 10 of the N.-W. P. Rent Act (XII of 1881) is to deprive the Civil Courts of jurisdiction to take cognizance of any suit the object of which is to declare, as between the zamindar and tenants, the status of the tenants. A Civil Court has no jurisdiction to entertain a suit in which, the defendants being admittedly the tenants of the plaintiffs, the plaintiffs pray for a declaration that certain entries of the defendants in the revenue records as occupancy-tenants, and certain orders of the Revenue Courts maintaining those entries, be set aside, and that the defendants are shikmis and not occupancy-tenants, and that the land in question is the plaintiffs' sír land. Such a suit cannot be brought within the Civil Court's jurisdiction by dropping all the reliefs claimed except the last-mentioned declaration, that being merely of importance as incidental to the previous ones, and as a roundabout mode of obtaining a declaration that the defendants are not the plaintiffs' occupancy-tenants. *Per* STRAIGHT, *J.*—The suit might also be considered as one to set aside orders passed by the settlement officer in the discharge of his duty for the purpose of correcting the jamabandi as a part of the record of rights, and thus the jurisdiction of the Civil Court was barred by s. 241 of the N.-W. P. Land Revenue Act (XIX of 1873). MAHESH RAI *v.* CHANDAR RAI. [I. L. R., 13 All., 17

192. ———— Suit involving the determination of status of tenant—*N.-W. P. Rent Act (XII of 1881), s. 95.*—A Civil Court has no jurisdiction to entertain a suit, the decision of which necessarily involves the determination of the class of tenancy of one or other of the parties to it. *Mahesh Rai* v. *Chandar Rai, I. L. R., 13 All., 17,* referred to. SAKINA BIBI *v.* SWARATH RAI [I. L. R., 15 All., 115

193. ———— Suit by zamindar to eject as trespassers, persons who claimed to be mortgagees of an occupancy-tenant, such tenant having died without heirs before suit—*N.-W. P. Rent Act (XII of 1881), s. 9.*—*S P* and others, zamindars, sued *M K* and others as trespassers to eject them from certain land alleged to form part of the plaintiffs' zamindari. The defendants pleaded that they were mortgagees, holding under a mortgage with possession given by one *S G*, said to be a tenant at fixed rates of the land in suit. It was found that *S G* had been an occupancy-tenant not at fixed rates, and that he had died without heirs prior to the institution of the suit. *Held* that the suit brought under the above circumstances was cognizable by a Civil Court. *Sakina Bibi* v. *Swarath Rai, I. L. R., 15 All., 115*, distinguished. MAHABIR KANDU *v.* SHEO PRASAD RAI

[I. L. R., 16 All., 325

194. ———— **Suit for possession against trespassers**—*N.-W. P. Rent Act, 1873, XVIII, s. 9—Sale of occupancy-rights with zamindar's consent—Acceptance of rent by zamindar from vendees.*—Under a deed, dated in 1879, the occupancy-tenants of land in a village sold their occupancy-rights, and the zamindars instituted a suit for a declaration that the sale-deed was invalid under s. 9 of Act XVIII of 1873 (the N.-W. P. Rent Act in force in 1879), and for ejectment of the vendees, who had obtained possession of the land. It was found that the zamindars had consented to the sale to the vendees, and received from them arrears of rent due on the holding by the vendors, and had recognized them as tenants. *Held per* MAHMOOD, *J.* (OLDFIELD, *J.*, dissenting), that the zamindars having accepted the vendees as tenants and taken rent from them, a tenancy was thereby constituted under the Rent Law; that the vendees were therefore not trespassers; and that therefore the question as to ejectment did not fall within the jurisdiction of the Civil Court. DURGA *v.* JHINGURI . **I. L. R., 7 All., 511**

Upheld on appeal under the Letters Patent in JHINGURI TEWARI *v.* DURGA

[I. L. R., 7 All., 878

Reversing the decision of OLDFIELD, *J.*

195. ———— *N.-W. P. Rent Act (XVIII of 1873), ss. 36, 39.*—*S* caused a notice of ejectment to be served upon *K* in respect of certain land, alleging that he held the same by virtue of a lease which had expired. *K* contested his liability to be ejected under s. 39, denying that he held the land by virtue of such lease and alleging that he held it under a right of occupancy. The Revenue Court decided that *K* held the land under a right of occupancy, and not under such lease. *S* thereupon sued *K* in the Civil Court, claiming possession of such land, on the allegation that *K* was a trespasser, wrongfully retaining possession thereof after the expiration of his lease. *Held* that the suit was cognizable in the Civil Courts. SUKHDAIK MISR *v.* KARIM CHAUDHRI

[I. L. R., 3 All., 521

196. ———— **Suit for demolition of a well**—*Landlord and tenant—N.-W. P. Rent Act (XVIII of 1873), s. 44.*—A suit in which the matter in dispute is whether a landholder is entitled to demolish a well constructed by a tenant is not one cognizable in the Revenue Courts, but in the Civil Courts. S. 44 of Act XVIII of 1873 implicitly authorizes tenants of all classes to construct wells for the improvement of the land held by them, and therefore where a well constructed by a tenant benefits the land held by him, a suit by the landholder in the Civil Court for its demolition as having been made without his consent is not maintainable. RAJ BAHADUR *v.* BIRMHA SINGH . . **I. L. R., 3 All., 85**

197. ———— **Suit by assignee of rent against tenant**—*N.-W. P. Rent Act (XII of 1881), s. 93 (d).*—A suit by the person, to whom a landholder has assigned rents payable to him by tenants, for the recovery of the money so assigned is a suit cognizable in the Civil Courts, and not in the Revenue. GANGA PRASAD *v.* CHANDRAWATI

[I. L. R., 7 All., 256

198. ———— **Assignment of rent of land in satisfaction of interest**—*"Jamog"—Mutation of names in favour of assignee not effected—Suit on bond.*—Subsequently to the execution and registration of a bond, a jamog was made orally between the creditor and the debtor, by which the former agreed to take the rents of certain tenants of the latter in satisfaction of interest, the latter agreed to release the tenants from payment of rent to himself, and the tenants (who were parties to the arrangement) agreed to pay their rents to the creditor. No mutation of names in favour of the creditor was effected in the revenue registers. The creditor brought a suit against the debtor to recover the principal and interest agreed to be paid under the bond, alleging that he had never received any rents under the jamog. *Held* that, whether or not the plaintiff could maintain a suit on the jamog against the tenants for the rent assigned to him in the Revenue Court, he could do so in the Civil Court, and the fact that the jamog was not in writing did not affect the question. *Gunga Prasad* v. *Chandrawati, I. L. R., 7 All., 256*, referred to. AUTU SINGH *v.* AJUDHIA SAHA

[I. L. R., 9 All., 249

199. ———— **Suit for share of revenue paid**—*Jurisdiction of Revenue Court—N.-W. P. Rent Act (XVIII of 1873), s. 93 (g).*—On the death of *K*, a dispute arose among her heirs as to the succession to the share of a village of which she was the recorded proprietor. In January 1874, *N* who was not one of her heirs, and who was not a shareholder of such village, was recorded in the revenue register as lambardar in respect of her share, and was so recorded until February 1878, when his name was expunged, and the name of *B*, who was one of the heirs, was recorded as the proprietor of such share. *N* subsequently sued *B* to recover R70-13-4, being the amount which he had paid on account of revenue in respect of such share during the period between January 1874 and February 1878, instituting such suit in a Civil Court (Munsif). *Held* that the suit was not one cognizable in a Revenue Court under s. 93 (*g*) of Act XVIII of 1873, but one cognizable in a Civil Court. NATH PRASAD *v.* BAIJNATH

[I. L. R., 3 All., 66

200. ———— Suit for declaration of proprietary right, and right to demand rent—*N.-W. P. Rent Act (XVIII of 1873), ss. 93, 95.*—The plaintiffs in this suit claimed a declaration of their proprietary right in respect of certain lands and possession of the lands, alleging that the defendants were their tenants, and liable to pay rent for the lands. The defendants, while admitting the proprietary right of the plaintiffs, alleged that they paid the revenue assessed on the lands, that they paid no rent, and that the plaintiffs were not entitled to rent, and they styled themselves tenants at fixed rates. *Held* on appeal that, as the defendants substantially denied the proprietary title of the plaintiffs and set up a title of their own, the claim of the plaintiffs for a declaration of their proprietary right and of their right to demand rent was a matter which the Civil Court must decide, leaving the plaintiffs to sue in the Revenue Court to eject the defendants, and to recover rent, if the position of the defendants as tenants was established. KANAHIA *v.* RAM KISHEN

I. L. R., 2 All., 429

201. ———— Suit by co-sharers in a joint undivided mehal for declaration of title to share of rent—*Civil and Revenue Courts—Act XII of 1881 (N.-W. P. Rent Act), ss. 93 (h), 106, 148—Act I of 1877 (Specific Relief Act), s. 42—Civil Procedure Code, s. 11.*—The effect and intention of the proviso to s. 148 of the N.-W. P. Rent Act (XII of 1881) is to preserve the jurisdiction of the Civil Courts under s. 42 of the Specific Relief Act (I of 1877), while prescribing a special period of one year's limitation for such suits when they arise out of adjudications such as s. 148 contemplates. Neither that section nor the proviso affects the jurisdiction of a Civil Court to entertain a suit by some of a body of co-sharers in a joint and undivided mehal for a declaration of their title to receive a proportionate share of the rent payable by the tenants. Having regard to s. 11 of the Civil Procedure Code, a suit for the recovery of certain sums of money as the plaintiffs' share of rent alleged by them to have been wrongfully received by the defendants, their co-sharers, and in which the plaintiffs' right to receive any portion of the rent claimed is denied by the defendants, is not barred from the cognizance of the Civil Courts by s. 93 (*h*) of the N.-W. P. Rent Act. That provision does not contemplate suits in which such claims of title are so made and resisted. But a suit by some of the co-sharers in a joint and undivided mehal for such declaration and such recovery of a proportionate share of rent as above referred to is barred by the provisions of s. 106 of the N.-W. P. Rent Act, in the absence of proof of local custom or special contract authorizing such suits. MAHADEO SINGH *v.* BACHU SINGH **I. L. R., 11 All., 224**

202. ———— Suit for declaration of proprietary title in property said to have been wrongfully distrained—*Civil Procedure Code, s. 11—Act XII of 1881 (N.-W. P. Rent Act), ss. 56, 83, 85, 93 (f)—Distress.*—In execution of a decree against the tenants of certain zamindars, the plaintiff attached and sold certain trees upon the holding of the judgment-debtors, and the auction-purchaser in turn transferred them to the plaintiff, who obtained possession. Subsequently, one of the judgment-debtors vacated the land on which the trees were situate, and the zamindars let the land to another tenant. This last-mentioned tenant having fallen into arrears of rent, the zamindars, purporting to act under s. 56 of the N.-W. P. Rent Act (XII of 1881), distrained some of the trees of which the plaintiff was in possession under his purchase, sold them, and themselves bought them. The plaintiff then brought a suit against the zamindars, praying for a declaration of his right to, and maintenance of, possession of the trees. *Held* that the plaintiff was entitled, under s. 11 of the Civil Procedure Code, to bring the suit in a Civil Court, and that the Civil Courts were not prevented from taking cognizance of it by ss. 83, 85, 93 (*f*) or any other provision of the N.-W. P. Rent Act (XII of 1881). SHANKAR SAHAI *v.* DIN DIAL

I. L. R., 12 All., 409

203. ———— Agreement by occupancy-tenant to relinquish his holding—*Suit for specific performance of agreement.*—The defendant, who was a tenant with a right of occupancy in the land cultivated and held by him, executed a kabuliat in respect of the said land in favour of the plaintiffs (his landlords), agreeing that on the expiry of the term fixed in the kabuliat he should have no claim to retain possession of the cultivatory holding, but that he should give it up. Plaintiffs sued for ejectment of the defendant on the basis of the agreement, and obtained a decree from the lower Appellate Court. On second appeal by the defendant,—*Held* that, inasmuch as the plaintiffs sought to enforce the covenant contained in the kabuliat in such a manner as to extinguish the rights of occupancy found upon the facts of the case to have been acquired by the defendant in the land in suit, such suit must fail, as opposed to the policy of the law as shown in the provisions of s. 9 of the Rent Act (XII of 1881). Such a tenant may be ousted from his holding by enforcement of the remedies given in that behalf in s. 95 (*d*) and (*f*) in a suit in the Civil Court, but not in the manner sought by the plaintiff in this action. KAURI THAKURAI *v.* GANGA NARAIN LAL

I. L. R., 10 All., 615

204. ———— Application to a Civil Court for stay of execution of a decree of a Court of revenue—*Civil Procedure Code (1882), ss. 2 and 492—"Decree," Meaning of.*—The term "decree" as used in the Code of Civil Procedure does not include the decree of a Court of Revenue. *Held* therefore that an application under s. 492 of the Code of Civil Procedure for stay of sale in execution of a decree of a Court of revenue in a suit under s. 93 of Act XII of 1881 cannot be entertained by a Civil Court. ONKAR SINGH *v.* BHUP SINGH

I. L. R., 16 All., 496

205. ———— **Suit for maintenance of possession as tenants at fixed rates**—*N.-W. P. Rent Act (XII of 1881), s. 95 (a)—N.-W. P. Land Revenue Act (XIX of 1873), s. 241.*—The plaintiffs sued in a Civil Court alleging that they were tenants at fixed rates of a cultivatory holding, and that at the settlement the settlement officer had entered the defendants in the village papers as the tenants at fixed rates, and the plaintiffs merely as mortgagees, and they asked for a decree for maintenance of possession "invalidating the proceeding of filling up the columns at the recent settlement." *Held* by the Full Bench (BANERJI, *J.*, *dubitante*) that the suit so framed was not within the cognizance of a Civil Court. AJUDHIA RAI *v.* PARMESHAR RAI

[I. L. R., 18 All., 340

206. ———— **Suit for recovery of possession by tenant dispossessed by a trespasser.**—Cl. (*n*) of s. 95 of Act XII of 1881 (which enacts that suits for recovery of occupancy of land of which a tenant has been wrongfully dispossessed shall be brought in a Court of Revenue) must be taken to apply to cases in which a tenant of agricultural land has been wrongfully dispossessed by the landlord or, at the instance of the landlord, by some one claiming title through the landholder. Where the dispossession has been by a trespasser, the suit is one for a Civil Court. MAULA *v.* BAHALA

[I. L. R., 19 All., 34

207. ———— **Suit to recover moveable property sold on account of an arrear of revenue due by a person other than the owner of the property**—*N.-W. P. Land Revenue Act (XIX of 1873), s. 241.*—Where in satisfaction of an arrear of revenue due by certain defaulters some cattle belonging to another person, who had no concern with the land in respect of which the arrear was due, were sold, it was held that the remedy of the owner of the cattle lay entirely in the Courts of revenue, and that no suit would lie in a Civil Court respecting such sale. SECRETARY OF STATE FOR INDIA *v.* MAHADEI

[I. L. R., 19 All., 127

208. ———— **Jurisdiction of Civil Courts where no remedy obtainable in Courts of revenue**—*N.-W. P. Rent Act (XII of 1881), s. 95 (n)—N.-W. P. Land Revenue Act (XIX of 1873), s. 64.*—A plaintiff brought his suit in a Civil Court alleging that he was entitled to the possession of certain land as a tenant at fixed rates, and that, in consequence of the order of a settlement officer, he had been dispossessed by certain persons, alleged by him to be trespassers without title, whom he made defendants, together with the zamindar of the land in dispute. *Held* that, inasmuch as the plaintiff could, under the circumstances indicated in his plaint, have obtained no relief from a Court of revenue, the Civil Court was competent to entertain the suit, and to give the plaintiff a decree for possession as against the defendants, other than the zamindar, who were found to be trespassers, notwithstanding that the Civil Court could not declare what was the nature of the plaintiffs' tenancy. *Tarapat Ojha* v. *Ram Ratan, I. L. R., 15 All., 387,* and *Ajudhia Rai* v. *Parmeshar Rai, I. L. R., 18 All., 340,* distinguished. DUKHNA KUNWAR *v.* UNKAR PANDE **I. L. R., 19 All., 452**

209. ———— **Suit in ejectment against a trespasser.**—Although a Civil Court cannot give a decree declaring or deciding the status of an agricultural tenant, yet where a plaintiff, having no remedy in the Revenue Courts, sues on the allegation that he is a tenant entitled to possession, to eject a trespasser, it is competent to a Civil Court to grant a decree for possession on the ground that the plaintiff is a tenant, the class of his tenancy being left to the Revenue Courts to determine. *Ajudhia Rai* v. *Parmeshar Rai, I. L. R., 18 All., 340,* and *Dukhna Kunwar* v. *Unkar Pande, I. L. R., 19 All., 452,* referred to. KALIANI *v.* DASSU PANDE

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210. ———— **Suit to set aside, on the ground of duress, an agreement by an ex-zamindar for surrender of his sir land.**—On the sale of a village, the vendor covenanted with the vendee to hold his sir land as a tenant of the vendee for a certain term and then to surrender it to the vendee. *Held* that there was nothing to preclude the vendee from suing in a Civil Court for a declaration that the said agreement was void and unenforceable, and had been extorted from him by undue influence. *Mahesh Rai* v. *Chandar Rai, I. L. R., 13 All., 17 ; Ajudhia Rai* v. *Parmeshar Rai, I. L. R., 18 All., 340 ;* and *Husain Shah* v. *Gopal Rai, I. L. R., 2 All., 428,* referred to. DAULAT RAM *v.* ANWAR HUSEN . . . **I. L. R., 20 All., 241**

211. ———— **Effect on tenant's rights of his neglecting to apply under s. 95**—*N.-W. P. Rent Act (XII of 1881), s. 95, cl. (n).*—A tenant of certain muafi land was dispossessed by his zamindars, as he alleged, wrongfully. The dispossessed tenant did not avail himself of the remedy provided by s. 95, cl. (*n*), of Act XII of 1881 ; but some time after the expiry of the period of limitation for an application under that section, he dispossessed the zamindars, who had meanwhile taken the land in suit into their own cultivation. The zamindars thereupon sued in the Civil Court for the ejectment of the former tenant as a trespasser. *Held* that the defendant could not set up in answer to this suit his status as tenant which he had lost by not availing himself within limitation of the means provided by s. 95, cl. (*n*), of Act XII of 1881, to contest his own ejectment, and not the jurisdiction of the Civil Courts. DALIP RAI *v.* DEOKI RAI . . **I. L. R., 20 All., 471**

Held on appeal under the Letters Patent that the failure of a tenant to apply under s. 95 (*n*) of the N.-W. P. Rent Act, 1881, for the recovery of the occupancy of land, of which he has been wrongfully dispossessed, within the period of six months after the date of dispossession prescribed for such applications by s. 96 (*e*) has the effect not only of barring the tenant's remedy, but of extinguishing the tenant's right to the occupancy of the land. DALIP RAI *v.* DEOKI RAI [I. L. R., 21 All., 204

212. ———— Suit to eject a tenant on the ground that the tenant had denied the landholder's title—*N.-W. P. Rent Act (XII of 1881), s. 34 et seqq, 95 (d), and 206 et seqq—Landholder and tenant.*—The reason which a landholder may have for desiring to eject a tenant of agricultural land has nothing to do with the procedure to be adopted for the tenant's ejectment. Where the procedure laid down in s. 36 *et seqq* of the N.-W. P. Rent Act, 1881, is available, the landholder must adopt that procedure, and the mere fact that the landholder's alleged cause of action is the denial by the tenant of the landholder's title will not give the landholder a right to sue for ejectment in a Civil Court. RAM SUKH *v.* GOKUL CHAND [I. L. R., 21 All., 143

213. ———— Remedy of mortgagee for non-payment of rent—*Mortgage—Lease of mortgaged premises by mortgagee to mortgagor—Jurisdiction of Revenue Court.*—Certain mortgagees, in whose favour a deed of mortgage providing for possession in lieu of interest had been executed, on the day following the execution of the mortgage granted a lease of the mortgaged premises to the mortgagor. The two documents were registered on the same day. The amount of rent reserved by the lease was exactly equivalent to the amount of interest payable under the mortgage, and the mortgage-deed contained a covenant that any arrears due by the lessee should be a charge upon the mortgaged property. In the counterpart of the lease also a similar covenant making the mortgaged property security for the rent payable under the lease was inserted. *Held* that, under the above circumstances, the mortgage and the lease formed merely different parts of the same transaction, and that the mortgagees were entitled to seek their remedy for non-payment of the rent reserved in a Civil Court by means of a suit upon the mortgage, and were not obliged to have recourse to a suit for rent in a Court of Revenue. *Baghelin* v. *Mathura Prasad, I. L. R., 4 All., 430,* followed. ALTAF ALI KHAN *v.* LALTA PRASAD [I. L. R., 19 All., 496

214. ———— Suit for possession and mesne profits alleging tenancy and dispossession—*Act XVIII of 1873, s. 95.*—The plaintiffs sued to recover possession of certain land on the averment that they were occupancy tenants and the defendants had forcibly dispossessed them, and also to recover mesne profits. The defendants set up a rival title, but were found by the Court of first instance, which decreed the claim, to be the plaintiff's shikmis. The decree of the lower Appellate Court dismissing the suit as one of which the Civil Courts were precluded from taking cognizance by s. 95, Act XVIII of 1873, was reversed, and the suit remanded to it for disposal on the merits. MATA PARSHAD *v.* JANKI [7 N. W., 226

215. ———— Suit by tenant against sub-tenant for ejectment—*"Landholder" and "tenant"—Act XII of 1881 (N.-W. P. Rent Act), Ch. II (B), ss. 93, 95, 148.*—The plaintiffs, alleging that they were the occupancy-tenants of certain land, that they had sub-let its cultivation to the defendants, and that the defendant had denied their title and set up a claim to be the tenant-in-chief under the zamindar, sued in the Civil Court to establish the right they claimed to the land and for possession of the land. *Held* that the cognizance of the suit in the Civil Court was not barred by s. 93 or 95 of the N.-W. P. Rent Act. RIBBAN *v.* PARTAB SINGH [I. L. R., 6 All., 81

216. ———— Suit to eject mortgagee of occupancy tenant—*N.-W. P. Rent Act (XII of 1881), ss. 93, 94—Limitation.*—A suit by the zamindar to eject the mortgagee of an occupancy-holding or his representatives in possession does not fall within ss. 93 (*b*) and 94 of the N.-W. P Rent Act, but is cognizable by a Civil Court under the rules of limitation applicable to suits in such Courts. MADHO LALL *v.* SHEO PRASAD MISR [I. L. R., 12 All., 419

217. ———— Suit for ejectment against occupancy-tenant and his mortgagee—*N.-W. P. Rent Act (XII of 1881), s. 94—Limitation.*—The plaintiff, a zamindar, sued an occupancy-tenant for ejectment under s. 93 (*b*) of the N.-W. P. Rent Act (XII of 1881), and to that suit one *C D*, a mortgagee of the occupancy-holding who had obtained a foreclosure decree against the occupancy-tenant, got himself made a party defendant under s. 112A of the Act. The pleadings, however, were not amended; and the suit proceeded to appeal before the District Judge. *Held* that, under the above circumstances, the suit as against *C D.* the intervening defendant (who, so far as the plaintiff was concerned, was a trespasser), was of a civil nature and triable by the Civil Court, and therefore subject to the ordinary rules of limitation as laid down in the Limitation Act, and not to the special limitation prescribed by s. 94 of Act XII of 1881. SRI KISHEN *v.* ISHRI . . . . I. L. R., 14 All., 223

218. ———— Suit for possession alleging (tenancy) and dispossession—*N.-W. P. Rent Act (XVIII of 1873), s. 95.*—The plaintiff sued the defendants (who were not his landlords) to recover possession of certain land on the averment that he held the same with a right of occupancy and had been forcibly dispossessed by them, and also to recover mesne profits. The defendants denied the alleged ejectment, and alleged that they were in possession of the land under a lease from the zamindar. It was held that the suit was one of which the Civil Courts could take cognizance. RAGHOBAR MISSER *v.* SITAL . . . . 7 N. W., 228

219. ———— Suit for possession after being dispossessed unlawfully—*N.-W. P. Rent Act (XVIII of 1873), s. 95.*—It was held

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that the Civil Courts were precluded by the provisions of s. 95 of Act XVIII of 1873 from taking cognizance of a claim to obtain possession of a tenant-holding based on the averment that the zamindar, the real defendant, had sanctioned a mortgage of the holding to the plaintiff, and appropriated the mortgage-money in satisfaction of arrears of rent due by the tenant, the mortgagor and *pro formâ* defendant, and that, having placed the plaintiff into possession, he had subsequently wrongfully dispossessed him. MUAZZIM ALI KHAN *v.* SHEO PARSHAD

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220. ———— **Suit to recover sír land from person having no right to possession** —*N.-W. P. Rent Act (XVIII of 1873), s. 95.*—It was held that the Civil Courts were not precluded by the provisions of s. 95 of Act XVIII of 1873 from taking cognizance of a suit to recover possession of sír land, brought on the allegation that the defendants had without any right taken possession of it. There was no question under s. 10 of the Act which needed to be determined, but only the question whether the defendants took possession of the land in dispute, with or without right, as trespassers or as tenants. GHISA *v.* DIDARI . **7 N. W., 257**

221. ———— **Suit for ejectment of person wrongfully in possession as tenant**—*N.-W. P. Rent Act (XVIII of 1873), s. 95.*—It was held (in accordance with the opinion of TURNER, SPANKIE, and OLDFIELD, *JJ.*, STUART, *C.J.*, and PEARSON, *J.*, dissenting) that the Civil Courts were not precluded by the provisions of s. 95 of Act XVIII of 1873 from disposing, after the passing of the Act, of a suit which was instituted in the Court of first instance before the passing thereof, in which the main matter in dispute was whether the plaintiff was entitled to eject the defendants from their holding on the ground of their not having a right of occupancy, and retaining possession of the holding wrongfully after the expiry of the term of the lease granted to their father. RADHA PARSHAD SINGH *v.* BALMUKAND ODJA . **7 N. W., 318**

222. ———— **Suit for perpetual injunction to restrain ejectment of tenant**—*Act XII of 1881—N.-W. P. Rent Act, s. 95—Act I of 1877 (Specific Relief Act), s. 56 (b) and (f).*—A tenant, on whom a notice of ejectment had been served under the N.-W. P. Rent Act, 1881, and whose suit to contest his liability to ejectment, brought under that Act, had failed, sued in the Civil Court for a perpetual injunction to prevent his ejectment, basing his suit on an agreement that he should not be ejected so long as he paid a certain rent. *Held* that the suit was not maintainable, the jurisdiction of the Civil Court being excluded by s. 95 of the Rent Act and by s. 56 (*b*) and (*f*) of the Specific Relief Act. MAHIP SINGH *v.* CHOTU

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223. ———— **Suit by landlord to determine nature of tenant's tenure**—*N.-W. P. Rent Act (XII of 1881), s. 95 (a).*—The cognizance by the Civil Courts of a suit by a landholder for a declaration that a tenant is not a tenant at fixed rates, or an occupancy-tenant, but a tenant-at-will, is barred by the provisions of s. 95 (*a*) of the N.-W. P. Rent Act, 1881. MAHARAJA OF BENARES *v.* ANGAN . . . **I. L. R., 7 All., 112**

224. ———— **Suit for declaration of proprietary right to land**—*Suit for a declaration that tenant is a tenant-at-will and liable to have his rent enhanced at will—Act XII of 1881 (N.-W. P. Rent Act), s. 95 (a) and (l).*—A suit for a declaration that the plaintiffs are the proprietors of a village, and the defendants are tenants thereof at the will of the plaintiffs and liable to have the rent enhanced at the will of the plaintiffs, is, as regards the claim for a declaration of right, cognizable in the Civil Courts, but not as regards the other claims, such claims raising questions under s. 10 and s. 95 (*a*) and (*l*), N.-W. P. Rent Act, 1881, exclusively cognizable in the Revenue Court. ANTU *v.* GHULAM MUHAMMAD KHAN . . **I. L. R., 6 All., 110**

225. ———— **Suit to recover under grant of land rent-free**—*N.-W. P. Rent Act (XVIII of 1873), s. 95 (c)—N.-W. P. Land Revenue Act (XIX of 1873), ss. 79, 241—Jurisdiction of Revenue Court.*—The plaintiff claimed the possession of certain land by virtue of a grant thereof to him, not merely of the proprietary right in such land, but of the rents of the same undiminished by the payment of the revenue assessed thereon which the grantor took upon himself to pay. *Held per* STUART, *C.J.*, PEARSON, *J.*, and SPANKIE, *J.*, that the suit was cognizable by the Civil Courts. JAGAN NATH PANDAY *v.* PRAG SINGH

[I. L. R., 2 All., 545

226. ———— **Suit for damages for use and occupation of land**—*N.-W. P. Rent Act (XII of 1881), s. 95 (l)—Landholder and tenant—Sír land—Determination of rent of ex-proprietary tenant.*—A co-sharer, in whose mehal, assigned on partition, sír land belonging to another co-sharer had been included, without having applied to the Revenue Court to have the rent of the latter in respect of such sír land determined under s. 95 (*l*) of Act XII of 1881, sued the latter in the Civil Court for damages for the use and occupation of such sír land "without obtaining a lease or having the rent fixed." *Held*, following the principle laid down in *S. A. No. 914 of 1879*, that such suit was not maintainable. RAM PRASAD RAI *v.* DINA KUAR

[I. L. R., 4 All., 515

227. ———— *Suit against an evicted tenant for damages for use and occupation.*—If a landholder wishes to get rent from a tenant of his agricultural land, he must, during the continuance of the tenancy, either come to an agreement with the tenant as to the rent to be paid or get the rent fixed by means of an application under Act XII of 1881. If no rent has been fixed, the landholder cannot, after the determination of the tenancy, sue his quondam

tenant in a Civil Court for damages for the use and occupation of the land. *Ram Prasad* v. *Dina Kuar, I. L. R., 4 All., 515; Radha Prasad Singh* v. *Jugal Das, I. L. R., 9 All., 185;* and *Debi Singh* v. *Jhanna Kuar, I. L. R., 16 All., 209,* referred to. *Brijbawan Singh* v. *Mehdi Ali, Weekly Notes, All., 1887, p. 140;* and *Ranjit Singh* v. *Diwan Singh, Weekly Notes, All., 1889, p. 175,* overruled. DEBI SINGH *v.* MUHAMMAD ISMAIL KHAN

[I. L. R., 20 All., 296

228. ———— *Landholder and tenant—Ex-proprietary tenant—Rent Act XII of 1881 (N.-W. P. Rent Act), ss. 95 (l), 206.*—*T,* who had acquired the proprietary rights of *D* in a certain mehal, sued *D* in a Civil Court for damages for the use and occupation of sír land of which *D,* on losing such rights, had become by law the ex-proprietary tenant. *Held* that, *T* being *D*'s landlord, such suit was not maintainable in the Civil Courts. *Ram Prasad Rai* v. *Dina Kuar, I. L. R., 4 All., 515; S. A. No. 768 of 1881;* and *S. A. No. 914 of 1879,* followed. *Held* also that the provisions of s. 206 of the N.-W. P. Rent Act were not applicable, it not being possible to treat the suit as being in any respect the claim that alone *T* was entitled to make on *D,* which was a claim for rent assessed or ascertained in the mode provided in that Act. DHIAN RAI *v.* THAKUR RAI . . **I. L. R., 5 All., 25**

229. ———— **Suit for money wrongly collected as rent**—*Lease of zamindari rights—Wrongful dispossession—Lessor and lessee—Suit for compensation—N.-W. P. Rent Act (XVIII of 1873), s. 95, cl. (m).*—*A* granted *B* a lease of his zamindari rights in certain villages for a term of years at a fixed annual rent. Two years before the term expired, in breach of the conditions of the lease, he dispossessed *B,* and thereafter made collections of rent from the agricultural tenants himself. *B* sued him in the Civil Court to recover the money so collected by him in those two years. *Held* (by a majority of the Full Bench) that the Courts of Revenue were open to *B,* and that, as he could obtain in such a Court the relief he sought in the suit by an application for compensation for wrongful dispossession, the Civil Courts could not, under cl. (*m*), s. 95 of Act XVIII of 1873, take cognizance of the suit. *Per* STUART, *C.J.,* and SPANKIE, *J.*—That as the matter was not one on which *B* could make an application to a Revenue Court of the nature mentioned in cl. (*m*), s. 95 of Act XVIII of 1873, the suit was properly instituted in the Civil Court. ABDUL AZIZ *v.* WALI KHAN

[I. L. R., 1 All., 338

230. ———— **Suit to recover alleged excess payments in respect of irrigation dues**—*N.-W. P. Land Revenue Act (XIX of 1873), s. 241 (i)—Northern India Canal and Drainage Act (VIII of 1873), s. 45.*—*Held* that no suit would lie in a Civil Court to recover payments alleged to have been made in respect of irrigation dues in excess of what was properly leviable on the plaintiff. BALWANT SINGH *v.* SECRETARY OF STATE FOR INDIA . . **I. L. R., 22 All., 139**

231. ———— **Suit for possession of land and for mesne profits**—*N.-W. P. Rent Act (XVIII of 1873), s. 95, cls. (m) and (n)—Revenue Court, Jurisdiction of.*—*T,* the occupancy tenant of certain lands, gave *K* a lease of his occupancy rights for a term of twenty years. In the execution of a decree for the ejectment of *T* from such lands obtained by the landholder against *T* in a suit to which *K* was no party, *K* was ejected from such lands. This decree was subsequently set aside, and *T* recovered the occupancy of such lands. *Held* in a suit by *K* against *T* and the landholder, in which *K* claimed the occupancy of the lands and mesne profits for the period during his dispossession, in virtue of the lease, that the suit was cognizable in the Civil Courts, and not one on the subject-matter of which an application of the nature mentioned in s. 95 of Act XVIII of 1873 could have been made, so as to give the Courts of Revenue exclusive jurisdiction in such matter. KALIAN DAS *v.* TIKA RAM

[I. L. R., 2 All., 137

232. ———— **Suit for compensation for wrongful dispossession**—*N.-W. P. Rent Act, 1873, s. 95, cls. (m) and (n)—Wrongful dispossession of land.*—In an estate held by *S* as a sub-proprietor he held certain land with a right of occupancy. *G,* the zamindar, obtained a decree against *S* in a Civil Court for the possession of the estate, in execution of which he ousted *S* from the estate including the land held by him with a right of occupancy. This decree having been set aside, *S* recovered the possession of the estate including such land, and sued *G* in the Civil Court for the value of the crops standing on such land at the time he was ousted from it by *G,* and for the rents of a portion of such land which *G* had let to tenants while in possession of it. *Held* that the suit was cognizable by the Civil Courts, and that *G* was liable for such rents. SAWAI RAM *v.* GIR PRASAD SINGH

[I. L. R., 2 All., 707

233. ———— *N.-W. P. Rent Act (XII of 1881), ss. 36 and 95, cls. (m) and (n)—Dispossession by process of law—Suit to recover damages for such dispossession.*—The expressions "wrongful dispossession" in cl. (*m*) and "wrongfully dispossessed" in cl. (*n*) of s. 95 of Act XII of 1881 do not include a dispossession by order of Court, though such order may be subsequently reversed on appeal. Where therefore a tenant who is evicted under s. 36 and the following sections of the Rent Act, but afterwards reinstated by order of a superior Court of revenue, sues the evicting zamindar for damages, such a suit may be brought in a Civil Court. *Sawai Ram* v. *Gir Prasad Singh, I. L. R., 2 All., 707;* and *Dhundu Bhagat* v. *Lal Pande, 1 Leg. Rem. R. and R., 183,* referred to. THAKUR DIN *v.* MANNU LAL

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JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

234. — — **Suit for declaration of right to re-formed land**—*Landlord and tenant—Submergence of occupancy-tenant's land—Diluvion—Liability for rent—Resumption by landholder—Custom—N.-W. P. Rent Act (XII of 1881), s. 95, cl. (n).*—A landholder, alleging that by local custom when land was submerged, and the tenant ceased to pay rent for the same, his right to it abated, and when the land re-appeared the landholder was entitled to possession thereof; that certain land belonging to him had been submerged, and the occupancy-tenant thereof had ceased to pay rent for it; and that such land had re-appeared and had come into his possession under such custom, sued such tenant in the Civil Court for a declaration of his right to the possession of it. *Held* that the suit, even if maintainable, was not, with reference to the provisions of s. 95, cl. (*n*), of Act XII of 1881, cognizable in the Civil Courts. KUPIL RAI *v.* RADHA PRASAD **[I. L. R., 5 All., 260**

235. ———— **Suit for recovery of land of which tenant has been dispossessed.**—*Relation of landlord and tenant admitted—Act XII of 1881, s. 95, cl. (n).*—A landholder served a notice of ejectment on *G*, under the provisions of s. 36 of the Rent Act (N.-W. P.), as a tenant-at-will. Under the provisions of s. 39 of the Act, *G* contested his liability to be ejected on the ground that he was not a tenant-at-will, but one holding by virtue of an agreement executed in his favour by the landholder. The question of *G*'s liability to be ejected was decided adversely to him, and he was ejected under s. 40 of the Act. He subsequently sued the landholder in the Civil Court for possession of the land, by virtue of the agreement, alleging that his ejectment was a breach of such agreement. The landholder's defence to this suit was that *G* had been rightfully ejected. *Held* that, inasmuch as the relation of landlord and tenant between the parties at the time of the proceedings under the Rent Act was admitted, and the dispute in the suit could appropriately form the subject of an application under cl. (*n*) of s. 95 of that Act, the suit was not cognizable in the Civil Courts. *Muhammad Abu Jafar* v. *Wali Muhammad, I. L. R., 3 All., 81; Sukhdaik Misr* v. *Karim Chaudhri, I. L. R., 3 All., 521; Kanahia* v. *Ram Kishen, I. L. R., 2 All., 429,* distinguished. *Shimbhu Narain Singh* v. *Bachcha, I. L. R., 2 All., 200,* referred to. GANGA RAM *v.* BENI RAM . . **I. L. R., 7 All., 148**

236. ———————— *N.-W. P. Rent Act, ss. 93, 95, cls. (m), (n)—Landholder and tenant—Jurisdiction of Revenue Court.*—No suit will lie against a landlord in a Civil Court for the wrongful dispossession of a tenant from a holding to which Act XII of 1881 applies. Where a plaint in a Civil Court alleges facts which, if true, would show that the dispute or matter involved in the suit was one to which s. 93 or s. 95 of Act XII of 1881 would apply, the plaint should be rejected under cl. (*c*) of s. 54 of the Code of Civil Procedure, or possibly in some cases returned under s. 57 of the same Code.

The plaintiffs, alleging themselves to be occupancy-tenants and to have been wrongfully dispossessed by their landlords, who had made a lease of the land in suit, sued the landlords and the lessees of such landlords for recovery of possession and for damages. *Held* that such suit was not cognizable by a Civil Court, but was exclusively cognizable by a Court of revenue. *Shimbhu Narain Singh* v. *Bachcha, I. L. R., 2 All., 200,* approved. TARAPAT OJHA *v.* RAM RATAN KUAR . . **I. L. R., 15 All., 387**

237. ——— **Suit for declaration of right as tenant**—*Landholder and tenant—Declaratory decree—Act XII of 1881, s. 95, cl. (n).*—A suit in which the plaintiff claims, as the tenant of land, that he may be declared to be the tenant, and that the defendant, the landholder, may be restrained from interfering with his right to the land as a tenant, and in which the defendant denies the relation between him and the plaintiff of landholder and tenant, is not a suit which is exclusively cognizable in the Revenue Court. SHEODISHT NARAIN SINGH *v.* RAMESHAR DIAL **[I. L. R., 7 All., 188**

238. ———— **Suit for rent where the right to receive it is disputed**—*N.-W. P. Rent Act (XII of 1881), s. 148—Landholder and tenant—Third person.*—In a suit for rent between a landholder and a tenant under the N.-W. P. Rent Act, 1881, where the right to receive rent is disputed, any rights which the landholder may have against the third person, who has been made a party to the suit, under s. 148 of the Act, can only be enforced through the medium of the Civil Court by a suit for declaration of title and for recovery of any rents improperly collected by such person. *Held,* therefore, where in such a suit it was found that the third person had actually and in good faith received the rent sued for, the claim should not have been decreed against him, but should have been dismissed. MADHO PRASAD *v.* AMBAR **I. L. R., 5 All., 503**

239. ———————— *N.-W. P. Rent Act, 1881, s. 148 — Landholder and tenant—Third person who has received rent made party—Jurisdiction of Rent Court to pass decree for rent against such party—Question of title.*—In a suit by a landholder for recovery of rent in which a third person alleged to have received such rent is made a party under s. 148 of the N.-W. P. Rent Act (XII of 1881), the question of title to receive the rent cannot be determined between the plaintiff and such person, but can only be litigated and determined in a subsequent suit in the Civil Court. The only question between the plaintiff and the person so made a party which can be determined in the Rent Court under s. 148 is the actual receipt and enjoyment of the rent. A party who is brought in under s. 148 of the Rent Act cannot be made subject to the decree for rent so as to allow execution to be taken out against him, whether his *bonâ fide* receipt and enjoyment of the rent is proved or not. The only person against whom such a decree

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

can be passed is the tenant. *Madho Prasad* v. *Ambar, I. L. R., 5 All., 502,* referred to. *Per* EDGE, *C.J., semble,* that the intention of the Legislature in allowing a third person who claims under s. 148 of the Rent Act to be made a party to the suit may possibly have been that, by bringing him in, he may be bound by a declaration in the suit that he had in fact received the rent, so as to prevent him in the civil suit from denying the fact that he had received it. In a suit by a landholder for recovery of rent, the defendants pleaded that they had paid the rent to a co-sharer of the plaintiff. The co-sharer made a deposition in which he alleged that he was entitled to the rent not only as a co-sharer, but also as appointed agent of the plaintiff. The Court thereupon made him a party to the suit under s. 148 of the Rent Act, and passed a joint decree against him and the tenant for rent. *Held* that the Court was justified in making him a party under s. 148 of the Rent Act, but was not competent to pass a decree for rent against him. GOBIND RAM *v.* NARAIN DAS

[I. L. R., 9 All., 394

240. ——————— **Occupancy-tenant**—*Suit by landholder against successor of occupancy-tenant for arrears of rent which accrued during the lifetime of his predecessors—Act XII of 1881 (N.-W. P. Rent Act), ss. 9, 93, cl. (a), 112A, 161.*—A suit against an occupancy-tenant in possession who has accepted the occupancy-holding, for arrears of rent not barred by limitation which accrued in the lifetime of the person from whom the right of occupancy has devolved upon him, is not cognizable by the Civil Court, but is exclusively cognizable by a Court of Revenue. So *held* by the Full Bench, MAHMOOD, *J.*, dissenting.—The following cases were referred to:—*Jyeperkash* v. *Shewpurshad, 1 N.-W. P. S. D. A., 1864, p. 230; Mata Deen Doobey* v. *Chundee Deen Doobey, 6 N.-W., 118; Mata Deen* v. *Chundee Deen, 2 N.-W., 54; Wazir Muhammad* v. *Amanat Khan, Weekly Notes, All., 1883, p. 172; Bhikhan Khan* v. *Ratan Kuar, I. L. R., 1 All., 512; Ahmad-ud-din Khan* v. *Majlis Rai, I. L. R., 5 All., 438; Ashootosh Chuckerbutty* v. *Baneemadhub Mookerjee, 1 Rev., Civ., and Cr. Rep., 26; Benod Behary Mookhopadhya* v. *Beer Narain Roy, 1 Rev., Civ., and Cr. Rep., 46; Hossein Ali Beg* v. *Ashruff Ali Beg, N.-W. P. S. D. A., 1865, p. 221; Gopal Pandey* v. *Parsotam Das, I. L. R., 5 All., 121; Mahadeo Singh* v. *Bachu Singh, I. L. R., 11 All., 224;* and *Waris Ali* v. *Muhammad Ismail, I. L. R., 8 All., 552.* LEKHRAJ SINGH *v.* RAI SINGH . . . . **I. L. R., 14 All., 331**

241. ——————— **Suit for contribution among pattidars for Government revenue.** —*Revenue Court—N.-W. P. Land Revenue Act (XIX of 1873).*—The question in the case was whether the plaintiff, a pattidar who had paid a sum on account of a demand for Government revenue, should sue to recover from the defendants, his co-pattidars, the balance in excess of his own quota in the Civil or in the Revenue Court. *Held* (SPANKIE, *J.*, dissenting) that the Civil Courts were

competent to entertain suits of the nature. *Per* SPANKIE, *J., contra.* RAM DIAL *v.* GOLAB SINGH

[I. L. R., 1 All., 26

242. ——————— **Suits for determination of rights**—*Record-of-rights. Entries in—N.-W. P. Land Revenue Act (XIX of 1873), ss. 62, 91, 94. 241—Jurisdiction of Revenue Courts.*—The Civil Courts are not competent to try suits to alter or amend a record-of-rights, or to give directions in respect of the same, but they are not debarred from entertaining and determining questions of right, merely because such questions have been the subject of entries in the record-of-rights, and because such determination may show that such entries are wrong and need correction. Consequently, a claim in the Civil Court for a declaration of the right to make certain collections of rent and to defray therewith certain village expenses, though such right had been the subject of an entry in the record-of-rights adverse to the person claiming such right, was held to be maintainable. SUNDAR *v.* KHUMAN SINGH

[I. L. R., 1 All., 614

243. ——————— **Suit for declaration of right to zamindari cesses**—*N.-W. P. Land Revenue Act (XIX of 1873), s. 66—Beng. Reg. VII of 1822, s. 9, cl. (i).*—Notwithstanding that zamindari cesses cannot be collected until recognized and sanctioned by the settlement authorities, there is nothing in Regulation VII of 1822, or Act XIX of 1873, to preclude a Civil Court from taking cognizance of suits seeking a declaration of zamindari rights to such cesses. AKBAR KHAN *v.* SHEORATAN

[I. L. R., 1 All., 373

244. ——————— **Suit to enforce cess**—*N.-W. P. Land Revenue Act (XIX of 1873), s. 66.*—A cess leviable in accordance with village custom which is not recorded under the general or special sanction of the Local Government cannot, under s. 66 of Act XIX of 1873, be enforced in a Civil Court. LALA *v.* HIRA SINGH . . **I. L. R., 2 All., 49**

245. ——————— **Suit to dispute partition by Revenue Court**—*Question of proprietary right decided by Revenue Court under Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 113—Omission by Revenue Court to frame decree—Decision of Revenue Court not open to attack by suit in Civil Court.*—A Revenue Court acting under the provisions of ss. 112 and 113 of the N.-W. P. Land Revenue Act (XIX of 1873) recorded a proceeding declaring the nature and extent of the respective rights of the parties before the Court, and prescribing the mode in which partition should be effected. No decree was framed in accordance with this proceeding. *Held* that the proceeding of the Revenue Court was a decision by a Court of competent jurisdiction, and could not be interfered with by a suit in the Civil Court disputing its correctness. BHOLA *v.* RAMDHIN

[I. L. R., 7 All., 394

See RANJIT SINGH *v.* ILAHI BAKSH

[I. L. R., 5 All., 520

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

246. ———— **Question of title arising on an application for partition, how to be determined.**—*N.-W. P. Land Revenue Act (XIX of 1873), s. 113.*—If a Revenue Court in disposing of an application for partition determines a question of title, it must, in so doing, act in conformity with the provisions of s. 113 of Act XIX of 1873. If it disposes of the application otherwise than in the manner contemplated by s. 113, its proceedings are *ultra vires*, and will not debar the parties from suing in a Civil Court for a declaration of their right to partition. NASRAT-ULLAH *v.* MUJIB-ULLAH . **I. L. R., 13 All., 309**

247. ———— **Suit after partition on reference to arbitration**—*Co-sharers in sir land—Determination of rights.*—An agreement to refer to arbitration the partition of a mehal provided that, if sir land belonging to one co-sharer were assigned to another co-sharer, the co-sharer to whom the same belonged should surrender it to the co-sharer to whom it might be assigned. The arbitrator assigned certain sir land belonging to the defendants in this suit to the plaintiffs. The partition was concluded according to the terms of the award. The defendants refused to surrender such land to the plaintiffs. The plaintiffs distrained the produce of such land, alleging that it was held by certain persons as their tenants and arrears of rent were due. The defendants thereupon sued the plaintiffs and such persons in the Revenue Court, claiming such produce as their own. The Revenue Court held that such distress was illegal, as such land was in the possession and cultivation of the defendants as occupancy tenants under s. 125 of Act XIX of 1873. The plaintiffs subsequently sued the defendants in the Civil Court for possession of such land, basing such suit on the partition proceedings. *Held* that the decision of the Revenue Court did not debar the Civil Courts from determining the rights of the parties under the partition, and such suit was cognizable in the Civil Courts. ABHAI PANDEY *v.* BHAGWAN PANDEY . **I. L. R., 3 All., 818**

248. ———— **Suit for possession of land assigned on condition of service**—*Resumption and assessment of rent—N.- W. P. Land Revenue Act (XIX of 1873), ss. 79 and 241.*—The plaintiffs sued for possession of certain land in a village alleging that it had been assigned to a predecessor of the defendant to hold so long as he and his successors continued to perform the duties of village watchmen, and that the defendant had ceased to perform those duties and was holding as a trespasser. The defendant alleged that he and his predecessors had held the land rent-free for 200 years, and that he held it as a proprietor. *Held* that the plaintiffs' claim was not one to resume such a grant or to assess rent on the land of which a Revenue Court could take cognizance under ss. 30 and 95, cl. (*c*), of Act XVIII of 1873, or ss. 79 and 241, cl. (*h*), of Act XIX of 1873, but one which was cognizable by the Civil Courts. PURAN MAL *v.* PADMA **[I. L. R., 2 All., 732**

JURISDICTION OF CIVIL COURT —*continued.*

25. RENT AND REVENUE SUITS—*continued.*

249. ———— *Resumption of rent-free grant—Act XII of 1881, ss. 30, 95, cl. (c)—Act XIX of 1873, s. 241, cl. (h).*—A zamindar brought a suit to recover possession of certain land in the village which was held by the defendants rent-free, in consideration of rendering services as khera-patis on the ground that he was entitled as zamindar to dispense with their services, and that therefore they no longer possessed any right to hold the land. The claim was resisted by the khera-patis on the ground that for many years they had been in possession of the land as muafi-holders. *Held* that the dispute so raised was a matter which could form the subject of an application to resume a rent-free grant within the meaning of s. 30 of the N.-W. P. Rent Act (XII of 1881), and that the cognizance of the suit by the Civil Court was therefore barred by cl. (*c*) of s. 95 of that Act, and that for similar reasons the Civil Court under cl. (*h*) of s. 241 of the N.-W. P. Land Revenue Act (XIX of 1873) could not exercise jurisdiction over the matter of the suit. TIKA RAM *v.* KHUDA YAR KHAN . **I. L. R., 3 All., 191**

250. ———— **Suit for possession of rent-free and revenue-free tenures**—*Assessment and settlement of revenue-free land—Act XIX of 1873 (N.- W. P. Land Revenue Act), s. 241.*—Certain land was settled with the defendants in this suit. The Settlement Officer having declared that the plaintiffs in this suit had acquired a proprietary right to such land under the provisions of s. 82 of Act XIX of 1873 and were entitled to hold it rent-free, the defendants applied to the Settlement officer to assess such land and to settle it with the plaintiffs as the persons in actual possession as proprietors. This having been done by the settlement officer, the plaintiffs sued the defendants to be maintained in possession of such land free of revenue, and for the cancelment of the Settlement officer's order. *Held* that, under s. 241 of Act XIX of 1873, the suit was not cognizable in the Civil Courts. ZALIM SINGH *v.* UJAGAR SINGH . **I. L. R., 3 All., 367**

251. ———— **Suit to set aside Collector's order for contribution**—*Malikana—Government revenue—N.-W. P. Land Revenue Act (Act XIX of 1873), s. 241, cl. (b).*—At the settlement of a certain village, a malikana allowance of 10 per cent. on the revenue was reserved for *C*, the talukhdar to whom the village belonged. At the same settlement, the muafi-holding of *A* in the village was resumed, and assessed to revenue; but *A* refused to engage for it, and it was therefore merged for revenue purposes in the mehal of the village, though still held by *A*. In 1872, *A* obtained in the Civil Court a decree by which he was declared to be the proprietor of his holding, and to be entitled to engage for it separately; and thereupon the Collector constituted the holding a separate mehal by causing a khewat to be prepared, and fixing the proportion of the revenue assessed upon the entire mehal which the muafi-holding should bear. Subsequently the zamindars of the village applied to the Collector that *A* might be made to contribute towards the payment of the malikana allowance of the talukhdar. The Collector passed an order declaring *A* to be liable to such contribution; and *A* then instituted a suit for cancelment of the Collector's order for a declaration of his non-liability to contribute to the malikana allowance of the talukhdar, and for a refund of contribution already paid. *Held* that, inasmuch as the decree of the Civil Court in 1872 and the proceedings of the Collector consequent thereon constituted the muafi-holding a "mehal" in the terms of s. 3, Act XIX of 1873, and by the terms of ss. 53-55 of the same Act, a malikana allowance, such as that under reference, is "revenue," and s. 241, cl. (*b*), bars the jurisdiction of the Civil Courts in matters regarding the amount of revenue to be assessed on any mehal, the suit was not cognizable by a Civil Court GAYADAT *v* KUTUB-UN-NISSA . . **I. L. R., 6 All., 578**

252. ———— Suit for declaration of non-liability of land to assessment of revenue—*Jurisdiction of Civil Court—Declaratory decree—Act XIX of 1873, s. 241.*—The Civil Courts are not debarred by s. 241 of Act XIX of 1873 (N.-W. P. Land Revenue Act) from taking cognizance of a suit for a declaration that land which the revenue officers seek, under the provisions of that Act, to assess to revenue, is included in an area which has already been permanently settled, and is therefore not liable to further assessment. *Government* v. *Raj Kishen Singh, 9 W. R., 427; Collector of Futtehpore* v. *Munglee Pershad, N.-W. P. S. D. A., 1854, p. 167; Raghunath Suhaee* v. *Bishen Singh, N.-W. P. S. D. A., 1855, p. 302; Zoolfikur Ali* v. *Ghunsam Baree, N.-W. P. S. D. A., 1865, p. 92;* and *Uppu Lakshmi Bhayamma Garu* v. *Purvis, 2 Mad., 167,* referred to. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* RAM UGRAH SINGH . **I. L. R., 7 All., 140**

253. ———— Suit to recover land wrongly recorded at settlement—*Partition of mehal—N.-W. P. Land Revenue Act (XIX of 1873), s. 241, cl. (f).*—*B*, the recorded proprietor of a 7 biswas 10 biswansis share in a village, the recorded area of which was 476 bighas and 5 biswas, purchased a 16 biswansis and 13½ kachwansis share in the same village. In 1872, at the time of settlement, *B* was recorded as the proprietor of an 8 biswas 6 biswansis and 13½ kachwansis share, and the area of this was recorded as 476 bighas and 5 biswas, that is to say, the same area as was recorded before the purchase. In 1876 *H* purchased *B*'s rights and interests in the village, and in 1877 applied for partition of the share of which he had been recorded proprietor, and the same was partitioned, an area of 476 bighas and 5 biswas being allotted to him. Subsequently he brought a suit against the proprietors of the other estates into which the village had been divided, for 61 bighas 4 biswas and 8 biswansis of land, alleging that, at the settlement of 1872, the area of *B*'s rights and interests had been erroneously recorded as only 476 bighas and 5 biswas. *Held* that the suit would not lie in the Civil Court, being barred by the provisions of s. 241, cl. (*f*), of the N.-W. P. Land Revenue Act (XIX of 1873). HABIBULLAH *v.* KUNJI MAL **[I. L. R., 7 All., 447**

254. ———— Suit to question legality of settlement by Collector—*Annulment of settlement—Fresh settlement—Act XIX of 1873, s. 241.* A settlement of land belonging to *G* and which he had mortgaged having been annulled under s. 158 of the N.-W. P. Land Revenue Act (XIX of 1873), the land was framed by the Collector of the district under s. 159. The revenue having fallen into arrears, the Collector, under the same section, took the land under his own management. Subsequently, under ss. 165 and 43 of the Act, the land was settled with *G*'s wife. In a suit to enforce against the lands a mortgage executed by *G* to the plaintiff,—*Held* that the Court was precluded by the terms of s. 241, cl. (*j*), of the Revenue Act from entering into the question whether the settlement was legally made by the Collector with the wife of the mortgagor, that she must therefore be taken to represent such rights and interests as the mortgagor possessed, and that consequently the estate was liable in her hands for the mortgage, and the mortgagee was entitled to claim foreclosure against her. BARI BABU *v.* GULAB CHAND . . . . **I. L. R., 7 All., 454**

255. ———— Suit to resume a rent-free grant—*Services—N.-W. P. Rent Act (XII of 1881), ss 3 (2), 30, 95, cl. (c)—N.-W. P. Land Revenue Act (XIX of 1873), ss 3 (4), 79-89, 241, cl. (h)—Beng. Regs. VIII of 1793, s. 41, and XIX of 1793, s. 10.*—A suit was brought for the ejectment of the defendant from certain land, on the allegations that it was rent-paying land which had been granted to the defendant's vendor by the plaintiff's father free from payment of any rent, on condition that he should perform certain services as a mimic, and that these services were discontinued by the defendant's vendor. The plaintiff endeavoured to resume the land in the Revenue Court as a rent-free grant under s. 30 of the N.-W. P. Rent Act (XII of 1881), but the application was rejected. In answer to the suit, the defendant pleaded that it was not cognizable by the Civil Court. *Held* by OLDFIELD, J. (MAHMOOD, J., dissenting), that the suit could not be held to be one to resume a rent-free grant, inasmuch as there was no rent-free grant at all in the sense of s. 30 of the Rent Act, and that the Civil Court therefore had jurisdiction to entertain the suit. *Held* by MAHMOOD, J., that the land constituted a rent-free grant, that the claim was one for the resumption of such grant or subjecting it to assessment to rent, and that under these circumstances the suit was not cognizable by the Civil Court. *Per* OLDFIELD, J.—The definition of the term "rent" in s. 3 of the Rent Act was intended to include services or labour rendered for the use of land, and the grantee in the present case was a tenant who rendered rent in this sense on account of the use of the land. Further, there was no such grant as is contemplated by s. 30 of the Rent Act,

25. RENT AND REVENUE SUITS—*continued.*

inasmuch as that section refers to grants for holding land exempt from the payment of rent alluded to in s. 10 of Regulation XIX of 1793, and that Regulation, assuming it to refer to grants free from payment of rent as well as of revenue, contemplated grants not only free from payment of rent in cash or kind, but free from payment of anything in lieu thereof. A tenure such as in the present case, where the land was land originally paying rent in cash, and where the cash rent was exchanged for rendition of services, is not a rent-free grant within the meaning of the Regulation, nor consequently of s. 30 of the Rent Act. *Mutty Lall Sen Gywal* v. *Deshkar Roy, B. L. R., Sup. Vol., 774 : 9 W. R , 1,* and *Puran Mal* v. *Padma, I. L. R., 2 All., 732,* referred to. *Per* MAHMOOD, *J.*—The services connected with the grant in this case did not constitute "rent" within the meaning either of the N.-W. P. Rent Act or of the N.-W. P. Land Revenue Act (XIX of 1873), and the word "render" in s. 3 of the former Act does not include or imply the rendering of services or labour. The word "rent" is probably used as the equivalent of the Hindustani words lagan or poth representing the compensation receivable by the landlord for letting the land to a cultivator, and s. 3 of the Rent Act, where it uses the expressions "paid, delivered, or rendered," must be taken to refer respectively to rent paid in cash, to rent delivered in kind, and to rent rendered by appraisement or valuation of the produce. The grant in the present case was a rent-free grant of the nature of chakran or chakri, *i.e.*, service tenure, to which s. 41 of the Regulation VIII of 1793 related. The incidents of the tenure would be governed by s. 30 of the Rent Act and ss. 79-84 of the Land Revenue Act, being matters outside the jurisdiction of the Civil Court. The scope of s. 10 of Regulation XIX of 1793 is not limited to permanent rent-free grants, and the present suit was in respect of a matter falling within s. 95, cl. (*c*), of the Rent Act, and "provided for in ss. 79 to 89, both inclusive," of the Land Revenue Act, within the meaning of s. 241, cl. (*h*), of the latter Act. *Puran Mal* v. *Padma, I. L. R., 2 All., 732 ; Tika Ram* v. *Khuda Yar Khan, I. L. R., 7 All., 191;* and *Forbes* v. *Meer Mahomed Tuquee, 13 Moore's I. A., 438,* referred to. WARIS ALI *v.* MUHAMMAD ISMAIL

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(*d*) OUDE.

256. ———— Suit for partition and account of talukhdari estate—*Oude Rent Act (XIX of 1868), s. 83, cl. 15, s. 106.*—In a suit commenced in 1865 by a member of a joint family for the declaration of his rights in a talukhdari estate, partition not being claimed, the order of Her Majesty in Council (1879) directed that the talukhdar should cause and allow the villages forming the talukhdari estate and the proceeds thereof to be managed and applied according to the trust declared in favour of the members of the family. The plaintiff in that suit afterwards obtained entry of his name as a co-sharer in the villages in the register kept under Act XVII of 1876, s. 56, and then brought the first of the present suits for his share upon partition, both in that estate as it stood in 1865 and also with the addition of villages since acquired out of profits claiming an account against the talukhdar. The latter alleged, among other defences, that the talukhdari estate was impartible, and brought a cross-suit to establish this, and also that it was held by him according to the rule of primogeniture, the right of other members of the family being only to the profits. *Held* that the provisions of the Oudh Rent Act (XIX of 1868), s. 83, cl. 15, and s. 106, precluding proceedings in the Civil Court, might be applicable to the proceeds of the villages forming the original estate, the claimant having been recorded in the revenue records as a shareholder therein, but could not be applied to the rest of the joint estate, and the Civil Court therefore had jurisdiction. PIRTHI PAL *v.* JOWAHIR SINGH . **I. L. R., 14 Calc., 493**

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25. RENT AND REVENUE SUITS—*concluded.*

26. REVENUE.

257. ———— Suit to try liability to public revenue on land—*Wrongful acts by executive officer of Government.*—The Civil Courts have jurisdiction to entertain suits brought to try questions of liability to the public revenue assessed upon land. Where a suit is brought for alleged wrongful acts by an executive officer of Government, the circumstance that the acts complained of were done in enforcing payment of a revenue assessment sanctioned by Government does not, *per se,* preclude the jurisdiction of the Court to entertain the suit. But acts done by Government through its executive officers, not contrary to any existing right, according to the laws administered by the Municipal Courts, although they may amount to grievances, would afford no cause of action cognizable by the Civil Courts. UPPU LAKSHMI BHAYAMMA GARU *v.* PURVIS . . . . . . **2 Mad., 167**

258. ———— Suit against officers of sea customs for act done without jurisdiction—*Revenue, Matter concerning—53 Geo. III, c. 155, ss. 99 and 100—Mad. Reg. IX of 1803, s. 55.*—*Per* INNES and KERNAN, *JJ.* (*dissentient* THE CHIEF JUSTICE)—The High Court of Madras has jurisdiction to try original suits against revenue officers for acts *ultra vires* done in their official capacity. The provision of the Letters Patent of the late Supreme Court, whereby such suits were excepted from the jurisdiction of the Supreme Court, has not been continued by the Letters Patent of the High Court so as to except such suits from the original jurisdiction of the High Court, but has been impliedly repealed by those Letters Patent. *Per* KERNAN, *J.*—The said provision was repealed by 59 Geo. III, c. 155, ss. 99 and 100, except as to land revenue. *Per* INNES, *J., contra. Per* THE CHIEF JUSTICE and INNES, *J.*—The District Court of Chingleput continued down to the year 1876 to have jurisdiction under Madras Regulation IX of 1803, s. 55, in suit

JURISDICTION OF CIVIL COURT —*continued.*

26. REVENUE—*continued.*

against customs officers at Madras. COLLECTOR OF SEA CUSTOMS *v.* CHITHAMBARAM
[I. L. R., 1 Mad., 89

259. ——— **Payment of hak in respect of majumdari watan** — *Bom. Act VII of 1863, s. 32.*—The payment of a hak in respect of a majumdari watan, though charged on villages, is not "a share of the revenues thereof" within the meaning of s. 32 of (Bombay) Act VII of 1863, and therefore a suit to recover majumdari watans resumed by Government is cognizable by the Civil Courts. GOVERNMENT OF BOMBAY *v.* DAMODHAR PARMANANDAS . . . . . 5 Bom., A. C., 202

260. ——— **Land revenue** — *Toddy spirit—Bombay Revenue Jurisdiction Act (X of 1876), ss. 3, 4, 5 — Bombay Abkari Act (V of 1878), ss. 24, 29, 54, and 67—Land Revenue Code (Bom. Act V of 1879), s. 82—Bom. Reg. XXI of 1827, s. 60.*—The plaintiff sued to recover from the defendant, a farmer of abkari duties on the manufacture of spirits, under s. 60 of Bombay Regulation XXI of 1817, a sum of money alleged to have been illegally levied by him as tax or rent through the mamlatdar in respect of certain cocoanut trees tapped by the plaintiff in 1877-78 and 1878-79. *Held* that the Civil Courts have jurisdiction to entertain such a suit. If the claim be held to be one in respect of land revenue, it falls within the exception contained in cl. (*c*) of s. 5 of Act X of 1876. If it is not, s. 4 of the Act has no application. *Per* BIRDWOOD, *J.*—The expression "land revenue" as used in Act X of 1876 does not include either the duties leviable, under Regulation XXI of 1827, on the manufacture of spirits, or the taxes on the tapping of toddy trees, the levy of which in certain districts was legalized by s. 24 of the Bombay Abkari Act (V of 1878). A farmer of duties on the manufacture of spirits is not authorized to levy a duty on any juice in trees, either under Regulation XXI of 1827, or Act X of 1876, or Bombay Act V of 1878. Juice in toddy-producing trees is not spirit, which includes toddy in a fermented state only. NARAYAN VENKU KALGUTKAR *v.* SAKHARAM NAGU KOREGAUMKAR
[I. L. R., 9 Bom., 462

261. ——— **Suit to recover possession of land added to estate paying revenue directly to Government** — *Act IX of 1847, ss. 6 and 9.*—No suit will lie in a Civil Court to recover possession of lands which have been added to an estate paying revenue directly to Government by the revenue authorities after an inspection of maps under s. 6 of Act IX of 1847, although such lands have reformed on an old site of land belonging to another. DEWAN RAMJEWAN SINGH *v.* COLLECTOR OF SHAHABAD . 14 B. L. R., 221 note : 18 W. R., 64

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[19 W. R., 127

262. ——— **Water-rate**—*Irrigation Act (Bom. Act VII of 1879), s. 48—Bombay Revenue Jurisdiction Act (X of 1876), s. 4, cl. (b)—Land revenue—Percolation of canal water—Opinion of the canal officer.*—Where water-rate is levied under s. 48 of the Irrigation Act (Bom. Act VII of 1879), the question as to the jurisdiction of Civil Courts in a suit for the determination of the legality or otherwise of such levy depends upon whether the incidence of the rate is authorized by the provisions of the section. Under it, the condition precedent to levying the rate is not the fact ascertained by evidence whether the water in dispute has percolated from the canal, but the opinion of the canal officer that it has so percolated, he and not the Civil Court being made the Judge of such percolation for the purposes of the Act. Such water-rate falls within the denomination of land revenue. BALVANT GANESH OZE *v.* SECRETARY OF STATE FOR INDIA . . . . I. L. R., 22 Bom., 377

27. REVENUE COURTS.

(*a*) GENERALLY.

263. ——— **Suits which cannot be brought in Revenue Court for want of jurisdiction.**—*Semble*—There is authority for holding that the Civil Courts may entertain suits which cannot be brought in a Revenue Court, although a portion of the claim is of a nature of which the exclusive cognizance is given to Revenue Courts. OOSMAN KHAN *v.* CHOWDHRY SHEORAJ SINGH . 5 N. W., 42

264. ——— **Claims to money in deposit with Collector**—*Civil Procedure Code, 1859, ss. 237, 242.*—S. 237 of the Civil Procedure Code, 1859, gave no authority to a Civil Court to dispose of claims to money in deposit with a Collector, nor did s. 242 give such a Court authority to dispose of claims to money under attachment. IN THE MATTER OF BROJONATH MITTER . . . 13 W. R., 301

265. ——— **Suit containing items cognizable by Civil Court**—*Jurisdiction of Revenue Courts—Act X of 1859, ss. 23, 24.*—In districts where Act X of 1859 is still in force, the jurisdiction of the Civil Courts cannot be ousted, except in cases where the parties concerned and the matters in dispute come wholly and exclusively within the category of persons and subjects in respect of which express jurisdiction is given to the Revenue Courts. Where, therefore, a suit which contained some items of charges cognizable by the Civil Courts was instituted in such Court,—*Held*, reversing the decisions of the Courts below, that such suit was properly so brought. KUMOOD NARAIN BHOOP *v.* PURNA CHUNDER ROY
[I. L. R., 4 Calc., 547 : 3 C. L. R., 258

(*b*) PARTITION.

266. ——— **Suit to set aside partition** —*Question of title.*—There is nothing in the law which makes the order of a Collector in a batwara proceeding final as regards questions of title. OODOY SINGH *v.* PALUCK SINGH . . . 16 W. R., 271

267. ——— **Suit for partition of land paying revenue.**—Where the real object is to obtain a division of the lands of an estate paying revenue to Government. the suit is not maintainable in a Civil Court. DOORGA KRIPA ROY *v.* MOHESH CHUNDER ROY . . . 15 W. R., 242

268. ———— Suits for partition of estates paying revenue to Government—*Beng. Reg. XIX of 1814, s. 3—Apportionment of revenue.*—Regulation XIX of 1814, s. 3, which requires that the partition of estates paying revenue to Government should be executed under the supervision of the Collector, applies only where there is a revenue payable to Government, which must be apportioned when a division of the estate is made. It does not apply where in making a division of the property it is unnecessary to apportion the revenue, it being already apportioned and payable by each of the owners of each of the parts of the original estate. A suit for partition in such a case may be entertained by the Civil Courts. SHAMA SOONDUREE DEBIA *v.* PURESH NARAIN ROY . . . 20 W. R., 182

269. ———— Suit to set aside partition under Beng. Reg. XIX of 1814 and for re-distribution of shares in estate.—The plaintiffs and defendants were owners of an undivided estate. Besides their share as part-owners, the plaintiffs held some of the estate as tenants and some as purchasers from some of their co-sharers in the estate. The whole estate was partitioned under Regulation XIX of 1814, and on such partition the lands which the plaintiffs held as tenants and as purchasers were allotted to co-sharers other than those under whom the plaintiffs held or from whom they purchased. In a suit by the plaintiffs for declaration of their title to those lands and for a re-distribution of the shares,—*Held* that the Court had no jurisdiction to entertain a suit to alter a partition effected by the Revenue authorities. SHARAT CHUNDER BURMON *v.* HURGOBINDO BURMON . . I. L. R., 4 Calc., 510

RADHA BULLUBH SINGH *v.* DHERAJ MAHTA CHAND . . . . 2 W. R., Mis., 51

270. ———— Suit by allottee at private partition to stay proceedings and have his possession confirmed—*Batwara — Proceedings under Beng. Reg. XIX of 1814 — Partition by private arrangement.*—An allottee under a private partition sued to stay subsequent proceedings brought under Regulation XIX of 1814 and to have his possession confirmed. The defendants objected to the suit being heard by the Civil Court, no proceedings having first been instituted before the revenue authorities. *Held* that the question whether the Collector would have brought the lands to partition, depended upon whether they were held "in common tenancy;" if they were not so held, the Collector would be only competent to make an assignment of the revenue in proportion to the several portions of the land held by the shareholders, and the Civil Court was entitled to adjudicate on the plaintiff's claim to be in possession of lands as comprising his share in the estate, and, on his succeeding in proving his claim, to declare that those lands belonged to his divided share. JOYNATH ROY *v.* LALL BAHADUR SINGH

[I. L. R., 8 Calc., 123 : 10 C. L. R., 146

271. ———— Suit to establish shares after rejection of portions.—Where the Collector directs that a separate account should be opened with the co-sharer of an estate on his application, and his share is found not to be such as he states it to be, the co-sharers are at liberty to bring a suit in the Civil Court to establish the extent of their shares, in the event of the Collector under the batwara law rejecting their application for a division of their specific shares. KHEDOO THAKOOR *v.* BHUGWUT LALL

[16 W. R., 9

272. ———— Suit for partition of lands excluded by Collector.—On partition of a certain mehal, lands belonging thereto were excluded by the Collector. It being afterwards satisfactorily found that such lands really belonged to the mehal and ought not to have been so excluded, it was held that a suit would lie in a Civil Court for partition of the excluded lands on the basis of the former partition. *Sree Misser* v. *Crowly, 15 W. R., 243,* distinguished. KRISHNO KUMAR BAISAK *v.* BHIM LALL BAISAK

[4 C. L. R., 38

273. ———— Suit for declaration of right to share.—There is nothing in the butwara law or in any other regulation to prevent the Civil Court from entertaining a suit for a declaration of the plaintiff's right to a larger share than that recorded in his name in the paper of partition. SPENCER *v.* PUHUL CHOWDRY. SPENCER *v.* KADIR BUKSH . 6 B. L. R., 653 : 15 W. R., 471

See AHMEDULLA *v.* ASHRUFF HOSSEIN

[8 B. L. R., Ap., 73 note

274. ———— Suit for partition—*Revenue-paying estate—Partition—Civil Procedure Code (Act X of 1877), ss. 11, 265.*—Where one of several co-sharers, owners of a piece of land defined by metes and bounds and forming part of a revenue-paying estate, brings a suit for partition, in which he does not seek to have his joint liability for the whole of the Government revenue annulled, such suit is cognizable by the Civil Courts which have jurisdiction to determine the plaintiff's right to have his share divided and to make a decree accordingly. CHUNDERNATH NUNDI *v.* HUR NARAIN DEB

[I. L. R., 7 Calc., 153

275. ———— Suit to have possession on private partition confirmed—*Declaration against jurisdiction of Revenue Court to partition—Specific Relief Act, 1877, s. 42.*—Certain proceedings having been instituted to obtain a batwara of an estate, the plaintiff, who was one of the co-sharers in the estate, filed a suit against the others for a declaration that certain plots, which were comprised in the estate, and which he alleged had been allotted to him on a private partition, were not liable to partition by the revenue authorities. The plaintiff also prayed for confirmation of his possession, and that

JURISDICTION OF CIVIL COURT —*continued.*

27. REVENUE COURTS—*continued.*

certain orders made by the Collector in the batwara proceedings might be set aside. The Collector was not a party to the suit. The lower Court found that there had been a private partition, and, without taking evidence as to the plots alleged to be held separately by the plaintiff, made a decree declaring that, by reason of the partition, the Collector had no jurisdiction to proceed with the batwara. *Held* that the Court had no jurisdiction to set aside the orders of the Collector, and that the Court, not having determined the specific property, held exclusively under the partition by the plaintiff, the declaration in the decree was not warranted by s. 42 of the Specific Relief Act (I of 1877). CHURUMAN SINGH *v.* ANOOP SINGH . . . . . **11 C. L. R., 533**

276. ———— Suit by purchaser at revenue sale for possession of share—*Partition suit.*—The purchaser at a sale, under Act XI of 1859, s. 54, of a share of an aymah estate sued for possession of the lands in the occupation of the sharer whose rights and interests he had purchased. The other sharers (also defendants in the suit), who had previous to the sale preferred an application under s. 11 and made a separate account of their shares with the Collector, alleged that plaintiff was in possession of all that he could claim as purchaser. The lower Courts gave plaintiff a modified decree, from which some of the defendants appealed. *Held* that the suit was not a suit for partition, and that the Civil Court had jurisdiction. AFTABOODDEEN *v.* SHUMSOODDEEN MULLICK . **18 W. R., 461**

277. ———— Suit for injunction to restrain partition.—A Civil Court cannot interfere by injunction to restrain a Collector's power of partition, but where, as between the several shareholders, the extent and nature of the share of each has been determined, the latter is bound to recognize such determination, and to give effect to it by carrying out the partition if the parties apply for it. KHOOLUN *v.* WOOMA CHURN SINGH **[3 C. L. R., 453**

278. ———— Suit to enforce partition—*Beng. Reg. VII of 1822*—*Act XIX of 1863.*—An imperfect partition was made between *P* and *D*, and assented to by them and accepted by the Deputy Collector. *In the instrument in which the parties* declared their assent, there were passages distinctly bearing on the possibility of inequality in the quantity of irrigated lands in each lot. Some months after, *D*, complaining (not, however, alleging fraud) that an excess of good and irrigable lands had fallen to the lot of *P*, applied to the Deputy Collector to set aside or re-open the partition. *P* objected, and asserted that there was no such inequality. The Deputy Collector made enquiry, and held it proved that the lands parcelled to each were of unequal value, and, because *P* persisted in denying this, ordered an interchange of lots, imputing fraud to *P*, but not making any enquiry whether or not *D* had been induced by fraud to assent to the partition. It was held that the Deputy Collector had no power to order an interchange of lots, and that the Civil Courts had jurisdiction to entertain a suit by *P* to restore him to the possession of the land which fell to him on the partition made and assented to by the parties, and completed by the order of the Deputy Collector accepting it. DESRAJ *v.* DHUNI **[7 N. W., 9**

279. ———— Suit for extra land after partition by revenue authorities—*Act XIX of 1863, s. 53—N.-W. P. Land Revenue Act (XIX of 1873), s. 135.*—A partition was arranged by arbitrators, and carried into effect by an ameen who marked out the boundaries of the pattis into which the mouzah was divided, and was accepted on the 20th of April 1871 by the parties concerned, and was sanctioned by the Commissioner. In November 1872, one of the parties complained that, according to a gashwara (map) filed by the ameen on the 9th of June 1871, he was entitled to more abadi land than he had got. The revenue authorities, considering that he had accepted the partition and that it had been confirmed, refused to entertain his complaint. *He accordingly sued in the Civil Court with a view* to obtain the extra land to which he asserted himself entitled. It was held that s. 53, Act XIX of 1863, would have precluded the suit, and it was equally barred by the spirit, if not by the letter, of s. 135, Act XIX of 1873. FIDA HOSSEIN *v.* GHOLAM JILANI . . . . . . **7 N. W., 346**

280. ———— Suit to set aside erroneous settlement by Collector.—A Civil Court may set aside a settlement of land erroneously made by the Collector as forming part of a resumed mehal, if the land has not actually been resumed. ABBOO BIBEE *v.* COLLECTOR OF BACKERGUNGE **[1 W. R., 255**

281. ———— Suit to set aside order under Act XIX of 1863. An order passed in the course of a partition under Act XIX of 1863 is open to revision under s. 53 of that Act, but is not liable to be contested in a civil suit. ISHREE DYAL *v.* BANIADEE TEWAREE . . . **4 N. W., 7**

282. ———— Suit by parties declared out of possession by Revenue Court for establishment of their rights—*Act XIX of 1863, ss. 8, 9, 10, 11.*—Two of the parties in an application, under Act XIX of 1863, for the partition of a joint undivided estate were found to be out of possession. *Held* there was nothing in s. 8, 9, 10, or 11 to prevent parties, who have been declared out of possession by the Collector, from suing in a Civil Court to obtain possession by establishment of their right of property in an estate, nor was there anything in those sections which empowered a Collector to determine questions of title. He was only authorized to declare the nature and extent of the interest in actual possession of the parties. *LUCHMAN v. SAIDHO* **[4 N. W., 169**

283. ———— **Suit to set aside order of Settlement Officer as to proportion of profits**—*Beng. Reg. VII of 1822, s. 10, cl. 1.*—The plaintiffs, biswadars, sued to set aside the order of a settlement officer, which determined the proportion in which the profits arising out of the limitation of the Government demand should be divided between them and the talukhdar. *Held* that, it being under cl. 1, s. 10, Regulation VII of 1822, the function of the Governor General in Council to determine such proportion, the suit was not cognizable by a Civil Court. JOGUL KISHORE *v.* RAMPERTAB SINGH

[4 N. W., 129

284. ———— **Suit in Civil Court for ejectment**—*Refusal of tenant to accept settlement after enhancement, under Beng. Reg. VII of 1822, s. 14, of rent of lands in a town.*—Where the Collector has issued due notice of enhancement, under s. 14 of Regulation VII of 1822, of the jama of lands, situate in a town and subject to that Regulation, and, on failure by the tenant to accept a settlement at the revised rate, an action in ejectment has been brought, the Civil Court has no power to consider whether the new rate of assessment is reasonable or in any way to interfere with the amount of the revised jama as fixed by the Collector. RAM CHUNDER BERA *v.* GOVERNMENT . . **6 C. L. R., 365**

285. ———— **Suit to alter settlement**—*Beng. Reg. VII of 1822, s. 15.*—Lakhirajdars whose lands have been resumed have the right, under s. 15, Regulation VII of 1822 (if not barred by limitation), to bring a civil suit to revise, annul, or alter a settlement made by the Collector, not only as against those who claimed the settlement before the revenue authorities, but against all who have claims. BISHOROOP HAZRAH *v.* DUMONOTEE DEBIA

[15 W. R., 537

286. ———— **Partition of mehal**—*Application by co-sharer for partition—Notice by Collector to other co-sharers to state objections upon a specified day—Objection raised after day specified by original applicant—Question of title—Distribution of land N.-W. P. Land Revenue Act (XIX of 1873), ss. 111, 112, 113, 131, 132, 241 (f)—Civil Procedure Code, s. 11.*—So far as ss. 111, 112, 113, 114, and 115 of Act XIX of 1873 are concerned, a Civil Court is the Court which has jurisdiction to adjudicate upon a question of title or proprietary right, either in an original suit in cases in which the Assistant Collector or Collector does not proceed to inquire into the merits of an objection raising such a question under s. 113 or on appeal in those cases in which the Assistant Collector or Collector does decide upon such questions raised by an objection made under s. 112. The remaining sections relating to partition do not provide for or bar the jurisdiction of the Civil Court to adjudicate upon questions of title which may arise in partition proceedings, or on the partition after the time specified in the notice published under s. 111. S. 132 is not to be read as making the Commissioner the Court of Appeal from the Assistant Collector or the Collector upon such questions, nor does s. 241 (*f*) bar the jurisdiction of the Civil Court to adjudicate upon them. Where, therefore, after the day specified in the notice published by the Assistant Collector under s. 111, and after an ameen had made an apportionment of lands among the co-sharers of the mehal, the original applicants for partition raised for the first time an objection involving a question of title or proprietary right, and this objection was disallowed by the Assistant Collector and the partition made and confirmed by the Collector under s. 131,—*Held* that the objection was not one within the meaning of s. 113, that the remedy of the objectors was not an appeal from the Collector's decision under s. 132, and that a suit by them in the Civil Court to establish their title to the land allotted to other co-sharers was not barred by s. 241 (*f*), and with reference to s. 11 of the Civil Procedure Code was maintainable. *Habibullah* v. *Kunji Mal, I. L. R., 7 All., 447,* distinguished. *Sudar* v. *Khuman Singh, I. L. R., 1 All., 613,* referred to. MUHAMMAD ABDUL KARIM *v.* MUHAMMAD SHADI KHAN **I. L. R., 9 All., 429**

287. ———— **Suit for partition**—*Revenue-paying estate—Proceedings under Beng. Act VIII of 1876, s. 31, Effect of.*—The jurisdiction of the Civil Court in matters of partition of a revenue-paying estate is restricted only in questions affecting the right of Government to assess and collect in its own way the public revenue. *Held*, accordingly, that pendency of partition proceedings before the Collector under s. 31 of Bengal Act VIII of 1876 was no bar to a suit for a declaration that under a partial partition effected between the co-sharers a portion of land had been separately allotted to the plaintiff. ZAHRUN *v.* GOWRI SUNKAR

[I. L. R., 15 Calc., 198

288. ———— **Suit for partition and possession of a share in a particular plot in a pottah**—*Jurisdiction of Revenue Court—N.-W. P. Land Revenue Act (XIX of 1873), ss. 135, 241 (f).*—A suit by a co-sharer in a joint zamindari estate for partition and possession of his proportionate share of an isolated plot of land is not maintainable in a Civil Court with reference to ss. 135 and 240 of the N.-W. P. Land Revenue Act (XIX of 1873). *Ram Dayal* v. *Megu Lal, I. L. R., 6 All., 452,* distinguished. IJRAIL *v.* KANHAI

[I. L. R., 10 All., 5

289. ———— **Partition by Civil Court of a portion of a revenue-paying estate**—*Civil Procedure Code (Act XIV of 1882), s. 265—Revenue-paying estate, Partition of, into several revenue-paying estates.*—The meaning of s. 265 of the Code of Civil Procedure is that, where a revenue-paying estate has to be partitioned into several revenue-paying estates, such partition must be carried out by the Collector. *Zahrun* v. *Gowri Sunkar, I. L. R., 15 Calc., 198,* approved. DEBI SINGH *v.* SHEO LALL SINGH

[I. L. R., 16 Calc., 203

JURISDICTION OF CIVIL COURT —*continued.*

27. REVENUE COURTS—*continued.*

(*c*) ORDERS OF REVENUE COURTS.

290. ——— Suit to reverse order of Revenue Court.—Parties suing to reverse an order of the Revenue Courts may do so in the Civil Courts. NANKU ROY *v.* MAHABIR PRASAD

[3 B. L. R., Ap., 35 : 11 W. R., 405

Contra, HASSAN ALLEE *v.* BUDDEROODDEEN

[1 W. R., 141

MAHOMED FAZUL *v.* OOMAKANT SEIN

[1 W. R., 159

291. ——— Suit to set aside proceeding of Collector in execution.—A Civil Court cannot set aside the proceeding of a Collector in execution of a decree of his own Court. RAJ KISHORE MULLICK *v.* BRINDABUN CHUNDER PODDAR

[15 W. R., 119

292. ——— Suit under Beng. Act VIII of 1865, s. 13—*Appeal to Collector.*—An appeal to the Collector was not necessary as a condition precedent to a suit in the Civil Court under s. 13, Bengal Act VIII of 1865. NUGENDRO CHUNDER GHOSE *v.* MUSRUFF BIBEE **15 W. R., 17**

293. ——— Suit to question award of Collector under Act I of 1847 *Boundaries.*—An award of the Collector under Act I of 1847 in respect of boundaries was not final, even though undisturbed on appeal; nor was he competent to do more than demarcate by visible and tangible marks the boundaries between estates and fields. His award, therefore, was liable to be questioned by a suit in the Civil Court. RAM JEWUN SINGH *v.* RADHA PERSHAD SINGH . . . . . . **16 W. R., 109**

294. ——— Suit to compel purchaser at sale for arrears of rent to furnish security—*Beng. Reg. VIII of 1819, ss. 5 and 7.*—A zamindar cannot bring a suit in the Civil Court to compel the purchaser of a patni in his estate sold by auction for arrears of rent to furnish security for the amount of half the yearly jama. If the purchaser of the patni is not willing to give security for the payment of his rent, the zamindar's remedy is under Regulation VIII of 1819, ss. 5 and 7, to appoint his own sezawal, or collector, and deduct his own rents from the collections before handing over the surplus to the patnidar, who, moreover, is declared by s. 7 to take all the risk of the attachment. This remedy of the zamindar is not affected by the grant by him of a dar-patni to a third party. JOY KISHEN MOOKERJEE *v.* JANKEENATH MOOKERJEE

[17 W. R., 470

295. ——— Order of Collector under s. 11, Act XI of 1859, Power of Civil Court to interfere with. - *Quære*—Whether the Civil Court can interfere with a Collector's order, under s. 11. Act XI of 1859, opening a separate account with the recorded sharer of a joint estate SHURUFOONISSA BEBEE *v.* HUSMUT ALI . **9 W. R., 533**

296. ——— Suit to set aside order of Collector—*Act XI of 1859, s. 11.*—The plaintiff

and *A* and *B* were joint owners of an estate paying revenue to Government. The names of *A* and *B* were alone recorded in the rent-roll of the Collector. *A* and *B* alienated certain specific portions of the lands of the estate to their wives, and applied to the Collector, under s. 11 of Act XI of 1859, to open a separate account for payment of the proportionate share of the revenue payable in respect of the lands so alienated. The plaintiff objected to such separation on the ground that the lands had never been divided, but always held ijmali, and that *A* and *B* claimed a larger share than they owned; but his objection was rejected by the Collector on the ground that he was not a recorded proprietor, and the application of *A* and *B* was granted. The plaintiff now sued in the Civil Court for a declaration of the extent of his share in the joint estate, and to have the order of the Collector set aside. *Held* that the Civil Court had jurisdiction to entertain such a suit, and that it was not necessary to make the Collector a party. HARGOBIND DAS *v.* BARODA PRASAD DAS

[6 B. L. R., 614
15 W. R., 112

MADAN MOHUN MAZUMDAR *v.* BAISTAB CHANDRA MANDAL. PURNA CHANDRA GANGULI *v.* MADAN MOHAN MAZUMDAR

[6 B. L. R., 617 note : 13 W. R., 67

297. ——— Suit to set aside order of Revenue Court under Act XIX of 1863.—A suit in the Civil Court did not lie to set aside the decision passed by the revenue authorities in the exercise of the power vested in them by s. 8, Act XIX of 1863. However irregular the proceedings be, and not in conformity to the provisions of that section, the proper course for the party aggrieved was by appeal in the manner prescribed by the Act. BUKHTA *v.* GUNGA . . . . . . **3 Agra, 161**

298. ——— Interference with decrees of Revenue Court—*Fraud.*—Proceedings held by the Revenue Courts in execution of their own decrees are final, and cannot be interfered with by the Civil Courts, unless on some special ground, like that of fraud. BHOOJUNGA THAKOOR *v.* LUCHMEE NARAIN SAHEE . . . . . **9 W. R., 80**

299. ——— Suit to set aside decree for fraud—*Act X of 1859, s. 23.*—The provisions of s. 23, Act X of 1859, are no bar to the institution in the Civil Court of a suit by a raiyat, farmer, or tenant for maintenance of possession, nor to a suit to set aside a decree of a Revenue Court on the ground that it had been obtained by fraud. RAMSEWAR CHOWDHUREE *v.* NACKCHEDEE SINGH

[3 Agra, 357
S. C. Agra, F. B., Ed. 1874, 160

300. ——————*Suit to set aside decree on kabuliat alleged to be false—Failure to show fraud.*—Plaintiff had executed a kistbundi for arrears of rent decreed against him by a Revenue Court. He then sued to set aside the decree and kistbundi on the ground that the decree had been based on a fraudulent and fictitious kabuliat. The suit, though dismissed in the first Court, was decreed on appeal. *Held,* on special appeal, there being no evidence of the fraud on the record of the case, that the plaintiff was not entitled to a decree. MUBRIAM BIBEE *v.* MAHOMED JAMAL . **12 W. R., 380**

301. ——— **Suit to set aside order of Collector refusing to sell for arrears of rent.**—A suit will not lie in the Civil Court against an order of a Collector refusing to hold a sale of a tenure for arrears of rent. ROY HUREEKISHEN *v.* NURSING NARAIN . . **6 W. R., Act X, 63**

302. ——— **Suit to set aside order of Collector for registration of names.**—A suit will not lie in the Civil Court to set aside an order by a Collector, made under s. 27, Act X of 1859, for the registration of the names of the defendants as shikmi talukhdars in the plaintiff's serishta. MAHOMED NOOR BUKSH *v.* MOHUN CHUNDER PODDAR **[6 W. R., Act X, 67**

303. ——— **Suit to establish claim to tenure not requiring registration**—*Transfer of tenure not requiring registration in zamindari serishta—Suit to establish claim to tenure.*—The sub-letting of a tenure does not necessarily make a raiyat a middleman. A raiyat who holds land under cultivation by himself, or by others taking under him, is not a middleman. His holding, therefore, was not one the transfer of which required registration under s. 27, Act X of 1859, and a suit will lie in the Civil Court in such a case by an unsuccessful claimant under s. 106 of that Act. KAROO LALL THAKOOR *v.* LUCHMEEPUT DOOGUR **7 W. R., 15**

304. ——— **Suits to reverse summary awards for rent** *Question of title.*—In a suit brought by raiyats to reverse summary awards for rent, the Court, instead of deciding the question of title between the co-defendants, should merely determine to whom the plaintiffs have paid rent in past years, and their liability for the present year, in accordance with their past payments and the possession of the property evidenced thereby, leaving the contending co-sharers to settle the question of title in a separate suit brought for that purpose. MUDDOOSOODUN ACHARJ *v.* KISHORE HAZRAH **W. R., F. B., 36**

305. ——— **Suit to set aside order of Revenue Court directing ejectment**—*Cause of action—Res judicata.*—A Revenue Court having ordered a tenant to be ejected under s. 10 of the Rent Recovery Act on the ground that he had refused to accept a pottah as directed by the Court, the tenant brought a suit in the Civil Court to set aside the order of the Revenue Court. *Held* that the suit would not lie. RAGAVA *v.* RAJAGOPAL **[I. L. R., 9 Mad., 39**

306. ——— **Order of ejectment—Suit to set aside such order**—*Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10.*—*Held* (DAVIES, *J., diss.*) that a tenant who has been ejected in pursuance of an order under Rent Recovery Act (Madras), s. 10, cannot maintain a suit to question the legality of that order. *Ragava v. Rajagopal, I. L. R., 9 Mad., 39,* followed. MANICKA GRAMANI *v.* RAMACHANDRA AYYAR **[I. L. R., 21 Mad., 482**

307. ——— **Suit for money paid as rent**—*Rent paid twice.*—The plaintiff sued to recover money which she had paid as rent to the zamindar, under a decree of the Revenue Court, after she had already paid her rent to his gomastah. *Held* that the suit was not cognizable by the Civil Court. SAUDAMINI DASI *v.* THAKOMANI DEBI **[3 B. L. R., Ap., 114**

308. ——— **Suit after decision of Revenue Court under Act X of 1859, s. 77**—*Question of title.*—After a decision by a Revenue Court under s. 77, Act X of 1859, a Civil Court might determine the legal title to the rent; and, when determining such title, the Civil Court might also determine whether any rent which may have been lost to a party by the decision of the Revenue Court might not be recouped to him. KEFAET HOSSEIN *v.* SHUMSHARE ALI . **13 W. R., 458**

309 ——— **Enquiry into legality of proceedings of Collector**—*Beng. Act VII of 1868—Certificate under s. 18.*—In a suit for arrears of rent it appeared that the plaintiff claimed under a pottah granted by the owner of land after a certificate had been issued against him out of a Collector's office under Bengal Act VII of 1868. The defendants had purchased the land in question at a sale held under the Act. The plaintiff alleged that the certificate had not been served, and that no notice before the certificate was issued was served upon the grantor as required by s. 18 of the Act; and he contended that, as the Collector's proceedings were irregular, the pottah was valid. The District Judge held that the Civil Court had no power to enquire into the Collector's proceedings, and must, as nothing appeared to the contrary, assume that they were regular, and dismissed the suit. *Held* that the Judge was bound to examine the proceedings of the Collector to see that they were legal and regular so as to constitute a legal bar to the grant of the pottah, and that the Judge was not at liberty to make any presumption in favour of their legality or correctness. HEM LOTTA *v.* SREEDHONE BOROOA **[I. L. R., 3 Calc., 771**

310. ——— **Suit for execution of decree in summary suit for rent.**—A regular suit to enforce a decree obtained in a summary suit for rent, which the Revenue Court has refused to execute upon the ground that it has been satisfied, cannot be maintained in the Civil Court (STEER, *J.,* dissenting). ANANDA MAYI DASI *v.* PATIT PABUNI DASI **B. L. R., Sup. Vol., 18 : W. R., F. B., 118**

311. ——— **Suit to enforce decree of Revenue Court.**—As a general rule, a suit cannot be brought in a Civil Court to enforce a decree of a

JURISDICTION OF CIVIL COURT —*continued.*

27. REVENUE COURTS—*continued.*

Revenue Court under Act X of 1859. Such decrees can be enforced only by execution, and the limitation for proceedings to execute them was defined by Act X itself. Aghore Chunder Mookerjee *v.* Wooma Soonderee Dabea . . **7 W. R., 216**

Odhesh Coomar Singh *v.* Ram Gobind Singh **[9 W. R., 145**

312. ——— **Suit for recovery of compensation awarded to a purchaser at a revenue sale**—*Maintainability of such a suit—Beng. Act VII of 1868, s. 2.*—A suit by a purchaser of an estate sold for arrears of Government revenue for recovery of compensation awarded to him under s. 2 of Act VII (B. C.) of 1868, by a Commissioner who set aside the sale, is maintainable in a Civil Court. Chuttu Lal *v.* Bhagwati Prosad **[1 C. W. N., 447**

313. ——— **Suit for amount due under decree in rent suit.**—*J K D* instituted a suit before a Deputy Collector, under Act X of 1859, against *L N R*, for money due from the defendant as his gomastah. The parties, before judgment, filed a petition of compromise, according to which it was agreed that the amount admitted by *L N R* to be due (R325) should be paid by instalments, and it was stipulated that, on failure to pay any instalment, "the whole debt will be realized at once, and I (*L N R*) shall be charged interest at half per cent. per month . . . . and it is prayed that the case be disposed of according to the above terms." The Deputy Collector decreed—"Let the case be disposed of in accordance with the terms of the compromise." *J K D* assigned his interest under that decree to *R M D*. *L N R* failed to pay an instalment. *R M D* then applied to the Deputy Collector to execute the decree for the whole amount with interest, but his application was refused. Thereupon, *R M D* brought an action in the Civil Court against *L N R* for the amount due with interest. *Held* the suit would not lie in the Civil Court to recover the amount due under the Act X decree. The parties to the compromise contemplated that the whole amount and interest should be realized only by process of execution to be issued out of the Revenue Court, which was to be delayed till a failure to pay an instalment had taken place. On the refusal of the Deputy Collector to issue execution for the amount of the debt, the plaintiff should have appealed to the Commissioner. Ram Mohan Das *v.* Lakhi Narayan Roy **[4 B. L. R., A. C., 207**

S. C. Luckhee Narain Roy *v.* Ram Mohun Doss . . . . . . **13 W. R., 151**

314. ——— **Suit to set aside sale by order of Collector.**—A Civil Court had no jurisdiction to entertain a suit to set aside a sale by order of a Collector, under Act X of 1859, in execution of a decree for arrears of rent due on the tenure of which the sale was made. Haranund Dutt *v.* Ram Dhun Sein . . . **W. R., 1864, Act X, 122**

JURISDICTION OF CIVIL COURT —*continued.*

27. REVENUE COURTS—*continued.*

315. ——— **Suit to set aside sale for arrears of revenue**—*Act XI of 1859, s. 33.*—Plaintiff not having appealed to the Revenue Commissioner against the sale of his estate for arrears of Government revenue, the Civil Court was not competent, under s. 33, Act XI of 1859, to entertain a suit for the annulment of the sale. Mohun Lall Tagore *v.* Collector of Tirhoot . **1 W. R., 356**

316. ——— **Suit by under-tenant to recover tenure sold for arrears of rent**—*Act X of 1859, s. 106.*—An under-tenant might sue in the Civil Court to recover his under-tenure sold by his zamindar for arrears of rent, although he did not previously intervene in the Collector's Court, under s. 106, Act X of 1859. Mooktokashee Dassia *v.* Brojunder Coomar Roy **3 W. R., Act X, 156**

317. ——— **Suit to set aside rent decree after failure to appeal against it.**—Where the Deputy Collector refused plaintiff's application to set aside a rent decree as passed against him upon a confession of judgment fraudulently filed by other parties, and the value of the suit being beneath R100, the plaintiff might have appealed to the Collector under s. 14, Bengal Act VI of 1862,—*Held* that, having failed to do so, he had no right to bring a suit for the purpose in the Civil Court. Raj Kishen Mookerjee *v.* Modhoo Soodun Mundle **[17 W. R., 413**

318. ——— **Suit to recover land sold in execution of decree for rent.**—A suit lay in the Civil Court for the recovery of land fraudulently sold in execution of a decree for rent, under Act X of 1859, against a party not in possession without suing specifically to set aside the sale. Noor Buksh *v.* Mean Jan . **6 W. R., Act X, 60**

319. ——— **Suit to set aside sale of under-tenure**—*Act X of 1859, s. 108.*—The owner of an under-tenure might sue in the Civil Court for a declaration that the sale of his under-tenure under Act X of 1859 was illegal and void under s. 108 of that Act, and that he was entitled to possession of the land in suit notwithstanding such illegal sale. Shuroop Chunder Bhottacharjee *v.* Kasheeshuree Dossia . . **6 W. R., Act X, 55**

320. ——— **Suit to set aside revenue sale on account of fraud.**—An *ex-parte* decree for an arrear of rent having been passed by a Revenue Court against certain tenants, and their land having been put up for sale in execution and bought by the decree-holders, the tenants brought a civil suit to get rid of the sale as well as of the decree. The lower Courts, finding that the whole of the proceedings had been conducted without the knowledge of the plaintiffs and that a fraud had been intended, gave them a decree, setting aside the sale, and affirming plaintiffs' title in the disputed land. *Held*, in special appeal, that as the parties came up on a ground of equity, the High Court could interfere without prejudice to the jurisdiction of the Revenue Courts. Accordingly, on the principle that the defendants should not be allowed to take advantage of their own fraud, it was decreed

JURISDICTION OF CIVIL COURT —*continued.*

27. REVENUE COURTS—*continued.*

(the purchase-money being still in deposit in the Collectorate) that the defendants should re-convey the property to the plaintiffs. SHIBO SOONDUREE DOSSEE *v.* PANCHCOWREE CHUNDRA **14 W. R., 158**

321. ———————— An action lies in the Civil Court to set aside a purchase fraudulently made at a sale in execution of a decree of a Revenue Court which has been obtained by fraud. NILMANI BURNICK *v.* PUDDO LOCHAN CHUCKERBUTTY **[B. L. R., Sup. Vol., 379: 5 W. R., Act X, 20**

AGHORE LALL SHAMUNT *v.* GYANANUND ROY **[6 W. R., Act X, 11**

BUCKLAND *v.* ASHOO CHOWDHRAIN **[9 W. R., 326**

BROJENDRO COOMAR CHOWDHRY *v.* RAM COOMAR HOLDAR . . . . . . **13 W. R., 32**

DEEN DYAL SINGH *v.* DANEE ROY **[13 W. R., 185**

322. ———— **Suit to set aside sale of under-tenure under Act X of 1859**—*Fraud.*—The purchaser of an under-tenure might sue in the Civil Court to set aside a sale of the under-tenure in execution of a decree for arrears of rent under Act X of 1859, on the ground that such decree was obtained by fraud subsequently to his purchase. GUNGA DOSS DUTT *v.* RAMNARAIN GHOSE **[B. L. R., Sup. Vol., 625 2 Ind. Jur., N. S., 111: 7 W. R., 183**

SOUDAMINEE DOSSEE *v.* BHOLANATH SHAHA **[9 W. R., 363**

323. ———— **Suit to set aside sale in execution of decree**—*Act X of 1859, s. 105—Fraud.*—The Civil Court had jurisdiction to entertain a suit instituted by *A* to set aside a sale of his tenure under s. 105 of Act X of 1859 on the ground that the sale was held under a decree obtained fraudulently against *B*, who was not the real owner. RAMSUNDAR PORAMANICK *v.* PRASANNA KUMAR BOSE **[B. L. R., Sup. Vol., 382: 5 W. R., Act X, 22**

324. ———— **Suit to set aside sale for arrears of rent**—*Act X of 1859, s. 105—Fraud.*—A Civil Court had jurisdiction to entertain a suit by a tenant to recover possession of a tenure from an auction-purchaser at a sale for arrears of rent under s. 105 of Act X of 1859, although there is no allegation of fraud, the tenant not having been a party to the decree for arrears of rent. MEAH JAN MUNSHI *v.* KURRUNAMAYI DEBI . **8 B. L. R., 1**

325. ———— **Suit to set aside sale by order of Revenue Court**—*Fraud.*—A sale by order of a Revenue Court can be set aside by a decree of the Civil Court, even if held directly under Act XI of 1859. In this case the sale had taken place under s. 110 of Act X of 1859. JOYDOORGA DEBIA *v.* GOPAL CHUNDER BANERJEE **[9 W. R., 538**

JURISDICTION OF CIVIL COURT —*continued.*

27. REVENUE COURTS—*continued.*

326. ———— **Suit to set aside illegal sale by Collector.**—In a suit to set aside a sale by a Collector under Act X of 1859, on the allegations that, at the time of the sale, a warrant of execution previously obtained against the moveable property of the judgment-debtor still remained in force, and that the deposit on the purchase-money was not paid until fourteen days had elapsed, it was held that such allegations, if proved, would amount to illegalities, and that a suit to declare such a sale null and void would lie in the Civil Court. ALI BUKSH SHAH *v.* NUBEE BUKSH . . . . **9 W. R., 600**

See BALKRISHEN DAS *v.* SIMPSON **[I. L. R., 25 Calc., 833 2 C. W. N., 513**

327. ———— **Suit by judgment-debtor to set aside sale by Revenue Court.**—The Civil Court has jurisdiction to entertain a suit by judgment-debtor under a decree of the Revenue Court for confirmation of his right in immoveable property sold by his execution-creditor under an order of the Revenue Court for the sale of the rights and benefits of the judgment-debtor in the suit in which the order was made, and for a declaration that the sale was void. CHANDRAKANT BHATTACHARJI *v.* JADUPATI CHATTERJI **[1 B. L. R., A. C., 177: 10 W. R., 224**

328. ———— **Suit to set aside Collector's sale and recover property**—*Costs of partition—Order of Collector for payment of proportionate share of costs by co-sharers—Suit to set aside sale.*—The Civil Court decreed partition (batwara) of an estate in a suit brought by some of the co-sharers in the estate, and ordered the plaintiffs to pay the costs of the partition. The Collector, however, called upon the defendants, the other co-sharers, to pay a portion of the fees to the Ameen who effected the partition, namely, in proportion to the shares allotted to them by the decree: and in default of payment of the whole of such portion he sold the defendant's shares in the estate. *Held* that the Collector acted *ultra vires*, and a suit was maintainable in a Civil Court to set aside the sale and for recovery of the property. BAIJ NATH SAHU *v.* LALLA SITAL PRASAD **[2 B. L. R., F. B., 1: 10 W. R., F. B., 66**

329. ———— **Order of Collector setting aside sale for arrears of revenue**—*Revenue Sale Act (XI of 1859), s. 33—Sale for arrears not due—Suit to set aside sale—Appeal to Commissioner.*—A suit may be brought in the Civil Court to set aside a sale held under Act XI of 1859, on the ground that no arrears were due, although such ground was not declared and specified in an appeal to the Commissioner as provided for in s. 33 of Act XI of 1859. *Baijnath Sahu* v. *Lala Sital Prasad, 2 B. L. R., F. B., 1: 10 W. R., F. B., 66,* followed. *Gobind Lal Roy* v. *Ramjanam Misser, I. L. R., 21 Calc., 70,* distinguished and explained. HARKHOO SINGH *v.* BUNSRIDHUR SINGH . . **I. L. R., 25 Calc., 876 [2 C. W. N., 360**

JURISDICTION OF CIVIL COURT —*continued.*

27. REVENUE COURTS—*continued.*

330. ———— **Suit to set aside sale when made without arrears of revenue being due**—*Sanction of Commissioner.*—A suit to set aside a sale under Act XI of 1869, on the ground that no arrear of revenue was due, may be brought in the Civil Court without previous appeal to the Commissioner. THAKUR CHURN ROY *v.* COLLECTOR OF 24-PERGUNNAHS . . . . **13 W. R., 336**

331. ———— **Suit to question regularity of sale in execution under Collector's order.**—When a sale had taken place by order of the Collector in execution of a decree under Act X of 1859, a civil suit lay for the purpose of questioning the regularity and propriety of the proceeding. Where circumstances indicate not merely irregularity, but irregularity brought about by the contrivance of the decree-holder, the Civil Court has jurisdiction to set the sale aside, and is right in doing so. TEKAET BHAO NARAIN DEO *v.* COURT OF WARDS . . . . . . **15 W. R., 59**

dissenting from RUTTUN MONEE DOSSIA *v.* KALEEKISSEN CHUCKERBUTTY . **W. R., F. B., 147**

332. ———— **Suit by person injured by sale of non-transferable tenure in execution of decree of Revenue Court.**—Where a tenure has been sold in execution of a decree by a Revenue Court, a third person, not a party to the suit in that Court, alleging that the tenure was not transferable, and seeking to have his right to possession vindicated against the pretended transferee, is entitled to complain in the Civil Court, and to ask protection against the probable injurious consequences to himself of the Collector's decree. JOYKISHEN MOOKERJEE *v.* HUREEHUR MOOKERJEE

[9 W. R., 286

333. ———— **Suit to set aside sale on ground other than fraud**—*Act X of 1876, s. 4—Sale for arrears of revenue—Suit to set aside.*—S. 4, cl. (*c*), of Act X of 1876 excepts from the jurisdiction of the Civil Courts claims to set aside, on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land revenue. *Quære*—Whether the exception of fraud in the above enactment is confined to fraud on the part of officers conducting sales for arrears of land revenue. BALKRISHNA VASUDEB *v.* MADHAVRAV NARAYAN

[I. L. R., 5 Bom., 73

334. ———— **Suit for confirmation of execution-sale set aside by Collector**—*Civil Procedure Code, 1882, s. 312—Onus probandi.*—A suit lies in a Civil Court for confirmation of a sale held in execution of a decree by the Collector under s. 326 of the Civil Procedure Code, and to set aside an order passed by the Collector cancelling the sale. *Madho Prasad* v. *Hansa Kuar, I. L. R., 5 All., 314,* referred to. *Azim-ud-din* v. *Baldeo, I. L. R., 3 All., 554,* followed. In such a suit, where it is pleaded in defence that the property was sold for an inadequate price, it lies on the defendant to show that there has been a material irregularity in publishing or conducting the sale. BANDI BIBI *v.* KALKA

[I. L. R., 9 All., 602

335. ———— **Sale in execution of decree**—*Civil Procedure Code, ss. 311, 313, 320, 322B, 322C, 322D—Transfer of execution to Collector—Application to Civil Court to set aside sale held by Collector on the ground of irregularity.*—*Held* by the Full Bench that an application to set aside, on the ground of material irregularity within the meaning of s. 311 of the Civil Procedure Code, a sale held by the Collector in execution of a decree transferred to him for execution under s. 320, cannot be entertained by a Civil Court. *Madho Prasad* v. *Hansa Kuar, I. L. R., 5 All., 314,* followed. *Nathu Mal* v. *Lachmi Narain, I. L. R., 9 All., 43,* distinguished. *Per* EDGE, *C.J.*—The intention of the Legislature as expressed in s. 320 and the following sections of the Civil Procedure Code was not to allow any delegation to the Collector of power to adjudicate upon questions of title, but, in other matters, to hand over all the proceedings to the Collector, and to withdraw the matters so handed over from the purview of the Civil Courts to that extent, but not questions of title or the other questions, if in dispute, referred to in s. 322B, 322C, or 322D. KESHABDEO *v.* RADHE PRASAD

[I. L. R., 11 All., 94

336. ———— **Suit to cancel pottah of Government waste issued by Collector**—*Power of Collector to cancel pottah granted by him—Standing order.*—The plaintiff having obtained from the revenue officers of the district a pottah of Government waste sued for the cancellation of a pottah for the same land subsequently granted to other persons by the Collector, who considered that the issue of the plaintiff's pottah was not in accordance with the darkhast rules. *Held* it was competent to a Civil Court to pass a decree declaring the second pottah null and void, and the plaintiff was entitled to such a decree. *Kullapa Naik* v. *Ramanuja Chariyar, 4 Mad., 429,* followed. COLLECTOR OF SALEM *v.* RANGAPA

[I. L. R., 12 Mad., 404

337. ———— **Suit by auction-purchaser to confirm sale set aside by the Collector**—*Civil Procedure Code (1882), ss. 312 and 320—Civil Procedure Code Amendment Act (VII of 1888), ss. 30 and 55—Decree transferred to Collector for execution—Right of suit.*—A decree was transferred to the Collector for execution. A sale was held by the Collector under that decree. Subsequently that sale was set aside by the Collector by an order under s. 312 of the Code of Civil Procedure. A person who had been an auction-purchaser at the sale so set aside brought a suit in a Civil Court to have the sale restored and confirmed. *Held* that such a suit would not lie. *Azimuddin* v. *Baldeo, I. L. R., 3 All., 554,* and *Bandi Bibi* v. *Kalka, I. L. R., 9 All., 602,* referred to, and held to be no longer applicable by reason of the changes effected

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27. REVENUE COURTS—*continued.*

in the law by Act VII of 1888, but the judgment of OLDFIELD, *J.*, in the former case approved. *Madho Prasad* v. *Hansa Kuar, I. L. R., 5 All., 314,* referred to. SHIB SINGH *v.* MUKAT SINGH

[I. L. R., 18 All., 437

338. ——— *Civil Procedure Code (1882), ss. 312 and 320—Act VII of 1888, ss. 30 and 55— Execution of decree—Decree transferred to Collector for execution.*—At a sale of ancestral property held by a Collector executing a decree transferred to him under s. 320 of the Code of Civil Precedure the plaintiffs, decree-holders, were the auction-purchasers. On the application of the defendants, judgment-debtors, the sale was set aside by the Collector. Thereupon the plaintiffs, decree-holders auction-purchasers, filed a suit for a declaration that the auction-sale was a valid one, and that the order of the Collector setting it aside was ineffectual. *Held* that such a suit was maintainable. *Shib Singh* v. *Mukat Singh, I. L. R., 18 All., 437,* overruled. *Ugar Nath Tiwari* v. *Bhonath Tiwari, Weekly Notes, All., 1891, p. 41,* and *Diwan Singh* v. *Bharat Singh, I. L. R., 3 All., 206,* referred to. SHIAM BEHARI LAL *v.* RUP KISHORE

[I. L. R., 20 All., 379

339. ——— **Suit for declaration contrary to decision of Revenue Court**—*N.-W. P. Rent Act (XII of 1881), ss. 95 and 96.*—One *N* was an occupancy tenant. On his death his widow *J* continued in occupation of the occupancy holding. After the death of *J*, one *S*, alleging herself to be the daughter of *N* and *J*, applied in the Court of revenue to have her name entered in the village papers as occupancy tenant of *N*'s holding in succession to him. The zamindars were made parties to this proceeding. The Court of revenue decided in favour of the applicant *S*. The zamindars appealed on the revenue side, but their appeal was dismissed. *Held* that no suit would lie in a Civil Court on the part of the zamindars for a declaration that they, and not *S*, were entitled to possession of the occupancy holding in question, and that it should be declared that *S* was not the daughter of *N*. SUBARNI *v.* BHAGWAN KHAN . **I. L. R., 19 All., 101**

340. ——— **Decision of a Revenue officer**—*Bengal Tenancy Act (VIII of 1885), ss. 107 and 108 Landlord and tenant—Record of rights.*—An order made by a Revenue officer under s. 107 of the Bengal Tenancy Act, determining the rent payable for a holding, has the force of a decree, and when not set aside by appeal or otherwise, cannot be questioned in a Civil Court. *Joypal Dhobi* v. *Palukdhari Das, 2 C. W. N., 491,* approved. RAM AUTAR SINGH *v.* SANOMAN SINGH

[I. L. R., 27 Calc., 167

See GOKHUL SAHU *v.* JODU NUNDUN ROY

[I. L. R., 17 Calc., 721

341. ——— **Order of Revenue Court granting sale under certificate**—*Public Demands Recovery Act (Beng. Act VII of 1880), s. 2—Limitation—Suit to set aside sale—Order of Revenue Court setting aside sale.*—A sale was held on the 9th September 1893, in execution of a certificate under the Public Demands Recovery Act (Bengal Act VII of 1880). On the 2nd January 1894, an appeal was preferred to the Commissioner under s. 2 of Act VII of 1868 for setting aside the sale after the expiry of sixty days prescribed for appeal. The Commissioner ordered an inquiry into the question whether the appellants before him were prevented from taking steps in consequence of fraud. The purchaser complained against this order before the Board of Revenue, who, acting under their power of revision, set aside the certificate, and the Commissioner subsequently set aside the sale without hearing the purchaser. In a suit brought in the Civil Court for the same object during the pendency of the appeal before the Commissioner and decided by the lower Court after the orders of the Board and the Commissioner setting aside the certificate and sale were passed,—*Held* by the High Court on appeal, (1) the plaintiff was entitled to proceed simultaneously in the Civil Court and in the Revenue Court. If the sale be validly set aside by the Revenue Courts, a decree must follow in the suit. (2) As regarded the contention that the Commissioner had no jurisdiction to entertain the appeal, as it was barred by limitation, the question of limitation could not be held to be one of jurisdiction, and the grounds of the Commissioner's finding on that point could not be discussed in the High Court. *Mahomed Hossain* v. *Purunder Mahto, I. L. R., 11 Calc., 287,* and *Mungal Pershad Dichit* v. *Grija Kant Lahiri, I. L. R., 8 Calc., 51: L. R., 8 I. A., 123: 11 C. L. R., 113,* referred to. (3) The Civil Court has no authority to reverse the order of a Revenue Court, which sets aside a sale. (4) The reason for overruling the objection on the ground of limitation applied to the objection that the Commissioner had not heard the purchaser, and that objection also could not be entertained. GUNESSAR SINGH *v.* GONESH DASS

[I. L. R., 25 Calc., 789

342. ——— **Commutation of rent**—*Bengal Tenancy Act (VIII of 1885), s. 40.*—An order passed in appeal by a Revenue Court under s. 40 of the Bengal Tenancy Act is final, and no suit lies in the Civil Courts by which its propriety can be questioned. LALLA SALIGRAM SINGH *v.* RAMGIR . . . . **3 C. W. N., 311**

343. ——— **Suit to set aside sale for arrears of cesses**—*Public Demands Recovery Act (Beng. Act VII of 1880), ss. 2, 8, 10—Beng. Act VII of 1880, ss. 2 and 8.*—A suit to set aside a sale held for arrears of cesses on the ground that no notice of the certificate under s. 10 of Bengal Act VII of 1880 was served upon the plaintiff is maintainable in the Civil Court. *Baijnath Sahai* v. *Ramgut Singh, I. L. R., 23 Calc., 775,* and *Saroda Charan Bandopadhya* v. *Kisto Mohun Bhattacharjee, 1 C. W. N., 516.* CHUNDEE COOMAR MUKERJEE *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 27 Calc., 698
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JURISDICTION OF CIVIL COURT
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28. SANADS.

344. ——— **Suit to cancel or set aside sanad as granted by mistake**—*Summary settlement—Sanad—Revocation of sanad—Garas—Wanta—Mazmun Narva—Bhagdari.*—Where a sanad by way of summary settlement of land revenue has been granted by Government under Bombay Act VII of 1863, Government cannot reform or set it aside without the assent of all parties interested therein. To do so would be an assumption by Government of the function of a Civil Court. A Civil Court cannot, on the ground that Government has by mistake granted such a sanad to a person not the owner of the land, reform or set aside the sanad. S. 7 of Bombay Act VII of 1863 renders the quit-rent fixed by the sanad, binding alike on Government and on the rightful owner of the land, but the latter may recover the land from the grantee of the sanad, subject to the quit-rent fixed by the sanad, and payable to Government; and such grantee will be declared to have taken the sanad as a trustee for the rightful owner. *Quære*—Whether a Civil Court can give relief, either by reforming or cancelling such sanads, against mistakes other than those relating to ownership which may be found to exist in the sanads DOLSANG BHAVSANG *v.* COLLECTOR OF KAIRA . . . . **I. L. R., 4 Bom., 467**

29. SERVICES, PERFORMANCE OF.

345. ——— **Suit to enforce services by barbers**—*Cause of action.*—A suit cannot be maintained in the Civil Courts to enforce the performance of certain services by barbers. RAJKISTO MAJEE *v.* NOBAEE SEAL . . **1 W. R., 351**

30. SOCIETIES.

346. ——— **Suit to enforce admission as member of a society.** A suit will not lie to force the defendants to admit the plaintiff into their society. RADHOO NISSEE *v.* RAM JUNOO NISSEE . . . . **2 Hay, 83**

347. ——— **Suit for declaration of right to be member of a society**—*Exclusion from somaj—Beng. Reg. III of 1793, s. 8.*—In a suit for a decree declaratory of the right of a person to the membership of a somaj (society), upon the allegation that the other members have excluded him from the somaj,—*Held* that, as such exclusion neither deprived him of caste nor affected any right of property, it is not cognizable by the Civil Court. The members of a society are the sole judges whether a particular person is entitled to continue as a member or not. S. 8, Regulation III of 1793, commented on. SUDHARAM PATAR *v.* SUDHARAM

[3 B. L. R., A. C., 91: 11 W. R., 457

348. ——— **Suit on account of exclusion from invitation to dinners.**—Civil Courts cannot compel Hindus, against their will, to ask other Hindus to their houses or their entertainments. JOY CHUNDER SIRDAR *v.* RAMCHURN

[6 W. R., 323

JURISDICTION OF CIVIL COURT
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31. STATUTORY POWERS, PERSONS WITH.

349. ——— **Remedy by ordinary suit barred**—*Madras Forest Act (V of 1882), s. 10 Procedure.*—Where by an Act of the Legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the ordinary jurisdiction of the Civil Courts is ousted, and in the case of injury the party cannot proceed by action. Plaintiff sued in a Munsif's Court to cancel the decision of a forest officer confirmed by a District Judge under s. 10 of the Madras Forest Act, 1882, and to recover certain land, a claim to which had been rejected under the said section. *Held* that the Munsif had no jurisdiction to entertain the suit. RAMACHANDRA *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 12 Mad., 105

32. SURVEY AWARDS.

350. ——— **Suit to set aside survey award**—*Beng. Reg. IX of 1833, s. 9.*—S. 9 of Regulation IX of 1833 referred only to decisions of punchayets, and did not bar a suit in the Civil Court to set aside an award of survey authorities as null and void. RAJ KISHEN ROY *v.* SURUT CHUNDER CHUCKERBUTTY . . . . **4 W. R., 79**

IKRAM-OOLLAH *v.* SHEO PERSHAD . **2 Agra, 340**

SIKUNDAR ALI *v.* PURWURUSH ALI

[3 N. W., 132

33. TRESPASS.

351. ——— **Suit to have door closed on account of apprehended trespass.**—*Held* that a suit for the closing of a door on account of apprehended trespass will not lie in the Civil Courts. PARUM SOOKH *v.* SITA RAM . . **2 Agra, 119**

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See SUPREME COURT, CALCUTTA.
[1 Moore's I. A., 67

1. GENERAL JURISDICTION.

1. ———— **Presumption of jurisdiction** —*Objection to jurisdiction.*—The High Court being a Court of superior jurisdiction, the want of jurisdiction is not to be presumed, but the contrary. Where the High Court had jurisdiction to try a prisoner for the offence committed, if a charge had been made against him by a person authorized to make that charge, and the prisoner pleaded not guilty,—*Held* that proof need not be given that the officer had authority to send up the charge. Objections to the jurisdiction should be made before pleading to the general issue. QUEEN *v.* NABADWIP GOSWAMI
[1 B. L. R., O. Cr., 15 : 15 W. R., Cr., 71 note
17 W. R., Cr., 36 note

2. ———— **Resistance of process of Civil Court.**—The resistance of process of a Civil Court is punishable under the Code of Criminal Procedure, by a Court of criminal jurisdiction. *In re Chunder Kant Chuckerbutty, 9 W. R., Cr., 63,* overruled. QUEEN *v.* BHAGAT DAFADAR
[2 B. L. R., F. B., 21 : 10 W. R. Cr., 43

3. ———— **Questions of title**—*Construction of documents.*—It is at all times desirable that questions of title should not be tried in Criminal Courts, and more especially where such questions depend on the construction of obscure documents, or fall to be decided in reference to transactions of which at the best but an imperfect record is preserved. QUEEN *v.* KISHEN PERSHAD **2 N. W., 202**

4. ———— **Special law, Effect of, on general jurisdiction**—*Criminal breach of trust by trustee of temple—Mad. Reg. VII of 1817—Act XX of 1863.*—The ordinary criminal law is not excluded by Regulation VII of 1817 or Act XX of 1863. ANONYMOUS CASES . **I. L. R., 1 Mad., 55**

JURISDICTION OF CRIMINAL COURT
—continued.

1. GENERAL JURISDICTION—*continued.*

5. ———— **Special law, Jurisdiction under, Effect of Criminal Procedure Code on**—*Criminal Procedure Code (Act X of 1882), s. 1.*—The jurisdiction conferred by the Code of Criminal Procedure (Act X of 1882) does not affect any special jurisdiction or power conferred by any law in force at the time when the Code came into force. QUEEN-EMPRESS *v.* GUSTADJI BARJORJI
[I. L. R., 10 Bom., 181

6. ———— **Order under Criminal Code by executive officer**—*Power of Judicial Courts to question the legality of such order.*—Where an executive officer makes an order or issues a notification under the provisions of the Code of Criminal Procedure, it is not within the province of judicial authority to question the propriety or legality of such order or notification until an attempt is made to enforce the exaction of a penalty against a person committing a breach of such order or notification. It then becomes the duty of the judicial authority to consider whether the order is properly made or not. IN THE MATTER OF THE PETITION OF SURJANARAIN DASS. EMPRESS *v.* SURJANARAIN DASS
[I. L. R., 6 Calc., 88

7. ———— **Obstruction to right of way** —*Erection of building on public way.*—Where a party residing on one side of a public lane encroaches on the lane by building, and narrows the passage at that particular spot, so far as to cause the traffic to pass over a portion of the land of the party residing on the opposite side of the lane, the remedy of the latter is, by recourse to the Criminal Court, to prevent the obstruction of the public thoroughfare. If he does not do so, he has no cause of action against the other. ABDUL HYE *v.* RAM CHURN SINGH
[11 W. R., 445

8. ———— **Suit for closing new road and opening old one.**—In a suit for closing a new road opened by the defendants through the land of the plaintiff, and for opening an old road, which had been closed by the defendant,—*Held* by MARKBY, *J.*, that the question of opening or closing a public road belongs to the Criminal Court, and not to the Civil Court. HIRA CHAND BANERJEE *v.* SHAMA CHARAN CHATTERJEE
[3 B. L. R., A. C., 351 : 12 W. R., 275

9. ———— **Offence committed on the high seas**—*12 & 13 Vict., c. 96—23 & 24 Vict., c. 88.*—An offence committed on the high seas, but within three miles from the coast of British India, as being committed within the territorial limits of British India, is punishable under the provisions of the Penal Code. The ordinary Criminal Courts of the country have jurisdiction over such offences by virtue of 12 & 13 Vict., c. 96, ss. 2 and 3, extended to India by 23 & 24 Vict., c. 88. Where certain inhabitants of the village of Manon in the Thana district sallied out in boats and pulled up and removed a number of fishing stakes lawfully fixed in the sea within three miles from the shore by the villagers of a neighbouring village, it was held that a Magistrate in

JURISDICTION OF CRIMINAL COURT —*continued.*

1. GENERAL JURISDICTION—*continued.*

the Thana district had jurisdiction over the offenders; and that the Penal Code was the substantive law applicable to the case. REG. *v.* KASHYA RAMA

[8 Bom., Cr., 63

10. ———— *Conversion of goods at foreign port entrusted to be carried from and to a British Indian port—Stats. 12 & 13 Vict., c. 96, and 23 & 24 Vict., c. 88.—B* entrusted with rice at M (a port in British India) for conveyance to C (also a port in British India) took the rice to G, a port in foreign territory, and there sold it. He was convicted at M of criminal breach of trust as a carrier under s. 407 of the Penal Code. *Held* that the Sessions Court at M had no jurisdiction to try the offence under the Code of Criminal Procedure. *Held* also that no offence was committed on the high seas so as to give the Court jurisdiction under 12 & 13 Vict., c. 96, extended by 23 & 24 Vict., c. 88. BAPU DALDI *v.* QUEEN . **I. L. R., 5 Mad., 23**

11. ———— **Jurisdiction in Tributary Mehals**—*Mohurbhunj—British India.*—A British subject residing in Midnapore, in Bengal, was charged before the Maharajah of Mohurbhunj with having committed the offence of defamation in Mohurbhunj in the Tributary Mehals. On an application made by the accused to the Magistrate of Midnapore, objecting to be tried by the Rajah of Mohurbhunj, the Commissioner of Cuttack, who was also Superintendent of the Tributary Mehals, directed that the case should be transferred to Midnapore and tried by the Magistrate of that district, who had the power of an Assistant Superintendent of the Tributary Mehals. The accused, while being tried, moved the High Court to set aside the proceedings at Midnapore on the ground that, the offence not having been committed within the district, the Magistrate was acting without jurisdiction. *Held* that the proceedings were without jurisdiction. *Per* CUNNINGHAM, *J.*—The Tributary Mehals are now, as they were in 1874, a portion of British India, which the Government of India has been pleased to exempt from the ordinary law and jurisdiction of the Courts, and to govern by means of special officials and enactments. Whatever may be the powers of Government as to Mohurbhunj, those powers do not extend to empowering the legally constituted tribunals of a British district to follow in that district, and in the case of residents in it, any procedure, and to exercise any other jurisdiction than that created by the law. *Per* PRINSEP, *J.*—The territory of Mohurbhunj is a part of British India, but at present not subject to any laws not specially extended to it. The Tributary Mehals being British India, and being excluded from the operation of all the laws in force in British India, unless expressly extended to them, the orders of Government conferring powers on particular officers over criminal offences committed within those mehals are *ultra vires.* HURSEE MAHAPATRO *v.* DINOBUNDO PATRO

[I. L. R., 7 Calc., 523 : 9 C. L. R., 93

12. ———— *Code of Criminal Procedure (Act X of 1872), s. 70—Foreign Jurisdiction and Extradition Act (XXI of 1879), s. 9—Beng. Regs. XII, XIII, and XIV of 1805.*—The prisoners, residents of the district of Singhbhum, a district in British India, were convicted, under s. 331 of the Penal Code, at Singhbhum, of an offence committed in Mohurbhunj. *Per* GARTH, *C.J.*, PONTIFEX and MORRIS, *JJ.*—The territory of Mohurbhunj is not within the limits of British India; but, under the provisions of s. 9 of Act XXI of 1879, a conviction in British India for an offence committed without the limits of British India is good. *Per* MITTER, *J.*—Mohurbhunj is within the limits of British India; but seeing that the Tributary Mehals constitute a "district" within the meaning of the Criminal Procedure Code, and that the Superintendent of these mehals has been vested with the powers of a Sessions Judge under an order of the Government of India, a conviction under the Penal Code (having regard to the provisions of s. 70 of the Criminal Procedure Code) ought not to be set aside. *Per* PRINSEP, *J.*—Mohurbhunj is within the limits of British India; but the Acts which extend to British India do not extend to Mohurbhunj. The territory having been expressly placed beyond the ordinary legislation, the law in force in British India cannot come into operation there until this exemption has been removed. EMPRESS *v.* KESHUB MOHAJAN. EMPRESS *v.* UDIT PRASAD

[I. L. R., 8 Calc., 985 : 11 C. L. R., 241

13. ———— *Criminal Procedure Code (Act X of 1882), s. 182—Local area—Uncertainty as to the situation of the scene of offence.*—When there is an uncertainty as to whether a particular spot, where an offence has been committed, is situated within one district or another, the case is governed by s. 182 of the Criminal Procedure Code (Act X of 1882), and the offence is triable in the Court of either district. The expression "local area" includes, and was intended to include a "district." PUNARDEO NARAIN SINGH *v.* RAM SARUP ROY

[I. L. R., 25 Calc., 858
2 C. W. N., 577

14. ———— *Kheonjur—"Local area"—Code of Criminal Procedure (Act X of 1882), ss. 182 and 531.*—The Penal Code and Criminal Procedure Code have no application to the Tributary Mehal of Kheonjur, which is on precisely the same footing in that respect as Mohurbhunj. Certain persons, officers of the Maharajah of Kheonjur, one of whom was a resident of the Cuttack district, and the others residents of Kheonjur, were charged before the Deputy Magistrate of Tajpore with certain offences under the Penal Code. They were convicted, and on appeal to the Sessions Judge the conviction was upheld. It was found by the Sessions Judge that the scene of the occurrence which gave rise to the charges was within the territory of Kheonjur. *Held* that the Deputy Magistrate and Sessions Judge had no jurisdiction to try the case, and that the conviction must be set aside. *Held,* further, that ss. 182 and 531 of the Criminal Procedure Code had no application to the case. The words "local area" used in s. 182 only apply to a "local area" over which the Criminal Procedure Code applies, and not to a local area in a foreign country, or in other portions of the British Empire to which the Code has no application; and similarly s. 531 only refers to districts, divisions, sub-divisions, and local areas governed by the Code of Criminal Procedure. IN THE MATTER OF BICHITRANUND DASS *v.* BHUGGUT PERI. IN THE MATTER OF BICHITERANUND DASS *v.* DUKHIA JANA **[I. L. R., 16 Calc., 667**

15. ———— **Offence committed in foreign territory**—*Criminal Procedure Code, s. 188—Trial without certificate of the Political Agent—Magistrate who is also Political Agent, Jurisdiction of.*—A District Magistrate instituted criminal proceedings in British India against a Native Indian subject of the Queen, in respect of offences under ss. 419, 467, and 114 of the Penal Code, said to have been committed by him in French territory, without a certificate under s. 188 of Criminal Procedure Code. The accused was committed to the Sessions Court. *Held*, although the District Magistrate was the Political Agent who might have certified under Criminal Procedure Code, s. 188, the proceedings were void for want of the certificate, and the commitment should be quashed. QUEEN-EMPRESS *v.* KATHAPERUMAL . . . **I. L. R., 13 Mad., 423**

16. ———— **Jurisdiction of the British Consular Court at Zanzibar over foreign subjects enjoying British protection**—*Order in Council, dated the 29th November 1884, s. 6—Greek subjects.*—The Greek residents at Zanzibar, having been by international action placed under British protection, are liable to the British criminal law in force at Zanzibar. The accused, who was a Greek under British protection at Zanzibar, was convicted by the British Consular Court at Zanzibar of culpable homicide not amounting to murder, and sentenced to ten years' rigorous imprisonment under s. 304 of the Indian Penal Code (Act XLV of 1860). He appealed to the High Court of Bombay, contending (*inter alia*) that he was a Greek subject, and as such not liable to be tried by the Consular Court. *Held* that it was competent to Her Majesty to exercise jurisdiction in one foreign State over the subjects of another foreign State; that under s. 6, cl. (*b*), of Her Majesty's Order in Council, dated the 29th November 1884, the provisions referring to British subjects were applicable to foreigners enjoying British protection in so far as by treaty, capitulation, grant, usage, sufferance, or other lawful means, Her Majesty had jurisdiction at Zanzibar in relation to such persons; and that the prisoner, being a British protected person within the meaning of s. 4, cl. (*b*), of the Order, was amenable to the jurisdiction of the Consular Court. QUEEN-EMPRESS *v.* REGO MONTOPOULO **[I. L. R., 19 Bom., 741**

17. ———— **Jurisdiction of Consular Court over persons not resident within a British Protectorate**—*Aiding the waging of war against a friendly power—Africa Orders in Council, 1889, 1892, 1893.*—Two natives of a German Protectorate were convicted by the English Consular Court of Uganda of aiding and abetting the King of Unyoro in waging war against the King of Uganda and the Queen-Empress under ss. 48 and 50 of the Africa Order in Council of 1889 as supplemented by the Order of Council of 1892 and 1893. One of them was also convicted of slave-dealing. *Held* that the English Consular Court had no jurisdiction, inasmuch as the accused, even if subjects of a Signatory Power, were not resident, and their offences were not committed, within a British Protectorate. *Held* also that the alleged fact that the "*locus in quo*" was in British military occupation gave no jurisdiction to the Consular Court. QUEEN-EMPRESS *v.* JUMA . **I. L. R., 22 Bom., 54**

18. ———— **Criminal jurisdiction along the railway through Indian Independent States**—*Locality of crime—Illegal arrest on lands occupied by the Hyderabad State Railway.*—The authority for the exercise of criminal jurisdiction by the Government of India upon lands within the limits of the Hyderabad State Railway is derived from a grant to that Government in 1887 by His Highness the Nizam as ruler of the territory. The railway lands remain part of his dominions. The grant of civil and criminal jurisdiction contained in the correspondence of that year between the Nizam's Minister and the Resident at Hyderabad is expressed to be "along the line of railway, as is the case on other lines running through independent States." This jurisdiction, notwithstanding any words in the notification of the Government of India of the 22nd March 1888 (which could not of itself give any authority or add to that granted by the Nizam), does not justify the arrest on the lands of the Hyderadad State Railway of a subject of the Nizam under the warrant of the Magistrate of a district in British India, on a charge of a criminal offence committed in British India, and unconnected with the Hyderabad railway administration. The mere presence of the accused on the railway lands, over which criminal jurisdiction had been granted as above, was no legal ground for his arrest under the warrant of the Court in British India, his offence, if committed at all, not having been committed on those lands, and not having been connected with the railway. MUHAMMAD YUSUF-UD-DIN *v.* QUEEN-EMPRESS . . . **I. L. R., 25 Calc., 20**
[L. R., 24 I. A., 137
2 C. W. N., 1

19. ———— **Power of Indian Legislature**—*Act XXII of 1869, s. 9—Indian Councils Act—24 & 25 Vict., c. 67, s. 22—24 & 25 Vict., c. 104, ss. 9, 11, 13—Delegation, Power of.*—By Act XXII of 1869 certain districts were removed from the jurisdiction of the High Court, and by s. 5 the administration of civil and criminal justice was vested in such officers as the Lieutenant-Governor of Bengal should appoint. By s. 9 the Lieutenant-Governor

was empowered to extend all or any of the provisions of the Act to the Cossyah and Jynteeah Hills. By a notification in the *Calcutta Gazette* of 4th October 1871, the Lieutenant-Governor extended the provisions of the Act to the Cossyah and Jynteeah Hills, and directed that the Commissioner of Assam should exercise the powers of the High Court in the civil and criminal cases triable in the Courts of that district. The two prisoners were tried for murder in April 1876, and were on conviction sentenced by the Chief Commissioner of Assam to transportation for life. On appeal by the prisoners to the High Court,—*Held* by the majority of a Full Bench (GARTH, *C.J.*, MACPHERSON and PONTIFEX, *JJ.*, dissenting) that the High Court had jurisdiction to entertain the appeal, and such jurisdiction was not taken away by Act XXII of 1869. *Per Curiam.*—The Governor General in Council had power by legislation to remove the districts from the jurisdiction of the High Court. *Per* JACKSON, AINSLIE, and MARKBY, *JJ.* (KEMP, *J.*, concurring)—The Governor-General in Council had no power to delegate his legislative functions to the *Lieutenant-Governor of Bengal in* the way he had done in Act XXII of 1869. The power of delegation cannot be considered as validated by any long course of practice, nor as sanctioned by the tacit recognition of Parliament; Act XXII of 1869 is therefore so far invalid. *Per* MACPHERSON, *J.* (PONTIFEX, *J.*, concurring)—Such delegation is nowhere expressly prohibited, and does not bring the Act under any of the restrictive provisions of the Indian Councils Act. *Per* GARTH, *C.J.*, and MACPHERSON, *J.* (PONTIFEX, *J.*, concurring)—The power of delegation now questioned had been exercised in many cases for a series of years previous to the passing of the Indian Councils Act, and that Act (the framers of which must have been cognizant of such course of practice) must be taken *as impliedly approving* of and sanctioning such practice, which it would otherwise have declared illegal. *Per* GARTH, *C.J.*, JACKSON, MARKBY, and AINSLIE, *JJ.* (KEMP, *J.*, concurring)—The High Court has power to question the validity of the Legislative Acts of the Governor General in Council. *Per* MACPHERSON, *J.* (PONTIFEX, *J.*, concurring)—The High Court has no such power if satisfied that the Act is not within any of the prohibitions of the Indian Councils Act. EMPRESS *v.* BURAH

[I. L. R., 3 Calc., 63 : 1 C. L. R., 161

Held by the Judicial Committee of the Privy Council that the decision of the majority of the High Court was erroneous and rested on a mistaken view of the powers of the Indian Legislature. That Legislature has powers expressly limited by the Act of the Parliament which created it, but has, when acting within those limits, plenary powers of legislation as large and of the same nature as those of Parliament itself. When plenary powers of legislation exist as to particular subjects, whether in an Imperial or Provincial Legislature, they may be well exercised either absolutely or conditionally. Legislation, conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence, is not uncommon, and in many circumstances may be highly convenient. By the terms of the Act 24 & 25 Vict., c. 104, the exercise of jurisdiction in any part of Her Majesty's Indian territories by the High Courts was meant to be subject to, and not exclusive of, the general legislative power of the Governor General in Council. An exercise of legislative authority by the Governor General in Council, whereby any place or territory is removed from the jurisdiction of the High Courts, is one expressly contemplated by the Stat. 24 & 25 Vict., c. 104, and by the Letters Patent issued under that statute. EMPRESS *v.* BURAH

[I. L. R., 4 Calc., 172 : 3 C. L. R., 197
L. R., 5 I. A., 178

20. ——— **Trial by jury**—*Commissioner of Cooch Behar.*—The Commissioner of Cooch Behar had no power to hold a trial by jury in the Gowalpara district. QUEEN *v.* BHAGIDHONE KATCHARI

[8 W. R., Cr., 53

QUEEN *v.* KHOODERAM . **8 W. R., Cr., 39**

2. EUROPEAN BRITISH SUBJECTS.

21. ——— **Sessions Court, Bellary**—*Treaty by Rajah of Sundoor with Government.*—The Sessions Court of Bellary has no jurisdiction under the Penal Code to try native subjects of the jaghirdar, or Rajah, of Sundoor, for offences committed in the plateau of Ramandoorg upon native inhabitants of the village of Ramandoorg. Ramandoorg is a portion of the territory of Sundoor, and the Rajah is in the position of a native chief or ruler. A treaty entered into by the late Rajah of Sundoor with the Government of Madras contained the following stipulation: "It being probable that, as European officers take up their residence on the said hill, many servants, tradesmen, private persons, and others will reside there, I have relinquished to the Company's Government the police and magisterial functions of maintaining peace, and trying and punishing offences committed by such people, such as violence, petty crimes, thefts, murder, etc. The Collector is to have jurisdiction in such matters." *Held* that this treaty did not give the Sessions Court of Bellary jurisdiction, but it surrendered exclusive criminal jurisdiction over a limited class of persons, namely, Europeans and their servants, and all other resident persons, not native subjects of the Rajah, and left the Government unfettered to provide in the way they deemed right for the trial and punishment of offences committed by such persons. QUEEN *v.* VENCANNA

[3 Mad., 354

22. ——— **Power to legislate for European British subject in mofussil**—*Legislature, Power of—Bom. Act VII of 1867 (District Police Act)—3 & 4 Will. IV, c. 123—53 Geo. III, c. 155, s. 105—37 Geo. III, c. 142, s. 10.*—Although the old East India Company had power, under the Charters of Charles II, to make laws affecting

British-born subjects, yet this power ceased in A.D. 1709, when its Charters were surrendered to Queen Anne. From that date down to the passing of the 3 & 4 Will. IV, c. 123 (with the exception of a limited power of legislating as regarded the local limits of the presidency town), no authority expressly granting power to the East India Company or the Indian Government to legislate for British-born subjects can be found. *Semble*—That neither the East India Company nor any Indian Government (with the like exception) possessed such power from the year 1709 till the passing of the 3 & 4 Will. IV, c. 122. With the exception of offences made punishable by the 53 Geo. III, c. 155, s. 105, by Justices of the Peace, the Recorder's Court had, by virtue of the 37 Geo. III, c. 142, s. 10, exclusive criminal jurisdiction over British-born subjects throughout the Bombay Presidency, and the same exclusive jurisdiction was continued to the late Supreme Court, and is now exercised by the High Court, with the like exception, and some further exceptions introduced by subsequent Acts of the Government of India. The Bombay District Police Act (VII of 1867), passed by the Governor of Bombay in Council for making laws and regulations, is *ultra vires* in so far as it confers criminal jurisdiction upon Magistrates in the mofussil, being also Justices of the Peace, over British-born subjects, as it thereby affects the Acts of Parliament under which the High Court is constituted, and interferes with the criminal jurisdiction which that Court possesses over British-born subjects in the mofussil, which jurisdiction is exclusive except in so far as it is limited by Stat. 53 Geo. III, c. 155, s. 105, and certain subsequent Acts of the Government of India. REG. *v.* REAY **7 Bom., Cr., 6**

23. ——— Power to try European British subject—*Criminal Procedure Code (Act X of 1872), ss. 71-88—Power of Indian Legislature —24 & 25 Vict., c. 67 (Indian Councils Act), ss. 22 and 42.*—A European British subject in the mofussil was convicted by a Magistrate under the provisions of Ch. VII of Act X of 1872. He appealed to the High Court on the ground (*inter aliâ*) that the Magistrate had no jurisdiction to try the case, inasmuch as the Governor General in Council had not the power, under 24 & 25 Vict., c. 67, to subject a European British subject to any jurisdiction other than that of the High Court, and therefore the provisions of Act X of 1872, under which the prisoner had been tried, were *ultra vires* and illegal. *Held* that the jurisdiction of the High Court as given by the Letters Patent in subject to the legislative powers of the Governor General in Council, and therefore the Magistrate had jurisdiction to try the case. QUEEN *v.* MEARES

[14 B. L. R., 106 : 22 W. R., Cr., 54

24. ——— *Criminal Procedure Code, 1882, s. 4, cl. (i), and ss. 453 and 454 —Privilege—Waiver—Jurisdiction of High Court over European British subjects in Sind—Bom. Act XII of 1866.*—Where a European British subject waives his right to be dealt with as such by the Magistrate before whom he is tried, he thereby loses all the benefits of the special procedure provided for him under Ch. XXXIII of the Code of Criminal Procedure (Act X of 1882), including the right to have the proceedings in his case reviewed by a Presidency High Court, if another Court exercises the highest revisional jurisdiction under the Code in cases other than those against European British subjects in the place where he is tried. The definition of "High Court" in s. 4, cl. (*i*), of the Code of Criminal Procedure (Act X of 1882) must be read with reference to the "special proceedings" against European British subjects contemplated in Ch. XXXIII, and not with reference to proceedings generally against Europeans, including proceedings in which they waive their rights under that chapter. If therefore in any particular case the special rules contained in Ch. XXXIII of the Code cease to have any application, the definition of "High Court" in the former part of s. 4, cl. (*i*), ceases also to have any application to such a case. The definition in the latter part of the section then prevails, and the case falls within the category of "other cases" to which that part of the section applies. The accused, a European British subject, was tried before the City Magistrate of Karachi and convicted of criminal breach of trust under s. 409 of the Indian Penal Code, and sentenced to six months' simple imprisonment. At the trial, he waived his right to be tried as a European British subject. *Held* that the accused was not subject to the revisional jurisdiction of the High Court. The accused not having been tried under the special procedure laid down for the trial of European British subjects, the Sudder Court in Sind, which, under Bombay Act XII of 1866, was the highest Court of Appeal in all civil and criminal matters in Sind, had the revisional powers of a High Court in the present case by virtue of the latter part of s. 4, cl. (*i*), of the Code of Criminal Procedure. QUEEN-EMPRESS *v.* GRANT

[I. L. R., 12 Bom., 561

25. ——— *Jurisdiction of High Court—Foreign Jurisdiction Act, 1879, Ch. II—European British subjects in Bangalore—Justices of the Peace for Mysore.*—The civil and military station of Bangalore is not British territory, but a part of the Mysore State, and the Code of Criminal Procedure is in force therein by reason of declarations made by the Governor General in Council in exercise of powers conferred by the Foreign Jurisdiction and Extradition Act, 1879. Justices of the Peace for the State of Mysore are also Justices of the Peace for Bangalore, and both the Civil and Sessions Judge and the District Magistrate of Bangalore, being such Justices of the Peace, are, by virtue of s. 6 of the said Act, subordinate to the High Court at Madras. The High Court has power, therefore, to transfer the trial of a European British subject from the Court of the District Magistrate of the civil and military stations of Bangalore to the Court of a Presidency Magistrate at Madras. IN RE HAYES

[I. L. R., 12 Mad., 39

JURISDICTION OF CRIMINAL COURT —*continued.*

2. EUROPEAN BRITISH SUBJECTS—*continued.*

26. ———— *Act X of 1872 (Criminal Procedure Code), ss. 74, 83.—B*, who was charged before a Magistrate who was competent to enquire into a complaint against a European British subject with an offence triable by him, claimed to be dealt with as a European British subject. *B* did not state the grounds of such claim. The Magistrate did not decide whether *B* was or was not a European British subject but proceeded with the case, dealing with him as if he were not a European British subject, and sentencing him to rigorous imprisonment for one year and to a fine. On appeal by *B*, the High Court remanded the case to the Magistrate in order that he might decide, in the manner directed by s. 83 of the Criminal Procedure Code, whether *B* was or was not a European British subject. The Magistrate having decided that *B* was a European British subject,—*Held* that this being so, and it appearing that the Magistrate had dealt with *B* as other than a European British subject, *B's* trial was void for want of jurisdiction. EMPRESS *v.* BERRILL . . **I. L. R., 4 All., 141**

27. ———— *European British soldier—Jurisdiction of Military authorities—Beng. Regs. XX of 1825 and XIII of 1833—4 Geo. IV, c. 81.*—A British-born European soldier in a regiment stationed at Hazaribagh was committed by the Deputy Commissioner of that place to the High Court on a charge of the murder of a comrade. Upon an application to have the commitment quashed and the prisoner handed over to the Military authorities in accordance with Regulation XX of 1825, it was held that the provisions of Regulation XX of 1825 as to the course to be taken in dealing with European British subjects who have committed offences were rescinded in Hazaribagh by Regulation XIII of 1833, s. 3, as being rules for the administration of criminal justice within the meaning of that section. Assuming the regulation was in force,—*Held* that 4 Geo. IV, c. 81, and Regulation XX of 1825, though they gave jurisdiction to the Military authorities in certain cases, did not wholly exclude the jurisdiction of the Civil, as opposed to the Military, Courts, and that, inasmuch as the proceedings before the Deputy Commissioner had been taken at the request of the Military authorities and assented to by them, such proceedings were not void, and the commitment was valid. QUEEN *v.* JACKSON

[13 B. L. R., 474 : 22 W. R., 20

28. ———— *Mutiny Act, s. 101—Offence committed by British soldier.*—S. 101 of the Mutiny Act does not deprive the Civil (as opposed to Military) Courts of jurisdiction over British soldiers committing offences within the territorial limits of those Courts, nor render the exercise of their jurisdiction dependent upon the sanction of the Commander-in-Chief. The section is merely permissive of a military trial being held. EMPRESS *v.* MAGUIRE

[I. L. R., 5 Calc., 124 : 4 C. L. R., 432

29. ———— *Proof of status—Question of fact.*—Whether or not an accused is a European British subject is a matter of fact to be determined judicially by the Court of Session on the evidence, in the event of the prisoner raising that question. QUEEN *v.* PARKS . **10 W. R., Cr., 6**

30. ———— *Proof of status.*—The prisoner pleaded that he was a British-born subject, and therefore not amenable to the jurisdiction of the Sessions Judge of Tellichery, by whom the prisoner had been convicted of criminal misappropriation. The evidence showed that the prisoner was the legitimate great-grandson of John Turnbull, said to have been a sergeant in the service of the King or of the East India Company, but was insufficient to establish a lawful marriage between him and a native Christian woman by whom he had a son, and the evidence as to his nationality was also incomplete. *Held* that the plea to the jurisdiction was not made out. QUEEN *v.* TURNBULL . . **6 Mad., 7**

31. ———— *Court of Magistrate of Tellichery.* The Joint Magistrate of Tellichery has no jurisdiction to try a resident of Mysore for criminal acts done in Mysore. ANONYMOUS CASE

[6 Mad., Ap., 3

32. ———— *Offence committed within the territories of Native Prince in alliance with Government.*—The defendant, a European British subject, was charged with having committed three offences at Bangalore, punishable under the Penal Code. *Held* that the High Court has the same criminal jurisdiction which the late Supreme Court had, and that, Bangalore being within the territories of the Maharajah of Mysore, a Native Prince in alliance with the Government of Madras, the defendant was subject to the jurisdiction of the High Court in respect of criminal offences committed in the territory of Mysore. REG. *v.* WATKINS

[2 Mad., 444

33. ———— *Madras Police Act (XXIV of 1859), s. 48.*—A European British subject was convicted by the Cantonment Magistrate under s. 48 of the Police Act (Act XXIV of 1859). *Held* that the Magistrate had no jurisdiction. ANONYMOUS CASE . . . **5 Mad., Ap., 25**

34. ———— *Judicial Commissioner of Mysore.*—A European British subject committed by a Justice of the Peace in Mysore for trial by the Judicial Commissioner of Mysore on a charge under s. 348 of the Penal Code was convicted on 10th March 1880. *Held* that the commitment and conviction were illegal. *Quære*—Whether, when a European British subject in Mysore, being a Christian, is accused of an offence not punishable with death or transportation for life, a commitment to the High Court at Madras would be legal. WARD *v.* QUEEN

[I. L. R., 5 Mad., 33

35. ———— *Justice of the Peace—Illegal conviction.*—Where a Magistrate, being also a Justice of the Peace, convicted a British-born subject of mischief under s. 426 of the Penal Code, the High Court annulled the conviction and

JURISDICTION OF CRIMINAL COURT —*continued.*

2. EUROPEAN BRITISH SUBJECTS—*concluded.*

sentence, and directed the accused to be committed to take his trial before the High Court, unless the complainant withdrew the charge under s. 271 of the Criminal Procedure Code. REG. *v.* WELLS

[7 Bom., Cr., 1

36. ——— *Officer invested with special powers—Ss. 30, 34, and 209, Code of Criminal Procedure (Act X of 1882).*—An officer invested with special powers under s. 35 of the Code of Criminal Procedure should rarely, if ever, try a case himself under s. 209 of the Code of Criminal Procedure, where it appears from some of the evidence that the accused might have been charged with an offence beyond the jurisdiction of the Magistrate to take cognizance of. EMPRESS *v.* PARAMANANDA

[I. L. R., 10 Calc., 85 : 13 C. L. R., 375

3. NATIVE INDIAN SUBJECTS.

37. ——— **Native Indian subject of Her Majesty**—*Criminal Procedure Code (Act X of 1882), s. 188—Offence committed by an alien outside British India—Jurisdiction of Courts in British India to try such an offence.*—The accused was Talati of Kalol in British territory. His family belonged to the village of Bakrol in the Baroda State. His father entered the service of the British Government and lived almost entirely at Kalol, but he does not appear to have given up his intention of returning to his family residence at Bakrol. The accused was born at Dubhai in the Baroda territory. He was educated partly at Kalol and partly at Baroda. He entered the Revenue Survey Department in the Panch Mahals. His services were lent by the British Government to the State of Cambay. He was charged with taking bribes while serving at Cambay. He was tried and convicted by the first class Magistrate of Ahmedabad within whose jurisdiction he was found and arrested. The Sessions Judge reversed the conviction on the ground that the Magistrate had no jurisdiction to try the accused. *Held* that the accused was not a "Native Indian subject of Her Majesty" within the meaning of s. 188 of the Code of Criminal Procedure; and though as a "servant of the Queen" he was subject to punishment under s. 4 of the Penal Code, the Magistrate of Ahmedabad, in whose jurisdiction he was "found," had no jurisdiction under that section to try him for an offence committed in a foreign State. *Per* PARSONS, *J.*—The expression "Native Indian subject of Her Majesty" in s. 188 of the Code of Criminal Procedure (Act X of 1882) must be construed strictly, and cannot be held to include "servants of Her Majesty." QUEEN-EMPRESS *v.* NATWARAI . . . **I. L. R., 16 Bom., 178**

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT.

(*a*) GENERALLY.

38. ——— **Offence begun in one place and completed in another**—*Stat. 9 Geo. IV,*

JURISDICTION OF CRIMINAL COURT —*continued.*

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—*continued.*

c. 74, s. 56.—S. 56 of the Stat. 9 Geo. IV, c. 74 (applying and extending to the British territories in India the provisions then recently made for England with respect to offences committed in two different places or partially committed in one place and accomplished in another) applies only to the cases of persons amenable to the Supreme Court at Calcutta beginning to commit offences in one place which are afterwards completed in another, and not to a case where the persons committing the offence were not amenable to the said Court, and where the whole offence which has been committed was within one jurisdiction. The term "within the limits of the Charter of the said United Company," construed to mean within the limits of the Trading Charter of the East India Company. NGA HOONG *v.* QUEEN

[4 W. R., P. C., 109 : 7 Moore's I. A., 72

39. ——— **Offence committed in British territory, instigated by foreign subject resident in foreign territory**—*Criminal Procedure Code, 1872, s. 66.*—Where a foreign subject, resident in foreign territory, instigated the commission of an offence which in consequence was committed in British territory,—*Held* that the instigation not having taken place in any district created by the Code of Criminal Procedure, the instigator was not amenable to the jurisdiction of a British Court established under that Code, s. 66. REG. *v.* PIRTAL . . **10 Bom., 356**

40. ——— **Acts done partly within and partly without British territories**—*Offence under Penal Code.*—A person who is admittedly a subject of the British Government is liable to be tried by the Courts of this country for acts done by him, whether wholly within or wholly without, or partly within and partly without, the British territories in India, provided they amount to an offence under the Penal Code. QUEEN *v.* AHMEDOOLLAH . . . . **2 W. R., Cr., 60**

(*b*) ABETMENT.

41. ——— **Abetment in British India of an offence committed in foreign territory not an offence under the Penal Code**—*Abetment of murder—Rioting—Penal Code (Act XLV of 1860), ss. 109, 115, 147, and 302—Criminal Procedure Code (1882), s. 188.*—An abetment in British India by a British subject of an offence committed in foreign territory is not an offence punishable under the Indian Penal Code (XLV of 1860), and cannot therefore be tried by a Court in British India. *Regina* v. *Elmstone, 7 Bom. H. C., Cr., 89,* and *Empress* v. *Moorga Chetty, I. L. R., 5 Mad., 338,* followed. The accused, a Native Indian subject of Her Majesty, was committed to the Court of Session for abetting the commission of murder or of rioting under ss 302 and 147 of the Indian Penal Code. The alleged abetment consisted of w rds spoken in British territory by the accused inciting certain Portuguese subjects to kill one Bhana, if he attempted to remove the produce of certain lands situate in the Portuguese territory of Daman. A disturbance afterwards occurred at Daman in connection with this matter, in which one man was killed and another wounded. Thereupon the Governor General of Portuguese India moved the Government of Bombay to bring the accused to justice as the instigator of the murder. The Government of Bombay, being of opinion that s. 188 of the Code of Criminal Procedure (Act X of 1882) was applicable to the case, passed a Resolution in the Political Department directing the District Magistrate to take the necessary action in the matter. The District Magistrate thereupon committed the accused to the Court of Session on a charge of abetment of murder or of rioting. *Held,* quashing the commitment, that the alleged abetment was not an offence punishable under the Indian Penal Code, and that therefore the Sessions Court had no jurisdiction to try the accused. *Held* also that s. 188 of the Code of Criminal Procedure had no application to the present case, the alleged offence of abetment not having been committed outside British India. QUEEN-EMPRESS *v.* GANPATRAO RAMCHANDRA **I. L. R., 19 Bom., 105**

42. ———— Offence committed out of British India—*Penal Code (Act XLV of 1860), ss. 108A, 372—Disposing of a minor for immoral purposes—Offence not triable except with the certificate of Political Agent or sanction of Government—Criminal Procedure Code (Act V of 1898), s. 188.*—A minor girl under the age of sixteen years was taken by accused No. 1, under the direction of accused No. 2, from Sholapur to Tuljapur (in the Nizam's territory), and there dedicated to the goddess Amba, with intent or knowing it to be likely that the minor would be used for purposes of prostitution. The District Magistrate of Sholapur convicted accused No. 1 of an offence under s. 372 and accused No. 2 of abetment of the offence under ss. 372 and 108A of the Indian Penal Code, and sentenced them each to six months' rigorous imprisonment. *Held* that, as the offence of the disposal of the minor took place out of British India, the Magistrate had no jurisdiction to try the offence in the absence of a certificate of the Political Agent or the sanction of the Local Government as required by s. 188 of the Code of Criminal Procedure (Act V of 1898). *Held* also that, as no offence was committed in British India, accused No. 2 was not guilty of abetment, and s. 108A of the Penal Code had no application to the present case. Mere intention not followed by any act cannot constitute any offence, and an indirect preparation which does not amount to an act which amounts to a commencement of the offence does not constitute either a principal offence or an attempt or abetment of the same. The intention of either of the accused while they were staying at Sholapur did not constitute any offence, and their removal with the girl to Tuljapur did not by itself constitute an abetment. QUEEN-EMPRESS *v.* BAKU . **I. L. R., 24 Bom., 287**

(*c*) ABETMENT OF WAGING WAR.

43. ———— Charge of abetment of waging war against the Queen—*Offence committed in Calcutta tried at Patna.*—Where the prisoner was charged with having, at Calcutta, abetted the waging of war against the Queen, and was tried at the Sessions Court of Patna, it was held that the Court of Session at Patna had jurisdiction to try him, because he was a member of a conspiracy, other members of which had done acts within the district of Patna in pursuance of the original concerted plan, and with reference to the common object. The Court of Patna had jurisdiction also, because the prisoner had sent money from Calcutta to Patna by hundis, and until that money reached its destination, the sending continued on the part of the prisoner. QUEEN *v.* AMEER KHAN

[9 B. L. R., 36 : 17 W. R., Cr., 15

(*d*) ADULTERATION.

44. ———— Adulteration of cotton—*Possession of cotton adulterated in foreign territory—Cotton Frauds Act, ss. 6 and 14.*—Cotton supposed to have been adulterated in foreign territory was seized in British territory. *Held* that the Magistrate of the place where the cotton was seized had jurisdiction to try the offender, as the effect of the new Cotton Frauds Act (Bombay), No. VII of 1878, ss. 6 and 14, was to make the possession of "cotton liable to confiscation" punishable with fine, and it is immaterial where the adulteration takes place. EMPRESS *v.* KHIMCHAND NARAYAN . . . **I. L. R., 3 Bom., 384**

(*e*) CRIMINAL BREACH OF CONTRACT.

45. ———— Contract made in foreign territory to be performed in British territory—*Breach—Arrest in foreign territory—Act XIII of 1859.—B,* having contracted in foreign territory to labour for *S* in British territory, broke his contract. He was arrested in foreign territory, brought into British territory, prosecuted under Act XIII of 1859, and ordered to perform the contract. *Held* that the Court had no jurisdiction. SIDDHA *v.* BILIGIRI . . . . **I. L. R., 7 Mad., 354**

46. ———— Breach of contract to labour in foreign territory.—*V,* having received an advance of money from *G,* contracted to labour for him in foreign territory. Having broken the contract, *V* was prosecuted under Act XIII of 1859, ordered to repay, and sentenced to imprisonment in default. *Held* that the order was illegal as having been made without jurisdiction. GREGORY *v.* VADAKASI KANGANI . . . **I. L. R., 10 Mad., 21**

See SIDDHA *v.* BILIGIRI . **I. L. R., 7 Mad., 354**

(*f*) CRIMINAL BREACH OF TRUST.

47. ———— Liability of native Indian subjects for offences committed out of British India—*Criminal Procedure Code, 1882,* *s. 188.*—The accused were charged under s. 407 of the Indian Penal Code (Act XLV of 1860) with committing criminal breach of trust in respect of certain property entrusted to them as carriers. They were all native Indian subjects of Her Majesty. The offence was alleged to have been committed in Portuguese territory, and they were found in a place in British territory. *Held* that under s. 188 of the Criminal Procedure Code (Act X of 1882) the accused could be tried in the place where they were found. QUEEN-EMPRESS *v.* DAYA BHIMA . **I. L. R., 13 Bom., 147**

48. ———— Place where consequence of act ensued—*Criminal Procedure Code (1882), ss. 179 and 185—Penal Code (Act XLV of 1860), s. 408.*—*B*, an employé of a company the office of which was at Cawnpore, was charged with the offence punishable under s. 408 of the Penal Code. The complainant alleged that *B*, being in charge, on behalf of the company at a place in Bengal, of certain goods belonging to the company, and being ordered to return the said goods to Cawnpore, never did so, and failed to account for the goods, or their value, to the loss of the company. *Held* that, on the statement of the case by the complainant, the Courts at Cawnpore had jurisdiction to inquire into the charge, inasmuch as the consequence of *B*'s acts, namely, loss to the company, occurred in Cawnpore. QUEEN-EMPRESS *v.* O'BRIEN **[I. L. R., 19 All., 111**

(*g*) DACOITY.

49. ———— Dacoity committed out of British territory—*Concealment of property in British territory—Criminal Procedure Code, 1872, s. 67.*—Where dacoity was committed at Velanpor, a village in the territory of His Highness the Gayakwad, and a part of the stolen property found where it had been concealed by the accused in British territory, it was held that a conviction of dacoity could not be sustained, that being a substantive offence completed as soon as perpetrated at Velanpor; although, had Velanpor been in British territory, the subsequent acts in the process of taking away the property might, in the legal sense, have coalesced with the first and principal one so as to give jurisdiction under s. 67 of the Code of Criminal Procedure in each district into which the property was conveyed. But on a conviction of retaining stolen property, the sentences awarded could, it was held, be sustained, the retaining having taken place in British territory. REG. *v.* LAKHYA GOVIND . . **I. L. R., 1 Bom., 50**

50. ———— Dacoity committed in British territory—*Criminal Procedure Code, s. 180—Dishonest receipt of stolen property in foreign territory.*—Certain persons, who were not proved to be British subjects, were found in possession, in a native State, of property the subject of a dacoity committed in British India. They were not proved to have taken part in the dacoity, and there was no evidence that they had received or retained any stolen property in British India. They were convicted of offences punishable under s. 412 of the Penal Code. *Held* that no offence was proved to have been committed within the jurisdiction of a British Court. QUEEN-EMPRESS *v.* KIRPAL SINGH **[I. L. R., 9 All., 523**

(*h*) EMIGRANTS, RECRUITING, UNDER FALSE PRETENCES.

51. ———— Place where false pretences were held out—*Jurisdiction to try recruiters of emigrants under s. 71, Act XIII of 1864.*—Recruiters of emigrants charged under s. 71, Act XIII of 1864, must be tried by the Magistrate within whose jurisdiction the holding out of false pretences to the labourers took place. ANONYMOUS **[4 Mad., Ap., 4**

(*i*) ESCAPE FROM CUSTODY.

52. ———— Place of trial—*District in which escape took place.*—A convict escaping from custody must be tried for that offence in the district within which he escaped: a Magistrate of another district has no jurisdiction to try him for the offence. REG. *v.* DOSSA SERA . . . **1 Bom., 139**

(*j*) KIDNAPPING.

53. ———— Offences committed in different districts in the course of the same transaction—*Criminal Procedure Code (1882), s. 180—Penal Code (Act XLV of 1860), ss. 366 and 368—Kidnapping—Commitment where to be made.*—*R*, *C*, *P*, and *K* were committed by the Joint Magistrate of Muzaffarnagar to the Court of the Sessions Judge of Saharanpur. Upon the case which was before the Joint Magistrate, it appeared that *R* had committed the offence punishable under s. 366 of the Indian Penal Code in the district of Bijnor, and possibly the other three persons had committed the offence punishable under s. 368 of the Indian Penal Code in the district of Muzaffarnagar; *C* and *P* also possibly having committed the offence punishable under that section in Bijnor. Under the above circumstances, the High Court, maintaining the order of commitment made by the Joint Magistrate, directed the case to be transferred for trial to the Court for the trial of sessions cases arising in the Bijnor district, namely, that of the Sessions Judge of Moradabad. *Reg.* v. *Samia Kaundan, I. L. R., 1 Mad., 173*, and *Queen-Empress* v. *Surja, Weekly Notes, All. (1883), 164*, not followed. *Queen-Empress* v. *Ingle, I. L. R., 16 Bom., 200*, and *Queen-Empress* v. *Abbi Reddi, I. L. R., 17 Mad., 402*, referred to. *Queen-Empress* v. *Thaku, I. L. R., 8 Bom., 312*, followed. QUEEN-EMPRESS *v.* RAM DEI **[I. L. R., 18 All., 350**

54. ———— Offence committed outside British territory—*Criminal Procedure Code*

(1882), s. 188—Certificate of Political Agent—Kidnapping.—The absence of the certificate of the Political Agent required by s. 188 of the Code of Criminal Procedure is an absolute bar to the trial of a case to which the provisions of that section apply. QUEEN-EMPRESS *v.* RAM SUNDAR

[I. L. R., 19 All., 109

(*k*) MURDER.

55. ———— Offence committed in Cyprus—*Foreign Jurisdiction and Extradition Act (XI of 1872), ss. 3, 9—Liability of Native Indian British subject for offence committed in Cyprus—"Native State"—Legislative powers of Governor General in Council—Confirmation of sentence of death—Division Court - Full Court.*—*Held* (STUART, *C.J.*, dissenting) that a Native Indian subject of Her Majesty, being a soldier in Her Majesty's Indian army, who committed a murder in Cyprus, while on service in such army, and who was accused of such offence at Agra, might, under s. 9 of Act XI of 1872, be dealt with in respect of such offence by the Criminal Courts at Agra, Cyprus being a "Native State," in reference to Native Indian subjects of Her Majesty, within the meaning of that Act. *Per* STUART, *C.J.*—The power of the Governor General of India in Council to make laws for the trial and punishment in British India of offences committed by British Indian subjects in British territories other than British India discussed. A Division Court of the High Court ordered the Magistrate who had refused to enquire into a charge of murder on the ground that he had no jurisdiction to enquire into such charge, considering that the Magistrate had jurisdiction to make such enquiry. The Magistrate enquired into the charge and committed the accused person for trial. The Court of Session convicted the accused person on the charge and sentenced him to death. The proceedings of the Court of Session having been referred to the High Court for confirmation of the sentence, the case came before the Full Court. *Held per* STUART, *C.J.*, SPANKIE, *J.*, and OLDFIELD, *J.*, that in determining whether such sentence should be confirmed, the Full Court was not precluded by the order of the Division Court from considering whether the accused person had been convicted by a Court of competent jurisdiction. EMPRESS OF INDIA *v.* SARMUKH SINGH

[I. L. R., 2 All., 218

56. ———— Murder committed in Island of Perim—*Criminal Procedure Code, 1882, s. 7—Law in force at Perim—Aden, Jurisdiction of Court of Political Resident at—Act II of 1864, s. 29—Appeal from sentence of Political Resident at Aden to High Court of Bombay in criminal case arising at Perim.*—*Held* that the Island of Perim, having been occupied with a view to its permanent retention by officers of the Government of Bombay, became a part of British India within the definition of Stat. 21 & 22 Vict., c. 106, and vested in Her Majesty along with the other Indian territories under that Act, which became law on 2nd September 1858. The Penal Code (Act XLV of 1860) and the Code of Criminal Procedure (Act X of 1882) extend in their entirety to the whole of British India and therefore to the Island of Perim. S. 7 of the Criminal Procedure Code (Act X of 1882) gives to the Local Government the power to alter the local limits of sessions divisions, and continues the divisions existing when that Code came into force.' A notification was issued by the Government of Bombay on the 6th May 1884 under the above section including the Island of Perim within the sessions division or district of Aden, and empowering the officer from time to time commanding the troops stationed at Perim, in virtue of his office, to exercise the powers of a Magistrate of the second class within the island and to commit persons for trial to the Court of Sessions at Aden. *Held*, having regard to the language of Act II of 1864, that, for the purposes of s. 7 of the Criminal Procedure Code (Act X of 1882), the Resident's Court at Aden might be considered as a Court of Session, and that the local area to which Act II of 1864 applied was the sessions division which was in existence at the date of the above notification when the limits thereof were altered by the inclusion of the Island of Perim. A prisoner charged with having committed murder in the Island of Perim was committed by the Magistrate at Perim to be tried before the Political Resident at Aden. Having been found guilty and sentenced to death, he appealed to the High Court of Bombay. By the Aden Act II of 1864, s. 29, it is provided that "no appeal shall lie from an order or sentence passed by the Resident in any criminal case." The High Court, however, admitted the appeal, being doubtful as to whether the above provision applied to cases arising in the Island of Perim. QUEEN-EMPRESS *v.* MANGAL TEKCHAND **I. L. R., 10 Bom., 258**

In a subsequent stage of the same case,—*Held*, notwithstanding the notification of the Government of Bombay (No. 2336), dated the 6th May 1884, including the Island of Perim within the sessions division and district of Aden and empowering the officer in command of the troops stationed at Perim to commit persons for trial to the Court of Session at Aden, that the Court of the Political Resident at Aden had no jurisdiction over the Island of Perim, and that the Political Resident at Aden was not a Judge of a Court of Session for that island. Where, therefore, a person charged with having committed murder at Perim was committed by the Magistrate at Perim for trial in the Court of the Political Resident at Aden, where he was convicted and sentenced to death, the conviction was annulled, and the prisoner was ordered to be re-tried before a Court of competent jurisdiction. The Island of Perim, although under the control of the Political Resident at Aden, cannot be regarded as part of Aden, and the provisions of the Aden Act II of 1864 are not in force at Perim. Act II of 1864 did not create a separate Court of Session at Aden. The Court created was the Court of the Resident, and the powers of that Court and of a Court of Session are not commensurate. QUEEN-EMPRESS *v.* MANGAL TEKCHAND . . **I. L. R., 10 Bom., 263**

(*l*) RECEIVING STOLEN PROPERTY.

57. ——— Receiving outside British territory—*Criminal Procedure Code, 1861, s. 31—Subject of foreign State—Offence committed out of British territory.*—S. 31 of the Criminal Procedure Code does not confer jurisdiction upon a Magistrate to try a subject of a foreign State for "receiving stolen property," when the offence of receiving such property has been committed outside the British territories. REG. *v.* BECHAR MAVA

[4 Bom., Cr., 38

58. ——— Property stolen in one place and received at another.—To make it legal to punish at Patna a prisoner committed in Calcutta on a charge of receiving stolen property, it must be shown that the property was stolen at Patna. QUEEN *v.* GHASOO KHAN . **5 W. R., Cr., 49**

59. ——— Receiving and retaining stolen goods within jurisdiction where the theft was committed out of jurisdiction—*Penal Code, ss. 410 and 411—Commission to take evidence, Power of High Court to grant, on application of prisoner.*—The prisoner was tried at Bombay, under s. 411 of the Penal Code, on a charge of having dishonestly received and retained stolen property, knowing or having reason to believe the same to be stolen property. He was also charged, under ss. 108 (explanation 3) and 109, with having abetted that offence. It appeared at the trial that the prisoner was a clerk in the employment of a mercantile firm at Port Louis, in the Island of Mauritius. On the 29th October and the 1st November 1879, certain letters addressed by the firm to their commission agent at Bombay were abstracted from the post office at Port Louis. The letters contained six bills of exchange belonging to the firm for an aggregate amount of R26,550. On the 1st November 1879, the prisoner sent all six bills of exchange in a letter to the manager of a Bank at Bombay, requesting that the several amounts might be collected on the prisoner's own account, and remitted to him by bills on Mauritius. The sums were accordingly realized by the Bank, and duly remitted to the prisoner. It was not denied that the prisoner obtained possession of the money and used it as his own. His defence was that the bills had been given to him in payment of a debt. The prisoner was convicted on all the charges; but the jurisdiction of the Court having been challenged on his behalf, the question was reserved. *Held per* SARGENT and MELVILL, *JJ.* (WEST, *J.*, *dissentiente*), that the bills of exchange, having been stolen at Mauritius, in which island the Penal Code is not in force, could not be regarded as "stolen property" within the provisions of s. 410, so as to render the person receiving them at Bombay liable under s. 411; that the High Court of Bombay had therefore no jurisdiction, and that the conviction must be quashed. EMPRESS *v.* MOORGA CHETTY . **I. L. R., 5 Bom., 338**

(*m*) THEFT.

60. ——— Theft out of British territory—*Criminal Procedure Code, 1872, s. 67.*—The accused stole property in foreign territory and was apprehended with it in his possession in a district in British territory. *Held* that s. 67 of Act X of 1872 did not give the Courts of such district jurisdiction to try the prisoner for the theft. REG. *v.* ADIVIGADU . . . **I. L. R., 1 Mad., 171**

61. ——— Dishonestly retaining in British territory property stolen beyond British territory—*Criminal Procedure Code, 1872, s. 66.*—A Nepalese subject, having stolen cattle in Nepal, brought them into British territory, where he was arrested and sentenced to one year's rigorous imprisonment. *Held* that he could not be tried for the theft itself, but that he might be convicted of dishonestly retaining the stolen property. EMPRESS *v.* SUNKER GOPE

[I. L. R., 6 Calc., 307 : 7 C. L. R., 411

62. ——— Theft in dwelling-house—*Violation of conditions of remission of punishment—Penal Code, s. 227.*—A person convicted by the Recorder's Court of Prince of Wales's Island, Singapore, and Malacca, of the crime of burglary and sentenced to transportation for ten years, at a place to be appointed by the Governor General of India in Council, was released from the Ratnagiri Jail on a ticket-of-leave after having been in confinement for more than eight years. At Karedar he committed theft in a dwelling-house before his sentence had expired. *Held* that the full power Magistrate at Karwar had jurisdiction to try the convict for the offence of violation of the condition of remission of punishment under s. 227, Penal Code. REG. *v.* AHONE AKONG . . . . . **9 Bom., 356**

63. ——— Theft where property is found out of jurisdiction—*Jurisdiction of Courts in British India over offences committed out of British India—Rajkot, Civil Court at—Stat. 21 & 22 Vict., c. 106—Penal Code, ss. 381, 410, 411.*—The civil station at Rajkot is not part of British India within the meaning of Stat. 21 & 22 Vict., c. 106. Where the accused, a subject of a Native State, committed theft at Rajkot Civil Station, and was found in possession of the stolen property at Thana,—*Held* that, as the offence was not committed in British India, and as the accused was the subject of a Native State, the Sessions Court at Thana had no jurisdiction to try the accused for theft under s. 381 of the Penal Code. But it was competent to try him for dishonest retention

JURISDICTION OF CRIMINAL COURT —*concluded.*

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—*concluded.*

of stolen property under s. 410 of the Penal Code as amended by Act VIII of 1882. QUEEN-EMPRESS *v.* ABDUL LATIB VALAD ABDUL RAHIMAN [I. L. R., 10 Bom., 186

5. OFFENCES COMMITTED DURING JOURNEY.

64. ——— **Offence under Railway Act, 1862**—*Dismissal outside jurisdiction of—Guard of train afterwards coming into jurisdiction.*—The High Court has no jurisdiction to try a prisoner charged with drunkenness while as guard or under-guard in charge of a railway train where he was removed from his post at a place outside the local limits, although the train thereupon proceeded with him to Madras. QUEEN *v.* MALONY. QUEEN *v.* JONES . . . . . . 1 Mad., 193

65. ——— **Offence committed on interrupted journey**—*Criminal Procedure Code (Act X of 1872), s. 67, Ill. (a).*—Where an offence was alleged to have been committed during a journey from Bombay to Calcutta, and was in fact committed between Bombay and Allahabad, at which latter place the complainant and the person by whom the offence was alleged to have been committed separated and proceeded to Calcutta by different trains,—*Held* that the Magistrate of Howrah had no jurisdiction to try the charge. To bring the matter within his jurisdiction, the journey should have been continuous from one terminus to the other without any interruption by either party. QUEEN *v.* PIRAN [13 B. L. R., Ap., 4

S. C. PEERUN *alias* KUREEMUN AYAH *v.* FIELD [21 W. R., Cr., 66

66. ——— **Theft of box during journey**—*Criminal Procedure Code, 1872, s. 67.*—A box containing money having been missed during a halt at Sumbhoogunge, from a boat which was on the way to Chittagong, and a question having been raised whether the charge of theft which was based on the loss should be tried at Tipperah or Chittagong,—*Held* that the journey was not broken by the halt, and that, under s. 67, Criminal Procedure Code, the case could be tried at Chittagong. QUEEN *v.* ABDUL ALI . . . . . . 25 W. R., Cr., 45

JURISDICTION OF REVENUE COURT.

Col.
1. BOMBAY REGULATIONS AND ACTS . . 4418
2. MADRAS REGULATIONS AND ACTS . . 4419
3. N.-W. P. RENT AND REVENUE CASES . 4420
4. OUDE RENT AND REVENUE CASES . . 4427

See ABATEMENT OF RENT. [1 B. L. R., A. C., 87

JURISDICTION OF REVENUE COURT —*continued.*

See APPEAL—N.-W. P. ACTS. [I. L. R., 13 All., 364

See JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO. [I. L. R., 13 Mad., 41

See CASES UNDER JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY, MADRAS, AND N.-W. PROVINCES.

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See CASES UNDER RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

1. BOMBAY REGULATIONS AND ACTS.

1. ——— **Collector of Bombay**—*Bom. Reg. XIX of 1827, s. 2.*—The Revenue Court, under s. 2 of Regulation XIX of 1827, had not exclusive jurisdiction over the Collector of Bombay for all acts done by him in his official capacity. NARAYAN KRISHNA LAUD *v.* NORMAN [5 Bom., O. C., 1

2. ——— **Suit for rent**—*Suit under Bom. Reg. XVII of 1827, s. 31, cl. 3—Act XVI of 1838, s. 1, cl. 1.*—In a suit to recover rent in a Revenue Court, under Regulation XVII of 1827, s. 31, cl. 3,—*Held* that the proper questions to determine were whether the defendant occupied the land as tenant of the plaintiff during the period alleged, and if so, what rent was due; and that a defendant so sued could not deprive the Court of jurisdiction by setting up a title in himself, nor did the suit by such defence become one "in which the right to possession of land is claimed" within the meaning of s. 1, cl. 1, of Act XVI of 1838. BAI MAHALAKSHMI *v.* AUDHARU KESHAVRAM NARASIRAM . . . 2 Bom., 193: 2nd Ed., 185

3. ——— *Assignment by mortgagee—Redemption—Suit for rent by assignee.*—Where a mortgagee had assigned his interest, and agreed to pay rent to the assignee, and subsequently permitted the mortgagor to redeem,—*Held* that a suit for rent could not be maintained in the Revenue Courts by the assignee against the mortgagor, as the relation of landlord and tenant never existed between them, nor against the representatives of the mortgagee, after they ceased to be in occupation of the land, but the assignee should proceed under the assignment in the Adawlut Courts. BHAU BABAJI GHOLAP *v.* GOPAL . . . . 2 Bom., 183

4. ——— **Mamlatdar's order under Bom. Act V of 1864**—*Possession—Act XVI of 1838, s. 1, cl. 2—Questions of title—Civil Courts, Jurisdiction of.*—A Mamlatdar's order under Bombay Act V of 1864 is not conclusive evidence of the fact of possession and dispossession between the parties. S. 1 of that Act gives to Mamlatdars' Courts jurisdiction in case of dispossession within six months from the date of such dispossession, and

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1. BOMBAY REGULATIONS AND ACTS
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relates to immediate possession; and under s. 15, the party to whom such immediate possession is given by the Mamlatdar, or whose possession he shall maintain, shall continue in possession until ejected by a decree of a Civil Court. The power reserved to the Revenue Courts by s. 1, cl. 2, of Act XVI of 1838, to determine the facts of possession and dispossession, was so reserved merely for the temporary purpose of enabling those Courts to dispose of the immediate possession, which was to continue until the Civil Court ejected the party put into such immediate possession. The purpose of Act XVI of 1838, as that of Bombay Act V of 1864, was temporary only, and chiefly to provide for the cultivation of the land and to prevent breaches of the peace until the Civil Courts should determine the rights of disputants. The decisions of the Revenue and the Mamlatdars' Courts as to possession and dispossession do not bind the Civil Courts, the proceedings in the former Courts being of a summary character. The Civil Courts alone can entertain the question of title. BASAPA BIN MURTIAPA *v.* LAKSHMAPA BIN MARITAMAPA . **I. L. R., 1 Bom., 642**

2. MADRAS REGULATIONS AND ACTS.

5. ———— Suit for rent of land—*Mad. Act VIII of 1865—Power of Head Assistant Collector—Act XI of 1865.*—At the date of the enactment of Act XI of 1865, suits for rent of land could not be entertained by the Revenue officers of this presidency, so as to bar the cognizance of suits by the Small Cause Court. Madras Act VIII of 1865, equally with the prior enactments, abstains from authorizing the cognizance by the Revenue authorities of suits for arrears of rent. The cognizance of such a suit by a Head Assistant Collector is a proceeding *coram non judice.* GAURI ANONTHA PARATHESE *alias* SATTHAPPAIYAN *v.* KALIAPPA SETTI **[3 Mad., 218**

6. ———— Suit for possession of land after wrongful ejectment—*Mad. Act VIII of 1865, s. 12.*—Plaintiffs sued under s. 12 of Madras Act VIII of 1865, to be reinstated in the possession of certain lands from which they alleged they had been wrongfully ejected by the defendant, a zamindar. Defendant pleaded that the suit was not maintainable as the lands in question formed part of his "panai" lands and were not a part of his zamindari. *Held* that the suit was maintainable before the revenue authorities under s. 12, Madras Act VIII of 1865. NAGAYASAMI KAMAYA NAIK *v.* PANDYA TEVAR . . . . **7 Mad., 53**

7. ———— Suit for a pottah—*Madras Rent Recovery Act (Mad. Act VIII of 1865), ss. 8, 9, 10—Denial of tenancy by landlord—Question of title.*—In a summary suit brought under the Madras Rent Recovery Act to compel the defendant to give a pottah to the plaintiff for certain land which plaintiff claimed to hold from him, the defendant denied that the plaintiff was his tenant. *Held* that the Collector was bound to try the question so raised, and not to refer the parties to a regular suit for its determination. NARAYANA CHARIAR *v.* RANGA AYYANGAR **[I. L. R., 15 Mad., 223**

8. ———— Suit to enforce acceptance of pottah—*Madras Rent Recovery Act (Mad. Act VIII of 1865), ss. 9 and 10—Boná fide denial by defendant of plaintiff's title—Question of title.*—The plaintiff obtained a permanent lease of inam lands attached to a mosque from the four owners thereof. The defendant was a cultivating tenant on the lands, and the plaintiff duly offered the defendant a pottah. The defendant refused to execute a corresponding muchilika on the ground that the plaintiff was not his landlord, since the first of the aforesaid owners had granted a lease for 35 years to a person who had sublet the land to the defendant. The plaintiff thereupon brought a suit to enforce acceptance of a pottah under s. 9 of Madras Act VIII of 1865. The Deputy Collector having decided the case in the plaintiff's favour, the defendant appealed, and the District Judge dismissed the suit on the ground that the defendant's contention raised a *boná fide* question of title which ousted the jurisdiction of the Deputy Collector. *Held* that there is no provision in Madras Act VIII of 1865 that a *boná fide* denial of the relationship of landlord and tenant ousts the jurisdiction of the Revenue Courts; and, with regard to s. 10 of the Act, whenever a Court is invested with jurisdiction to determine the existence of a particular legal relation, the intention must be taken to be to authorize it to adjudicate on every matter of fact or of law incidental to such adjudication. *Narayana Chariar* v. *Ranga Ayyangar, I. L. R., 15 Mad., 223,* and *Ayappa* v. *Venkata Krishnamarazu, I. L. R., 15 Mad., 485,* cited and followed. ABDUL RAHIMAN SAHIB *v.* ANNAPILLAI **[I. L. R., 17 Mad., 140**

3. N.-W. P. RENT AND REVENUE CASES.

9. ———— Nature of defence—*Effect of, on jurisdiction of Court.*—The jurisdiction of a Revenue Court under the Rent Act, 1859, was not affected by the nature of the defence set up. DOYAL CHUNDER GHOSE *v.* DWARKANATH MITTER **[W. R., F. B., 47: Marsh., 148 1 Ind. Jur., O. S., 41: 1 Hay, 347**

CHUNDER KOOMAR MUNDUL *v.* BAKER ALI KHAN **[9 W. R., 598**

10. ———— Denial of relation of landlord and tenant—*Issue as to relationship of landlord and tenant existing or not.*—If in a suit brought in the Revenue Court on an allegation of the existence of the relation of landlord and tenant that relation is denied by the defendant, the Court (instead of declining jurisdiction by reason of that denial)

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3. N.-W. P. RENT AND REVENUE CASES —*continued.*

should judicially determine the fact, and take jurisdiction or not according to the result. HUREE PERSAD MALEE *v.* KOONJO BEHARY SHAHA
[W. R., F. B., 29 : 1 Ind. Jur., O. S., 20 Marsh., 99 : 1 Hay, 238

KALLEE SINGH *v.* MOORLEE RAM . **1 W. R., 135**

SANDES *v.* SUROOP CHUNDER BISWAS
[2 W. R., Act X, 11

NUSRUN BEBEE *v.* WATSON . **3 W. R., 215**

POORNO DOSS *v.* OOJOODHIAPROSAD
[3 W. R., Act X, 16

11. ———— **Questions of title**—*Jurisdiction of Civil Court.*—It is not the province of a Revenue Court to decide questions of title between contending claimants, such questions being within the province of the Civil Courts. JUGUT SHOBHUN CHUNDER *alias* DOOLAL CHUNDER. DEHINGUR GOSSAMEY *v.* BINAUD CHUNDER *alias* SODA SHOBHUN CHUNDER DEHINGUR GOSSAMEY
[I. L. R., 9 Calc., 925

12. ———————— *Boundary question.*—The Revenue Courts have no jurisdiction to decide a boundary question between two estates. A landlord must first obtain a declaration in the Civil Court that the land in dispute is within the limits of his estate, after which he may proceed to assess revenue upon it in the usual course under Act X of 1859. AMINA *v.* RAMZAN ALI . **W. R., 1864, Act X, 116**

RUGHOONATH SAHOY *v.* BOONDIR MUNDIR
[1 W. R., 36

13. ———————— *Plea of proprietary title.*—*Held* that where a proprietary title is pleaded in respect to land whereof rent is claimed, it can be adjudicated upon by the revenue authorities, who, so far from being prevented by law from taking cognizance of such pleas, are competent to dispose of all such pleas when raised in bar of a claim for rent, as is evident from s. 153, Act X of 1859. KASHI RAM *v.* MENDEE SINGH . **2 Agra, Rev., 8**

14. ———————— *Question of title incidentally raised—Suit for rent.*—In cases in which the determination of title is incidental to the decision of suits properly brought in the Revenue Court, that Court is bound to enquire into the title. Where a person ostensibly in possession as proprietor institutes a suit for rent, and the alleged tenant pleads that he is in possession as a proprietor, the Revenue Court is bound to raise and decide the issue respecting title. RAMGUT SINGH *v.* RAM SARUN SINGH . . . . . **3 N. W., 141**

15. ———— **Set-off—Suit for rent.**—A Court of Revenue cannot entertain a claim to a set-off unless such claim, if made the subject of a suit, would fall within its jurisdiction. *Held* that in a suit in a Court of Revenue by a lumbardar to recover rent, the defendant was not competent to plead as a set-off that

certain arrears of malikana were due to him by the plaintiff. BENI MADHO *v.* GAYA PRASAD
[I. L. R., 15 All., 404

16. ———— **Landlord and tenant**—*N.-W. P. Rent Act (XVIII of 1873), s. 4—Determination of status of tenant—Order for ejectment.*—In a suit for a declaration that the defendant holds an estate paying revenue to Government as a manager, subject to ejectment at will, and for ejectment, if the relationship of landholder and tenant between the parties be established, then the Revenue Court only can make an order for the defendant's ejectment, or for determining the nature and class of his tenure, that is to say, whether he is a tenant at fixed rates within the meaning of s. 4 of Act XVIII of 1873, or an ex-proprietary tenant, or an occupancy-tenant, or a tenant without a right of occupancy. MUHAMMAD ABU JOFAR *v.* WALI MUHAMMAD
[I. L. R., 3 All., 81

17. ———— **Status of cultivator**—*Suit for enhancement—Plea that defendant is proprietor—Act X of 1859, s. 153.*—The Revenue Court has jurisdiction to try the question whether the defendant in a suit for enhancement of rent, though recorded as cultivator, was on the footing of a proprietor, and had held the land on payment of revenue rate, there being nothing in the law to bar the adjudication of such a plea. KAISRUR *v.* PUT RAM
[2 Agra, Pt. II, 212

18. ———— **Application for partition of orchards**—*Act XIX of 1863.*—An application for partition of orchards not liable for a quota of the village assessment was not one cognizable by the Revenue Court under Act XIX of 1863, but by the Civil Court. OODEY RAM *v.* SIRAJOOL HUSSUN
[2 Agra, 241

19. ———— **Suit to make up deficiency of sir land**—*Suit for partition and separat on of share.*—*Held* that a suit to make up the deficiency of sir land of one patti with another patti of a joint undivided estate was not cognizable by the Civil Court, the remedy of the plaintiff being by a revenue suit for partition and separation of his share. GOLAM GHOUS *v.* FUREED ALUM . **1 Agra, 246**

20. ———— **Suit for ejectment and for mesne profits against tenant**—*Jurisdiction of Civil Court.*—If a landholder desires to eject a tenant, holding only for a limited period, after the determination of his tenancy, he can proceed only in the Revenue Court, and in that Court by application and after notice and not by suit, and the circumstance that a claim for mesne profits is added to the claim for ouster does not give the Civil Court jurisdiction in such cases. RAM AUTAR RAI *v.* TALIMUNDI KUAR . . . . . **7 N. W., 49**

21. ———— **Suit to determine rate of rent** *Application—Ex-proprietary tenant.*—A Revenue Court cannot entertain a suit to determine the rate of rent payable by an ex-proprietary tenant, but an application only. PHULAHRA *v.* JEOLAL SINGH . . . . . **I. L. R., 6 All., 52**

22. ———— **Suit for arrears of rent for period prior to order**—*Determination of rent by Settlement officer—Jurisdiction in such suit to determine rent for such period—N.-W. P. Land Revenue Act (XIX of 1873), ss. 72, 77—N.-W. P. Rent Act (XII of 1881), s. 95 (l).*—The jurisdiction to determine or fix rent payable by a tenant is given exclusively to the Revenue Court, either by order of the Settlement officer or by application under s. 95 (*l*) of the N.-W. P. Rent Act (XII of 1881); and such rent cannot be determined in a suit by a landholder for arrears of rent in the Revenue Court in which the appeal lies to the District Judge or High Court. In March 1884, the rent payable by an occupancy-tenant was fixed by the Settlement officer under s. 72 of Act XIX of 1873 (N.-W. P. Land Revenue Act). In 1885, the landholder brought a suit to recover from the tenant arrears of rent at the rate so fixed for a period antecedent to the Settlement officer's order, as well as for the period subsequent thereto. The lower Appellate Court dismissed the claim for rent, prior to the 1st July 1884, and decreed such as was due subsequently to that date, but without interest. *Held* that the rent could not be fixed in the present suit, neither the Court of first instance nor the High Court having jurisdiction to fix it, and that the claim for rent for the period in question must therefore be dismissed. *Ram Prasad* v. *Dina Kuar, I. L. R., 4 All., 515; Special Appeal No. 914 of 1879;* and *Phulahra* v. *Jeolal Singh, I. L. R., 6 All., 52,* referred to. RADHA PRASAD SINGH *v.* JUGAL DAS .. **I. L. R., 9 All., 185**

23.———— **Suit for arrears of rent in kind**—*N.-W. P. Rent Act (XVIII of 1873), s. 93—Bhouli.*—*Held* (PEARSON, *J.*, dissenting) that a suit for the money equivalent of arrears of rent payable in kind is a suit for arrears of rent within the meaning of s. 93 of Act XVIII of 1873, and therefore cognizable by a Revenue Court. *Per* PEARSON, *J.*—Such a suit, being a suit for damages for breach of contract, is cognizable by a Civil Court. TAJ-UD-DIN KHAN *v.* RAM PARSHAD BHAGAT

[I. L. R., 1 All., 217

24. ———— **Suit partly cognizable in Revenue Court and partly in Civil Court**—*N.-W. P. Rent Act (XII of 1881), ss. 206, 207.*—A co-sharer sued in a Court of Revenue (i) for his share of the profits of a mehal, and (ii) for money payable to him for money paid for the defendant on account of Government revenue. An objection was taken in the Court of first instance that the suit, as regards the second claim, was not cognizable in a Court of revenue. The lower Appellate Court allowed the objection, and dismissed the suit as regards such claim on the ground that the Court of first instance had no jurisdiction to try it. *Held* that the objection being in effect "an objection that the suit was instituted in the wrong Court," within the meaning of ss. 206 and 207 of Act XII of 1881, the defect of jurisdiction was cured by those sections, and the procedure prescribed in s. 207 should have been followed. LACHMI NARAIN *v.* BHAWANI DIN

[I. L. R., 4 All., 379

25. ———— *Act XII of 1881 (N.-W. P. Rent Act), ss. 206, 207.*—A suit was instituted in a Court of Revenue which was partly cognizable in the Civil Courts. *Held* on the question raised on appeal, whether the Revenue Court had jurisdiction to entertain the suit, that the provisions of ss. 206 and 207 of the Rent Act (N.-W. P.), 1881, rendered the plea in respect of jurisdiction ineffective. BADRINATH *v.* BHAJAN LAL

[I. L. R., 5 All., 191

26. ———— **Suit for arrears of malikana**—*Jurisdiction of Civil Court.*—Suits for arrears of malikana are cognizable by Revenue not by Civil Courts. RAM CHURN *v.* GUNGA PERSHAD

[2 N. W., 228

27. ———— **Suit by mortgagor for profits**—*Act XIV of 1863.*—Where a mortgagor obtaining possession of the mortgaged property by redemption sued the mortgagee for the profits of certain years as due to him by the latter,—*Held* that the question, being not between co-sharers, but between mortgagor and mortgagee, was not cognizable by the Revenue Court under Act XIV of 1863. PRAIM SOOKH *v.* ABBAS ALY . . **2 Agra, Rev., 4**

28. ———— **Suit by lambardar for share of profits**—*Suit against lambardar.*—A suit by a lambardar for his share of the profits against another lambardar is cognizable by the Revenue Courts. MOHAMED GHOUS *v.* KURREEMOONISSA

[1 Agra, Rev., 52

29. ———— **Suit for profits taken by lambardar as mortgagee**—*Jurisdiction of Civil Court.*—Where profits received by a lambardar are not taken by him as lambardar, but in his individual character under a supposed mortgage title, such profits are not recoverable by a suit for profits in the Revenue Court. KHOOB SINGH *v.* BULWANT SINGH

[2 Agra, 302

30. ———— **Suit against lambardar for profits**—*Jurisdiction of Civil Court.*—A lambardar is not chargeable in the Revenue Court in respect of profits payable at a time prior to his appointment, although he succeeded his father in the office. His liability in such a case, if any exists, arises not by reason of his official character, but as one of his father's heirs and representing his estate, and the suit must be brought in the Civil and not in the Revenue Court. MATA DEEN *v.* CHUNDEE DEEN . **2 N. W., 54**

See MATA DEEN DOOBEY *v.* CHUNDEE DEEN DOOBEY . . . . **6 N. W., 118**

31. ———— *Act XIV of 1863, s. 1, cl. 2.*—A suit lies in the Revenue Court under cl. 2 of s. 1 of Act XIV of 1863 for a share of

profits against the lambardar, although plaintiff collects her own rents, and pays in separately her quota of the Government revenue. SALAMUT BIBEE *v.* BHUGWAN DOSS . . . . . **2 N. W., 33**

32. ———— **Suits by co-sharers for share of profits**—*Act XIV of 1863, s. 1, cl. 2—Suits by lambardar.*—Construction of cl. 2, s. 1 of Act XIV of 1863. Suits by co-sharers against co-sharers who are not lambardars for a share of the profits are cognizable in the Revenue Courts. Such suits may also be brought against co-sharers who, without authority, have made collections in excess of their proper shares. Suits for the profits of a muafi, as well as of a khalsa estate, are so cognizable. A lambardar can maintain a suit in the Revenue Courts for his lambardari allowance, as well as for his ordinary profits as a co-sharer. HUR NARAIN *v.* SHIAM SOONDER

[1 N. W., 211 : Ed. 1873, 264 : S. C. Agra, F. B., Ed. 1874, 188

33. ———— *Possession.*—Where certain sharers took in lieu of their proportion of profits a piece of land rent-free, with an agreement that on relinquishing the land they might claim their share of the profits, it was held that they could not be said to have been at any time out of possession of their shares so long as they held the land, and that on relinquishing the land they might sue for profits in the Revenue Court. SEETUL SINGH *v.* LUCHMUN SINGH . . . . . . **3 N. W., 23**

34. ———— **Suit by ex-co-sharer for share of profits**—*Possession.*—An ex-co-sharer may sue in the Revenue Court for his share of the profits during the time he was in possession. HUR NARAIN *v.* SHIAM SOONDER . **3 N. W., 112**

35. ———— **Suit to determine obligation of plaintiff to contribute to revenue on alluvial lands and right to share in profits.**—Where the possession of the plaintiff in a share in a village is admitted, the Revenue Courts have jurisdiction to try a suit brought to determine whether the plaintiff is bound to contribute to the revenue charged on certain alluvial lands and entitled to share in the profits thereof. RAM SHUNKER *v.* SHEO PERSHAD . . . . . **5 N. W., 7**

36. ———— **Gaondars**—*Suit under Act XIV of 1863, s. 1, cl. 2, for profits.*—Gaondars, or persons exercising full proprietary rights over their land, save that they pay Government revenue through a third party, and also pay malikana at a certain rate to such third party as their superior landlord, fall within the terms of cl. 2, s. 1 of Act XIV of 1863. SHEO PERTAB NARAIN SINGH *v.* HURSHUNKER PERSHAD SINGH . . . . **5 N. W., 40**

37. ———— **Suit for profits by co-sharer**—*Act XIV of 1863, s. 1, cl. 2—Sharer in possession.*—A suit by a co-sharer for possession of an undivided share, and for mesne profits, is substantially a suit for mesne profits, and therefore falls under cl. 2 of s. 1 of Act XIV of 1863, and should have been preferred in a Revenue Court. In the above-mentioned clause there is nothing which requires that a co-sharer should be a co-sharer in possession—that is, in receipt of profits. ADUT *v.* NASEEBA KOOER

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38. ———— *Act XIV of 1863, s. 1, cl. 2.*—The plaintiffs, recorded proprietors of a certain share, sued, after their father died, under cl. 2, s. 1 of Act XIV of 1863, to recover profits which had accrued before their father's death. *Held* (*per* STUART, *C.J.*, SPANKIE, *J.*, *dissentiente*) that the profits were recoverable in a Civil, and not in a Revenue Court. MATADEEN DOOBEY *v.* CHUNDEE DEEN DOOBEY . . . . **6 N. W., 118**

39. ———— *N.-W. P. Rent Act (XVIII of 1873), ss. 93, 206, 207—Suit for share of profits from lambardar.*—*Held* by the Division Bench, following the ruling of the majority of the Full Bench in *Ashraf-un-nissa* v. *Umrao Begum*, that a suit by a co-sharer in an undivided mehal against the heir of a deceased lambardar for his share of profits collected by the lambardar before his death is a suit cognizable not by a Civil Court, but by a Court of Revenue. *Per* STUART, *C. J.*—Observations on the application of ss. 206 and 207 of Act XVIII of 1873. BHIKHAN KHAN *v.* RATAN KUAR . . . . **I. L. R., 1 All., 512**

40. ———— **Suit by heirs of deceased co-sharer against heirs of deceased lambardar for profits**—*Lambardar and co-sharer—Act XII of 1881, ss. 93 (h), 208.*—A suit by the heirs of a deceased co-sharer against the heirs of a deceased lambardar for money claimed as profits due to the deceased co-sharer by the deceased lambardar is a suit which is cognizable in the Civil, and not the Revenue Courts. *Mata Deen Doobey* v. *Chundee Deen Doobey, 6 N. W., 118 ; Mata Deen* v. *Chundee Deen, 2 N. W., 54*; and *Bhikhan Khan* v. *Ratan Kuar, I. L. R., 1 All., 512*, observed on by STUART, *C.J.* AHMADUDDIN KHAN *v.* MAJHI RAI

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41. ———— **Suit for arrears of revenue**—*Lambardar and co-sharer—Mortgagee—Act XVIII of 1873 (N.-W. P. Rent Act), s. 93 (g)—Act VIII of 1879, ss. 11, 12.*—*Per* STUART, *C.J.*, and STRAIGHT, *J.*—The term "co-sharer" in s. 93 (*g*) of Act XVIII of 1873 does not include the mortgagee of a co-sharer, and therefore a suit by a lambardar against the mortgagee of a co-sharer for arrears of Government revenue is not one which, under that section, is cognizable in a Court of revenue, but is one which is cognizable in a Civil Court. *Per* PEARSON, *J.*, and OLDFIELD, *J.*, *contra.* BHAWANI GIR *v.* DALMARDAN GIR

[I. L. R., 3 All., 144

42. ———— *N.-W. P. Rent Act (XII of 1881), s. 93 (g).*—*Held* that a suit against a co-sharer and the transferees of his share for arrears of Government revenue which became due

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before such transfer, the plaintiff claiming as lambardar and as heir to the deceased lambardar during whose incumbency such arrears became due, was cognizable in the Revenue Courts. The principle laid down in *Bhikhan Khan* v. *Ratan Kuar, I. L. R., 1 All., 512,* followed. WAZIR MUHAMMAD KHAN *v.* GAURI DAT . . . **I. L. R., 4 All., 412**

43. ——— *N.-W. P. Rent Act (XII of 1881), ss. 93 (g), 205—"Proprietor"—"Co-sharer."*—Where a lambardar brought a suit for arrears of land revenue payable by the proprietors against several defendants of whom some were co-sharers and others mortgagees in possession,—*Held* that such suit was one of the nature contemplated by s. 93 (*g*) of the N.-W. P. Rent Act, 1881, and was cognizable by a Court of revenue as against all the defendants. LACHMAN SINGH *v.* GHASI **[I. L. R., 15 All., 137**

44. ——— **Suit by lessee of occupancy tenant for recovery of possession**—*N.-W. P. Rent Act (XII of 1881), s. 95 (n).*—S. 95 (*n*) of the N.-W. P. Rent Act (XII of 1881) is applicable to a suit by the lessee of an occupancy-tenant to recover possession of the land under the lease from which the lessor has ejected him, and such a suit is exclusively cognizable by the Revenue Courts. *Muhammad Zaki* v. *Hasrat Khan, Weekly Notes, All., 1882, p. 61,* and *Ribban* v. *Partab Singh, I. L. R., 6 All., 81,* distinguished. CHHIDDU *v.* NARPAT . . . . . **I. L. R., 8 All., 62**

4. OUDE RENT AND REVENUE CASES.

45. ——— **Liability of lessees in the position of under-proprietors not entitled to sub-settlement**—*Oude Rent Act (XIX of 1868), ss. 41 and 83, cl. (4)—Oude Sub-Settlement Act (XXVI of 1886)—Oude Land Revenue Act (XVII of 1876), s. 158.*—A decree, in 1869, of a Settlement Court, upon the compromise of a claim made by village co-parcenary occupiers, to an order for sub-settlement as against the talukhdar, declared the claimants to be entitled to a heritable, but not transferable, lease of the village, at a rent, leaving twelve per cent. profit to the lessees. For default in payment of rent this lease was decreed to be in future liable to cancellation "by the decree of any competent Court, according to any law which may be in force in Oude with respect to persons holding an under-proprietary right in land." Afterwards, in 1879, the parties agreed that the lessees might be dispossessed for non-payment of rent. Default occurred, decrees for arrears were made in 1882 and 1883, and remained unsatisfied. In a rent-suit brought by the talukhdar,—*Held* that he could not sue in a Revenue Court to have the lease cancelled under the terms of the Oude Rent Act (XIX of 1868), either by virtue of the decree or of the subsequent agreement. MADHO SINGH *v.* AJUDHIYA SINGH . . . . **I. L. R., 15 Calc., 515**
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[8 W. R., Cr., 39, 53

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.
[I. L. R., 9 All., 420

——— **Trial of case properly triable with Assessors by—**

See ASSESSORS . **I. L. R., 3 Calc., 765**

1. CIVIL CASES.

1. ——— **Trial of civil cases by jury**—*Illegal procedure.*—The Civil Procedure Code nowhere empowers a Judge to try a case with the aid of a jury. DOONGUR RAI *v.* DOORGA RAI **[2 N. W., 97**

See MODY *v.* QUEEN INSURANCE CO.
[I. L. R., 25 Bom., 332
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2. JURY UNDER HIGH COURTS' CRIMINAL PROCEDURE.

2. ——— **Special jury**—*Power of Clerk of Crown—Drawing up list of special jurors.*—The drawing up of the list of special jurors is entirely in the discretion of the Clerk of the Crown, and the Court will not interfere. IN THE MATTER OF SHAMCHUND MITTER . **1 Ind. Jur., N. S., 106**

3. ——— **Ballot for selection of jury**—*High Courts' Criminal Procedure—Criminal Procedure Code, 1882, ss. 274, 276 (Act X of 1875, s. 33)—Constitution of jury—Ballotting.*—Act X of 1875, s. 33, contemplates that the names of the jury to be "chosen by lot" shall all be drawn out of one box containing the names of all persons summoned to act as jurors. REG. *v.* VITHALDAS PRANJIVANDAS . . **I. L. R., 1 Bom., 462**

4. ——— **Constitution of jury**—*High Courts' Criminal Procedure—Criminal Procedure Code, 1882, ss. 267, 452 (Act X of 1875, ss. 32, 37).*—*Prisoner not being European British subject.*—A prisoner not being a European British subject, who is not charged jointly with a European British subject, is not entitled, under the provisions of the High

JURY—*continued.*

2. JURY UNDER HIGH COURTS' CRIMINAL PROCEDURE—*concluded.*

Courts' Criminal Procedure Act, to be tried by a jury of which at least five persons shall not be Europeans or Americans. REG. *v.* LALUBHAI GOPALDAS [I. L. R., 1 Bom., 232

5. ———— **Separation of jury**—*Discretion of Judge—Trials for felony and for misdemeanour.*—By the practice of the Supreme Court at Bombay, before the Penal Code came into operation, on a trial for treason or felony, the jury (as in England) was kept together during the night under the charge of officers of the Court; but on a trial for misdemeanour it was in the discretion of the Judge whether they should be kept together or allowed to return to their homes for the night, the latter being generally done; and after the Code came into operation the practice continued the same, as well in the Supreme Court as subsequently in the High Court, the Judges applying the rule by determining whether the offence under trial would by the old law have been felony or a misdemeanour. REG. *v.* DAYAL JAIRAJ . . . . . 3 Bom., Cr., 20

3. JURY IN SESSIONS CASES.

6. ———— **Qualification of juror**—*Selection of jury.*—In forming a jury a Sessions Judge should endeavour to obtain persons of an independent position in life, and men of judgment and experience. QUEEN *v.* RAM DUTT CHOWDHRY [23 W. R., Cr., 35

7. ———— *Clerk in office of Magistrate.*—The fact that a person is a clerk in the office of the Magistrate of the district is not sufficient to disqualify him from sitting on a jury. IN THE MATTER OF THE PETITION OF ROCHIA MOHATO. EMPRESS *v.* ROCHIA MOHATO [I. L. R., 7 Calc., 42: 8 C. L. R., 273

8. ———— **Objection to juror**—*Criminal Procedure Code, 1861, s. 344, cl. (3).*—The allowing of an objection to a juror coming within the third clause of s. 344 of the Code of Criminal Procedure is in the discretion of the Court; and although the Judge is not bound to admit the objection, yet he should not treat it as frivolous. QUEEN *v.* KRISNO CHURN . . . . . 16 W. R., Cr., 66

9. ———— **Swearing Jury**—*Necessity to swear jurors.*—*Held* that it was not necessary in a trial by jury before a Court of Session under the provisions of the Code of Criminal Procedure that the jurors should be sworn. REG. *v.* LAKSHUMAN RAM CHUNDRA . . . . . 3 Bom., Cr., 56

10. ———— **Omission to swear jury in sessions case.**—*Quære*—If the jury in a sessions case are not sworn, is the omission one which would be covered by s. 13 of the Oaths Act, 1873? QUEEN *v.* RAMSODOY CHUCKERBUTTY [20 W. R., Cr., 19

11. ———— **Withdrawal of case from jury**—*Improper acquittal.*—In a case in which the prisoner was charged with murder, and he made a confession that he did strike the deceased with a stick, the Sessions Judge, after considering the evidence, discredited the confession and all the evidence except that of the medical officer and discharged the prisoner, not considering it necessary that the case should go before a jury. *Held* that the Sessions Judge had no right to pronounce his own judgment on the credibility of the evidence, and to withdraw the consideration of the due weight to be given to the evidence to the jury. QUEEN *v.* HUROO SAHA . . . . . 16 W. R., Cr., 20

12. ———— **Trial by jury or assessors**—*Deputy Commissioner of non-regulation provinces.*—*Held,* with reference to the provisions of ss. 445A and 445B of Act VIII of 1869, that the chief executive officer of a non-regulation province is bound to proceed under the provisions of Act XXV of 1861 in the trial of offences punishable by a Court of Session, and that he must try the prisoners with a jury or assessors, even if one of the counts of the charge against the prisoners be in respect of an offence not triable by a Court of Session. QUEEN *v.* KISHTORAM DASS . . . . 13 W. R., Cr., 59

13. ———— **Irregularity in trial**—*Offence under s. 91, Registration Act, 1866.*—An offence under s. 91 of the Registration Act ought not to be tried with the assistance of a jury. Where, however, such offence was tried with the assistance of a jury, and the verdict of the jury, who were unanimous in convicting the prisoner, was approved of by the Sessions Judge, the High Court considered it unnecessary to quash the proceedings. QUEEN *v.* ABDOOL KURREEM . . 14 W. R., Cr., 32

14. ———— *Case tried by jury to which trial by jury had not been extended—Invalidity—Appeal.*—Where a case to which Government had not extended trial by jury was tried by jury, the trial was not considered invalid on that ground; but the Judge's charge was treated as his judgment in the case, and the prisoner's appeal was heard on the facts. QUEEN *v.* DOORGA CHURN SHOME . . . . . 24 W. R., Cr., 30

15. ———— *Trial by jury of case triable by assessors—Adultery—Criminal Procedure Code, 1872, s. 233.*—The fact that a charge under the Penal Code, s. 497, was triable with assessors, and not by a jury, would not affect the legality of a conviction of adultery before a jury. QUEEN *v.* LUCKHY NARAIN NAGORY . 24 W. R., Cr., 18

16. ———— **Trial of charges partly triable by assessors**—*Power of Judge in dealing with verdict—Criminal Procedure Code, 1872, s. 233, Expl.*—In a trial by a jury before a Court of Sessions upon charges some of which were triable by a jury, and some with the aid of assessors, the jury, by a majority of four to one, returned a verdict of "not guilty" on all the charges. *Held* that it was not competent to the Judge, who disagreed with the verdict, to treat the trial so far as it dealt with the latter charges, as a trial with the aid of assessors, and concurring with the minority to convict and sentence the accused persons. It was the duty of the Judge,

JURY—*continued.*

3. JURY IN SESSIONS CASES—*continued.*

in such a case, to have accepted the verdict as one of acquittal, and then to have passed orders in accordance with s. 263 of the Code of Criminal Procedure. Explanation to s. 233 of the Code of Criminal Procedure discussed. In the matter of Bhooth Nath Dey . . . . . **4 C. L. R., 405**

17. ———— **Trial by jury of an offence triable with assessors**—*Criminal Procedure Code (Act X of 1882), ss. 306, 307, 536.*—The accused was tried by a jury for an offence triable with the aid of assessors, and the jury by a majority found him "not guilty." The Sessions Judge, who disagreed with the verdict, convicted the accused, treating the verdict of the jury as the opinion of assessors. *Held* that the conviction was bad, inasmuch as the case was validly "tried by a jury" within the meaning of s. 536 of the Criminal Procedure Code (Act X of 1882), and the trial was complete when the jury had returned their verdict; and that the Judge was bound, under the circumstances, either to give judgment in accordance with the verdict or, if he disagreed with it, to submit the case for orders of the High Court, as provided by ss. 306 and 307 of the Code. *In the matter of Bhooth Nath Dey, 4 C. L. R., 405,* followed. Surja Kurmi *v.* Queen-Empress . . . . **I. L. R., 25 Calc., 555**

See Queen-Empress *v.* Jeyram Haribhai **[I. L. R., 23 Bom., 696**

18. ———— **Order directing trial by jury**—*Criminal Procedure Code, 1898, ss. 269 (1), 536 (2)—"Particular class of offences"—Revocation of order—Jury case tried by assessors—Omission to take objection before finding recorded—Validity of trial.*—By s. 269 of the Code of Criminal Procedure the local Government may, with the previous sanction of the Governor General in Council, by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may, with the like sanction, revoke or alter such order. In the Fort St. George Gazette, dated 30th August 1899, it was notified that, whereas by orders previously made the trial of persons charged with certain offences should, in certain districts of the Presidency, including that of Tinnevelly, be by jury, and whereas disturbances known as the anti-Shanar disturbances had taken place in the districts of Tinnevelly and Madura, and certain persons stood committed for trial and others might thereafter be similarly committed in connection therewith, the Governor in Council, with the previous sanction of the Governor General in Council, directed, under s. 269 of the Code of Criminal Procedure, that the said previous orders be revoked as regards the persons referred to, and that such persons should be tried with the aid of assessors and not by jury. Certain persons having been so tried for offences under ss. 148, 454, 395, and 323 of the Indian Penal Code, one assessor gave it as his opinion that none of them were guilty: the other assessor finding some of them not guilty. The Additional Sessions Judge convicted and sentenced all the accused, whereupon the objection was taken, on appeal, in the High Court, that the trial should have been by jury and not with the aid of assessors, and that the conviction should therefore be set aside. The objection was not taken at the trial. *Held* that the omission to take objection to the trial before the Court had recorded its findings was fatal to the contention now urged that the trial was invalid. *Held,* further, that even assuming that objection had been duly taken, the offences connected with the outbreak had been rightly treated as a "class of offences," and that it was competent to the Government, with the consent of the Governor General in Council, to revoke the previous notification so far as it related to that class. Queen-Empress *v.* Ganapathi Vannianar . **I. L. R., 23 Mad., 632**

4. JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE.

19. ———— **Appointment of jury**—*Criminal Procedure Code, 1872, s. 523—Discretion of Magistrate.*—A Magistrate acting under Act X of 1872, s. 523, should exercise his own independent discretion in selecting the members of the jury, and the persons so selected by him should not be nominees of the party interested in upholding the Magistrate's order. Shatyanundo Ghosal *v.* Camperdown Pressing Company . . **21 W. R., Cr., 43**

20. ———— *Jury improperly constituted—Criminal Procedure Code, 1861, s. 310.*—A jury appointed under s. 310 is not properly constituted when only the foreman is appointed by the Magistrate and the rest of the members by the parties. Queen *v.* Hargobind Pal **[7 B. L. R., Ap., 57**

S. C. Dino Nath Chuckerbutty *v.* Hurgobind Pal . . . . . . **16 W. R., Cr., 23**

21. ———— *Order for removal of obstruction in public way—Jury appointed to consider reasonableness of order—Magistrate deciding contrary to verdict of jury—Criminal Procedure Code (1882), ss. 133, 135, 138, and 139.*—One *K R,* having been ordered by a Magistrate under s. 133 of the Code of Criminal Procedure to remove an alleged obstruction, applied for a jury. Five jurors were chosen who, having examined the place in dispute, proceeded without consultation to deliver separate and independent opinions. The verdict of the majority was in favour of upholding the Magistrate's order. The Magistrate, however, discharged his order. On reference by the Sessions Judge under s. 438 of the Code, it was *held* that the last order of the Magistrate should be set aside, and the case remanded for consideration by a fresh jury. Queen-Empress *v.* Khushali Ram **[I. L. R., 18 All., 158**

22. ———— *Criminal Procedure Code (Act V of 1898), s. 138—Use of discretion in nomination of jurors by Magistrate.*—In nominating the foreman and one half of the remaining members of the jury as required by s. 138 of the Criminal Procedure Code the Magistrate must exercise his own independent discretion and not appoint the nominees of the parties. KAILASH CHUNDER SEN *v.* RAM LALL MITTRA . **I. L. R., 26 Calc., 869**

23. ——————— *Constitution of jury—Criminal Procedure Code (1882), ss. 133 to 138—Nomination of jury by Magistrate.*—In the nomination of those members of the jury, the nomination of whom devolves upon the Magistrate under the provisions of s. 138 of the Criminal Procedure Code, it is his duty to exercise his own independent discretion, and not merely to accept persons who may be put forward by the party opposed to the applicant. A jury constituted in violation of the provisions of s. 138 is not legally constituted, and is incapable of making a legally binding award. *Dino Nath Chuckerbutty* v. *Hur Gobind Pal, 16 W. R., Cr., 23,* and *Shatyanundo Ghosal* v. *Camperdown Pressing Co., 21 W. R., Cr., 43,* followed. UPENDRA NATH BHUTTACHARJEE *v.* KHITISH CHANDRA BHUTTACHARJEE . . . **I. L. R., 23 Calc., 499**

24. ——————— *Jury improperly constituted—Criminal Procedure Code, 1872, s. 523.*—In a case in which a party on whom an order had been made for abatement of nuisance applied under s. 523, Criminal Procedure Code, 1872, for the appointment of a jury, the Magistrate appointed the complainant and two of his witnesses to be, the former a foreman, and the latter two of the members of the jury. *Held* that the jury so constituted by the Magistrate was not a proper tribunal under s. 523, Criminal Procedure Code, and the proceedings, etc., were accordingly set aside, and the Magistrate directed to appoint a fresh jury. BRINDABUN DUTT *v.* DWARKANATH SEIN . . **22 W. R., Cr., 47**

25. ——————— **Juror refusing to act**—*Criminal Procedure Code (Act X of 1882), ss. 133, 138, 139—Jury illegally constituted.*—One out of five jurors appointed under s. 138, Act X of 1882, declined to act on the jury. Two out of the remainder of the jury were in favour of a temporary order under s. 133 being maintained, whilst the other two were against its being so maintained. The Deputy Magistrate declined to pass any order under s. 139 of the Code of Criminal Procedure, as a majority of the jurors did not find the temporary order to be reasonable and proper, and he therefore struck off the case. *Held* that the course taken by the Deputy Magistrate was irregular, and ordered that a fresh jury be summoned, and the case enquired into anew. UMA CHURN MUNDLE *v.* JOSHEIN SHEIKH

[I. L. R., 11 Calc., 84

26. ——————— **Appointment of second jury**—*Criminal Procedure Code, 1872, s. 523.*—Where a jury appointed by a Magistrate under s. 523, Criminal Procedure Code, had fully entertained and considered the matter submitted to it, and the individual members of the jury had given in their opinion to the foreman to report to the Magistrate, and the only delay was in the foreman's making the report, it was held that the Magistrate could not appoint a second jury to consider the matter afresh, but ought to have acted on the report of the first jury which had been given in before he made his final order in the matter. NOZUMUDDY *v.* HASIM KHAN

[21 W. R., Cr., 54

27. ——————— **Question for jury**—*Criminal Procedure Code, 1872, s. 523—Procedure.*—In a case in which a Magistrate ordered a person either to remove an obstruction to a path leading to a road or to show cause why such order should not be enforced, and in which subsequently the Magistrate, on the application of the party charged, appointed a jury under s. 523, Criminal Procedure Code, it was held that the question the jury should have been told to try was the question whether the first order of the Magistrate was reasonable and proper, and for that purpose to consider whether there was a *bonâ fide* question between the parties as to the right of way over this particular piece of land. OMESH CHUNDER SEN *v.* ICHANATH MOZUMDAR . . . . **21 W. R., Cr., 64**

28. ——————— **Fixing time for award of jury**—*Criminal Procedure Code, 1861, s. 310.*—In referring a case regarding a nuisance to arbitrators under s. 310, Code of Criminal Procedure, a Magistrate should fix a time within which the arbitrators are to send in their award; and this must be done whenever from any cause the constitution of the jurors is changed and a fresh juror is appointed. Where this is not done, a Magistrate cannot carry out his original order if there is any delay in the submission of the award by the arbitrators. IN THE MATTER OF SHAMA KANT BUNDOPADYHA . **14 W. R., Cr., 69**

29. ——————— **Award delivered after time fixed, Effect of**—*Criminal Procedure Code (Act VIII of 1869), s. 310—Act X of 1872, s. 523.*—A Magistrate cannot receive and enforce the award of a jury under s. 310 of the Criminal Procedure Code, delivered long after the day fixed for the purpose. QUEEN *v.* HARGOBIND PAL . **7 B. L. R., Ap., 57**

S. C. DINONATH CHUCKERBUTTY *v.* HURGOBIND PAL . . . . **16 W. R., Cr., 23**

30. ——————— **Decision of jury, Effect of**—*Finality of decision so far as Magistrate is concerned.*—Where a jury is appointed under s. 310 of the Code of Criminal Procedure to try whether an order passed by a Magistrate for the removal of a nuisance or obstruction is reasonable or not, the Magistrate is bound under that section to be guided by the decision of the jury. QUEEN *v.* POHOLEE MULLICK . . . . **12 W. R., Cr., 28**

31. ——————— *Criminal Procedure Code (1882), ss. 133, 135—Order of Magistrate for removal of unlawful obstruction—Application for appointment of a jury.*—Where a person against whom an order has been made under s. 133 of the Code of Criminal Procedure applies for a jury under s. 135 of the Code, the applicant is bound by the verdict of the jury, and *cannot afterwards* raise such a plea as that the obstruction was caused in the exercise of a *bonâ fide* claim of right. IN THE MATTER OF THE PETITION OF LACHMAN

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JURY—*concluded.*

4. JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE—*concluded.*

32. ——— **Report of majority of jury**—*Criminal Procedure Code, 1872, s. 523—Duty of Magistrate.*—Where, under s. 523 of the Criminal Procedure Code, a Magistrate receives the report of a jury, he is bound to act according to the recommendation of the majority. When a number of jurors do not agree with one another in every respect, but all agree that a certain order passed by a Magistrate, taken as a whole, is not necessary, such jurors should be counted together as objecting to the order. QUEEN *v.* NAKORI PAROEE . **25 W. R., Cr., 31**

33. ——— *Criminal Procedure Code, s. 133—Public way—Nuisance—Removal of obstruction—Refusal of minority of jury to act.*—When a minority of a jury appointed under the provisions of s. 133 of the Criminal Procedure Code do not act, the Magistrate cannot proceed under that section upon a report submitted by the majority. IN THE MATTER OF DURGA CHARAN DAS *v.* SASHI BHUSAN GUHO . **I. L. R., 13 Calc., 275**

34. ——— *Verdict on inspection of locality without taking evidence.*—A jury cannot decide a matter referred to them merely on inspection of the locality without taking any evidence. KAILASH CHUNDER SEN *v.* RAM LALL MITTRA **[I. L. R., 26 Calc., 869**

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See CASES UNDER CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO JOINT PROPERTY—KABULIATS.

1. FORM OF KABULIAT.

1. ——— **Date for commencement of kabuliat**—*Discretion of Court—Suit for kabuliat without specifying date.*—Where a plaint asks for a kabuliat for a given term, without specifying the date from which the term is to commence, it is in the discretion of the Court to fix the proper term. POORNO CHUNDER ROY *v.* STALKART **[10 W. R., 362**

See GHOLAM MAHOMED *v.* ASMUT ALI KHAN CHOWDHRY . . **B. L. R., Sup. Vol., 974**

2. ——— **Omission of specification of boundaries in kabuliat**—*Act X of 1859, s. 2.*—The want of specification of boundaries in a kabuliat is no ground for dismissing a suit for a kabuliat, when all the particulars of area are given as required by s. 2 of Act X of 1859. RAMNATH RAKHIT *v.* CHAND HARI BHUYA **[6 B. L. R., 356 : 14 W. R., 432**

2. IN RESPECT OF WHAT SUIT LIES.

3. ——— **Suit for kabuliat for portion of land**—*Land included in an entire holding.*—A suit for a kabuliat will not lie for a portion only of the land included in an entire holding. RAM DOSS BHUTTACHARJEE *v.* RAMJEEBUN PODDAR **[6 W. R., Act X, 103**

ABDUL ALI *v.* YAR ALI KHAN CHOWDHRY **[8 W. R., 467**

4. ——— *Land held under istemrari tenures.*—A landlord cannot sue for a kabuliat in respect of a portion of the land held under an istemrari pottah. DOORGAKANT MOZOOMDAR *v.* BISHESHUR DUTT CHOWDHRY **[W. R., 1864, Act X, 44**

5. ——— *Proprietor of fractional share in estate.*—The question was referred to a Full Bench "whether a suit by the owner of a fractional share of an undivided estate for a kabuliat

KABULIAT—*continued.*

2. IN RESPECT OF WHAT SUIT LIES —*concluded.*

will lie." NORMAN, *J.*, was of opinion that, as a general rule, the holder of a tenure cannot be sued by owners of fractional shares in the superior tenure for separate kabuliats according to the proportions to which they allege themselves to be entitled in the superior tenure. A tenure is an entire thing, and cannot be sub-divided against the will of the tenant. LOCH, BAYLEY, MACPHERSON, and MITTER, *JJ.*, did not answer the question on the ground that it did not arise in the suit. INDAR CHANDRA DUGAR *v.* BRINDABUN BHARA

[8 B. L. R., 251: 15 W. R., F. B., 21

6. ———— *Uncultivated lands brought into cultivation.*—A separate kabuliat cannot be claimed for uncultivated lands already comprised in a lease on the ground that such uncultivated lands have since been brought into cultivation. MAHOMED KALOO CHOWDHRY *v.* FEDAYE SHIKDAR

[8 W. R., 219

7. ———— **Right of fishery.**—A suit for a kabuliat will not lie for a right to fish in certain waters. MOHUN GOBIND SEIN *v.* NITTAYE HALDAR

[6 W. R., Act X, 101

8. ———— **Suit for etmami kabuliat**—*Jurisdiction.*—A suit by a proprietor of land for an etmami kabuliat from his tenants at the prevailing rates is cognizable only under the Rent Act. NUSSURUT ALI CHOWDHRY *v.* MAHOMED KANOO SIKDAR

[11 W. R., 541

9. ———— **Land occupied by buildings**—*Jurisdiction—Building used as dwelling-house, manufactory, or shop.*—Where the land in respect of which a kabuliat is demanded is occupied by a building used as an ordinary dwelling-house, manufactory, or shop,—*Held* that a suit for delivery of a kabuliat in respect of such land is not cognizable under the Rent Acts. If such land formed part of an agricultural holding and was auxiliary to its enjoyment, it would form a portion of the holding, and the landlord would be entitled to demand a kabuliat in respect of the entire holding, not excluding the land on which the building is erected. The principle of this decision will apply equally to suits brought to obtain payment of perjout as rent. CHOTUCK PANDOO *v.* INNAYUT ALI

[3 Agra, 49: S. C. Agra, F. B., Ed. 1874, 131

10. ———— **Suit by mutwalli to obtain kabuliat from khadim**—*Jurisdiction.*—A suit by the mutwali of a mosque to obtain a kabuliat from a khadim, or subordinate servant attached to the mosque, will not lie under the Rent Act. HIDDUT ALI *v.* KOBEEMALLA MEEAJEE

[6 W. R., Act X, 9

11. ———— **Suit to set aside Collector's order for kabuliat**—*Jurisdiction.*—A suit to set aside a decree passed by a Deputy Collector for executing a kabuliat in favour of the defendant, and for a declaration that the land in suit pertains to the talukh of a third party, is cognizable under the Rent Act. SONATAN ROY *v.* ANAND KUMAR MOOKERJEE

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3. RIGHT TO SUE.

12. ———— **Requisites for maintenance of suit**—*Evidence of relationship of landlord and tenant.*—In order to maintain a suit for a kabuliat, the plaintiff must show that the relation of landlord and tenant existed between him and the defendant. RAMESSUR AUDHIKAREE *v.* WATSON & CO.

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JALHA *v.* KOYLASH CHUNDER DEY **[10 W. R., 407**

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KRISUBYA *v.* CHOTOO **[1 N. W., 78: Ed. 1873, 131**

MUHESH DUTT PANDEY *v.* SEETUL SONAR **[1 N. W., Ed. 1873, 146**

13. ———— *Agreement fixing rent—Raiyat without right of occupancy—Agreement fixing rent.*—A landlord can sue a raiyat not having a right of occupancy for a kabuliat only when an agreement fixing the rent has been entered into. AHMED REZA *v.* AGHORI . **2 B. L. R., S. N., 15**

14. ———— *Allegation of tenancy.*—*Quære*—Whether a suit for a kabuliat on an allegation that the defendant is holding a specific quantity of land under the plaintiff will lie. YAKOOB ALI *v.* KAEMOOLLAH . . . **8 W. R., 329**

15. ———— *Proof of right to assess as tenant.*—Until the right to assess has been properly determined, a suit for a kabuliat will not lie under Act X of 1859. RAMNATH SINGH *v.* HURO LALL PANDEY . . . **8 W. R., 188**

16. ———— *Proof of right to rent—Decree declaring liability to assessment.*—Where the tenure of a defendant is declared liable to assessment in a suit passed between him and the plaintiff's vendor, the plaintiff can sue for a kabuliat, as he is thereby only carrying out the provisions of the decree obtained in that suit. MODHOOSOODUN CHOWDHRY *v.* RAM MOHUN GHUR . **8 W. R., 473**

17. ———— *Suit for resumption—Land claimed to be lakhiraj—Obligation of landlord to sue for resumption.*—A landlord is not bound to sue for resumption before bringing a suit for a kabuliat in respect of lands which the defendant claims to hold as lakhiraj. FUZLON *v.* ABDULLAH

[7 W. R., 169

18. ———— *Proof of right to rent—Suit for declaration of liability to assessment and for kabuliat.*—A suit for a kabuliat cannot be maintained where the parties are not related to each other as landlord and tenant. But a landlord may legally sue for a declaration of the amount of rent with which his land ought to be assessed; and should the occupant not agree to the rent assessed by the Court, the landlord may sue him for use and occupation, or for ejectment, or for both. SHUNTO DOSS AUTITH *v.* HUREEHUR MUKERJEE . . **20 W. R., 268**

KABULIAT—*continued.*

3. RIGHT TO SUE—*concluded.*

19. ———— *Proof of right to rent—Trespasser—Decree in summary suit for possession.*—A zamindar cannot compel a trespasser on his land to become his raiyat and execute a kabuliat in his favour, and the fact that the zamindar has obtained a summary decree under s. 15, Act XIV of 1859, against a person, does not entitle him to treat such person either as a trespasser or a raiyat on his land. Hemalee *v.* Kumla Kant Banerjee

[16 W. R., 133

4. REQUISITE PRELIMINARIES TO SUIT.

20. ——— **Notice of enhancement.**—A suit for a kabuliat at an enhanced rate, to take effect prospectively from the date of suit, may be instituted without any preliminary notice of enhancement, and at any time during the tenancy. Brae *v.* Kumul Shaha . . **4 W. R., Act X, 5**

21. ———— *Landlord and tenant.*—*Held per* Steer, Kemp, and Seton-Karr, *JJ.*, that, under Act X of 1859, a landlord can sue his tenant for a kabuliat fixing the amount of rent, without having served upon him notice of enhancement. *Per* Norman, *J.*—Such notice was necessary, and by s. 9 of Act X of 1859 the landlord must, before suing for a kabuliat, tender a pottah to the tenant. *Per* Peacock, *C.J.*—The question did not arise in the case. The relationship of landlord and tenant did not exist between the parties. Ram Kanth Chowdhry *v.* Bhubun Mohun Biswas

[B. L. R., Sup. Vol., 25 : W. R., F. B., 183

Woolfut Hossein *v.* Jumoona Dass

[W. R., 1864, Act X, 60

Doorga Pershad Doss *v.* Kalee Kinkur Roy

[5 W. R., Act X, 88

22. ———— *Act X of 1859, ss. 9 and 13.*—*Held*, by the majority of a Full Bench, a landlord can sue for a kabuliat at an enhanced rate without first having given notice of enhancement under s. 13, Act X of 1859. He can also sue without having first tendered a pottah. *Per* Peacock, *C.J.*—He can sue if he has given notice of enhancement. *Per* Norman, *J.*—A suit for a kabuliat is not maintainable except in cases provided for by s. 9, Act X of 1859. Thakooranee Dassee *v.* Bisheshur Mookerjee

[B. L. R., Sup. Vol., 202 : 3 W. R., Act X, 29

Suffer Ali *v.* Futteh Ali

[W. R., 1864, Act X, 2

Tarinee Churn Bose *v.* Kashinath Singh

[W. R., 1864, Act X, 37

23. ——— **Tender of pottah**—*Decree contingent on offer of pottah.*—The previous tender of a pottah is not absolutely necessary to entitle a landlord to a decree for a kabuliat. The decree may make the obtaining of the kabuliat contingent on the offering of a corresponding pottah. Munsoor Ali *v.* Bunoo Singh . . . . **7 W. R., 282**

Nityanund Ghose *v.* Kissen Kishore

[W. R., 1864, Act X, 82

KABULIAT—*continued.*

4. REQUISITE PRELIMINARIES TO SUIT —*concluded.*

Mahomed Yacoob Hossein *v.* Chowdhry Wahed Ali

[4 W. R., Act X, 23 : 1 Ind. Jur., N. S., 29

Govind Chunder Addy *v.* Auloo Beebee

[1 W. R., 49

Modhoosoodun Chowdhry *v.* Ram Mohun Ghur . . . . . . **8 W. R., 473**

24. ———— *Landlord and tenant.*—In order to entitle a landlord to sue for a kabuliat, he must tender a pottah. Akhoy Sunkur Chuckerbutty *v.* Indro Bhusan Deb Roy

[4 B. L. R., F. B., 58
12 W. R., F. B., 27

Pertab Chunder Banerjee *v.* Phillippe

[2 W. R., Act X, 56

Troylukhonath Chowdhry *v.* Kaleema Bibee . . . . **2 W. R., Act X, 96**

Umbica Churn Pottro *v.* Boidanath Pottro

[1 W. R., 82

25. ———— *Act X of 1859, s. 9.*—A landlord is not entitled, under Act X of 1859, s. 9, to require his tenant to give him a kabuliat unless the tenant holds under a pottah, or the landlord has tendered a pottah. Gobinlall Seal *v.* Kinoo Koyal . . . . **Marsh., 400**

Doorga Kant Mozoomdar *v.* Bisheshur Dutt Chowdhry . . **W. R., 1864, Act X, 44**

26. ———— *Issues—Intervenors.*—Where a suit is brought for a kabuliat after service of the proper notice, the first and main question is whether, as a matter of fact, the plaintiff can establish that he or some person from whom he derives title, put the defendant into possession of all the lands in respect of which the kabuliat is demanded; and the second question is whether he has tendered a proper pottah, and is therefore entitled to the corresponding kabuliat. For the decision of such a suit it is immaterial whether the land for which the kabuliat is demanded belongs in reality to the plaintiff or to third parties, and the Court should not allow the latter to come in as intervenors against the will of the plaintiff. Radha Nath Chowdhry *v.* Joy Soonder Moitra . . . **2 C. L. R., 302**

5. PROOF NECESSARY IN SUIT.

27. ——— **Evidence of quantity of land**—*Failure to prove quantity.*—In a suit for obtaining a kabuliat, failure to prove the exact quantity of land for which the kabuliat is sought to be obtained renders the suit liable to dismissal. Shib Ram Ghose *v.* Pran Piria

[4 B. L. R., Ap., 89 : 13 W. R., 280

28. ——— **Proof of reasonable rent**—*Proof of holding land in suit—Onus of proof.*—A landlord suing a raiyat for a kabuliat is bound to make out the reasonableness of the rent which he demands, and *à fortiori* that the defendant is holding the

KABULIAT—*continued.*

5. PROOF NECESSARY IN SUIT—*continued.*

particular land specified in his suit. SHIB CHUNDER BOSE *v.* RAM CHUND CHUND . 9 W. R., 521

29. ———— **Rate of rent, Evidence of**—*Customary rate of rent.*—A landlord is bound to prove that the rate of rent at which he claims a kabuliat is the rate that he has been in the habit of receiving from the tenant. RAM JEEBUN CHUCKERBUTTY *v.* KHOODEERAM CHATTERJEE [17 W. R., 388

30. ———— *Failure to prove rate of rent—"Probable rent."*—In a suit for a kabuliat for certain resumed lakhiraj where it was found that the quantity of land in the defendant's possession was less than that alleged by the plaintiff, and that the rates of rent deposed to were less than those claimed,—*Held* that the suit was rightly dismissed, and that the mere use of the word "probable" in describing the rate of rent claimed ought not, under the circumstances, to better the position of the plaintiff; the entire gist of the suit having been to get a certain rate of rent. *Held* (by MITTER, *J.*) that the mere fact of the lands in question having been declared in a previous litigation between the parties to be the mál lands of the plaintiff's zamindari wrongfully held by the defendant under an invalid lakhiraj title was not sufficient to convert the defendant into a tenant of the plaintiff; and that, as the relation of landlord and tenant did not exist between the parties, the foundation was wanting for a suit for a kabuliat. SOWDAMINEE DEBIA *v.* MOHESH CHUNDER MOOKERJEE . . 19 W. R., 262

31. ———— *Landlord and tenant—Enhancement—Plaint — Decree.*—A landlord, who sues for a kabuliat at a specified rate, but fails to show that such rate is fair and equitable, is not entitled to a decree for a kabuliat at a less rate, but the suit must be dismissed. *Held* also (PHEAR, *J.*, doubting) that in a suit for a kabuliat the plaint should specify the date for the commencement of the kabuliat. A plaint which does not specify such date ought to be returned; but if it has been admitted and the case heard, the Court may supply the omission by specifying in the decree the date from which the kabuliat is to commence. GHOLAM MOHAMED *v.* ASMUT ALI KHAN CHOWDHRY

[B. L. R., Sup. Vol., 974: 10 W. R., F. B., 14

HAMID ALEE *v.* AFEEOODEEN

[1 B. L. R., S. N., 14: 10 W. R., 213

DINDAYAL PARAMANIK *v.* SURENDRANATH ROY

[3 B. L. R., A. C., 78 note: 10 W. R., 77

32. ———— *Failure to prove rate of rent—Tenure invalid lakhiraj.*—*Held* that the principle of the Full Bench decision in the case decided on the 19th March 1868, *Gholam Mohamed* v. *Asmut Ali Khan Chowdhry, B. L. R., Sup. Vol., 974: 10 W. R., F. B., 14,* applies as much to cases in which defendant has held under an invalid lakhiraj as to raiyats whose rents are be enhanced. IMDAD HOSSEIN *v.* STACK . . . 12 W. R., 454

KABULIAT—*continued.*

5. PROOF NECESSARY IN SUIT—*continued.*

33. ———— *Suit for kabuliat at rate other than fair and equitable.*—A suit for a kabuliat at a given rent, where the rent claimed is found to be above what is fair and equitable, is a suit for enhancement to which the Full Bench ruling—*Gholam Mahomed* v. *Asmut Ali Khan Chowdhry, B. L. R., Sup. Vol., 974: 10 W. R., F. B., 14*—applies, even though the rent is asked only for excess land. KUNCHUN DEO SINGH *v.* TEKAIT SIDH NATH SINGH . . . . 15 W. R., 289

34. ———— *Failure to prove rate of rent—Right to kabuliat at fair rent after notice of enhancement.*—Where a tenant has had full and timely notice of the grounds on which his landlord claims a kabuliat at enhanced rates, the landlord is entitled to a decree for a kabuliat for what he may prove to be a fair and legal demand, notwithstanding his failure to prove his right to a kabuliat at the rate fixed by him. The Full Bench ruling in *Gholam Mahomed* v. *Asmut Ali Khan Chowdhry, B. L. R., Sup. Vol., 974: 10 W. R., F. B., 14,* not applying to a case where notice of enhancement has been given. GOPEENATH JANNAH *v.* JETOO MOLLAH

[18 W. R., 272

35. ———— *Failure to prove rate of rent—Suit for kabuliat and assessment after resumption.*—A party, having obtained a decree for resumption declaring that he was entitled to assess rent upon certain land, brought a suit for a kabuliat. The first Court found that the extent of the land was less than that alleged in the plaint, and the rate of rent to which the plaintiff was entitled, lower than that claimed. Accordingly it decreed a kabuliat for the proper quantity of land at the proper rate. The lower Appellate Court dismissed the suit on the ground that the plaintiff had not proved the claim stated in the plaint. *Held* that the District Judge had rightly applied the decision in *Gholam Mahomed* v. *Asmut Ali Khan, B. L. R., Sup. Vol., 974: 10 W. R., F. B., 14,* which was equally applicable to cases in respect of lands for the first time resumed and assessed. JELLOR RUHMAN *v.* SEETARAM DUTT

[21 W. R., 224

36. ———— *Enhancement of rent — Presumption of landlord's willingness to grant pottah.*—In order to entitle a landlord to sue a tenant for a kabuliat at a certain rate of rent, he should either have tendered a pottah to the tenant at the rate of rent mentioned in the kabuliat, or he should be willing to grant a pottah at that rate; and if the Court considers that the rent which he claims is the correct amount, it will presume that he is ready to grant a pottah at that rate, and will give him a decree for the kabuliat. But this presumption will not hold if the Court thinks that the rate claimed is too high; and in such a case, therefore, the presumption having failed, the landlord will not be entitled to a kabuliat at such lower rate as the Court may think just, but his suit will be dismissed.—*Golam Mahomed* v. *Asmut Ali Khan Chowdhry, B. L. R., Sup. Vol., 974: 10 W. R., F. B., 14,* followed. *Gopeenath Jannah* v. *Jetoo Mollah, 18 W. R., 272,*

KABULIAT—*concluded.*

5. PROOF NECESSARY IN SUIT—*concluded.*

dissented from. Gogon Manji *v.* Kashishwary Debi . . . . **I. L. R., 3 Calc., 498**

S. C. Gogon Manji *v.* Gobind Chunder Khan **[1 C. L. R., 241**

37. ———————— *Enhancement of rent—Pottah, Tender of—Form of decree.*—If a plaintiff brings a suit for a kabuliat at an enhanced rate against a tenant holding a mouzah under him at a wholly insufficient rent, and the tenant sets up a wholly false and fraudulent defence,—*e.g.*, that the rent he pays is not liable to enhancement, as he holds under a pottah which entitles him to hold so long as he pays a certain fixed rent quite irrespective of the value of his holding; and if on enquiry it is found that the defendant's plea is entirely false, and that he is not entitled to hold at any fixed rent, but only on payment of a fair rent with reference to the value of his holding, still if it be found that the plaintiff has at all overestimated the amount of rent to which he is entitled, his suit must be dismissed with costs. Brojo Kishore Singh *v.* Bharrut Singh Mohaputtur . . . . **I. L. R., 4 Calc., 963**

Mahomed Assur *v.* Pogose . . **2 C. L. R., 8**

6. DECREE FOR KABULIAT.

38. ———— **Form of decree**—*Specification of duration of kabuliat—Decree in suit for kabuliat.*—In a decree for a kabuliat the term for which it is to remain in force should not be fixed. Swarnamayi *v.* Gauri Prasad Das **[3 B. L. R., A. C., 270**

39. ———————— *Kabuliat, Decree for, without fixing term, Effect of.*—Where a suit for a kabuliat at an enhanced rent is decreed without any term being fixed by the Court, the kabuliat executed is inoperative beyond the year of demand. Kristo Chunder Murdraj *v.* Poorosuttum Dass **[15 W. R., 424**

Modhoo Ram Dey *v.* Boydonath Dass] **[9 W. R., 592**

KARNAM.

See Hereditary Offices Regulations. **[5 Mad., 360**

See Hindu Law—Inheritance—Special Heirs—Males—Daughter's Son. **[I. L. R., 18 Mad., 420**

See Madras Regulation XXIX of 1802.
[4 Mad., 234
I. L. R., 9 Mad., 214, 283
I. L. R., 10 Mad., 226
I. L. R., 11 Mad., 196
I. L. R., 18 Mad., 420

See Madras Revenue Recovery Act, s. 52 . . **I. L. R., 15 Mad., 35**

See Public Servant. **[I. L. R., 15 Mad., 127**

KARNAM—*concluded.*

See Right of Suit—Office or Emolument . **I. L. R., 10 Mad., 226**
[I. L. R., 15 Mad., 284
I. L. R., 21 Mad., 47
I. L. R., 23 Mad., 47

See Small Cause Court, Mofussil—Jurisdiction—Government, Suits against . **I. L. R., 18 Mad., 395**

1. ———— **Right of women to hold office of karnam.**—Women are incapacitated from holding the office of karnam. *Alymalammal* v. *Venkataramayyan, S. D. A., Mad., 1844, p. 85,* followed. Venkataratnamma *v.* Ramanujasami **[I. L. R., 2 Mad., 312**

2. ———— **Office of karnam in zamindari village**—*Right of woman to succeed—Mad. Reg. XXIX of 1802, s. 7.*—A woman cannot hold the office of karnam. Chandramma *v.* Venkataraju . . . **I. L. R., 10 Mad., 226**

3. ———— **Rights of de facto karnam**—*Presumption of appointment from long tenure—Limitation.*—*A* filed a plaint on 28th June 1882 for a declaration of his title as karnam of a village and for arrears of dues payable to him as such, including those for Fasli 1288, which accrued due on 1st July 1879. His family had held the office and discharged its duties for three generations, but there was no evidence of any formal appointment of *A* or his ancestors. *Held* that the plaintiff was entitled to the dues as *de facto* karnam, and his claim was not barred in respect of any of the arrears claimed. Ganapathi *v.* Sitharama **[I. L. R., 10 Mad., 292**

4. ———— **Karnam in permanently-settled estate**—*Mad. Reg. XXXV of 1802, ss. 8 and 11—Mad. Reg. XXIX of 1802, s. 5—Right to sue for removal of karnam—Delegation of such right to lessees of zamindari—Damages accrued by a karnam's neglect of a statutory duty.*—The lessees of a zamindari are not entitled to sue for the removal of a karnam from office, though their lease contains a provision purporting to authorize them to appoint and remove karnams, but if they suffer any loss from the karnam's neglect of his statutory duty, they are entitled to bring an action for damages against him. Kumarasami Pillai *v.* Orr . . **I. L. R., 20 Mad., 145**

KARNAVAN.

See Cases under Malabar Law—Joint Family.

See Cases under Malabar Law—Maintenance.

KATTUBADI.

See Rent . **I. L. R., 22 Mad., 12**

KAZI.

See Collector **I. L. R., 18 Bom., 103**

See Hereditary Offices Act, s. 13.
[I. L. R., 18 Bom., 103
I. L. R., 19 Bom., 250

KAZI—*concluded.*

See MAHOMEDAN LAW—CUSTOM.
[I. L. R., 1 Bom., 633

See MAHOMEDAN LAW—KAZI.

———— **of Bombay.**

See MAHOMEDAN LAW—ENDOWMENT.
[I. L. R., 18 Bom., 401

KHAZANCHI.

See CRIMINAL PROCEDURE CODES, s. 45 (1872, s. 90).
[I. L. R., 4 Calc., 603

KHOJA MAHOMEDANS.

See HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION 12 Bom., 281, 294
[I. L. R., 3 Bom., 34

See RELIGIOUS COMMUNITY.
[12 Bom., 323

———— **Distinction between ancestral and self-acquired property among Khoja Mahomedans**—*Partition—Right of a son to obtain partition of ancestral property in his father's lifetime without his father's consent—Burden of proving property to be self-acquired.*—Amongst Khoja Mahomedans a son is entitled to obtain partition of ancestral estate in his father's lifetime without his father's consent. By the law and customs of Khoja Mahomedans there is a distinction between ancestral and self-acquired property in reference to the power of the owner to devise or make a gift thereof similar to that which obtains under the ordinary Hindu law. The presumptions of the Hindu law apply to Khoja Mahomedans, and the burden of proving propositions opposed to that law lies on him who alleges them. Therefore in a suit for partition brought by a son against his father, who alleged that the customs and usages of the Khoja community in matters of partition were not identical with the Hindu law, and did not confer on a son any right to demand in his father's lifetime a partition of the property in the father's hands, whether ancestral or self-acquired,—*Held* that the burden of proving the issues framed upon these allegations lay on the defendant. In considering the question of the alleged custom and usages the Court adhered to the less stringent rule of proof applied in *Hirbai* v. *Gorbai, 12 Bom., 294.* In the same suit where the defendant, having failed to establish the existence of the special custom and usages abovementioned, yet resisted the plaintiff's claim to partition on the ground that the property claimed was not ancestral,—*Held* that the onus was on the plaintiff in the first instance to give evidence that the property was ancestral. In such cases the amount of the evidence required to shift upon the defendant the burden of displacing it depends on the circumstances of each case. CASSUMBHOY AHMEDBHOY *v.* AHMEDBHOY HABIBHOY
[I. L. R., 12 Bom., 280

KHOJA MAHOMEDANS—*concluded.*

Held on appeal. The rule that Hindu law as administered in the Bombay Presidency, in the absence of proof of customs to the contrary, is the law applicable to Khoja Mahomedans, is not to be understood in its widest sense, but as confined to simple questions of inheritance and succession. The right of a son to partition in the lifetime of his father, more especially where moveable property is concerned, is one upon which the greatest doubt and difference of opinion has always prevailed, and consequently there is no presumption in favour of its inclusion in the Hindu law, which, in the absence of proof of custom to the contrary, is applicable to Khoja Mahomedans. The onus is on the party alleging such a right in the case of Khoja Mahomedans to prove it. *Held* on the evidence that it was not established that amongst Khojas in Bombay there was any recognized right of a son to demand partition in the lifetime of his father, although it was proved to be customary in Kathiawar and Cutch for a father to give a son who wished for it his share of the family property, both ancestral and self-acquired. *Help* also, on the evidence, that there was no sufficient proof of the property, of which the plaintiff sought partition, being ancestral property in the hands of his father. Where wealth amassed by an individual in trade is said to be ancestral in the hands of that individual, it is not enough to show that he inherited some property; it must be shown that the property inherited contributed in a material degree to the wealth so amassed. AHMEDBHOY HUBIBBHOY *v.* CASSUMBHOY AHMEDBHOY
[I. L. R., 13 Bom., 534

KHOTI ACT (BOMBAY ACT I OF 1865).

See BOMBAY SURVEY AND SETTLEMENT ACT.

KHOTI SETTLEMENT ACT (BOMBAY ACT I OF 1880).

See KHOTI TENURE.
[I. L. R., 8 Bom., 525
I. L. R., 13 Bom., 373

See LEASE—CONSTRUCTION.
[I. L. R., 13 Bom., 373

See STATUTES, CONSTRUCTION OF.
[I. L. R., 18 Bom., 133

———— **Landlord and tenant**—*Presumption as to nature of tenancy in absence of evidence—Payment of rent—Mortgage by tenant—Sale of tenant's interest—Rights of purchaser—Suit for possession—Transfer of tenancy in khoti village—Occupancy tenancy.*—One *A*, who held certain land as tenant, mortgaged it to *H* and shortly afterwards died. There was no evidence to show the term of *A*'s tenancy. After his death the plaintiff *V*, who was his brother, became tenant of the land and paid rent to the khots. Some years subsequently *H* (the mortgagee) sued to enforce his mortgage, and made the plaintiff *V* and his two sisters parties. He obtained a decree and sold the mortgaged land in execution. *S* bought it and now claimed possession. *V*

KHOTI SETTLEMENT ACT (BOMBAY ACT I OF 1880)—*continued*

contended that *A*'s interest terminated at his death, and that *S* was therefore not entitled to possession. *Held* that *S* was entitled to possession. The fact that *A* had paid rent to the khots showed that he was their tenant. In the absence of all evidence on the subject, the presumption was that tenancy was an ordinary tenancy from year to year continuable until legally terminated. There was nothing to show that the khots had ever terminated it. *A*'s heir could not surrender it to the prejudice of the mortgagee. *S* therefore had purchased a tenancy which had never been legally put an end to, and was entitled to possession. Under the Khoti Settlement Act (Bombay Act I of 1880), occupancy tenancies are not transferable except under certain circumstances, but there is no prohibition to the transfer of an ordinary tenancy. SONSHET ANTUSHET TELI *v.* VISHNU BABAJI JOHARI . . **I. L. R., 20 Bom., 78**

——— **s. 16**—*Mortgagee of a co-sharer in the khotki settlement register, Preparation of—Survey officer's authority to determine the title of persons claiming as mortgagees only from a co-sharer.*—The word "khot" as used in the Bombay Khoti Act (Bombay Act I of 1880) does not include a mortgagee of a co-sharer in the khotki. The Act does not give the Survey officer, when preparing the settlement register, any authority to investigate and determine the title of persons who claim as mortgagees only of a share in the khotki, still less to determine whether an alleged mortgage of a share has been redeemed or is still subsisting. DATTATRAYA GOPAL *v.* RAMCHANDRA VISHNU **I. L. R., 24 Bom., 533**

——— **ss. 16 and 17**—*Entry in the Survey Settlement officer's record, Finality of—Land Revenue Code (Bom. Act V of 1879), s. 108.*—The Settlement officer's record fixing the amount of rent payable to a khot in respect of lands in the khoti village, though prepared in the form of the statement published at p. 584 of the "General Rules of the Revenue Department," edition of 1893, and labelled "bot-khat," cannot be treated either as a survey register under s. 108 of the Land Revenue Code (Bombay Act V of 1879) or a settlement register as it is called in s. 16 of Bombay Act I of 1880; it is one of the "other records" prepared under s. 17 of the latter Act. VAIDKHAN ROSHANKHAN SARGURO *v.* SAKHYA . . . **I. L. R., 20 Bom., 729**

1. ——— **s. 17**—*Entry in Survey officer's record—Land Revenue Code (Bom. Act V of 1879), s. 108—Evidence Act (I of 1872), s. 40—Res judicata.*—An entry of a record prepared under s. 108 of the Land Revenue Code (Bombay Act V of 1879), by the Survey officer, describing certain lands as khoti, is by force of s. 17 of the Khoti Act (Bombay Act I of 1880) conclusive and final evidence of the liability thereby established, and shuts out the evidence of a prior decision otherwise relevant under s. 40 of the Evidence Act as proof of *res judicata* whereby a Civil Court adjudged the land to be dhara. *Gopal Krishna Parachure* v. *Sakhojirav, I. L. R., 18 Bom., 133,* referred to and followed. RAMCHANDRA BHASKAR NANAL *v.* RAGHUNATH BACHASHET SONAR . **I. L. R., 20 Bom., 475**

KHOTI SETTLEMENT ACT (BOMBAY ACT I OF 1880)—*continued.*

2. ——— **and ss. 20 and 21**—*Entry in the Settlement officer's record—Evidence as to amount of rent due.*—An entry in the Settlement officer's record referred to in s. 17 of the Khoti Act (Bombay Act I of 1880) is conclusive as to the nature and amount of rent. The words "conclusive and final evidence of the liability" in s. 17 have the effect of shutting out any other evidence on the subject which might be adduced before the Civil Court. The words "when not final" in s. 21 of the Act refer to the finality ascribed in s. 17 to the entries of the nature therein mentioned, and which follow as contemplated in s. 20 on the Survey officer arriving at his decision. GOPAL KRISHNA PARACHURE *v.* SAKHOJIRAV . . **I. L. R., 18 Bom., 133**

3. ——— **and ss. 16 and 33**—*Entries made by Settlement officer in a form headed as issued under Bombay Survey and Settlement (Khoti) Act (Bom. Act I of 1865) when Bom. Act I of 1880 was in force—Finality of the entry as to the liability of the tenant—Occupancy-tenant—Jurisdiction of Civil Court.*—At a time when the Khoti Act (Bombay Act I of 1865) had been repealed and the Khoti Settlement Act (Bombay Act I of 1880) had come into operation, the Survey officer made, in a form which was headed as being issued under Act I of 1865, entries of rent payable by the occupancy-tenant to the khot with regard to some survey numbers of a fixed amount of grain, and with respect to one survey number as held rent-free, instead of a fixed share of the gross annual produce of the land as directed in the second paragraph of cl. (*c*) of s. 33 of the Khoti Settlement Act, without recording that the rent had been so fixed by agreement,—*Held* that the entries of the rent payable by the occupancy-tenants were duly made under s. 17 of the Khoti Settlement Act according to the provisions of s. 33 so as to make them conclusive and final evidence of the tenant's liability, which it was not open to a Civil Court to question. BALAJI RAGHUNATH *v.* BAL BIN RAGHOJI
[I. L. R., 21 Bom., 235

4. ——— **and ss. 20, 21, and 33**—*Entry in the Settlement officer's record, Effect of.*—An entry by a survey officer that an occupancy tenant holds the land rent-free is not an entry under s. 17 of the Khoti Act (Bombay Act I of 1880), and not being final, it can under s. 21 be reversed or modified by a decree of a Civil Court. *Balaji Raghunath* v. *Bal bin Raghoji, I. L. R., 21 Bom., 235,* distinguished. VITHAL ATMARAM *v.* YESA
[I. L. R., 22 Bom., 95

5. ——— **and ss. 21 and 33**—*Bombay Land Revenue Code (Bom. Act V of 1879), ss. 108 and 110—Entry made by Survey officer—Conclusive and final evidence—Entry specifying the amount and nature of rent.*—Under the Khoti Act (Bombay Act I of 1880), it is only an entry of the Survey officer specifying the nature and amount of rent payable to the khot by a privileged occupant, according to the provisions of s. 33, in a record made under s. 17, that is declared to be final and conclusive evidence. An entry of a Survey

officer specifying that an occupant, who was found to be not a dharekari or privileged occupant, should pay assessment and local fund cess only for the lands in his possession, is not conclusive and final evidence under the Khoti Act, s. 21, declaring such decision binding only on the parties until reversed or modified by a final decree of a competent Court. KRISHNAJI NARASINVA *v.* KRISHNAJI NARAYAN JOSHI

[I. L. R., 21 Bom., 467

6. ———————— and s. 33—*Bombay Land Revenue Code (Bom. Act V of 1879), s. 211—Determination by the settlement officer of the liability of the defendant to khot—Entry in the settlement register as occupancy-tenant—Revision of the record by the Collector—Jurisdiction of Civil Court—Decision as to the rent payable—Appeal.* In May 1885, under s. 33 of the Khoti Settlement Act (Bombay Act I of 1880), the Survey officer determined the liability of the defendant to pay to the khot as rent for his land the survey assessment and the local fund cess, and this was entered in the record made under s. 17 of the Act, notwithstanding that in the settlement register the defendant was entered as an occupancy-tenant. In April 1889, the Collector, on the application of the plaintiff, revised the former record, which as revised showed that the defendant was liable to pay one-third of the produce of the land as rent to the khot. A question having arisen as to the legality of the revised entry by the Collector,—*Held* that the revised entry in the record was duly made by the Collector under s. 17 of the Khoti Settlement Act, and was conclusive and final evidence of the liability established by it. It is not open to a Civil Court to inquire into the legality or otherwise of the reasons which may have led to the determination of the amount of rent payable. The Khoti Settlement Act does not make the decision of rent final. In s. 17 it only makes the entry, which is the result of the decision, final and conclusive evidence. Under s. 33, an appeal lies from a decision, and the decision can be revised under s. 211 of the Land Revenue Code (Bombay Act V of 1879) by the authorities therein mentioned. GOPAL RAMCHANDRA NAIK *v.* DASHRATHSHET . . **I. L. R., 21 Bom., 244**

7. ———————— and ss. 21 and 33—*Bombay Land Revenue Code (Bom. Act V of 1879), s. 108—Decision of Survey officer as to tenure—Power of Court to reverse or modify it.*—The decision of a Survey officer determining the tenure on which a survey number is held is not final under the Khoti Act (Bombay Act I of 1880), and it can be reversed or modified by a competent Court. ANTAJI KASHINATH *v.* ANTAJI MADHAV BHAVE

[I. L. R., 21 Bom., 480

8. ———————— and ss. 21 and 33—*Survey register—Defendants entered by Survey authorities as occupancy-tenants—Suit by plaintiffs for reversal of Survey officer's decision and for declaration that defendants were ordinary tenants—Decision of Survey officer as to tenure—Right of suit—Khot holding dhara land.*—A Survey officer under the Khoti Settlement Act (Bombay Act I of 1880) having determined and entered in the survey register that the defendants held the lands in suit as occupancy-tenants, the plaintiffs, who were the khots of the village, objected to the decision, and brought a suit for its reversal and to obtain a declaration that the lands were held by them on the dhara tenure, and that the defendants were ordinary tenants thereof. The Judge dismissed the suit in appeal, holding that the survey entry was conclusive proof of the tenant's liability, and that it gave no cause of action to the plaintiffs. *Held*, reversing the decree, that the decision of the Survey officer as to tenure was not final, and that a suit like the present would lie. A khot of a village can hold dhara lands. GOPAL SADASHIV PALEKAR *v.* NAGESHWAR SITARAM PHANSALKAR

[I. L. R., 21 Bom., 608

———— s. 20.

See LIMITATION ACT, ART. 14.

[I. L. R., 18 Bom., 244

1. ———————— and s. 21—*Effect of decision of a Survey officer as to tenure—Burden of proof.*—S. 20 of the Khoti Settlement Act (Bombay Act I of 1880) throws upon the Survey officer the duty of investigating and determining disputes as to any matter which he is bound to record. The tenure upon which any particular survey number is held is one of such matters which he has to determine between the khot and its holder. His decision is, under s. 21 of the Act, binding upon the parties affected thereby until reversed or modified by a final decree of a competent Court. The burden of proof in such case lies upon the party seeking to vary the decision. MADHAVRAO APPAJI SATHE *v.* DEONAK

[I. L. R., 21 Bom., 695

2. ———————— and ss. 21 and 22—*Jurisdiction of Civil Court—Order or act of Settlement officer—Power of Collector.*—Under ss. 20 and 21 of the Khoti Settlement Act, it is the "decision" on the rival claims of the parties which is open to reversal by the Civil Court, and not the consequences of that decision, which as provided by s. 22 are left to the Collector himself to undo or modify in accordance with the decision of the Civil Court. S. 21 does not contemplate any "order" being made by the Survey officer between the parties; and even if framing the register be regarded as an "act" of the Survey officer, s. 22 provides for its being amended by the Collector himself in accordance with the decision of the Civil Court. FAKI GULAM MOHIDIN *v.* SAJNAK

[I. L. R., 18 Bom., 244

———— s. 33—*Khot—Occupancy tenants—Thal—Thal to be determined by Survey officer and not by Civil Court—Rent suit.*—Under s. 33 of the Bombay Khoti Act (Bombay Act I of 1880), it is the duty of the Survey officer to determine the thal or customary rent payable to a khot by an occupancy-tenant. Until a new determination has been made by the Survey officer under s. 33 of the rent payable to the khot, a Civil Court must award rent to the old rate legally fixed. BAPUJIRAO *v.* GANU

[I. L. R., 24 Bom., 489

KHOTI TENURE.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY . 8 Bom., A. C., 1

See FOREST ACT, ss. 75 AND 76. [I. L. R., 18 Bom., 670

See LANDLORD AND TENANT—LIABILITY FOR RENT . I. L. R., 19 Bom., 528

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT. [I. L. R., 17 Bom., 677

1. ———— **Proprietary rights**—*Ownership of wood on village lands—Forest rights.*—The plaintiff sought to raise the question whether in virtue of his being izafadar and khot of three-fourths of a village, he was or was not proprietor of three-fourths thereof and entitled, as such proprietor, to three-fourths of the wood, including teak as well as izaili wood, growing on the village lands. His rights under the izafati title depended on two documents: one, an imperial sanad, dated in A.D. 1653; the other, a Marathi document, dated in A.D. 1722. The first was construed to confer upon the grantee, as collector of the revenue, certain perquisites, and to make hereditary a right which before had been only a personal right, with reversion to the sovereign, but not to confer any proprietary right in the village lands. By the second, all that was granted was a right to babatas or cesses, the grantee being the desai, or collector of the revenue, on behalf of the Government. Therefore it was held that the izafati title did not carry with it the proprietary right. On the question as to the khoti, it was held, without the expression of any opinion, that no khot is or can be the proprietor of the soil; that such a right is not vested in every khot. This khot of three-fourths of a village had been authorized by the Government to carry on the management as khot of the remaining fourth, and had agreed, at the time of entering into this arrangement, that he would preserve for the Government all the trees in reserves marked by survey numbers, and all the teak trees in the village. He had admitted that the Government had the power to make such reserves. It was not shown that the Government had cut down any izaili wood in the village; only that it had recovered the value of some izaili wood cut in the reserves without their leave. It was decided that the khot had not made out a title to any teak wood as against the Government, nor a claim against it in respect of the izaili wood. NAGARDAS *v.* CONSERVATOR OF FORESTS, BOMBAY [I. L. R., 4 Bom., 264 L. R., 7 I. A., 55

2. ———— **Right to restoration of tenure after resumption by Government**—*Conditional restoration.*—In a suit brought by a khot in 1862 to recover an hereditary share in a khoti village, which had been mortgaged by her husband in 1845, and taken directly under Government management by the Sub-Collector of Kolaba on failure by the mortgagee to pass the customary agreement (kabuliat) for the security of the revenue for the year 1851-52, the Court of first instance decreed the restoration of the khoti estate on payment by the plaintiff of any loss which may have been sustained by Government during its entire management, but the District Judge in appeal modified that decree by annexing a condition that the plaintiff was to observe the engagements which had been entered into between Government and the sub-tenants of the estate through the revenue survey which had been introduced during the direct management of the village by Government whether as regards the rates of assessment or the right of tenancy. *Held* by ARNOULD and NEWTON, *JJ.* (TUCKER, *J.*, *dissentiente*), that plaintiff had no right to object to the condition subject to which the District Judge had allowed her claim to resume the khotship. TAJUBAI *v.* SUB-COLLECTOR OF KOLABA [3 Bom., A. C., 132

3. ———— **Liability to assessment for lands while khoti village is under attachment by Government**—*Bom. Act I of 1865, s. 11, cl. 1, and s. 38.*—A khot is liable to be assessed for khoti profits in respect of land in his private occupation during the time that the khoti village is under attachment by Government. *Quære*—Whether a khot in respect of such lands is a tenant within the meaning of s. 11, cl. 1, of Bombay Act I of 1865, and whether the powers in s. 38 of that Act apply to such lands. RAMCHANDRA NARSINHA *v.* COLLECTOR OF RATNAGIRI . 7 Bom., A. C., 41

4. ———— **Khot's right to profits for one year when khoti village under Government attachment**—*Bombay Khoti Act I of 1880—Land Revenue Code (Bom. Act V of 1879), s. 162—Right to levy profits from khoti co-sharer—Limitation.*—The position of a khot, in the villages to which the Bombay Khoti Act I of 1880 has been extended, is that of a superior holder, and in the event of attachment of his village his rights in respect of khoti profits, on his resuming the management of the village, would be regulated by s. 162 of the Revenue Code (Bombay Act V of 1879). But this rule does not hold good where the village attached is one in the Kolaba district to which the Khoti Settlement Act (I of 1880) has not been extended, unless the khots therein are sanadi or vatandar khots. Where plaintiff sued the defendant, his khoti co-sharer, to recover from him the khoti profits for the year during which the village was under Government attachment, and it was found that the Khoti Act I of 1880 was not extended to the village and that the plaintiff was not a sanadi or vatandar khot,—*Held* that the plaintiff was not entitled to recover the profits from the defendant, nor could he do so from Government under the Revenue Code, even if it had collected them for the year of attachment. The Government could not be said to have been trustee for the khots of the village. BHIKAIJI RAMCHANDRA OKE *v.* NIJAMALI KHAN [I. L. R., 8 Bom., 525

5. ———— **Relations of inamdars with khots**—*Status of khot in the Ratnagiri district—Ownership not an essential incident of khotship—Onus—Thal.*—The plaintiffs were the inamdars of a certain village in the Ratnagiri district, which was granted to their ancestors by the Peshwa under a sanad, dated 3rd September 1878. The defendants

KHOTI TENURE—*continued.*

were the vatandar (or permanent) khots of the same village. In a previous suit between the parties relating to the forest attached to the village, it was held, upon the construction of the Peshwa's sanad, that "so far as the Peshwa's Government could pass the soil of the village and its revenues by its grant, it did pass them to the plaintiff's ancestors," and that therefore the plaintiffs were the owners of the forest. *Narayan Dhondbhat* v. *Pitre Trimbak Vithal, I. L. R., 11 Bom., 688 note.* In the present suit, which was brought to compel the defendants to pass a fresh kabuliat every year to the plaintiffs and to recover the revenue from them for the years 1869-70 and 1870-71, the defendants contended (*inter aliâ*) that they had proprietary rights, as inherent in their khotship, over the cultivated land of the village, and that the plaintiffs as inamdars were mere alienees of the land-tax payable to Government. In support of this contention, they principally relied upon the fact that they were entitled to recover, and did in fact recover, thal, or rent for lands reclaimed and brought under cultivation by the plaintiffs. The plaintiffs claimed, on the other hand, to be the absolute owners of the whole soil of the village, and that the defendants were estopped by the annual kabuliats they had passed through a long series of years from setting up a proprietary title. *Held* that the mere fact of the defendants being vatandar khots did not make them proprietors of the cultivated land in the village; that proprietary rights were not essential to the conception of a khotship; that in levying thal on the lands tilled by the plaintiffs the defendants did not necessarily assert, they certainly did not establish, a proprietary right to the soil as against the inamdars; and that the defendants held a position with rights and obligations not essentially different from those of other khots in the Ratnagiri district who were farmers of the public revenue. MORO ABAJI *v.* NARAYAN DHONDBHAT PITRE

[I. L. R., 11 Bom., 680

6. ——— Proprietary right of khot to khoti vatani land—*Right of such khot to forest land and to timber and wood growing therein—Government, Right of, to appropriate to forest preserves assessed or unassessed land—Construction of such khoti grants.*—The plaintiff sued the defendant, alleging that that village of mauze Ambedu, in the Ratnagiri district, was his khoti vatani village in which his proprietary right extended to raise crops of any kind or to preserve and cut the jungle and forest trees on the lands therein. He complained that since 1855-56 the Collector of the district prohibited him from exercising the above alleged rights, and prayed that the obstruction might be removed, and R600 awarded as damages. The plaintiff based his claim mainly on the settlement of 1788, Dunlop's proclamation of 1824, and several other khoti grants in the district. The defendant denied that the plaintiff had any proprietary right in the village, and contended (*inter aliâ*) that the khot derived his rights from the yearly kabuliats passed by him; that his right to cultivate did not extend to cultivating the jungle land, and that his position was no better than that of a patel. The Joint Judge who tried the suit held that under the settlement of 1788 the plaintiff as khot was entitled to the jungle produce except timber; that in virtue of Dunlop's proclamation of 1824 the plaintiff acquired an unqualified right to the forest land in the village and timber growing on it, and that the defendant had no right to appropriate assessed or unassessed land for forest purposes, and awarded the plaintiff the sum of R600 as damages. On appeal by the defendant to the High Court,—*Held* that the application of the general rules of construction of grants to a subject by the State requires that language of such general import as is ordinarily to be found in the khot's sanads should be taken most beneficially to the State. *Held* accordingly that, in the absence of a sanad expressly granting it the ownership neither of the soil nor of cultivated or uncultivated lands passes by the grant of the vatandari khotship. *Held* also that the grant of the vatani khoti did not make the khot a perpetual tenant of Government in respect of all lands in the village, except dhara lands. *Held* on the authority of *Tajubai* v. *Sub-Collector of Kolaba, 3 Bom., A. C., 132,* and *Ramchandra Narsinha* v. *Collector of Ratnagiri, 7 Bom., A. C., 41,* that a permanent relationship was created between the Government and the khot which could not be interfered with as long as the settlement of 1788 was in force, except with the khot's consent, and therefore that in 1855, when the pahani of 1788 was in force, the Government could not withdraw the thikan in question from the plaintiff's cultivation. *Held* also that, in the absence of evidence to show that the right to the jungle produce was intended to be reserved to Government, the plaintiff was entitled to cut down brushwood, whether as a source of revenue or for the purpose of bringing the land into cultivation. *Held* that the respondent was entitled to damages for the years during which he had been excluded and to an injunction restraining the defendant from excluding him in the future. *Held* also that as khot the respondent had no right to cut timber in forest and uncultivated lands, whether by virtue of his khotship or Dunlop's proclamation. COLLECTOR OF RATNAGIRI *v.* ANTAJI LAKSHMAN . . . **I. L. R., 12 Bom., 534**

See SECRETARY OF STATE FOR INDIA *v.* SITARAM SHIVRAM . . . **I. L. R., 23 Bom., 518**

7. ——— Managing khot's right to create tenancies—*Maphi istava lands—Suti lands—Sanad—Construction—Fraud.*—A managing khot is entitled, without any express authorization, to create tenancies in land, even though the reversionary interest in it is vested in the person whose lessee he is. If such a khot himself takes up land, he can do so consistently with the conditions of the khoti tenure; for a khot, as regards lands in his private occupation, may be a tenant to him himself *quâ* khot. In 1832 the British Government granted to the plaintiff's father, *M I M*, the village of Ransai on khoti tenure by a sanad which provided (*inter aliâ*) as follows:—(1) That the whole of the land lying waste in the village in the year 1830-31 was granted as inam. (2) That exclusive of this inam land, all the rest of the village was granted on khoti tenure on certain conditions and stipulations set forth in twelve clauses, the chief of which were the following: Clause 1st provided that the khot should annually pay to Government a fixed sum of R249 2 as. 35 rs. Clause 7th provided that the khot should allow the lands, which had been granted on maphi istava tenure to certain hawaldars before the date of the sanad, to continue in their possession; that he should every year recover from them the Government dues and pay the same over to Government in addition to the amount stipulated with him on account of the khotship. Clause 9th provided that the holders of the suti lands in the village were the owners of those lands. Should a new survey be made and a new assessment settled, the same should be settled by Government for the holders of the suti lands agreeably thereto. From 1845 to 1871 the management of the khoti village was entrusted to the defendant as a maktadar, or lessee, under two kabuliats passed by him—one in 1845 to *M I M*, the grantee of the khoti village, and the other in 1858 to the grantee's heirs and legal representatives. By clause 5th of the kabuliat of 1858 the defendant agreed to carry on the management of the village and render a detailed account of the balance of the village revenue every year. Clause 7th of the same kabuliat was in the following terms: "I (the lessee) will bring under cultivation and into prosperous state the waste, culturable, and unculturable land of the aforesaid village. I will take the proceeds of the same during the years of my contract. After the expiry of the years of the contract, you are to take the assessment of the fields according to the practice of the village. I have nothing to do with the same. I will not let (the village) nor lease to anybody for a longer period than for the period of the contract. If I let it, I will make good the damage you may suffer." In 1859 some of the maphi istava lands were sold by the Collector for arrears of assessment and bought in by Government. The defendant applied to the Collector to have the lands transferred to him, and the Collector transferred them to his name. Shortly afterwards the defendant acquired some more lands which were held on suti tenure in the village. He either purchased them or took them up on the tenants abandoning them. In 1861 when the survey was introduced into the village, he got his title to these lands recognized by the Superintendent of Survey. In 1871 the defendant's management of the village ceased. But he refused to deliver up to the plaintiff, either the maphi istava or the suti lands which he had acquired during his management. The plaintiff therefore sued as khot of the village to recover the said lands with mesne profits, alleging that the defendant had illegally and fraudulently acquired those lands on his own account while acting as plaintiff's agent and praying that he should be declared to have acquired and held them in trust for the plaintiff. The defendant contended (*inter alia*) that the lands in suit were not included in the khoti grant; that they belonged to Government; that he had acquired some from the Collector and the rest from the Superintendent of Survey; that under his kabuliats he was entitled to take up the lands direct from Government, and that the plaintiff was only entitled to the assessment due on the lands which he had refused to accept. Lastly, the defendant denied that he had acted in fraud of the plaintiff's right in acquiring the lands in dispute on his own account. *Held*, on the construction of the sanad, that the plaintiff being the khot of the whole of the village exclusive of the land granted in inam, the maphi istava lands were included in the khoti grant; that the khot's interest in them, whatever might be the extent of it, was not separable from the khoti estate; and that the khot had a reversionary interest in the maphi istava lands as well as in the suti lands, which had been abandoned by their former occupants. *Held* also that the defendant was not precluded by the terms of his lease from acquiring the lands in dispute on his own account. The engagement to furnish accounts of the balance of the village revenue at the end of each year was simply an engagement to furnish the plaintiff with information which would be of use to him, and which indeed it would be necessary for him to possess when he resumed the management of the village on the determination of the lease. It imported nothing more than that; and the whole transaction evidenced by the kabuliats was merely an assignment, in consideration of a fixed annual payment to be made by defendant to plaintiff, of the rights and liabilities of the latter to be exercised and discharged for a certain period by the former. For that period the defendant was the makhtadar, or tenant of the plaintiff's khotship; and though a certain confidence was necessarily reposed in him in connection with a tenancy of this nature, and though he was bound jealously and scrupulously to protect the plaintiff's interests, so far as they were in his keeping, yet he was not bound by the strict rule which prohibits a trustee from acquiring for himself an estate of his *cestui que trust*. Under cl. 7 of the kabuliat of 1858, the defendant was at liberty either to take up waste lands himself or put in tenants; if he put in tenants on leases, the special advantages of any leases were to expire with his own lease. But the actual occupation of land either by himself or by his tenants was not to be interfered with at the determination of his lease, so long as he or they continued to pay the assessment according to the practice of the village. The defendant could therefore, without the intervention of the Collector, have taken up the maphi istava lands in suit and become himself the tenant; and he could have also acquired the suti lands from former sutidars, or taken them up if waste, without the intervention of the Survey Superintendent. The circumstance that, when acquiring the lands, he needlessly invoked the assistance of the Revenue authorities, would not invalidate his title if it could not be impugned on other grounds. *Held* further that the defendant was not guilty of fraud, as there was no evidence to show that he had acted in a surreptitious or secret manner in acquiring the lands in suit. On the contrary, his action in applying to the revenue authorities was a sign of his good faith rather than of any fraudulent intent. The plaintiff was therefore not entitled to oust the defendant from the lands in suit. FAKI ISMAIL *v.* MAHOMED ISMAIL

[I. L. R., 12 Bom., 595

KHOTI TENURE—*concluded.*

8. ———— **Lease containing words of inheritance not inalienable**—*Construction—Khoti Act (Bom. Act I of 1880), s. 9.*—The khots of the village of *A* in 1854 leased certain land to *B* by a lease which declared that "you (*B*) are to enjoy, you and your sons, grandsons, from generation to generation." The rent fixed by the lease was eleven maunds and six and a half pailis of bhat per year. *B* having died, his widow in 1878 transferred the lease to the plaintiff, who entered itno possession and offered to pay to the defendants, who were khots of the village and the successors of the grantors of the lease in 1854, the annual rent fixed by the lease. The defendant refused to accept it, and contended that the plaintiff was liable to pay the rent paid by other occupying tenants in the village. The plaintiff thereupon sued to have it declared that he was entitled under the lease to hold the lands permanently at the rent thereby fixed. *Held* by the High Court that he was entitled to the declaration. The lease was one to hold in perpetuity at the fixed rent, but there were no words making the lease inalienable. There was no evidence of any custom of the village, nor anything in the Khoti Act I (Bombay) of 1880, which could be construed as a declaration of the existing custom of khoti villages when the Act was passed. VINAYAK MORESHVAR *v.* BABA SHABUDIN

[I. L. R., 13 Bom., 373

9. ———— **Khoti khasgi lands**—*Khasgi lands allotted to a khoti sharer—Sale of khoti—Occupancy rights in khoti khasgi lands.*—One *N* was the owner of a 14 pies takshim (share) in a khoti village. To this takshim were allotted twenty khasgi thikans. In 1876 *N* mortgaged his khoti takshim to the plaintiff. In 1880 the takshim was sold in execution of a decree against *N* and purchased by *A*. *A* sold the takshim to plaintiff in 1881. In 1893 plaintiff obtained a decree against *N* establishing his right to recover thal (or customary rent) in respect of the twenty khasgi thikans. *N* having died, plaintiff brought this suit against *N*'s son in 1895 to eject them from the khasgi thikans. *Held* that the plaintiff was entitled to recover. The sale of the khoti takshim passed with it the khasgi lands allotted to the takshim. Both as mortgagee and purchaser of the takshim, plaintiff acquired a title to the khasgi thikans in dispute. *Held* also that the effect of the decree which plaintiff had obtained against *N* in 1893 in the rent suit was that, in the absence of any agreement, *N* was a mere tenant-at-will of the khasgi thikans, liable to be evicted after due notice. *Held* also that a khoti sharer has not, with reference to a khoti khasgi thikan allotted to his share, an "occupancy right" against the body of khoti sharers, so that, when he parts with his share in the khoti, his khoti khasgi lands are changed into khoti nisbat lands. RAGHUNATHRAO *v.* VASUDEV

[I. L. R., 23 Bom., 769

KIDNAPPING.

See CHARGE TO JURY—SPECIAL CASES —KIDNAPPING . 7 W. R., Cr., 22
[I. L. R., 14 All., 25

KIDNAPPING—*continued.*

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—KIDNAPPING.
[I. L. R., 18 All., 350
I. L. R., 19 All., 109

1. ———— **Requisites of offence**—*Penal Code, s. 363—Abduction from lawful guardianship.*—To constitute the offence of kidnapping under s. 363 of the Penal Code, it must be shown that the person was abducted from lawful guardianship, and lawful guardianship is a guardianship by a person who is lawfully entrusted with the care or custody of a minor. QUEEN *v.* BULDEO

[2 N. W., 286

2. ———— **Continuing offence**—*Penal Code (Act XLV of 1860), s. 363.—Semble*—That the offence of kidnapping from lawful guardianship punishable under s. 363 of the Penal Code is not a continuing offence. QUEEN-EMPRESS *v.* RAM SUNDAR

[I. L. R., 19 All., 109

3. ———— *Penal Code, ss. 361, 363—Enticing from lawful guardianship.*—To support a conviction for kidnapping under ss. 361 and 363 of the Penal Code, it must be shown that the accused took or enticed away from lawful guardianship the person kidnapped. QUEEN *v.* NEELA BIBEE]

[10 W. R., Cr., 33

QUEEN *v.* MOHIM CHUNDER SIL

[16 W. R., Cr., 42

4. ———— The offence of kidnapping is complete when the person is actually taken out of the custody of his lawful guardian. RAKHAL NIKARI *v.* QUEEN-EMPRESS

[2 C. W. N., 81

5. ———— **Omission to enquire as to guardian**—*Child under ten years of age—Penal Code, s. 361—Guardianship—Minor.*—A child under ten years of age is, *primâ facie*, subject to guardianship, and any one removing such child without permission properly obtained takes the risk of such act upon himself; the fact of having omitted to enquire whether the child had a guardian or not is no defence to a charge of kidnapping a minor from lawful guardianship under s. 361 of the Penal Code. EMPRESS *v.* UMSADBAKSH

[I. L. R., 3 Bom., 178

6. ———— **Lawful guardianship**—*Guardianship of illegitimate child—Penal Code (Act XLV of 1860), ss. 361, 366.*—The mother of an illegitimate child is its proper and natural guardian during the period of nurture. And where the mother, on her death-bed, entrusts the care of such child to a person who accepts the trust and maintains the child, such a person is "lawfully entrusted" with the care and custody of the minor within the meaning of s. 361 of the Penal Code. The explanation of the words "lawful guardian" in s. 361 is intended to obviate the difficulty the prosecution might be put to in being bound to prove strictly, in cases of abduction, that the person from whose care the minor has been abducted was the guardian of such

KIDNAPPING—*continued.*

minor within the meaning of the legal acceptation of the word. EMPRESS *v.* PEMANTLE **[I. L. R., 8 Calc., 971**

7. ———— *Penal Code, s. 361—Taking by father of minor wife from her husband—Guardianship of wife.*—The husband of a Hindu girl of fifteen is her lawful guardian; and if the father of the minor takes away the girl from her husband without the latter's consent, such taking away amounts to kidnapping from lawful guardianship, even though the father may have had no criminal intention in so doing. IN THE MATTER OF THE PETITION OF DHURONIDHUR GHOSE **[I. L. R., 17 Calc., 298**

8. ———— *Enticing away child playing on public road—Taking from lawful guardianship.*—An enticing away of a child playing on a public road is kidnapping from lawful guardianship. QUEEN *v.* OOZEERUN . **7 W. R., Cr., 98**

9. ———— *Penal Code, s. 363—Betrothed girl after marriage is broken off.*—A person who carries off, without the consent of her guardian, a girl to whom he had been betrothed by her father after the father had changed his mind and broken off the marriage, is guilty of kidnapping, punishable under s. 363 of the Penal Code. QUEEN *v.* GOOROODASS RAJBUNSEE . **4 W. R., Cr., 7**

10. ———— *Kidnapping from lawful guardianship—Completion of such offence—Whether a continuous offence—Constructive possession—Penal Code (Act XLV of 1860), ss. 360, 361, and 363.*—*J*, a minor girl, was taken away from her husband's house to the house of *R*, and there kept for two days. Then one *M* came and took her away to his own house and kept her there for twenty days, and subsequently clandestinely removed her to the house of the petitioner, and from that house the petitioner and *M* took her through different places to Calcutta. The petitioner was convicted under s. 363 of the Penal Code for kidnapping a girl under 16 years of age from the lawful guardianship of her husband. *Held* (by the majority of the Full Bench) that the taking away out of the guardianship of the husband was complete before the petitioner joined the principal offenders in taking the girl to Calcutta, and that the petitioner therefore could not be convicted under s. 363 of the Penal Code. *Held* further that the offence of kidnapping from lawful guardianship is complete when the minor is actually taken from lawful guardianship; it is not an offence continuing so long as she is kept out of such guardianship. *Per* RAMPINI, *J.*—The offence of kidnapping under s. 363 is not necessarily or in all cases complete as soon as the minor is removed from the house of the guardian; when the act of kidnapping is complete is a question of fact to be determined according to the circumstances of each case. NEMAI CHATTORAJ *v.* QUEEN-EMPRESS . **I. L. R., 27 Calc., 1041 [4 C. W. N., 645**

11. ———— **Husband taking away wife**—*Abettors in taking away wife.*—A husband cannot be convicted of kidnapping for taking away his own wife, nor can those who aid him in doing so. QUEEN *v.* ASKUR . . . **W. R., 1864, Cr., 12**

12. ———— **Consent**—*Taking by force or fraud—Penal Code, s. 361.*—The consent of a kidnapped person is immaterial, and it is not necessary for a conviction, under s. 361, Penal Code, that the taking or enticing should be shown to have been by means of force or fraud. QUEEN *v.* BHUNGEE AHEER . . . . . **2 W. R., Cr., 5**

QUEEN *v.* AMGAD BUGEAH . **2 W. R., Cr., 61**

QUEEN *v.* MODHOO PAUL . **3 W. R., Cr., 9**

QUEEN *v.* KOORDAN SINGH . **3 W. R., Cr., 15**

QUEEN *v.* SOOKEE . . . **7 W. R., Cr., 36**

13. ———— **Abetment of kidnapping**—*Penal Code, ss. 116 and 363.*—Accused was convicted by the Magistrate of abetting the kidnapping of a minor. Accused, knowing that the minor had left home without the consent of his parents, and at the instigation of one Komaren, the actual kidnapper, undertook to convey the minor to Kandy in Ceylon and was arrested on the way thither. The Sessions Judge reversed the conviction on the ground that there was no concert between the accused and Komaren previous to the completion of the kidnapping by the latter. *Held* by the High Court that, so long as the process of taking the minor out of the keeping of his lawful guardian continued, the offence of kidnapping might be abetted, and that in the present case the conviction should be of an offence punishable under ss. 363 and 116 of the Penal Code. REG. *v.* SAMIA KAUNDAN . . **I. L. R., 1 Mad., 173**

14. ———— *Penal Code (Act XLV of 1860), ss. 109, 363—Right to custody of children.*—A mother cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily the custody of the mother is the custody of the father, and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian, and not as a taking out of his keeping. But where a Hindu woman left her husband's house, taking with her her infant daughter, and went to the house of *A*, and on the same day the daughter was married to *B*, the brother of *A*, without the father's consent, it was held that *A* was rightly convicted under ss. 109 and 363 of the Penal Code of abetting the offence of kidnapping. IN THE MATTER OF THE PETITION OF PRAN KRISHNA SURMA. EMPRESS *v.* PRANKRISHNA SURMA **[I. L. R., 8 Calc., 969: 11 C. L. R., 6**

15. ———— **Concealment of kidnapped person**—*Penal Code, s. 368—Concealment of kidnapper.*—S. 368 of the Penal Code refers to some other party who assists in concealing any person who has been kidnapped, and not to the kidnappers. QUEEN *v.* OOJEER . . . . . **6 W. R., Cr., 17**

16. ———— *Penal Code, s. 368.*—The mere fact of a girl being received into a house and retained there by the owner, even after he may have become aware or found reason to believe that she had been kidnapped, does not amount to

KIDNAPPING—*concluded.*

concealment of her, unless an intention of keeping her out of view be apparent. QUEEN *v.* JHURRUP
[5 N. W., 133

17. ———— *Girl merely staying temporarily in another house.*—The mere circumstance of a girl, who had been kidnapped, staying in the house of a person for a day or two, does not warrant the conclusion that she was wrongfully concealed by that person, with the object of baffling any search that might be made for her. QUEEN *v.* CHUBBOA . . . . . **5 N. W., 189**

18. ———— *Penal Code, ss. 363, 366, 368—Illegal concealment.*—When a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner, and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under s. 363 of the Penal Code only, and of the latter under s. 368 only, while the separate conviction of both under s. 366 was quashed. QUEEN *v.* ISREE PANDEY . **7 W. R., Cr., 56**

19. ———— *Restraint or confinement in attempt to kidnap.*—Where an act of restraint or confinement in an attempt to kidnap has been exercised in furtherance of the attempt, and goes to form part of that offence, and is not done with an intention or object which can be separated from the general intention to kidnap, it will constitute an integral part of that offence, and should not form the subject of a separate conviction and sentence. QUEEN *v.* MUNGROO . **6 N. W., 293**

20. ————*Penal Code, s. 368—Confinement of kidnapped girl.*—If, knowing a girl has been kidnapped, a person wrongfully confines her and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Penal Code. QUEEN *v.* SIKUNDER BHUKUT
[3 N. W., 146

21. ———— **Proof of offence**—*Evidence of kidnapped girl.*—The evidence of a kidnapped girl, if thoroughly credible, is legally sufficient for a conviction for kidnapping. QUEEN *v.* DOORGA DASS
[7 W. R., Cr., 104

KISTBANDI.

See CASES UNDER CIVIL PROCEDURE CODE, 1882, ss. 257, 258 (1859, s. 206).

———— **Suit on—**

See CONTRACT ACT, s. 25.
[I. L. R., 4 Calc., 500

KNOWLEDGE.

See CASES UNDER ACQUIESCENCE.

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR . . **6 B. L. R., 85**
[12 B. L. R., 406

———— **of commission of offence.**

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.
[5 B. L. R., 274

L

LABOURERS.

See ACT XIII OF 1859 **8 W. R., Cr., 69**
[14 W. R., Cr., 29
18 W. R., Cr., 53
2 B. L. R., A. Cr., 32
I. L. R., 1 Mad., 280
I. L. R., 7 Bom., 379
9 Bom., 171
I. L. R., 8 Mad., 379
I. L. R., 13 Mad., 351

———— **Protector of—**

See BENGAL ACT VI OF 1865.
[3 B. L. R., A. Cr., 39

———— **Wages of—**

See BENGAL ACT VI OF 1865.
[3 B. L. R., A. Cr., 39

LACCADIVE ISLANDS.

See CRIMINAL PROCEEDINGS.
[I. L. R., 13 Mad., 353

LACHES.

See ACQUIESCENCE . **I. L. R., 1 All., 82**
[2 Mad., 114, 270
22 W. R., 267

See COSTS—SPECIAL CASES—DELAY.
[I. L. R., 11 All., 372

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.
[I. L. R., 15 All., 84

See LIMITATION ACT, s. 10.
[I. L. R., 18 Bom., 119

See LIMITATION ACT, 1877, ART. 113.
[I. L. R., 2 Calc., 323

See PRIVY COUNCIL, PRACTICE OF—REHEARING . **2 B. L. R., P. C., 10**
[12 Moore's I. A., 244

See REVISION—CRIMINAL CASES—DELAY.

See SALE IN EXECUTION OF DECREE—PURCHASERS, RIGHTS OF—GENERALLY.
[11 Bom., 193

See SUMMONS . **15 B. L. R., Ap., 12**

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES.
[22 W. R., 522
5 Bom., A. C., 63
17 W. R., 477
18 W. R., 87
2 C. L. R., 545

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 4 All., 154
I. L. R., 6 All., 125

See TRANSFER OF PROPERTY ACT, s. 41.
[I. L. R., 17 All., 280

LACHES—*continued.*

1. ———— **Doctrine of laches, Application of**—*Suits for which period of limitation is provided.*—The equitable doctrine of laches and acquiescence does not apply to suits for which a period of limitation is provided by the Limitation Act. Ram Rau *v.* Raja Rau . **2 Mad., 114**

Taruck Chunder Bhuttacharjee *v.* Huro Sunkur Sandyal . . . **22 W. R., 267**

2. ———— *Suits for which period of limitation is provided.*—Mere laches, or indirect acquiescence short of the period prescribed by the statute of limitations, is no bar to the enforcement of a right absolute vested in the plaintiff at the time of suit. *Semble*—The doctrine of acquiescence or laches will apply only to cases, if such there are, in which they can be regarded as a positive extinguishment of right. When they go merely to the remedy, the Courts have no power arbitrarily to substitute an extinguishing prescription different to that determined by the Legislature. Peddamuthulaty *v.* Timma Peddy **[2 Mad., 270**

3. ———— *Mortgagor—Limitation Act, 1859, s. 1, cl. 15—Estoppel.*—The laches of a mortgagor in taking no steps for many years to enforce his alleged rights may afford evidence against the existence of those rights, but cannot estop him from asserting them, if they do exist, at any time within the period of sixty years allowed by s. 1, cl. 15, Act XIV of 1859. On account of the plaintiff's laches, the Judicial Committee disallowed mesne profits prior to the date of the institution of the suit, which had been allowed by the High Court. Juggurnath Sahoo *v.* Shah Mahomed Hossein **[14 B. L. R., 386: L. R., 2 I. A., 49**
23 W. R., 99

4. ———— *Suit for declaratory decree—Specific Relief Act, s. 42—Laches and delay on plaintiffs' part.*—Inasmuch as in this country a period of limitation is prescribed even for suits where the grant of relief sought is within the discretion of the Court, mere lapse of time short of the period of limitation should not ordinarily be held a good ground for refusing relief to a plaintiff. Athikarath Nanu Menon *v.* Erathanikat Komu Nayar **[I. L. R., 21 Mad., 42**

5. ———— *Reversioners suing within period of limitation but after delay in knowing their rights.*—When reversioners bring their suit within the period of limitation allowed by law, delay in asserting their rights is not by itself sufficient to justify a finding that they have assented to the invasion of the right which necessitates their applying for relief. Dulleep Singh *v.* Sreekishoon Panday . . . . **4 N. W., 83**

6. ———— *Delay in suing—Suit not barred by limitation.*—A suit in which plaintiff claimed to have a drain closed on the ground that it passed through his land, having been dismissed because the delay in bringing it amounted to consent,—*Held* that the Courts of this country have no power to refuse relief on the ground of mere delay where the plaintiff establishes a right not affected by limitation. Ramphul Sahoo *v.* Misree Lall **[24 W. R., 97**

7. ———— *Delay in execution of decree—Interest, Right to.*—As long as a decree-holder does not incur the loss of right by limitation, he cannot be deprived of the interest which his decree gave him, on the ground of his dilatoriness in taking out execution. Modhoo Soodun Roy Chowdhry *v.* Bhikaree Roy Chowdhry **[5 W. R., Mis., 11**

8. ———— *Delay in execution of decree—Debt barred by limitation—Admission of debtor.*—The decision of the Full Bench, *Bissessur Mullick* v. *Dhiraj Mahatab Chand Bahadoor, B. L. R., Sup. Vol., 967: 10 W. R., F. B., 8*, that a decree once barred is always barred, for the reason that no proceedings in execution can be valid if instituted after three years from the date of the last proceeding, was held to apply in a case where the admissions of a judgment-debtor were pleaded in condonation of the decree-holder's laches in executing his decree. Bhooputty Lall Tewaree *v.* Soochee Shekhur Mookerjee . . **12 W. R., 255**

9. ———— *Delay in suing*—Where a plaintiff sued to recover certain property as waqf on the ground that the mutwali and his ancestor (a former mutwali) had misconducted themselves by selling to some of the defendants the property which was the subject of the endowment, and where it appeared that the plaintiff lay by for nearly twelve years from the time when the vendees purchased and were put into possession, it was held that he was not entitled to the assistance of the Court. Bhurruck Chundra Sahoo *v.* Golam Shuruff **[10 W. R., 458**

10. ———— *Right of person guilty of laches against subsequent purchaser without notice.*—*A* bought land from *B* in 1848, entered into possession, and in 1852 went abroad. In 1853 *C* bought the same land from *B* without notice of *A*'s purchase, the land being then registered in *B*'s name. *Held*, in a suit brought in 1859, *A* could not eject *C*, having forfeited his right by his own laches. Chidambara Nayinan *v.* Annapa Naykkan **[1 Mad., 62**

But *see* Virabhadra Pillai *v.* Hari Rama Pillai . . . . . . **3 Mad., 38**

11. ———— *Contract Act, 1872, ss. 13, 20—Bill of exchange—Mistake—Void agreement.*—On the 3rd March 1881 *N* drew a bill in English at Cawnpore in favour of *F* on a Calcutta firm and gave it to *F*'s agent, who did not understand English. *F*'s agent kept the bill till the 10th March 1881 without ascertaining its nature. On that date the Calcutta firm on which the bill was drawn became insolvent. *F* subsequently sued *N* for the money he had paid for the bill on the ground that his agent had asked *N* for a bill drawn on himself and not one drawn on the Calcutta firm. *N* asserted in defence to the suit that *F*'s agent had not asked for a bill drawn on himself, but merely for a bill on Calcutta. *Held* that, assuming that the sale of the

LACHES—*continued.*

bill was void by reason of both parties being under a mistake as to the bill, yet *F* could not recover the amount of the bill from *N* because his agent had been guilty of gross negligence in taking the bill and keeping it so long without ascertaining its nature and applying for redress. NIGHTINGALE *v.* FAIZ-ULLA [I. L. R., 4 All., 334

12. ———— *Mortgagee not taking possession after usufructuary mortgage.*—An usufructuary mortgage of lands was executed in 1846, but the mortgagee did not enter into possession. In 1852 his representative, the plaintiff, commenced a suit to obtain possession, but allowed it to drop. In 1854 he commenced the present suit for the same object. *Held* that laches could not be imputed to the plaintiff from the date of presenting the plaint in 1852, and that the produce from that date should be accordingly awarded him. LAKSHMI NARAYANA *v.* RAMAPA CHAKKIRA . . . 1 Mad., 70

13. ———— *Mortgage, Suit for redemption of—Neglect in applying in time for execution of decree for possession—Fresh suit for redemption.*—The plaintiff in this suit claimed possession of certain property by redemption of a usufructuary mortgage of it which he had given the defendants. The plaintiff had previously sued the defendants for possession of the property by redemption of the mortgage and had obtained a decree for possession of it, but had not applied for execution of such decree within the time allowed by law. *Held* that the plaintiff, having obtained in the former suit a decree for possession of the property, and having by his own neglect lost his right to execution of such decree, could not be permitted to revert to the position which he held before the institution of that suit and to bring a fresh suit for possession. *Golam Hossein* v. *Alla Rukhee Beebee, 3 N. W., 62,* followed. ANRUDH SINGH *v.* SHEO PRASAD [I. L. R., 4 All., 481

14. ———— *Application to amend decree—Delay.*—Where a decree-holder came in, after the lapse of some three and a half years, and when one of the Judges who made the order ceased to be a Judge of the Court, to ask for an amendment of the decree by allowing her the costs of all the remands that took place in the case,—*Held* that, after such a delay, the Court could not make such an order, or even say whether the decree-holder was entitled to these costs. OODAY TARA CHOWDRAIN *v.* JONAB ALI CHOWDRY . . . 17 W. R., 358

15. ———— *Redemption refused where mortgagor neglected to set aside a decree and sale of the mortgaged property under it.*—Redemption of a mortgage was refused, as it appeared that the mortgaged property had been sold in execution of a decree against the mortgagor, and that the plaintiff had neglected and refused to pray that it might be set aside. MALKASGIM BIN SHIDRAMAPPA PASARE *v.* NARHARI BIN SHIVAPPA [L. R., 27 I. A., 216

16. ———— *Omission to appeal from order—Acquiescence, Presumption of.*—Where the Assistant Commissioner in execution in 1857 acted without jurisdiction in giving interest when the decree did not award it, and the claim for interest was disallowed by the Deputy Commissioner in execution in 1865, and the Deputy Commissioner's order was reversed in appeal by the Judicial Commissioner on the ground that the Assistant Commissioner's order was a judicial one from which no appeal had been preferred,—*Held* by the High Court that it was too late now to interfere with an order passed so long ago as 1857, as the judgment-debtor, by neglecting to appeal, must be presumed to have acquiesced in that order. RAM KERAN DEO *v.* FUHIMA BIBEE . . . 7 W. R., 37

17. ———— *Defence showing great delay on part of defendant—Suit for arrears of rent.*—Plaintiffs (patnidars) sued the defendants (dar-patnidars) for arrears of rent. The defendants alleged that a part of the land had been taken by the Government, twenty-four years previously, for the purposes of railway, and they claimed an abatement on that ground. *Held* that the Limitation Act does not in terms prevent a defendant from setting up such a defence; but that the great delay in this case, combined with other circumstances, disentitled the defendants to any relief in a Court of equity. RAM NARAIN CHUCKERBUTTY *v.* POOLIN BEHARI LALL SINGH . . 2 C. L. R., 5

18. ———— *Ignorance of Ameen's proceedings in demarcating land—Delay.*—In execution of a decree for possession of land, an Ameen having been deputed to demarcate the land, the defendant pleaded, nearly a year after the demarcation, that he had been entirely ignorant of the Ameen's proceedings. *Held* that an opportunity should be given to the defendant of substantiating his plea; but that, if plaintiff could prove that defendant had even indirect notice of what was transpiring, the lower Court should refuse to go into the question after so long a delay. COLLECTOR OF MONGHYR *v.* BHOBANY PERSHAD . 25 W. R., 183

19. ———— *Loss of Government promissory notes—Suit on agreement to obtain duplicate, or restore value.*—Plaintiff's relative borrowed money from defendant on the security of a Government promissory note which was stolen from defendant in 1865, and defendant advertised the loss. In 1865 an ikrar was executed between the parties, whereby defendant was bound to take steps, assisted by plaintiff, to procure a duplicate. The note was endorsed, not in defendant's, but in plaintiff's name, and no steps whatever were taken by plaintiff until 1869, when the note turned up in the Currency office. Defendant being unable therefore to perform his part of the contract,—*Held* that any neglect that had taken place in obtaining a duplicate was entirely owing to the plaintiff's laches, and that he was not entitled to recover on the ikrar. KAMINEE DEBIA *v.* RADHA SHAM KOONDOO . . 18 W. R., 58

20. ———— *Omission to register certificate of sale—Right to second certificate for purposes of registration.*—*Quære*—Whether the Subordinate Judge should have issued a new certificate of sale after the original one had been rejected by the Court as being unregistered in order

LACHES—*concluded.*

that the plaintiff might register it, the plaintiff having already lost, by his own laches, the right to register the original certificate. LALBHAI LAKHIMDAS *v.* KAMALUDIN HUSEN KHAN . 12 Bom., 247

21.——— *Presumption against persons who do not enforce their rights—Unexplained delay—Disturbance of long possession—Dispute as to chur lands.*—The presumption that usually arises against those who slumber on their rights is the stronger when applied to rights, the subject-matter of which (as in the case of churs) is in a constant state of change, and the proof of which is rendered more than usually difficult by lapse of time. In this case plaintiff sought to oust from possession persons who had enjoyed the property in question from 1835 to the present time; and as he was responsible for nearly twenty years of that delay, the Privy Council required to be satisfied by clear proof of the grounds which he alleged for disturbing a possession of such long continuance, and were of opinion that plaintiff had failed to prove his case, inasmuch as he had not proved the lands which had re-formed (if lands had re-formed in the bed of the river) to have been the same as those which belonged to his predecessors and had been diluviated, nor had he proved his title upon the ground of the *locus in quo* being an accretion to any lands of which he was possessed SHAM CHAND BYSACK *v.* KISHEN PROSAUD SURMA

[18 W. R., 4 : 14 Moore's I. A., 595

"LAND."

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.

[I. L. R., 24 Bom., 600

See PRESCRIPTION—EASEMENTS—LAND.

[I. L. R., 16 All., 178
I. L. R., 17 All., 87

——— Acquisition of—

See BENGAL TENANCY ACT, s. 84.

[I. L. R., 18 Calc., 271

See LAND ACQUISITION ACTS.

See RAILWAY COMPANY **10 B. L. R., 241**

See STATUTES, CONSTRUCTION OF.

[12 Bom., 250

——— belonging to Government.

See BOMBAY SURVEY AND SETTLEMENT ACT, 1865, ss. 35, 48.

[I. L. R., 1 Bom., 352

——— covered with buildings, Suit for rent of—

See CASES UNDER ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—LANDS OCCUPIED BY BUILDINGS AND GARDENS.

See CASES UNDER RENT, SUIT FOR.

——— Exchange of—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION. **I. L. R., 21 Bom., 396**

"LAND"—*concluded.*

See SALE FOR ARREARS OF RENT—INCUMBRANCES **I. L. R., 23 Calc., 254**

——— for building purposes.

See CASES UNDER ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—LANDS OCCUPIED BY BUILDINGS AND GARDENS.

——— reclaimed from the sea.

——— *Dock, Construction of.*—The plaintiff demised to the defendants for a term of 999 years certain lands a portion of which, A, was liable to an annual rent of R500 per acre. For the other portion, B, which was described in the lease as "being at times covered by the sea," a nominal rent of R1 per acre per annum was reserved. The lease contained a power to the lessees "to reclaim from the sea" the whole or any portion of B, and provided that upon such reclamation the lessees should pay for any portion of B which they might "reclaim from the sea" an enhanced rent at the rate of R500 per acre per annum. The lessees also had power under their lease to dig or excavate any portion of the demised lands, and to remove the soil therefrom. The lessees thereupon excavated a portion of B, and thus turned it into a dock, at the entrance of which they constructed gates, by means of which they could in a measure, but not entirely, control the flow of sea water into the dock. The defendants charged nothing for the use of the dock, but for the use of the wharves round it they charged a fee. *Held* that the expression "to reclaim from the sea" signifying, in its primary and ordinary sense, the conversion of the reclaimed land into dry land, by rendering it secure from the ingress of the sea, with the view to its being used as such, the construction of the dock was not such reclamation as was contemplated in the lease, and therefore the enhanced rent of R500 per acre could not be charged for the water area of the dock. SECRETARY OF STATE FOR INDIA *v.* SASSOON . . . **I. L. R., 1 Bom., 513**

——— Re-formation of—

See CASES UNDER ACCRETION.

——— Suit for—

See CASES UNDER JURISDICTION—SUITS FOR LAND.

LAND ACQUISITION ACT (VI OF 1857).

See APPEAL—ACTS—LAND ACQUISITION ACT.

See CASES UNDER ARBITRATION—ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—ACT VI OF 1857.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS.

[6 Bom., A. C., 116

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT **. 8 W. R., 327**

See CASES UNDER LAND ACQUISITION ACT (X OF 1870).

See LIMITATION ACT, 1877, s. 19 (1859, s. 4)—ACKNOWLEDGMENT OF DEBTS.

[11 W. R., 1

LAND ACQUISITION ACT (X OF 1870).

See BOMBAY CIVIL COURTS ACT, s. 16.
[I. L. R., 16 Bom., 277

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS . **I. L. R., 18 Calc., 99**
[L. R., 17 I. A., 90

See LANDLORD AND TENANT—BUILDING ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS.
[I. L. R., 22 Calc., 820

See RES JUDICATA—ESTOPPEL BY JUDGMENT . **I. L. R., 20 Mad., 269**

———— **Sale of mortgaged land under—**

See TRANSFER OF PROPERTY ACT, s. 68.
[I. L. R., 13 Mad., 321

1. ———————— *High Court—Powers of superintendence.*—The Courts established under Act X of 1870 are Courts subject to the appellate jurisdiction of the High Court, and not the less so because an appeal lies to the High Court from their decisions in certain cases only. The High Court consequently has the power of superintendence over those Courts under s. 15 of 24 & 25 Vict., c. 104. IN THE MATTER OF THE PETITION OF ABDOOL ALI
[15 B. L. R., 197

ABDOOL ALI *v.* VERNER. VERNER *v.* ABDOOL ALI
[23 W. R., 73, 239

2. ———————— *Award of compensation—Payment of compensation awarded how enforced against the Collector—Appeal from an order irregularly made.*—The Land Acquisition Act (X of 1870) did not provide for or contemplate an award for compensation being enforced against the Collector by execution proceedings, and there is no general law which enables a Civil Court to enforce such a statutory liability, when imposed upon a Collector or other civil officer, by means of execution proceedings without a suit. The ordinary mode of enforcing such an obligation is by suit unless the Legislature when it creates the obligation prescribes such other means of enforcing it. NILKANTH GANESH NAIK *v.* COLLECTOR OF THANA
[I. L. R., 22 Bom., 802

———— **s. 3 and ss. 24 and 25**—*"Land" Value of works on land used for salt factory—Exercise of jurisdiction by Judge under the Act.*—Having regard to the definition of "land" contained in s. 3 of Act X of 1870, there is nothing illegal in a Judge taking into account the value of works on the land which make it suitable for a salt factory; and even if, in making his estimate of the market value of the land, he took into consideration the price paid for neighbouring pans, and was in error in so doing, his mistake would be only one concerning the principles of valuation, and not an irregularity in the exercise of jurisdiction. JOSEPH *v.* SALT CO.
[I. L. R., 17 Mad., 371

———— **s. 9.**

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.
[I. L. R., 16 All., 78

LAND ACQUISITION ACT (X OF 1870) —*continued.*

1. ———— **s. 11**—*Ascertainment of value and tender of compensation—Land given as compensation—Mad. Reg. II of 1803, s. 44—Darkhast rules—Collector, Power of.*—The owner of certain land taken up under the Land Acquisition Act, after the amount of compensation had been fixed, conveyed her interest to the present defendant, who applied for the land now in dispute in lieu of compensation, it being then Government waste; and this application was granted and the deed of exchange executed. The plaintiff and another had previously applied under darkhast rules for the land now in dispute, but the Collector ordered the land to be placed in possession of the defendant. The Board of Revenue, however, directed that the land be made over to the prior darkhastdars on terms which were complied with, and they were put into possession. The plaintiff, having been subsequently dispossessed by the defendant, now sued for a declaration of title and for possession. *Held* that the plaintiff was entitled to the land as against the defendant. There is no provision in the Land Acquisition Act under which land can be given as compensation, and the Collector acted beyond his powers both under that Act and under Madras Regulation II of 1803, s. 44, in authorizing the alienation of any land without the sanction of the Board of Revenue. NARAYANA *v.* RAMACHANDRA . **I. L. R., 13 Mad., 485**

2. ———— *Claim to share of compensation—Valuation in private transaction.*—The plaintiff, as heir to her husband, brought a suit, in which Government was not represented, for a declaration of title to a quarter share of the jenm value of land taken up under the Land Acquisition Act. It appeared that the plaintiff's husband had mortgaged his share of the land in question to the defendants' predecessor in title in 1872 by an instrument in which his share was valued at R375. *Held* that the valuation of the plaintiff's husband's share in the instrument of 1872 was not binding on the plaintiff in the present suit. CHOMU *v.* UMMA
[I. L. R., 14 Mad., 46

———— **ss. 13, 24, and 25**—*Valuation of land acquired for public purposes—Time of acquisition—Award of compensation.*—When land has been acquired under the provisions of the Land Acquisition Act, 1870, changes in its condition, between the time of such acquirement and that of the actual conclusion of the award of compensation, are not to increase or lessen the valuation. The provision in s. 25 points to ascertaining the value at the time when the land is acquired, the right to compensation being simultaneous with the right to the land attaching to the Government. At the time when, according to the claim, the right to certain plots of land attached to the Government, the sub-soil had no market value, because the surface was in use for public roads, having been so for about half a century. *Held* that, even if the claimants had proved a title in themselves to the sub-soil of the plots underneath the roads, still no market value had been shown to belong to that sub-soil within the meaning of ss. 13 and 24 of the Land Acquisition Act, 1870, at

LAND ACQUISITION ACT (X OF 1870)
—continued.

the time of the right therein attaching to the Government for a public purpose; therefore compensation had been rightly disallowed. MANMATHA NATH MITTER *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 25 Calc., 194
L. R., 24 I. A., 177
1 C. W. N., 693

——— **s. 15.**

See APPEAL—ACTS—LAND ACQUISITION ACT . . **I. L. R., 16 Bom., 525**

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL. **[I. L. R., 9 Calc., 838**

1. ——— *Reference by Collector to District Court—Land claimed by Collector on behalf of Government or Municipality.*—The scope and object of the Land Acquisition Act (X of 1870) is to provide a speedy method for deciding the amount of the compensation payable by the Collector, when such amount is disputed, and the person or persons to whom it is payable. S. 15 of the Land Acquisition Act contemplates a reference when the question of the title to the land arises between the claimants who appear in response to the notice issued under s. 9, and who set up conflicting claims one against another as to the land required, which the District Judge as between such persons can determine. The Collector has no power to make a reference to the District Judge under s. 15 in cases in which he claims the land in question on behalf of Government or the Municipality, and denies the title of other claimants, and the District Judge has no jurisdiction to entertain or determine such reference. IMDAD ALI KHAN *v.* COLLECTOR OF FARAKHABAD **I. L. R., 7 All., 817**

2. ——— *Reference by Collector to Judge—Land in respect of which reference is made claimed by Collector on behalf of Government.*—The Collector has no power to make a reference to the District Judge under s. 15 of Act X of 1870 in cases in which he claims the land, in respect of which such reference is made, on behalf of Government, and denies the title of other claimants, and the District Judge has no jurisdiction to entertain or determine such reference. *Imdad Ali Khan* v. *Collector of Farakhabad, I. L. R., 7 All., 817,* followed. CROWN BREWERY, MUSSOORIE *v.* COLLECTOR OF DEHRA DUN . . . . **I. L. R., 19 All., 339**

3. ——— **and ss. 38 and 55**—*District Court, Powers of—Compensation, its principle and measure—Lands severed from a factory.*—The Land Acquisition Act provides for two classes of reference to the Judge, one to assess compensation under s. 15 and the other to apportion compensation under s. 38. The power of the District Court is limited to the determination of these questions and questions of title incidental thereto. There is no power in the Judge or the High Court in appeal to decide on any such reference a question arising under s. 55. Land taken under the Act is taken discharged of all easements, and the loss of easements must be taken into account in assessing compensation for injurious affection. TAYLOR *v.* COLLECTOR OF PURNEA **[I. L. R., 14 Calc., 423**

1. ——— **ss. 16 and 17**—*Act VI of 1857, s. 8—Acquisition of land by Government—Right of way.*—When land is taken by the Government under Act VI of 1857, the land is absolutely vested in the Government under s. 8, free from any right of way previously enjoyed by the public over such land. IN THE MATTER OF THE PETITION OF FENWICK **[6 B. L. R., Ap., 47: 14 W. R., Cr., 72**

2. ——— *Act VI of 1857, s. 8—Right of way.*—A right of way cannot by the provisions of Act VI of 1867 continue to exist over land acquired by a railway company under that Act with the aid of Government. If, however, the railway company by their representations and conduct lay themselves under legal obligation to provide a way, such obligation may be enforced. COLLECTOR OF THE 24-PERGUNNAHS *v.* NOBIN CHUNDER GHOSE **[3 W. R., 27**

1. ——— **s. 19**—*Assessor—Qualified assessor—Bias.*—The Municipality of Poona wishing to take up the applicant's land, the Collector of Poona determined the amount of compensation, and tendered it to the applicant, who declined to accept it. The Collector thereupon referred the matter to the District Judge. Two assessors were appointed to aid him, one by the applicant and another by the Collector. The nominee of the Collector was the Mamlatdar of Poona, a rate-payer and *ex-officio* member of the Municipality, who, whilst a member of the managing committee, had unsuccessfully negotiated with the applicant for the purchase of the ground. The District Judge made an award upholding the Collector's valuation. *Held* that the award was bad and must be set aside, as the Collector's nominee had, under the circumstances, a real bias, and was not a qualified assessor within the meaning of s. 19 of the Land Acquisition Act (X of 1870). KASHINATH KHARGIVALA *v.* COLLECTOR OF POONA **[I. L. R., 8 Bom., 553**

2. ——— *Assessor, Appointment of—Disqualifications in an assessor—Bias—Objections to assessor's appointment not raised in time—Waiver—Effect on minor of guardian omitting to raise objection—Assessor as witness—Mamlatdar—Superintendence of High Court.*—Certain land belonging to the applicant, a minor, was taken by the Municipality of Hubli under the Land Acquisition Act (X of 1870). The Mamlatdar of Hubli, who was an *ex-officio* member of the Municipal Committee, took part in the negotiations for the purchase of the land. He also gave evidence as to its value in the inquiry before the Collector. As the price offered by the Collector was not accepted by the applicant, the matter was referred to the District Judge, under s. 15 of the Act, for the purpose of determining the amount of compensation. On this reference the Mamlatdar acted as an assessor appointed by the Collector, and was also examined as a witness as to the value of the land. But no objection was taken

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to his acting as an assessor. The District Judge eventually upeld the Collector's award. On an application under s. 622 of the Civil Procedure Code (Act XIV of 1882),—*Held* that the award was bad. The Mamlatdar had, under the circumstances, a substantial interest in the matter, sufficient to disqualify him from acting as an assessor. *Kashinath* v. *Collector of Poona, I. L. R., 8 Bom., 553,* followed. *Held* also that the minor applicant was not estopped from objecting to the competency of the Mamlatdar by the fact that his guardian had not raised any such objection in the Court below, and might therefore be taken to have waived it. Assuming that there was a waiver, it could not bind the minor, as it was not for his benefit. *Held,* further, that a person who is appointed an assessor under s. 19 of the Land Acquisition Act performs *quasi*-judicial functions, and is therefore incompetent to testify as a witness in the same proceedings. SWAMIRAO *v.* COLLECTOR OF DHARWAR . . **I. L. R., 17 Bom., 299**

1. ———— s. 22—*Determination of amount of compensation—Assessors, Non-appearance of—Claimant, Non-appearance of—Pleader, Non-appearance of.*—Where, in a compensation case before the Land Acquisition Court, neither of the assessors nor the pleader for the claimant appear on the day fixed for hearing, the Judge should not proceed with the case in their absence by confirming the Collector's award, but should give notice to the parties; and if they do not, within the time limited by s. 22 of the Land Acquisition Act, cause their assessors to attend or appoint others, the Court should appoint other assessors in the place of those who were not in attendance. IN THE MATTER OF THE PETITION OF KAMINI DASI *v.* SECRETARY OF STATE FOR INDIA **[I. L. R., 17 Calc., 380**

2. ———— *Determination of amount of compensation—Assessor of claimant, Non-appearance of—" Neglect to act "—Appointment of another assessor by Judge without notice to claimant.*—On the hearing of a reference in a Land Acquisition case to determine the amount of compensation to be awarded, the assessor duly nominated on behalf of the claimant was not present, owing to some misunderstanding as to the order of the Judge in an application by the claimant for an adjournment of the case made two days previously, and the other side objecting to any adjournment, the Judge called upon the pleader for the claimant to nominate another assessor on the claimant's behalf, which the pleader declined to do, as one had been already duly nominated. The Judge thereupon himself nominated another assessor, and, proceeding with the case, confirmed the award of compensation by the Collector. *Held,* assuming that the absence of the claimant's assessor amounted to a neglect to act, the Judge had no power to appoint another without seven days' notice to the claimant, and that the proceedings were consequently irregular and not in accordance with the Land Acquisition Act, and must be set aside. IN THE MATTER OF PEARSON *v.* COLLECTOR OF THE 24-PERGUNNAHS . . **I. L. R., 17 Calc., 383**

1. ———— s. 24—*Valuation of land—Annual rental—Market value.*—In assessing the market value of house property, situated in the town of Bulsar, acquired for public purposes under Act X of 1870, the Court awarded a capital sum which, at the rate of six per cent. per annum, would yield interest equal to the ascertained annual rental of the premises after deducting the amount necessarily expended for annual repairs. CAREY *v.* BANU MIYA. CAREY *v.* KALU MIYA . . **10 Bom., 34**

2. ———— *Compensation—Determination of value—Occupied and unoccupied land.*—In determining the compensation to be allowed for land taken for public purposes, the Court distinguished between the occupied and the unoccupied land. In the case of the former the income yielded was taken into account with a view to consider the number of years' purchase to be allowed for the land, and, in estimating the value of the godowns yielding rent, a deduction was made for the chance of some of them being unoccupied for part of the year, as well as for periodical repairs and municipal taxes. In the case of unoccupied land, it was held that the thing to be looked at was not the cost of what had been done to preserve the land or the money spent on improvements, but the market value at the time, with an allowance for the manner in which the land was taken from the claimant. COLLECTOR OF HOOGHLY *v.* RAJ KRISTO MOOKERJEE **[22 W. R., 234**

3. ———— *Principle on which compensation is given—Market value of property.*—Where Government takes property from private persons under statutory powers, it is only right that those persons should obtain such a measure of compensation as is warranted by the current price of similar property in the neighbourhood, without any special reference to the uses to which it may be applied at the time when it is taken by the Government, or to the price which its owners may previously have given for it. In accordance with this principle, the question for enquiry is, What is the market value of the property, not according to its present disposition, but laid out in the most lucrative way in which the owners could dispose of it? IN THE MATTER OF THE LAND ACQUISITION ACT (X OF 1870). PREMCHAND BURRAL *v.* COLLECTOR OF CALCUTTA **[I. L. R., 2 Calc., 103**

4. ———— *Principle on which compensation is given—Land subject to mokurari lease in favour of Government.*—When in a Land Acquisition case it was shown that the land to be acquired was subject to a mokurari lease in favour of the Government, and the Court in estimating the compensation had deducted 5 per cent. from the rent on account of collection charges,—*Held* that such deduction was excessive, and that, having regard to the fact that the amount was R85-4 and was collected only once in a year, 4 annas was all that should have been deducted. SECRETARY OF STATE FOR INDIA *v.* SHAM BAHADOOR . **I. L. R., 10 Calc., 769**

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5. ———— and s. 25—*Compensation—Mode of determining the amount of compensation to be given—Land in vicinity of town where building is going on—Market-value at time of awarding compensation, Meaning of.*—The recognized modes of ascertaining the value of land for the purpose of determining the amount of compensation to be allowed under the Land Acquisition Act (X of 1870) are—(1) If a part or parts of the land taken up has or have been previously sold, such sales are taken as a fair basis upon which making all proper allowances for situation, etc., to determine the value of that taken. (2) To ascertain the net annual income of the land, and to deduce its value by allowing a certain number of years' purchase of such income according to the nature of the property. (3) To find out the prices at which lands in the vicinity have been sold and purchased, and making all due allowance for situation, to deduce from such sales the price which the land in question will probably fetch if offered to the public. In the case of land in the vicinity of a town where building is going on, it would be unjust to adopt the second of the above methods if there is a fair probability of the owner being able, owing to its situation, to sell or lease his land for building purposes. The value of land should be determined, not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner can dispose of it. The market value "at the time of awarding compensation" may fairly be taken to mean "at the time when proceedings under the Act are taken." IN THE MATTER OF THE LAND ACQUISITION ACT (X OF 1870). IN THE MATTER OF MUNJI KHETSEY . **I. L. R., 15 Bom., 279**

6. ———— and ss. 25, 15, 42—*Compensation—Mode of assessment—Antiquities not proved to have any market-value—Quarries—Persons interested in the land acquired.*—The Government having, under the Land Acquisition Act (X of 1870), commenced proceedings to acquire a plot of land containing granite quarries besides ancient temples and sculpture, a reference was made to the District Judge (ss. 15, 18) as to the amount of the compensation to persons interested in the land. *Held* (1) with regard to the nature of the property that only the value of the stone quarries as yielding profit could form the subject of assessment, and the value of the antiquities could not; for, under the circumstances, no market value could be assigned to the antiquities; (2) the right, if not the only, course of proceeding was to estimate the rent at which possibly the whole plot might be leased, on the basis of how much rent a portion of the plot when leased for quarries had in fact obtained for the zamindar; (3) to calculate the purchase-money, as the first Court had done, at twenty-five years of such rent was proper, and no reason appeared for reducing this number of years to fifteen; (4) though quarrymen had been employed, and had earned money, on the plot, they were not interested therein, in the sense intended by the Act; and their earnings, in which the zamindar was not interested, could not enter into the question of compensation and increase the award; (5) under s. 42, fifteen per cent. was to be paid on the sum awarded. SECRETARY OF STATE FOR INDIA *v.* SHANMUGARAYA MUDALIAR

[I. L. R., 16 Mad., 369
L. R., 20 I. A., 80

1. ———— s. 35—*Appeal—Difference of opinion between Judge and assessors—"Amount of compensation."*—The "amount of compensation" in s. 24, Act X of 1870, must be taken to mean the whole amount of the award, and not the amount of the different items to be taken into consideration separately under that section; therefore, where the Judge differed wholly from one assessor, and differed from the other assessor in the amounts awarded for the different items, but agreed with him in the total amount awarded,—*Held* there was not such a difference of opinion between the Judge and both assessors as to give a right of appeal from the Judge's decision under s. 35. ANANDAKRISHNA BOSE *v.* VERNER . **13 B. L. R., 300: 22 W. R., 305**

2. ———— *Appeal—Appeal from decision of Judge and assessors—Collection charges, Amount of, to be deducted in cases of mokurari lease.*—In a case under the Land Acquisition Act, if there be a difference of opinion between the Judge and the assessors, or any of them, upon a question of law or practice or usage having the force of law, but ultimately they agree upon the amount of compensation, s. 28 must be taken to apply, and no appeal will lie against the decision of the Court with reference to the point upon which the Court and the assessors differed. If, however, in addition to differing upon any question of law, etc., they ultimately differ also as to the amount of compensation to be awarded, s. 28 does not apply, but under s. 35, coupled with s. 30, in such a case an appeal will lie, and in such appeal all questions decided by the lower Court, whether the opinion of the assessors coincided with that of the Judge or not upon these questions, are open to the parties in the Appellate Court. SECRETARY OF STATE FOR INDIA *v.* SHAM BAHADOOR . **I. L. R., 10 Calc., 769**

3. ———— *Appeal—Difference of opinion between Judge and assessors—Compensation.*—Under s. 30, Act X of 1870, an appeal lies from the decision of the Judge where he differs from the assessors, whether the assessors agree with one another or not. IN THE MATTER OF THE LAND ACQUISITION ACT (X OF 1870). HEYSHAM *v.* BHOLANATH MULLICK. BHOLANATH MULLICK *v.* HEYSHAM . **11 B. L. R., 230: 17 W. R., 221**

4. ———— *Appeal—"District Judge"—Officer specially appointed under Act X of 1870—Costs.*—An appeal from the decision of a judicial officer appointed to exercise the functions of a Judge under Act X of 1870 within the town of Calcutta lies to the High Court sitting to hear appeals from decisions by the Court in its original civil jurisdiction. The words "District Judge" in

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s. 35, Act X of 1870, include the High Court in its appellate jurisdiction, and there is nothing in the definition of those words given in Act I of 1868, s. 2, cl. 12, opposed to this meaning. No appeal lies on a question of costs in a case under Act X of 1870. In this case the costs of the appeal were allowed by the High Court on scale 2. BAMASOONDERE DOSSEE *v.* VERNER . **13 B. L. R., 189 [22 W. R., 136**

5. ——— *Apportionment of compensation referred to Judge—Denial by one party interested of right of another to share in compensation—Appeal.*—Under s. 35 of Act X of 1870, the fact that one of the persons concerned denies altogether the right of another of such persons to share in the compensation awarded will not prevent an appeal lying from the order of a District Judge apportioning compensation. *Kishan Lal* v. *Shankar Singh, Weekly Notes, All., 1888, p. 170,* overruled. HUSAINI BEGAM *v.* HUSAINI BEGAM **[I. L. R., 17 All., 573**

——— **s. 39.**

See RES JUDICATA—ADJUDICATIONS. **[I. L. R., 7 Calc., 406**

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL. **[I. L. R., 9 Calc., 838**

1. ——— *Appeal—Apportionment of compensation—Judicial officer appointed as Judge in town of Madras—Appeal.*—No appeal lies to the High Court from a decision apportioning compensation by a judicial officer appointed to perform the functions of a Judge within the town of Madras under Act X of 1870, the Land Acquisition Act. AROONACHELLA GRAMANY *v.* VELLIAPPA GRAMANY **[8 Mad., 103**

2. ——— *Appeal—Additional Judge—District Judge—Civil Procedure Code (Act XIV of 1882), s. 647.*—An Additional Judge appointed to hear cases under the Land Acquisition Act, 1870, is a District Judge within the meaning of s. 39 of the Act. Under s. 647 of the Civil Procedure Code, an appeal from the decision of an Additional Judge so appointed lies to the High Court. IN THE MATTER OF THE APPLICATION OF PORESH NATH CHATTERJEE *v.* SECRETARY OF STATE FOR INDIA **[I. L. R., 16 Calc., 31**

3. ——— *Compensation, Apportionment of—Right of suit.*—A decreee which apportions compensation made under s. 39 of the Land Acquisition Act (X of 1870) by a Court to whom such matter has been referred under s. 38 of the same Act is final, and cannot be questioned otherwise than by the appeal permitted under s. 39. NILMONEE SINGH DEO *v.* RAMBUNDHOO ROY **[I. L. R., 4 Calc., 757 : 3 C. L. R., 211**

4. ——— *Act VI of 1857, s. 14—Apportionment of compensation.*—The compensation should be divided by the parties in the ratio of their respective interests in the land. The zamindar of ghatwali lands is entitled to a share, in retaining, under Regulation XXIX of 1814, an interest in such lands. BHAGEERUTH MOODEE *v.* JABUR JUMMAH KHAN . . . . . . **18 W. R., 91**

5. ——— *Apportionment of compensation, Claim and title to.*—When land is taken for public purposes, the party *primâ facie* entitled to compensation is the proprietor. Any party claiming it against him by virtue of a right created by him must prove his title to it. ISSUR CHUNDER BANERJEE *v.* SUTTYO DYAL BANERJEE . . **12 W. R., 270**

6. ——— *Compensation, Apportionment of—Party in possession—Land taken for railway.*—When a railway company takes land for public purposes, the party in possession at the time is *primâ facie* entitled to the money paid for it, until some one else establishes a prior claim. CHUNDER CHURN CHATTERJEE *v.* BIDOO BUDDEN BANERJEE **[10 W. R., 48**

7. ——— *Compensation, Apportionment of—Land taken for railway.*—Where lands are taken compulsorily, the principle upon which the amount of compensation is divisible amongst the zamindar and the holders of several subordinate tenures is by ascertaining the value of the interest of each holder of a tenure, and to give him a sum equivalent to the purchase-money of such interest. GORDON, STUART & CO. *v.* MOHATAB CHUNDER **[Marsh., 490 : 2 Hay, 565**

8. ——— *Compensation, Apportionment of—Land taken for railway—Deduction from rent by tenant.*—When land is taken for railway purposes and compensation is made which is divided between the zamindar and those holding under him, any deduction of rent claimed from the zamindar must be reckoned with reference not to the gross amount of compensation, but to the proportion which passed into his hands. DHERAJ MAHTAB CHAND *v.* CHITTRO COOMAREE BIBEE . . **16 W. R., 201**

9. ——— *Compensation, Apportionment of, for land—Owner under grant by zamindar retaining reversionary interest.*—It was held that, assuming that possession of certain plots of land had been granted by the zamindars to persons to build thereon, and to hold so long as the buildings subsisted, the zamindars being only entitled to a reversionary interest in the land contingent on the owner of the buildings allowing them to fall into ruin, the owner of the buildings would be entitled to the bulk of any compensation awarded under the provisions of Act X of 1870 in respect of the sites. GUR PARSHAD *v.* UMRAO SINGH . . . . **7 N. W., 218**

10. ——— *Compensation, Apportionment of.*—A patnidar is entitled to compensation on account of lands in his patni taken for public purposes, although there was no agreement to that effect. JOY KISHEN MOOKERJEE *v.* REAZOONISSA BEEBEE . . . . . **4 W. R., 40**

11. ——— *Apportionment of compensation between zamindar and patnidar, Principle of.*—The apportionment between zamindar and patnidar of the amount awarded as compensation for

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land taken by Government under the Land Acquisition Act will depend partly on the sum paid as bonus for the patni, and the relation that it bears to the probable value of the property, and partly on the amount of rent payable to the zamindar, and also the actual proceeds from the cultivating tenants or under-tenants. BUNWARI LAL CHOWDRY *v.* BURNOMOYI DASI . . . . **I. L. R., 14 Calc., 749**

12. ——— *Compensation, Apportionment of.—Held* that the principle laid down in the case published at page 328 of the Sudder Decisions for 1860 (*vide* foot-note) to regulate compensation for land taken for public purposes is not applicable to the division of compensation in every case. It would not provide for the case of several patnis where the land is taken from the holder of the lost tenure, and where the grantors of the several intermediate tenures have received a sum of money as a bonus for the grant. MAHATAB CHAND BAHADOOR *v.* BENGAL COAL COMPANY . . . . **10 W. R., 391**

13. ——— *Compensation, Apportionment of—Compensation for land taken for public purposes—Distribution of compensation.*—Where land held in patni is taken by Government for public purposes, the proper mode of settling the rights of the parties interested is to give the patnidar an abatement of his rent in proportion to the quantity of land which has been taken from him, and to compensate the zamindar for the loss of rent which he sustains. Accordingly the compensation awarded was held to have been very fairly distributed where the zamindar received a little more than sixteen years' purchase of the rent abated, and the patnidar received the remainder. When the compensation-money was in deposit with the Collector without specification of shares, the patnidar's cause of action against the zamindar was held to have arisen when the former sought to obtain his share and was prevented by the latter's not joining him or enabling him to get it. RAYE KISSORY DOSSEE *v.* NILCANT DEY **[20 W. R., 370**

14. ——— *Apportionment of compensation-money—Zamindar—Patnidar—Dar-patnidar—Construction of document.*—Where a patni and a dar-patni has been given of land which is afterwards acquired by the Government for public purposes under the provisions of the Land Acquisition Act, the zamindar is, generally speaking, entitled to as much of the compensation-money as the patnidar is. As a rule, raiyats having a right of occupancy in such land and the holders of the permanent interest next above the occupancy raiyats are the persons entitled to the larger portion of the compensation-money. The principles on which compensation-money should be apportioned among the different holders discussed and explained. Construction of dar-patni lease. GODADHAR DASS *v.* DHUNPUT SINGH **[I. L. R., 7 Calc., 585 : 9 C. L. R., 227**

15. ——— *Act VI of 1857—Compensation for land taken.*—A portion of the area of two villages having been taken under Act VI of 1857, and compensation deposited in the Collectorate, the dar-patnidar sued for the same, contending that the zamindar was entitled to twenty times the rental payable by the dar-patnidar, less expenses of collection. The zamindar claimed twenty times the profits he derived from the patnidar, less revenue paid to Government. *Held* that, as the plaintiff's calculation secured to the zamindar a more favourable result than that for which the latter himself contended, it was sufficient to decree the suit without determining the proper principle on which compensation should be allowed. BENGAL COAL COMPANY *v.* MAHTAB CHUND BAHADOOR . **12 W. R., 340**

16. ——— *Distribution of compensation allowed—Mirasidar—Allowance for expenses of cultivation.*—No general rule can be laid down as to the tenure and rights of persons called "Ulkudi Sukhavasis" or "Payakaris," but, where land is taken under the Land Acquisition Act, they are clearly entitled to a proportion of the compensation granted. In ascertaining the proportionate interest of the mirasidar and ulkudi tenant, allowance must be made for the mirasidar's reversionary right; and when the rights of the parties are calculated on the basis of the value of the produce, allowance must be made for the expenses of cultivation. APPASAMI MUDALI *v.* RANGAPPA NATTAN **[I. L. R., 4 Mad., 367**

17. ——— *Apportionment of compensation—Landlord and tenant.*—The mode of apportionment of compensation between landlord and tenant considered. DUNNE *v.* NOBO KRISHNA MOOKERJEE . . . **I. L. R., 17 Calc., 144**

18. ——— *Land Acquisition Act (I of 1894)—Superior zamindar and talukhdar—Apportionment of compensation-money—Landlord and tenant.*—No fixed principle can be laid down regarding the apportionment of compensation allowed by Government under Act I of 1894 between the superior zamindar and the talukhdar. Where the talukhdar's interest is of a permanent character only regarding the duration and not regarding the rent payable, the zamindar has a much larger interest than to receive the capitalized value upon the rent reserved. In this particular case, the compensation-money was equally divided between the zamindar and the talukhdar. *Dunne* v. *Nobo Krishna Mookerjee, I. L. R., 17 Calc., 144,* and *Godadhar Das* v. *Dhunput Singh, I. L. R., 7 Calc., 585,* referred to. BIR CHUNDER MANIKHYA *v.* NOBIN CHUNDER DUTT **[2 C. W. N., 453**

19. ——— The mode of apportionment of compensation between landlord and tenant considered. *A. M. Dunne* v. *Nobo Krishna Mookerjee, I. L. R., 17 Calc., 144,* and *Godadhar Dass* v. *Dhunput Singh, I. L. R., 7 Calc., 585,* followed. KHETTER KRISTO MITTER *v.* DINENDRA NARAIN ROY . . . . . **3 C. W. N., 202**

20. ——— *Accretion to parent tenure—Beng. Reg. XI of 1825, s. 4, cl. 1—Rate of rent—Apportionment of compensation awarded.*—The words "increase of rent to which he may be justly liable" contained in cl. 1, s. 4, Regulation XI of 1825, were not intended to lay down an inflexible rule applicable to all cases, and in the absence of any special circumstance the rate of rent to be assessed upon an accretion should be in proportion to that paid for the parent tenure. Where therefore such accreted land is taken up under the Land Acquisition Act, the compensation awarded should be divided by giving the landlord the value of the rent payable in respect thereof, with 15 per cent. for compulsory sale, and the balance to the tenure-holder. *Golam Ali* v. *Kali Krishna Thakur, I. L. R., 7 Calc., 479*, commented on. CHOORAMONI DEY *v.* HOWRAH MILLS COMPANY **I. L. R., 11 Calc., 696**

21. ——— *Compensation, Award of —Frontage and back sites—Parties—Lessees of such land, Right of, to be joined in suit by the owner.*—The claimant, Kashinath, owned certain land, measuring 173,436 square feet, situated in the city of Poona. This land was originally devoted to agricultural purposes, and contained also a number of fruit trees and some buildings, and was in the form of a square enclosed and surrounded by houses on all sides, except towards the south, on which side it opened upon a large unoccupied area of garden land, also belonging to the claimant. The second and third claimants were the lessees of Kashinath. The said land was taken up by the Collector of Poona on behalf of the municipality of that city for the purposes of erecting a central market. The claimant having declined to receive R12,880 offered to him as compensation, the Collector referred the matter to the District Judge, who, after deducting 21,532 square feet from the measurement of the whole land for roads, divided the rest, on the principle of frontage and back sites, in the proportion of one to three, appraising it at the average rate of eighteen sales enumerated in certain sale deeds at ten annas per square foot, and some at less than one anna. His award for the land was R30,674 for the land alone, R2,517 for the materials of buildings, R400 for trees, and R700 for severance. The sum total was made subject to R3,000 awarded to the second and third claimants for their unexpired leases. On appeal by the Collector to the High Court,—*Held* that neither the principle of frontage applied by the District Judge nor the proportion of one to three for frontage and back sites was applicable to the claimant's land, which was surrounded on all sides by buildings, which shut it out from communication with the town, except by opening a passage of ten feet wide. As there was no evidence to show that there was any particular demand for land for building speculation, one and a half annas per square foot was to be regarded as the adequate value of such a large area as 179,436 square feet, subject to the lessees' compensation for their interest. The claimant was not entitled to the award of R700 on account of severance. The decree was accordingly varied by awarding R19,739-2 as compensation for the property, to which 15 per cent. was to be added, as provided by s. 42 of the Land Acquisition Act (X of 1870). *Held* also that the claim of the claimants Nos. 2 and 3 was not triable in this suit. It was one exclusively between the co-respondents, and properly fell under s. 39 of the Act. In so far as it was not objected to its being tried in appeal, they could be awarded reasonable damages, and R1,200 was ample compensation to them. COLLECTOR OF POONA *v.* KASHINATH KHASGIWALA . . . . **I. L. R., 10 Bom., 585**

22. ——— and s. 40—*Proceedings under—Finality.*—In proceedings under the Land Acquisition Act (X of 1870), ss. 38 and 39, the persons entitled to take land compulsorily deal only with those who are in possession of it, or who are ostensibly its owners. It may happen that the real owner, being an infant, or a person otherwise under disability, does not appear, and is not dealt with in the first instance. There is therefore a proviso in s. 40 to the effect that nothing contained in that or the preceding sections "shall affect the liability of any person who may receive the whole, or any part, of any compensation awarded under the Act to pay the same to the person lawfully entitled thereto." This applies only to persons whose rights have not been dealt with in adjudications in pursuance of ss. 38, 39, and 40, and does not permit a person whose claim has been disposed of in the manner pointed out in the Act to have that claim re-opened, and again heard, in another suit. NILMONI SINGH DEO BAHADUR *v.* RAM BANDHU RAI

[I. L. R., 7 Calc., 388 : 10 C. L. R., 393
L. R., 8 I. A., 90

Contra, DWARKA SINGH *v.* SOLANO

[22 W. R., 38

23. ——— *Settlement of amount of compensation—Apportionment of compensation, Notice of proceedings for—Right of suit to recover share of compensation.*—The apportionment of the compensation under s. 39 of Act X of 1870 is intended to be a proceeding distinct from that of settling the amount of compensation under the previous provisions of the Act, and any dispute as to the apportionment is only decided as between those persons who are actually before the Court. A separate notice therefore of the apportionment proceedings is requisite to bind any person by those proceedings, and where such a notice has not been served, any party interested, although served with notice of the proceedings for settling the amount of the compensation, cannot be considered a party to the proceedings for apportioning it, and is not barred, by the decision in the latter proceedings, from bringing a suit under the proviso to s. 40, to recover a share of the money so apportioned. HURMUTJAN BIBI *v.* PADMA LOCHUN DOSS . . . . **I. L. R., 12 Calc., 33**

24. ——— *Power to award compensation—Judge and assessors sitting together.*—There is nothing in Act X of 1870 which gives the Judge and assessors sitting together power to determine the right to compensation or the title to the land for which compensation is to be assessed. Where therefore the Collector tendered compensation in respect of land, some of which was above, and some below, high-water mark, and made an offer for each separately,—*Held* that the Judge and assessors had no power to award the whole sum tendered by the Collector as compensation for the land above

LAND ACQUISITION ACT (X OF 1870) —*continued.*

high-water mark ; but they should have determined what was a proper compensation for each description of land. IN THE MATTER OF THE PETITION OF ABDOOL ALI . . . . **15 B. L. R., 197**

S. C. ABDOOL ALI *v.* VERNER. VERNER *v.* ABDOOL ALI . . . **23 W. R., 73, 239**

25. ———— *Award of compensation—Question of title.*—Where, in a suit for the recovery of the money awarded by Government for some land acquired for public purposes, the Judge, instead of deciding as between the parties in possession the money value of their respective rights, determined as between the persons in possession and others whose claims had remained dormant until the acquisition of the land the relative strength of their titles,—*Held* that the order of the Judge was *ultra vires*, his duty under the Land Acquisition Act being to determine the money value of ascertained interests, and not to try questions of title. GOUR RAM CHUNDER *v.* SONATUN DOSS . . **25 W. R., 320**

26. ———— *Apportionment of compensation—Question of title.*—Under s. 39 of the Land Acquisition Act, it is the duty of the Judge in apportioning the compensation-money which he is directed to apportion to decide the question of title between all persons claiming a share of the money. *Semble*—No decision under the Land Acquisition Act should be treated as *res judicata* with respect to the title to the other parts of the property belonging to persons who may come before the Judge under s. 39. NOBODEEP CHUNDER CHOWDHRY *v.* BOOPENDRO LALL ROY

[I. L. R., 7 Calc., 406 : 9 C. L. R., 117

27. ———— *Judge appointed under s. 3—Power of Judge to give costs.*—A Judge appointed under s. 3 of Act X of 1870 to perform the functions of a Judge under the said Act generally within the local limits of the ordinary original jurisdiction of the High Court has no power to award costs in respect of proceedings under s. 39, Part IV of the Act. RAMANJEM NAIDOO *v.* RUNGIAH NAIDOO . . . . . . **8 Mad., 192**

———— **s. 55 (Act VI of 1857, s. 32).**

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—ACT VI OF 1857.

See COLLECTOR . **I. L. R., 16 Mad., 321**

———— *Part of property acquired for public purposes—Owner desiring that the whole shall be acquired—Right of owner not confined to small or confined areas—Convenience of owner not the test.*—The Local Government having appropriated for public purposes under the Land Acquisition Act (X of 1870) some of the out-houses attached to a dwelling-house, and part of the compound in which they were situate, without taking the house with its other out-houses or appurtenances, or the rest of the compound, the owner objected, under s. 55 of the Act, that the Government should take the whole of such property or none. *Held* applying to s. 55 the interpretation placed by the Courts in England upon the corresponding s. 92 of the Land Clauses Consolidation Act (8 & 9 Vict., c. 18), that the section was applicable, and the objection must be allowed. *Grosvenor* v. *Hampstead Junction Railway Company, 26 L. J., N. S., Ch., 731 ; Cole* v. *West London and Crystal Palace Railway Company, 28 L. J., Ch., 767,* and *King* v. *Wycombe Railway Company, 29 L. J. Ch., 462,* referred to. *Held* also that the rule was not in England restricted to small or confined areas, and that the test was not whether the part appropriated could be severed from the rest of the property without inconvenience to the owner. KHAIRATI LAL *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 11 All., 378

———— **s. 58**—*Award of compensation—Effect on award of suit to recover compensation from person to whom it has been awarded.*—An award under the Land Acquisition Act cannot be affected by a suit to recover from the party to whom compensation has been awarded and to have plaintiff's title declared to the land concerned. KAMINEE DEBIA *v.* PROTAP CHUNDER SANDYAL . **25 W. R., 103**

LAND ACQUISITION ACT (I OF 1894).

See MUNSIF, JURISDICTION OF.

[I. L. R., 20 Mad., 155

1. ———— **s. 2, sub-s. 2**—*Land Acquisition Act (X of 1870)—Act I of 1894, s. 2, sub-s. (2)—Contest before the Collector—Admission before the Judge—Increased value, s. 25, Act I of 1894.*—Whilst proceedings under Act X of 1870 were pending, the new Act I of 1894 came into operation. *Held* that having regard to s. 2, sub-s. *(2)*, Act I of 1894, the case must be governed by the new Act. *Balaram Bhramaratar Ray* v. *Sham Sunder Narendra, I. L. R., 23 Calc., 526,* followed. NOBIN CHUNDER SARMA *v.* DEPUTY COMMISSIONER OF SYLHET

[1 C. W. N., 562

2. ———— *Award of compensation—Payment of compensation awarded how enforced against the Collector—Appeal from an order irregularly made—Practice—Procedure.*—On the 16th February 1894, under the Land Acquisition Act (X of 1870), an award of compensation to the claimant for land acquired under that Act was made by the Assistant Judge of Thana, and he subsequently made an order directing the Collector to pay the amount with interest and costs, without, however, fixing a date for payment. On the 1st March 1894, the new Land Acquisition Act (I of 1894) came into force. On the 26th February 1895, the claimant applied to enforce payment of the amount awarded, and the then Assistant Judge (Mr. Knight) re-affirmed the previous order and directed the Collector to pay it on or before the 20th May 1896. No payment, however, was made, and the matter came before the new Judge (Mr. FitzMaurice) for final order. He held that neither under Act X of 1870 nor the new Act I of 1894 had he any power to enforce payment against

LAND ACQUISITION ACT (I OF 1894) —*continued.*

the Collector, and he therefore dismissed the claimant's application. On appeal to the High Court, the matter was referred to a Full Bench. *Held* that the Act X of 1870 prescribed no mode of compelling payment by the Collector of compensation awarded under its provisions, but left the persons interested to a suit to enforce such payment. The proceedings under that Act were therefore at an end when the award was made. That being so, there were no proceedings pending in the case when the new Act I of 1894 came into force. Cl. 2 of s. 2 of that Act therefore did not apply, and no further steps could be taken under that Act. *Per* RANADE, *J.*—The District Judge's order appealed from was improperly made. The Assistant Judges had jurisdiction to make the previous order, and, even if their order was not properly made, it could not be set aside in the way it was done by the District Judge as if an appeal lay to him from such order. That order, however, as now held was wrong, and the irregularity of the District Judge's order thus led to no failure of justice, and fell under s. 578 of the Civil Procedure Code (Act XIV of 1882). *Quære*—Whether an award made under the provisions of Act I of 1894 can be enforced against the Collector by execution proceedings. NILKANT GANESH NAIK *v.* COLLECTOR OF THANA

[I. L. R., 22 Bom., 802

———— **s. 10.**

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.

[I. L. R., 27 Calc., 985

———— **s. 23**—*Compensation—Acquisition of land "injuriously affecting other property"—Right to compensation for loss of a ferry by reason of acquisition of adjacent land—Land Clauses Consolidation Act (8 Vict., c. 18), s. 63.*—The word "acquisition," as used in s. 23 of the Land Acquisition Act, includes the "purpose" for which the land is taken as well as the actual taking. And the words "at the time" in cl. 4 of the same section must be taken to mean the time when the damage takes place and the right to compensation arises. *London and Brighton Railway Company* v. *Truman, L. R., 11 App. Cas., 45; Hopkins* v. *Great Northern Railway Company, L. R., 2 Q. B. D., 224: 46 L. J., (Q.B.), 265; Ricket* v. *Metropolitan Railway Company, L. R., 2 E. & I. A., 175;* and *Cowper Essex* v. *Acton Local Board, L. R., 14 App. Cas., 153,* referred to. The District Board of Dinagepore erected a bridge over the river Tulai, in consequence of the erection of which a ferry, which was within 100 cubits of the bridge and owned by the Maharajah of Dinagepore, who was also the owner of the land taken for the construction of the bridge, ceased to exist. *Held* that the owner of the ferry was entitled under the Land Acquisition Act to compensation for the loss of the ferry. COLLECTOR OF DINAGEPORE *v.* GIRJA NATH ROY

[I. L. R., 25 Calc., 346

———— **s. 25**—*Objection to amount of compensation before Collector—Withdrawal of objection on appeal—Right to increased amount given on appeal.*—Where a claimant objected to the amount of compensation offered by the Collector, but withdrew his objection before the District Judge, who, however, allowed an increased amount at the instance of other objectors. *Held* that under s. 25, Act I of 1894, the former did not disentitle himself from claiming the benefit of the increased amount awarded by the Judge. NABIN CHANDER SARMA *v.* DEPUTY COMMISSIONER OF SYLHET . **1 C. W. N., 562**

———— **s. 53.**

See FALSE EVIDENCE—GENERAL CASES.

[I. L. R., 27 Calc., 820

———— **s. 54 and s. 30**—*Award of compensation—Order for apportionment of compensation—Appeal.*—The term "award" used in s. 54, Act I of 1894, includes an order for the apportionment of compensation made under s. 30, and an appeal from such order of appointment lies to the High Court. BALARAM BHRAMARATAR RAY *v.* SHAM SUNDER NARENDRA . . . **I. L. R., 23 Calc., 526**

SHEO RATTAN RAI *v.* MOHRI

[I. L. R., 21 All., 354

LANDHOLDERS.

See CASES UNDER MADRAS RENT RECOVERY ACT (VIII OF 1865), s. 1.

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876).

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE.

[I. L. R., 8 Calc., 923

See POSSESSION—EVIDENCE OF POSSESSION . . **I. L. R., 8 Calc., 853**

See TITLE—EVIDENCE AND PROOF OF TITLE—GENERALLY.

[I. L. R., 8 Calc., 853

———— **s. 7**—*Delimitation of land of adjoining proprietors—Correction of entry in register.*—On a claim for the correction of the entry of the names of proprietors in the general register of revenue-paying lands in a district kept in accordance with Bengal Act VII of 1876, the limits of the area of the estate had not been defined, further than by boundaries mentioned in the plaint, which were disputed by the defendants, who were the owners of land adjoining, and who had obtained from the revenue authorities an order for the entry now alleged to be incorrect. The properties were both parts of an ascertained number of bighas forming a chuckla. The High Court, while affirming the decision of the Court below in the plaintiffs' favour, ordered a local enquiry, with a view to the accurate delimitation of their estate. This, with the subsequent decree, resulted in the area being defined therein by reference to a map made and marked by an Ameen. This was not a just division; for, while it divided the chuckla so as to give the defendants their full share, it went beyond it, to make up the full area of the

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)—*continued.*

plaintiffs' share. Their Lordships therefore made a new order, calculated to secure the division of the whole chuckla in due proportions for the purposes of the entry in the register. HEMMUNI SINGH *v.* CAUTY . . . I. L. R., 17 Calc., 304

——— **ss. 38 and 78**—*Patnidar—Proprietor—Right of suit—Suit for rent.*—A patnidar is not a proprietor within the meaning of ss. 38 and 78 of the Land Registration Act, and he need not therefore get his name registered before suing for rent. SUKURULLAH KAZI *v.* BAMA SUNDARI DASI [I. L. R., 24 Calc., 404

1. ——— **s. 42**—*Suit for rent by unregistered proprietor—Transfer of proprietary right by succession.*—S. 42 of the Land Registration Act makes it clear that every person succeeding to the proprietary right in any estate must apply for registration of his name. PUNUK LALL MUNDAR *v.* THAKUR PROSAD SINGH . I. L. R., 25 Calc., 717

2. ——— **and s. 78**—*Administrator—Obligation of administrator to register his name before bringing suits for rent—Right of suit.*—A person who is an administrator, and as such the representative of a deceased proprietor of an estate and legal owner of his property, is bound to be registered under s. 42 of the Land Registration Act (Bengal Act VII of 1876) before he can sue the tenants of the estate for rent. McINTOSH *v.* JHARU MOLLA . . . I. L. R., 22 Calc., 454

——— **ss. 52, 55.**

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES. [I. L. R., 10 Calc., 350

——— *Effect of orders under the Act—Possession, Confirmation of.*—An order made under s. 55 of Bengal Act VII of 1876 prevents the person against whom it is made from relying on his previous possession in a subsequently instituted suit for confirmation of possession. An order made under s. 52 of the same Act has not that effect. OMRUNISSA BIBEE *v.* DILAWAR ALLY KHAN [I. L. R., 10 Calc., 350

——— **s. 55.**

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE. [12 C. L. R., 139
I. L. R., 26 Calc., 845

See EVIDENCE ACT, s. 35. [I. L. R., 9 Calc., 431

See POSSESSION—EVIDENCE OF POSSESSION . . I. L. R., 9 Calc., 431

——— **s. 78.**

See BENGAL TENANCY ACT, s. 95. [I. L. R., 22 Calc., 634

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)—*continued.*

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT. [I. L. R., 9 Calc., 517 : 2 C. L. R., 141

See LIMITATION ACT, 1877, s. 22. [I. L. R., 19 Calc., 760

See MERGER . I. L. R., 19 Calc., 760

1. ——— *Suit for rent by unregistered proprietor—Application for registration as proprietor.*—S. 78 of the Land Registration Act, 1876, precludes a person claiming as proprietor from suing a tenant for rent until his name has been actually registered as such under the Act. A mere application to be registered is not sufficient for the purpose. SURYA KANT ACHARYA BAHADUR *v.* HEMANT KUMARI DEBI I. L. R., 16 Calc., 706

DHORONIDHUR SEN *v.* WAJIDUNNISSA KHATTON [I. L. R., 16 Calc., 708 note

2. ——— *Suit for arrears of rent—Unregistered proprietor—Bengal Tenancy Act (VIII of 1885), ss. 60, 61, and 62—Act XXVII of 1860, s. 2—Guardians and Wards Act (XL of 1858)—Succession Certificate Act (VII of 1889), s. 4—Transfer of Property Act (IV of 1882), s. 131.*—The plaintiff sued the defendants in the Calcutta Small Cause Court for arrears of rent of certain premises in Calcutta, without having previously caused his name to be registered under the Land Registration Act (Bengal Act VII of 1876), but at the first hearing he produced the certificate of registration, which he had obtained since bringing the suit. The defendants objected that the suit should be dismissed by reason of s. 78 of the Land Registration Act. *Held* by the majority of the Full Bench, PRINSEP, NORRIS, and GHOSE, *JJ.* (PETHERAM, *C.J.*, and BEVERLEY, *J.*, dissenting), that the certificate of registration having been produced when the suit came on for trial, the trial could proceed. The construction to be put on ss. 78-81 of the Land Registration Act is that the right to the rent of an estate is in the true proprietor, although unregistered, and his right to sue for the rent is not taken away by anything in these sections of the Act which do not affect his cause of action, but merely put an impediment in the way of his realizing the rent, until he has complied with the law by obtaining registration of his name as proprietor. The case of *Dhoronidhur Sen* v. *Wajidunnisa Khatoon, I. L. R., 16 Calc., 708,* being a mofussil case governed by, and possibly decided with regard to, the Bengal Tenancy Act (VIII of 1885), the decision of the question whether it was or not rightly decided had no bearing on a case like the present brought in the Calcutta Small Cause Court, and relating to property in Calcutta where the Bengal Tenancy Act is not applicable. *Per* NORRIS, *J.*—The case of *Dhoronidhur Sen* v. *Wajidunnissa Khatoon,* as reported, is wrongly decided. *Held* by PETHERAM, *C.J.,* and BEVERLEY, *J.*—On the construction of the Land Registration Act, an unregistered proprietor of an estate has no cause of action on which he can institute a suit for the rent. The fact of his obtaining a

certificate of registration after the institution of the suit could therefore have no effect in validating the suit brought whilst he was an unregistered proprietor. Assuming that s. 78 of the Act was applicable to the case, the suit ought to be dismissed. The case of *Dhoronidhur Sen* v. *Wajidunnissa Khatoon* was in the above view of the matter rightly decided. *Held* by PETHERAM, *C.J.*, and PRINSEP and PIGOT, *JJ.*, in referring the case to the Full Bench that the Land Registration Act (Bengal Act VII of 1876) is applicable to properties in Calcutta. ALIMUDDIN KHAN *v.* HIRA LALL SEN . . . . **I. L. R., 23 Calc., 87**

3. ——— *Suit for rent by unregistered proprietor—Transfer of proprietary right by succession.*—S. 78 of the Land Registration Act, 1876, precludes a person claiming as proprietor from suing a tenant for rent unless his name has been registered as such under the Act. It is immaterial how the transfer of proprietorship is effected, whether it is a case of transfer by purchase or a case of transfer by succession. *Surya Kant Acharya Bahadur* v. *Hemant Kumari, I. L. R., 16 Calc., 706,* applied. PUNUK LALL MUNDAR *v.* THAKUR PROSAD SINGH . . **I. L. R., 25 Calc., 717**

4. ——— *Registration in regard to a share—Right to receive rent.*—When some out of several proprietors of an estate, who collect the rent jointly, have registered their names under the Land Registration Act, all the proprietors are entitled to join in an action for the whole rent, but a decree will be made only in respect of the rent proportionate to the share registered. Under s. 78 of the Land Registration Act, the penalty of non-registration is the forfeiture, not of the whole rent, but of the rent of the share in regard to which the landlord is unregistered. NILMADHUB PATRA *v.* ISHAN CHANDRA SINHA . . . **I. L. R., 25 Calc., 787**

GOBINDA CHANDRA PATRA *v.* ISHAN CHANDRA SINGH . . . . . **2 C. W. N., 600**

5. ——— *Suit for rent, without registration of name, whether maintainable by the legal representatives.*—A suit for rent, accruing due partly during the lifetime of a registered proprietor and partly after his death, was brought by his representatives; the defence was that the suit was not maintainable, inasmuch as the plaintiffs were not registered proprietors, and had no certificate under the Succession Certificate Act. *Held* that s. 78 of the Land Registration Act is not a bar to the realization of rent accruing due during the lifetime of the registered proprietor, but a suit for rent accruing due after the death of the registered proprietor is not maintainable by his representatives without having their names registered under the Land Registration Act. NAGENDRA NATH BASU *v.* SATADAL BASINI BASU . . . **I. L. R., 26 Calc., 536**
[3 C. W. N., 294

See SHERIFF *v.* JOGEMAYA DASI
[I. L. R., 27 Calc., 535

decided under the Bengal Tenancy Act.

6. ——— *Bengal Tenancy Act (VIII of 1885), s. 60—Right of suit—Suit for rent—Unregistered proprietor.*—There is nothing in s. 60 of the Bengal Tenancy Act to render a suit for rent by an unregistered proprietor unmaintainable, it being sufficient if during the pendency of the suit and prior to decree his name is registered. *Dhoronidhur Sen* v. *Wajidunnissa Khatoon, I. L. R., 16 Calc., 708,* dissented from. *Alimuddin Khan* v. *Hira Lall Sen, I. L. R., 23 Calc., 87,* explained and followed. *Belchambers* v. *Hassan Alli Mirza Bahadur, 2 C. W. N., 493,* followed. ABUL KHAIR *v.* MEHER ALI . . . **I. L. R., 26 Calc., 712**

ABDUL KHAIR *v.* MEHER ALI **3 C. W. N., 381**

7. ——— *Suit for rent—Legal representative of registered proprietor—Landlord and tenant.*—A suit for rent was instituted by the registered proprietor of an estate, who died during the pendency of the suit. His widow, the present plaintiff, was then substituted on the record in his place, but her name was not registered under the provisions of the Land Registration Act before the disposal of the suit in the first Court. *Held* that, as the present plaintiff was claiming rent due to the deceased plaintiff, in a representative character, s. 78 of the Land Registration Act did not bar her claim, and she was entitled to a decree. *Belchambers* v. *Hassan Alli Mirza, 2 C. W. N., 493,* followed. PRAMADA SUNDARI DEBI *v.* KANAI LAL SHAHA
[I. L. R., 27 Calc., 178

8. ——— *Suit for rent—Registration not effected at time of suit—Sufficiency of registration of name before decree.*—A suit for arrears of rent cannot be dismissed merely on the ground of the plaintiff's name not being registered under the Land Registration Act at the time the suit was brought, and it is sufficient if the name is registered before the decree is made. *Alimuddin Khan* v. *Hira Lall Sen, I. L. R., 23 Calc., 87,* explained. HAREEKRISHNA DAS *v.* BRINDABUN SHAHA . . . . . **1 C. W. N., 712**

9. ——— *Suit for rent—Liability to parent—Person whose name is "required" to be registered—Want of registration at the time the suit is brought—Landlord and tenant.*—The proprietor of two estates, numbered 822 and 837, died in September 1893. On the 7th February 1894, plaintiff No. 1 was appointed receiver of his estate with power to get in arrears to the estate. In May 1893, the estate No. 837 had been sold and purchased by plaintiff No. 2. Suit was instituted for the rents of the years 1891 and 1892, which had not been paid to the testator during his life, and for the subsequent rents for the years 1893 and 1894 as well. As to the rents for the years 1891 and 1892, it was contended that plaintiff No. 1 could not recover, as he had not been registered under Act VII of the 1876. *Held per* MACLEAN, *C.J.*—That with regard to these rents plaintiff No. 1 could hardly be said to be suing either as proprietor or as manager of the estate, and that he was suing as the officer of the Court appointed to get in arrears of rent due to the registered proprietor. *Held* further that plaintiff No. 1 could not be

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)—*concluded.*

regarded as a person who was "required" to be registered within the meaning of the section, as he could not be registered either before or after the death of the testator, for the testator was the registered proprietor when the arrears accrued and the estate had been sold before his death. *Held per* MACPHERSON, *J.*—That the provisions of the Act relating to registration do not apply to the case of a person who is seeking to recover rent as the representative of a deceased proprietor whose name was registered, the rent having become due during the lifetime of that proprietor. With regard to the subsequent rents for the years 1893 and 1894, it was contended that, as plaintiff No. 2 had not been registered at the time when the suit was instituted, he could not maintain the suit. *Held* that this furnished no ground for the dismissal of the suit. *Alimuddin Khan* v. *Hira Lall Sen, I. L. R., 23 Calc., 87,* and *Harekkrishna Dass* v. *Brindabun Shaha, 1 C. W. N., 712,* followed. BELCHAMBERS *v.* HASSAN ALLI MIRZA . . **2 C. W. N., 493**

——— s. 89.

See LIMITATION ACT, 1877, ART. 14.
[I. L. R., 10 Calc., 525

See RELIEF . **I. L. R., 10 Calc., 525**

LAND REVENUE.

See CASES UNDER N.-W. P. LAND REVENUE ACT (XIX OF 1873).

See SETTLEMENT—CONSTRUCTION.
[I. L. R., 17 Bom., 407

1. ——— **Liability of lands in Kanara district to revenue**—*Maxim, "Nullum tempus occurrit regi."—Bom. Act VII of 1863, s. 21—Bom. Reg. XVII of 1827, ss. 4 and 7—Bom. Act I of 1865, ss. 25 and 49.*—The mulavargdar, a holder of land on muli tenure in Kanara, enjoys an hereditary and transferable property in the soil and cannot be ousted so long as he pays the land revenue assessed upon his land. In the absence of special terms to the contrary, Government may enhance the land revenue payable in respect of land so held. The history of the land revenue in Kanara narrated. The question of the cultivating raiyat's property in the soil considered both with reference to the Hindu and the Mahomedan law. Similarity of the mirasi, kani yatchi, the janmakari, the swasthyan, and the muli tenures mentioned. The rule of the Hindu and Mahomedan as well as of the English law is *nullum tempus occurrit regi.* The extent to which that maxim has been restrained by legislation in the Presidency of Bombay considered. Construction of Bombay Act VII of 1863, s. 21, and Bombay Act I of 1865, ss. 25 and 49. The revenue system of Akbar under Todar Mul and of Aurangzeb discussed. If there be no specific limit, either by grant, contract, or law, to the right of Government to assess land for the purpose of land revenue, the Civil Courts have no jurisdiction under Bombay Regulation XVII of 1827, ss. 4 and 7, to entertain a suit to rectify the assessment made by the Collector or other competent Revenue authority. VYAKUNTA BAPUJI *v.* GOVERNMENT OF BOMBAY . . **12 Bom., Ap., 1**

LAND REVENUE—*continued.*

2. ——— **Liability to land revenue of village of Kabilpur in district of Surat**—*Maxim "Nullum tempus occurrit regi"—Bom. Act VII of 1863, s. 21—Bom. Act I of 1865, ss. 25 and 49—Bom. Reg. XVII of 1827, ss. 2 and 8.*—The jurisdiction of the Civil Courts, in the Presidency of Bombay, in matters of revenue and land assessment considered and defined. The enactments limiting the operation, in the Presidency of Bombay, of the maxim *nullum tempus occurrit regi* considered. The land tenures of the district of Surat described. The village of Kabilpur in the district of Surat is an udhad budhijama village settled for hereditarily and of right by the co-sharers in it in the gross at a fixed immutable rent, independent of the quantity of land under cultivation, payable to Government, and as such falls, in respect of the joint liability of the holders for the revenue in gross, within s. 8 of Regulation XVII of 1827. The village of Kabilpur is land situated in a district ceded by the Peishwa in 1802 to the British, held by the co-sharers in it and their predecessors in title partially exempt from payment of land revenue, under a tenure recognized by the custom of the country, for more than thirty years, and therefore falls within the claims for exemption mentioned in Bombay Act VII of 1863, s. 21. Whether s. 2, cl. 1, and s. 8 of Regulation XVII of 1827, and s. 21 of Bombay Act VII of 1863 are or are not controlled by Bombay Act I of 1865, the village of Kabilpur is liable to assessment to the extent of R1,089-13-1 only, inasmuch as it falls within the concluding proviso in Bombay Act I of 1865, saving from further assessment a village entered in the land register as partially exempt from payment of land revenue. Comparison of this (the Kabilpur) case with that of Kanara—*Vyakunta Babuji* v. *Government of Bombay, 12 Bom., Ap., 1.* GOVERNMENT OF BOMBAY *v.* HARIBHAI MONBHAI
[12 Bom., Ap., 225

3. ——— **Exemption from assessment**—*Wanta or rent-free lands—Summary settlement—Bom. Act VII of 1863—Talukhdari settlement—Bom. Act VI of 1862—Right to hold wanta lands free.*—The lands in dispute, now forming part of the hamlets of Hirapur or Rasulpur, originally formed part of the talukhdari village of Kuwar. About the year 1843 the talukhdar mortgaged the lands to *P*, and two years afterwards, in order to pay off *P*, the talukhdar mortgaged the same lands to the plaintiff's father, and in or about 1858 gave him a deed of sale. On the passing of the Talukhdari Settlement Act (Bombay Act VI of 1862), the village of Kuwar was brought under its operation, and placed under Government management. While the village was under Government management, the Summary Settlement Act (Bombay Act VII of 1863) was passed, and the Talukhdari Settlement officer, acting apparently under s. 3 of the Act, made an order directing the plaintiff to pay assessment to the extent of R2,000. Part of the lands held by the plaintiff were entered in the Government khardas as wanta. In a suit brought by the plaintiff to establish his right to hold all the lands rent-free, the District Judge held that the plaintiff had failed to prove that

the lands were rent-free, and that he was liable to pay the assessment, and he therefore rejected the plaintiff's claim. *Held* on appeal that the Government was bound by the statements in its own khardas, which admitted that part of the land was wanta, which must be regarded as meaning rent-free or tax-free land, and that it lay upon Government to prove that land so denominated was assessable, which it had failed to do; the plaintiff therefore, as to so much of the land as was entered in the Government khardas as wanta, was entitled to hold it free of Government assessment. But as to the residue of the land in the hands of the plaintiff, and to which as against the talukhdar the plaintiff was entitled, the Court could not interfere with the rate of assessment fixed upon it by the Government. There not being any specific limit fixed by law, grant, sanad, contract, or otherwise, to the assessment of that residue for the purpose of land revenue, the Civil Courts had no jurisdiction to regulate such assessment, even if, having regard to the value of the land, it were excessive. GULAM MOHIDIN *v.* COLLECTOR OF AHMEDABAD

[12 Bom., Ap., 276

See also GOVERNMENT OF BOMBAY *v.* SUNDARJI SAVRAM . . . . **12 Bom., Ap., 275**

4. ———— **Mode of realization**—*Bom. Reg. XVII of 1827, s. 5—Bombay Survey Act (I of 1865), ss. 2 and 48—"Occupant."*—Regulation XVII of 1827, s. 5, enables the Government, and therefore the holder of the rights of Government, on failure of the superior holder to pay the land revenue, to realize it from the inferior holder. The laws for realizing the land revenue establish a kind of privity of estate between the superior and inferior holders, by which the latter, taking the profits of the land, must satisfy the obligations of the former to Government, independently of, and even in opposition to, any agreement between the two contracting parties. The liability to pay adheres to the occupation and enjoyment, and cannot be got rid of, except through its resignation by the Sovereign or the Sovereign's representatives. *Held*, accordingly, that when the person, who was the "occupant" of certain land within the meaning of the Bombay Survey Act, failed to pay the revenue due thereon, the kabuliatdar khot might recover the amount from that person's mortgagee in possession. KRISHNAJI RAVJI GODBOLE *v.* RAMCHANDRA SADASHIV . . . **I. L. R., 1 Bom., 70**

5. ———— **"Farmers"**—*Bom. Reg. XVII of 1827.*—The word "farmer," as used in Regulation XVII of 1827, is used not as a cultivator of the ground, but as a farmer of public revenue, a person who would stand between the Government and the raiyats as possessors of the ground. RUTTONJEE EDULJEE SHET *v.* COLLECTOR OF THANNA

[10 W. R., P. C., 13
11 Moore's I. A., 295

6. ———— **Assessment of revenue**—*Bom. Reg. XVII of 1821, s. 3—Right of Government to enhance—Foras or foras-toka land—Proof of right to hold at fixed rate.*—The plaintiff was the holder of certain land in the Island of Bombay, called foras or foras-toka land. He and his predecessors in title had held the said land for upwards of sixty years, and had paid a certain fixed assessment to Government. On the 31st July 1882, the Collector of Bombay, claiming to act under powers conferred by Bombay Act II of 1876 and under the order and with the sanction of Government contained in a Government Resolution, dated the 14th August 1879, gave notice to the plaintiff that the assessment payable in respect of the said lands was enhanced. He claimed the increased rent not merely for the future, but also for two previous years (1879-80 and 1880-81) subsequent to the date of the Government Resolution of the 14th August 1879. The plaintiff paid under protest, for the said two years, the sum of R442-8-2 in excess of his previous assessment, and now sued to recover that amount from the defendant. The plaint prayed for a declaration that there was "a right on the part of the plaintiff in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved, in respect of the said lands, to possess and hold the same at the rent or assessment hitherto paid by the plaintiff; and that the Collector of Bombay had no right to increase the plaintiff's rent or assessment beyond such specific limit; and that the defendant should be ordered to repay to the plaintiff the said sum of R442-8-2." *Held* that no grant, contract, or law emanating from Government being proved to have emanated from Government conferring on the lands in question a right to a fixed and permanent rate of assessment, the assessment on these lands was liable to enhancement. *Held* also that the plaintiff was only liable to the enhanced rate of assessment from the time at which it was actually made by the Collector, and that he (the plaintiff) was therefore entitled to be repaid the sum sued for. Strict proof must be given of any right set up in derogation of the inherent right of the Sovereign to assess the land at his discretion; and the facts that the lands in question were waste lands reclaimed from the sea which the inhabitants were invited to cultivate, or that a very small rent has been paid for many years, do not show that the Government has forfeited its right to enhance the assessment in respect of such lands. SHAPURJI JIVANJI *v.* COLLECTOR OF BOMBAY

[I. L. R., 9 Bom., 483

LAND REVENUE ACT (BOMBAY).

See BOMBAY LAND REVENUE ACT (V OF 1879).

LAND TENURE IN BOMBAY.

———— *Real and chattel property — Husband and wife—Agreement by husband alone for renewal of lease—"Pension and tax"—Nature of Bombay land tenures—Fergusson's Act IX Geo. IV, c. 33—Act IX of 1837.*—Immoveable property situated in the Island of Bombay, conveyed in 1859 to *N* and his wife (Parsis), their heirs, executors, administrators, and assigns, was subsequently mortgaged by *N* and his wife, but the mortgagee did not

LAND TENURE IN BOMBAY —*concluded.*

enter into possession. Afterwards, in 1861, *N* alone entered into an agreement with the plaintiffs to give them a lease of that property for five years, the plaintiffs being willing to accept that lease with such title as *N* could confer. *Held* that it was unnecessary, under such circumstances, to consider whether the estate of *N* and his wife in the property was chattel real or real estate; for if it were chattel real, *N* by his marital right, according to English law (which in this case applied), might dispose, either wholly or in part, of her interest; and if the property were realty, the lease by *N* would at all events bind her for the term of five years, if *N* should so long live. Assuming the property to be realty, *semble*—that on *N's* death before the expiration of the term of five years, the lease would, as against the wife surviving, be voidable only, and not void. The proposition laid down by the Judge of the Division Court, that all immoveable property in Bombay was of the nature of chattel real, and that there was not any property of the nature of freehold of inheritance in that island, disapproved of and denied as being irreconcileable with Royal Charters, Acts of Parliament, and of the Legislative Council of India, dicisions of the Courts, both in India and England, and the tenures of land and practice of conveyancers in Bombay. The nature and results of Governor Aungiers' convention stated, and the origin of "pension and tax" in Bombay traced. The tenure of land in Bombay under the Portuguese was of a feudal character. Creation and tenure of the ancient manor of Mazagon described. Doctrine that the fief of the Middle Ages has sprung from the Roman tenure in emphyteusis mentioned. Ceremonies of enfeoffment and livery of seisin in Bombay. Statement of the circumstances which led to the passing of Stat. 9 Geo. IV, c. 33 (Fergusson's Act), and also of those which led to the passing of Act IX of 1837 (relating to the immoveable property of Parsis). Naoroji Beramji *v.* Rogers

[4 Bom., O. C., 1

LAND TENURE IN CALCUTTA.

1. ———— Lands held in fee-simple—*Unattested will, Devise by.*—Lands in the East Indies held by a tenure of the nature of fee-simple do not pass by an unattested will, but descend to the person who would be heir-at-law in England. *A* by an unattested will devised lands to *B*. *B* received the rents, and by a will, also unattested, gave the lands together with a legacy to the heir-at-law of *A*. *Held* that the heir might receive the legacy and also call for an account of the rents received by *B*. Gardiner *v.* Fell . . . **1 Moore's I. A., 299**

2. ———— Freehold land—*Unattested will, Devise by.*—The tenure of land in Calcutta was of the nature of freehold, and real estate would not therefore pass by an unattested will. Freeman *v.* Fairlie . . . **1 Moore's I. A., 305**

LAND TENURE IN KANARA.

1. ———— Liability to land revenue—*Maxim "Nullum tempus occurrit regi" considered.*—The mula vargdar, a holder of land on muli tenure in Kanara, enjoys an hereditary and transferable property in the soil, and cannot be ousted so long as he pays the land revenue assessed upon his land. The question of the cultivating raiyat's property in the soil considered both with reference to the Hindu and Mahomedan laws. Similarity of the mirasi, kaniyatchi, the janmakari, the swasthyan, and the muli tenures mentioned. The rule of Hindu and Mahomedan as well as of the English law is *nullum tempus occurrit regi.* The extent to which that maxim has been restrained by legislation in the Presidency of Bombay considered. Vyakunta Bapuji *v.* Government of Bombay . . . **12 Bom., Ap., 1**

2. ———— *Nature of kumri cultivation—Kumri assessment—Rights of vargdars—Korlaya.*—The plaintiff sued to recover possession of four specified tracts of forest land situated in the district of North Kanara from which he alleged he had been wrongfully ejected under an order made by the Collector in 1861, and to recover certain sums of money exacted from him between 1849 and 1861 by the revenue authorities as a tax or rent for the exercise by him of his proprietary rights by way of kumri cultivation. As to three of the tracts of the land in question, the plaintiff based his claim on certain sanads alleged to have been granted by the officers of Tippu Sultan to his ancestors; and as to the fourth, he claimed a title by prescription, alleging that the land had been in the possession of his family for forty years prior to 1870, the date of the institution of the suit. The plaint contained no indication of a claim which was put forward during the argument of the appeal, that the payment to the Government of assessment in respect of kumri, pepper, and farmaish, or in particular of kumri assessment, and the entry of such charge in the chitta of a vargdar muli or geni, gives to such vargdar, or at least is a recognition by Government that such vargdar has a right of ownership in the forests in respect of which it was contended such assessment was imposed. The plaintiff admitted a right on the part of Government to take certain kinds of timber from the forests; but, subject to this, he contended that the timber, as the soil and produce of the forests generally, belonged to him, subject also to the right of Government to levy an increased assessment thereon. Subject to these rights on the part of Government, the plaintiff claimed an absolute right to have kumri cultivation carried on within the limits specified; that he and no other had a right to cultivate and give in cultivation as rice land jungle land within those limits, and an exclusive right to cut down and dispose of timber within those limits. *Held* by Green, *J.*, on the evidence, that the sanads put forward were not proved to have been in fact executed by any person having authority to execute such documents, and that, even if genuine, they had never been recognized by the British Government as valid and binding or been made the foundation of the revenue relations between the British Government and the plaintiff's family or those under whom they claimed. The fact, however, that the plaintiff put forward those sanads as the root of his title, so far at least as concerned the greater portion of the property claimed, was an admission that at the date of those sanads the then Government had the power to make the grants they purported to evidence, and the sanads being out of the way, the plaintiff had to establish that he had at the institution of the suit succeeded to rights of property which by his own case, at the dates respectively of the sanads, belonged to the then Government, and would, in the absence of any private right shown then to exist therein, have vested in the East India Company after the taking of Seringapatam in May 1799 and the subjugation of the country under the rule of Tippu Sultan. The primary meaning of the word "varg" was "account," and it was only by an extension of the original meaning that it came to be used as indicating the property, to the assessment on which such account relates. Kumri assessment was in its origin an assessment upon, or having reference to, the actual number of labourers employed cutting down forest, and not with reference to any particular portion or quantity of land or its produce. Originally, kumri assessment was inserted in vargs only as incidental to rice or garden cultivation, and the entry of such assessment in the plaintiff's vargs and its payment for a long series of years did not show or manifest any estate or permanent right at all in the forests, as such, as being vested in the plaintiff, even as to such ground as he might have been able to show had been at former times kumried by his labourers, and whether or not the Government may have had, or, having had, may have ceased to have, any right to collect korlaya (tax on bill-hooks) direct from the cutters so long as kumri cultivation at all is or was carried on; yet it has a right to stop the cultivation altogether (remitting the kumri assessment entered in the vargs) in all the forests of North Kanara, including those in question in the present case, not shown to be private property, on some other ground than the mere entry of kumri assessment in a particular varg or number of vargs. The plaintiff's suit, therefore, which was to recover possession of particular tracts of forest on the ground of ownership, shown or evidenced only (apart from the question of the sanads) by such entry in his vargs of kumri assessment, was rightly dismissed. But even assuming that the plaintiff had established a right, exclusive of others and permanent as against the Government, to have kumri cultivation carried on in such places as he could show had theretofore been kumried by him or by his permission, or even throughout the limits claimed in the plaints, such a right, having regard to the incidents of the cultivation, itself did not necessarily involve general ownership of the soil. Such general ownership, not being in the plaintiff, was with the Government; and the plaintiff, if his right, supposing he had any, were disturbed, either by a stranger or by the Government, ought to have asserted it by a suit for damages for the disturbance of a right in *alieno solo*, and not by a suit to recover possession. Even had the plaintiff, therefore, established a permanent and exclusive right to carry on kumri cultivation within the limits specified in his plaint, yet his suit, which was directed to recover possession on the ground of general ownership, should have been dismissed. That was the case he put forward to the last, and to which his evidence was directed, and it would be quite inadmissible for him to fall back on another case, which, if established, would have, as its result, a relief wholly different to that which and which alone he had all along asked for. *Held* also that the plaintiff's claim was barred by limitation. *Per* West, *J.*—Though the introduction of British rule did not extinguish private rights already fully acquired, the principle to start from is, that waste lands belong to the State. The mere fact that a vargdar is charged in the village accounts with an assessment for kumri, cannot of itself make him the owner of all the forests within its boundaries. He could not become the owner, in fact, without the active or passive assent of the Government passing its proprietary right to him. Such assent is not to be inferred, as to an extensive tract of forest, from the payment and receipt of some insignificant sum—*e.g.*, a moiety of the rent realized on a small number of acres—which may most naturally be referred to rateability, or the mere participation by the State, according to an immemorial rule, in all profits arising from the land. As there must be certainty in a grant as to the area conferred, so there must be certainty as to the area, or, at least, as to identity of the object occupied, if the occupation is to raise the presumption of a grant, or of acquiescence in a definite occupation. It is not inconsistent with this principle, but rather as complementary to it, that the farther rule is accepted, that the possession and the ownership springing from possession of a farm or varg as a whole, and within the limits as to which certainty is attainable, are not prevented or destroyed by an undoubted encroachment, or by a want of certainty as to some particular plot of ground or as to the precise delimitation here or there of its proper boundary line. A suit to ascertain boundaries does not imply that either of the owners of contiguous estates has no property at all; and as there may be an effective grant of lands in possession, though occupied of wrong, so may distinct acquiescence give a like right in the like case; but there can be no grant, no acquiescence in a possession, unless the essential elements of possession, a fixed, a definable, and an exclusive possession, exists, and are present to the perception of the parties. In the case of a private owner even the allowance of acts which do not necessarily involve any denial of his ownership, or a grant from him, do not suffice to create an ownership against him; and the mere non-interference of the State, to which neglect is not to be imputed, is not to be accounted for, if it can otherwise be accounted for, on a presumption of a surrender of its ownership. Such a transaction must be evidenced by an undisguised and effective appropriation assented to or submitted to by some one having due authority, or else fortified by an equivalent law of prescription. Under these conditions, a true ownership event of the forests might arise, but the mere payment of the kumri assessment would not create it in the case of a vargdar. Upon the evidence held that the sanads were not proved, nor had the plaintiff established any exclusive possession of, or proprietary right in, any part of the fore claimed; while the evidence showed a continued and consistent exercise, on behalf of the Government, of its proprietary right over the timber and even the firewood in the forests in dispute from the time that the assertion of the right became a matter of appreciable consequence, and that the plaintiff's family knew this, and submitted to it, and themselves applied repeatedly for timber to the Revenue officers. From the year 1842 downwards there was no instance which effectively disproved the acquiescence of the plaintiff's family in the ownership of Government. That ownership had not been parted with at all in the opinion of the parties most interested. If it had been parted with and become vested in the plaintiff's ancestors as an integral portion of the estate in the land which the plaintiff claimed was theirs, then the assumption and the exercise of ownership by the Government over the trees from 1841 down to the filing of the suit was itself a perpetual ouster of the family from a portion of their estate, and would constitute a complete eviction of the owner as such. If there was such an ouster proved as to the whole by a multiplicity of acts bearing on the several parts of the estate, but all referrible to the same principle or purpose, then the plaintiff had a cause of action in the nature of ejectment so soon as he was disturbed in his possession by any of these acts, in their legal nature such as to contradict and annihilate his right throughout the estate, even though their immediate physical incidence was on but particular parts of it—a cause of action extending, as to its physical object, to the whole property, because his power over the whole was invaded and overthrown. Regarding the plaintiff's right, therefore, to land, to timber, to kumri cultivation, and to reclamation and disposal at his own mere will, as parts, so far as the right was concerned, of a single legal unit, the cause of action had arisen more than twelve years before the institution of the suit. The plaintiff's right, so far as it rested on the sanads, was not supported, but contradicted by the active enjoyment assumed, on behalf of the Government thirty years almost before the institution of the suit, of an important part of the advantages conferred by the grants, and on an assertion of rights which, if the grants were to be construed as the plaintiff desired, called for immediate action in the Court on his part. The claim was also contradicted by a series of transactions in which the Government officers disposed, from time to time, of portions of land included within the confines of the estate which the plaintiff claimed. His claim, therefore, on the sanads was untenable. Setting aside the sanads, then, the mere payment of kumri tax, however it may have indicated that some land was beneficially occupied by the vargdar, afforded by itelf no certain evidence either of the place of that occupation or of its nature as temporary or permanent, as held on proprietary right, or as merely casual and precarious. It is the possibility of referring the exaction levied to some particular area, shown to have been actually and exclusively held by the taxpayer, either by extrinsic evidence, or by that of the Government accounts themselves, that makes the payment and receipt of a tax a practical assertion and admission of private ownership of the space thus rendered distinguishable. But private ownership being established, it still remains true that a property in the soil must not be understood to convey the same rights in India as in England. It may be subject to restrictions and qualifications varying according to the peculiar laws of each country; and those acts which under one system would be necessarily regarded as contradictions of any ownership over the object on which they were exercised except that from which they spring may, under another system, be quite compatible with an ownership subsisiting unimpaired side by side with the limited right to which they would be attributed. The reserve of timber generally, as of particular kinds of timber, may be referred to as an instance of this divided dominion. What the Government intend and practically intimated through its officers, constituted the bounds which it set to the plaintiff's acquisition through its acquiescence, both as to the extent of the rights to be exercised and the local limits within which they were to be exercised. As to the former point, whether the plaintiff's predecessors gained a general ownership of the soil or not, they either did not gain an ownership of the timber or were wholly ousted from the exercise of that ownership from 1842 downwards. As to the latter point, the evidence showed that the plaintiff's family as vargdars exercised rights over forest tracts in all the estates to which the present claim extended, though as to some of these tracts these rights could not be referred to any particular space. But, even though there had been no interference on the part of the Revenue officers with the plaintiff's free use of the forest, that free use without an exclusive appropriation would not in itself constitute an exclusive right against the State. The right arising from the State's eminent domain is not extinguished by its mere non-exercise, and its exercise was not called for until some public injury or inconvenience arose. The exercise of the plaintiff's dominion had been prevented, except within such limits as the executive officers prescribed, at any rate from 1842; while the ownership of the Government over the forest trees and its proprietary right in the soil had been during the same time at least uniformly asserted, and the plaintiff's suit was therefore barred by limitation. BHASKARAPPA *v.* COLLECTOR OF NORTH KANARA . . **I. L. R., 3 Bom., 452**

3. ———— *Mula-vargdars, Power of, to raise rent of mul-gainidar—Enhancement of assessment by Government—Power of State.*—The plaintiff, who was a mula-vargdar (superior holder) of certain land situated in a village in the district of Kanara, sued to recover from the defendant, his mul-gainidar (permanent tenant), the enhanced assessment levied on the land by Government, and the local cess. Plaintiff also claimed rent for one year. The plaint alleged that the assessment had been enhanced, because of the defendant's encroachment on the adjoining land. The defendant denied his liability for the enhanced assessment, as he was a mul-gainidar, and only liable to pay the fixed annual rent reserved in the lease. He also denied having made any encroachment, and contended that the land, alleged to have been acquired

LAND TENURE IN KANARA—*concluded.*

by encroachment, had been included in the lease. Both the lower Courts allowed the plaintiff's claim with respect to the enhanced assessment and local cess, together with rent for one year. On an issue being sent to the District Judge by the High Court on second appeal, it was found that defendant was in possession of land other than that which he held under the lease; that he had acquired this other land by encroachment subsequently to the date of the lease; that both the lands were entered in the plaintiff's name in the Government survey, at which the assessment on the land originally demised to the defendant was raised to R36-12-0 (the original assessment being R12), while the land subsequently acquired by defendant was assessed at R5. *Held* that the plaintiff could not recover from the defendant any more than the rent reserved in the lease in respect to the land originally demised, but that he was subject to no such restriction in respect to the land subsequently acquired by encroachment. *Held* also that the defendant was liable for the local cess in respect of both the lands. It is not within the power of a Court of law, in the face of the contracts originally made between the mula-vargdars (superior holders) and their mul-gainidars (permanent tenants), to relieve the former from the hardship caused to them by reason of the enhancement, by Government, of the assessment on their lands to an amount exceeding or equal to the rent received by them (mula-vargdars) from the mul-gainidars. It is doubtful whether Government, in its executive capacity, has any more power than Courts of law to interfere with contracts made between private persons. The remedy lies rather in the hands of the Legislature. RANGA *v.* SUBA HEGDE . . . . **I. L. R., 4 Bom., 473**

See also BABSHETTI *v.* VENKATARAMANA **[I. L. R., 8 Bom., 154**

and RAM KRISHNA KINE *v.* NARSHIVA SHANBOG **[I. L. R., 4 Bom., 478 note**

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LAND TENURE IN ORISSA.

———— **Maurasi sarvarakari tenure, The mode of succession to**—*Consent of the zamindar to the transfer of tenure.*—The tenure known in Orissa as maurasi sarvarakari, although recorded in the name of a single member, is descendible to all the heirs as joint heritable property, and cannot be transferred without the consent of the zamindar. BHUBAN PARI *v.* SHAMANAND DEY **[I. L. R., 11 Calc., 699**

LAND TENURE IN SURAT.

———— **Village of Kabilpur**—*Maxim "Nullum tempus occurrit regi."*—The enactments limiting the operation in the Presidency of Bombay of the maxim *nullum tempus occurrit regi* considered. The land tenures of the district of Surat described. The village of Kabilpur in the district of Surat is an udbad bandhiyama village, settled for hereditarily and of right by the co-sharers in it in the gross at a fixed immutable rent independent of the quantity of land under cultivation, payable to Government, and as such falls in respect of the joint liability of the holders for the revenue within s. 8 of Regulation XVII of 1827. The village of Kabilpur is land situated in a district ceded by the Peishwa in 1802 to the British, held by the co-sharers in it and their predecessors in title partially exempt from payment of land revenue, under a tenure recognized by the custom of the country for more than thirty years, and therefore falls within the claims for exemption mentioned in Bombay Act VII of 1863, s. 21. GOVERNMENT OF BOMBAY *v.* HARIBHAI MONBHAI . **12 Bom., Ap., 225**

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1. CONTRACT OF TENANCY, LAW GOVERNING.

1. ———— **Rules applicable to relation of landlord and tenant.**—The rules applicable to the relation of landlord and tenant in England are applicable to India, whenever no precise rule regarding the subject is to be found in Hindu or other laws. TARACHAND BISWAS *v.* RAM GOBIND CHOWDHRY . . . . I. L. R., 4 Calc., 781

2. ———— ***Contracts of tenancy between* Hindus in Calcutta**—*Stat. 21 Geo. III, c. 70, s. 17.*—A tenancy created by express contract between Hindus in Calcutta is within the words "matters of contract and dealing between party and party" in 21 Geo. III, c. 70, s. 17, and the right of the parties and the incidents of the tenancy must be governed by Hindu law. RUSSICKLOLL MUDDUCK *v.* LOKENATH KURMOKAR
[I. L. R., 5 Calc., 688 : 5 C. L. R., 492

2. CONSTITUTION OF RELATION.

(*a*) GENERALLY.

3. ———— **Contract to pay rent**—*Omission to obtain kabuliat.*—Where two parties bind themselves under an indenture drawn up in the English form, the one to lease and the other to pay rent for certain land, the contract is complete, and a suit for arrears of rent due under it will lie under Act X of 1859, although no separate kabuliat is executed. KISHEN DOSS *v.* HURRY JEEBUN DOSS
[10 W. R., 324

4. ———— **Implied relationship of landlord and tenant**—*Absence of express condition.*—Where *A* avowedly holds and cultivates *B*'s land, *A* is, by the universal custom of this country, *B*'s tenant (even without express permission to cultivate on *B*'s part, or express condition to pay rent on *A*'s part), and while so holding and cultivating is bound to pay *B* a fair rent and to give him a kabuliat. NITYANUND GHOSE *v.* KISSEN KISHORE
[W. R., 1864, Act X, 82

5. ———— **Grant of pottah by zamindar to sub-tenant**—*Non-assignment of rights to intermediate tenant—Suit for kabuliat.*—The defendant was under-tenant in respect of lands which his lessor held under a modafut from the zamindar.

Subsequently the lessor left, and the zamindar gave to the defendant a pottah for part of the lands covered by the modafut, and to the plaintiff a pottah for the whole land covered by the original modafut; but did not assign any of his rights as zamindar to the plaintiff to recover or enhance the rent reserved in the pottah he had granted to the defendant. *Held* in a suit for a kabuliat at an enhanced rate that the plaintiff and defendant were not in the position of landlord and tenant, so as to enable the plaintiff to maintain his suit. KALAM SHEIKH *v.* PANCHU MANDAL

[2 B. L. R., A. C., 252

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[11 W. R., 128

6. ———— **Grant retaining portion of land rent-free, but subject to house-tax**—*Holders under sanad under Bom. Act VII of 1863.*—The plaintiffs were the registered holders of the village of Mankoli, in the Ahmedabad Collectorate, for which they obtained a sanad in 1864 under Bombay Act VII of 1863. The defendants were the descendants of the original owners of the village, who, about 1768, finding themselves unable to meet the expenses attaching to the village, gave up their title to it to the ancestors of the plaintiffs on condition of retaining a third of the lands rent-free as their wanta, or share, subject to no other condition but a house-tax. *Held* that the circumstances did not constitute the relationship of landlord and tenant between the parties. JESINGBHAI *v.* HATAJI . I. L. R., 4 Bom., 79

7. ———— **Instrument not fixing permanent rent.**—Where a written instrument purported to create the relation of landlord and tenant for five years, the lessor's tenure being that of a mirasidar, *i.e.*, a hereditary tenancy under Government determinable on default in payment of the proportion of the motha faisal assessment payable for the land,—*Held* that the instrument did operate to create the relation of landlord and tenant, notwithstanding that the assessment was not permanently fixed. SAMINATHAIYAN *v.* SAMINATHAIYAN

[4 Mad., 153

8. ———— **Payment of revenue by one co-sharer through another**—*Interest—Act X of 1859, s. 20.*—By a deed between *A* and *B*, *B* purchased from *A* a fractional share of a pergunnah the Government revenue payable on which was R43·12; and it was stipulated that *B* was to apply to the Collector for mutation; and that, until the mutation was completed, he should pay the above quota of the Government revenue through *A*; and that after the mutation the relation between *A* and *B* should be an independent one. *Held* that the relation of landlord and tenant was not created by the deed, and consequently that s. 20 of Act X of 1859 did not apply to entitle *A* to interest upon the recovery of a quota of revenue payable by *B* under the deed. GOLUCK CHUNDER ROY *v.* JUGGERNAUTH ROY CHOWDHRY

[Marsh., 146: W. R., F. B., 47
1 Hay, 346

9. ———— **Decree for kabuliat**—*Evidence of relationship of landlord and tenant.*—A decree which directs that a kabuliat shall be given by the defendant at a certain rent amounts to an adjudication that there is between the parties the relation of landlord and tenant, and is important evidence on that point in any subsequent suit against the same defendant. SHURUF JAN *v.* FUTTEH ALI

[22 W. R., 389

10. ———— **Assessment after resumption**—*Position of lakhirajdar after resumption.*—To create the relation of landlord and tenant between a zamindar and lakhirajdar after resumption, it is necessary for the zamindar to assess the rent. The holding of a lakhirajdar, after a decree of resumption, is not that of a trespasser, and he is fully entitled to remain in possession of the land without paying rent until the zamindar assesses rent upon him. HUREEBUNS BURHAL *v.* JOYKISHEN MOOKERJEE

[6 W. R., 92

BROJONATH DUTT *v.* JOYKISHEN MOOKERJEE

[4 W. R., 69

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[6 W. R., 286

11. ———— **Decree declaring right to assessment**—*Resumption of invalid lakhiraj—Beng. Reg. II of 1819, s. 30—Beng. Reg. XIX of 1793, s. 10—Decree of Civil Court.*—A decree of a Civil Court in a suit (the plaint of which referred to s. 30 of Regulation II of 1819 and s. 10 of Regulation XIX of 1793), which declared the right of the zamindar to assess rent on land not proved to have been held under a grant prior to 1st December 1790, was sufficient to establish the relationship of landlord and tenant between the zamindar and the party against whom the right of assessment was declared. SAUDAMINI DEBI *v.* SARUP CHANDRA ROY . 8 B. L. R., Ap., 82: 17 W. R., 363

SHAMASUNDARI DEBI *v.* SITAL KHAN

[8 B. L. R., Ap., 85 note: 15 W. R., 474

MADHUSUDAN SAGORY *v.* NIPAL KHAN

[8 B. L. R., Ap., 87 note: 15 W. R., 440

ROHINI NANDAN GOSSAIN *v.* RATNESWAR KUNDU

[8 B. L. R., Ap., 89 note: 15 W. R., 345

12. ———— **Decree for resumption**—*Resumption of invalid lakhiraj—Beng. Reg. II of 1819—Suit for kabuliat—Act X of 1859, s. 23, cl. 1.*—The having obtained a decree for resumption of invalid lakhiraj lands, held on tenure prior to 1st December 1790 under Regulation II of 1819, did not create the relationship of landlord and tenant between the plaintiff and defendant so as to enable the plaintiff to sue for a kabuliat under cl. 1, s. 23, Act X of 1859. That relationship could not come into existence until the lakhirajdar had agreed to pay the revenue assessed by the Collector. MADHAB CHANDRA BHADORY *v.* MAHIMA CHANDRA MAZUMDAR

[8 B. L. R., Ap., 83 note: 12 W. R., 442

13. ———— **Suit for arrears of rent as so determined for a period prior to such**

LANDLORD AND TENANT—*continued.*

2. CONSTITUTION OF RELATION—*continued.*

determination—*Order of Settlement officer under N.-W. P. Land Revenue Act (XIX of 1873), s. 77, determining rent.*—An order of a Settlement officer under s. 77 of Act XIX of 1873 determining rent is a purely prospective order and will not entitle the landlord to sue his tenant for rent at the rate fixed thereby for any period antecedent to the 1st of July next following the date of such order. *Mahadeo Prasad* v. *Mathura, I. L. R., 8 All., 189,* distinguished. DEBI SINGH *v.* JHANO KUAR

[I. L. R., 16 All., 209

14. ———— **Position of occupiers in village granted to inamdar**—*Suti tenure.*—An inamdar to whom a village has been granted by Government, though bound to respect all existing tenant-rights, is under no obligation to grant unoccupied lands in "suti" or other permanent tenure, or to re-grant on the same tenure lapsed suti lands; nor does the mere taking up of lands in such a village constitute the occupiers suti tenants. NASARVANJI HORMASJI *v.* NARAYAN TRIMBAK PATIL

[4 Bom., A. C., 125

15. ———— **Relationship depending on validity of adoption**—*Status pending appeal to Privy Council.*—In a suit for rent the plaintiff sued as the adopted son of the deceased landlord, and the defendant (who was the adopted son of the deceased tenant and in possession) denied the relationship of landlord and tenant between them. It appeared that the defendant disputed the validity of the plaintiff's adoption and had brought a suit to set it aside in which he had failed, but had appealed to the Privy Council; that the plaintiff had not received rent for many years, and had brought a suit to eject the defendant and recover mesne profits which was dismissed, it being found that the defendant was entitled to retain possession. *Held* that, so long as the decision that the plaintiff was the adopted son of the deceased landlord held good, the relationship of landlord and tenant existed between the parties, and the plaintiff was therefore entitled to recover rent from the defendant. HURONATH ROY CHOWDHRY *v.* GOLUCKNATH CHOWDHRY . . 19 W. R., 18

16. ———— **Assignment by tenant of goodwill, stock-in-trade, fixtures, furniture, and chattels**—*Notice by landlord to lessee and to assignee to deliver up possession on expiration of lease or to pay rent—Holding over—Use and occupation—Liability of assignee for compensation for use and occupation.*—*L* assigned to *D* the stock-in-trade, goodwill, fixtures, chattels, and premises in connection with a certain business carried on by him at the said premises which he held on lease from the plaintiff. The deed of assignment contained (*inter alid*) a provision empowering the assignee, in the event of any breach by *L* of the covenants contained in the said deed, to let the premises for any term or terms of years for such rent and under such covenants and conditions as *D* might think fit; and there was a further provision that *L* should not remove any of the stock-in-trade, chattels, etc., without the permission of *D*. Shortly before the expiration of the lease, the plaintiff served a notice on *L* to deliver up possession of the premises on the expiry of the lease or to pay an enhanced rent therefor, and a notice on *D* requiring *D* to deliver up possession and stating that in default he would hold *D* jointly liable with *L* for the enhanced rent. *D* had durwans and a clerk on the premises to see that nothing was removed therefrom without his permission. *L* and *D* continued to keep the stock-in-trade on the premises after the determination of the lease, and the business was carried on as before. The plaintiff subsequently brought an action against *D* and *L* for compensation for use and occupation of the premises for four months. *Held* (reversing the decision of AMEER ALI, *J.*) that the lease did not pass under the terms of the assignment to *D*, and that *D* was not liable to the plaintiff for compensation for the use and occupation of the premises. MADHUBMONEY DASSEE *v.* NUNDO LALL GUPTA

[I. L. R., 26 Calc., 338

(*b*) ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT.

17. ———— **Right to recover rent, Establishment of**—*Assessment—Agreement to pay rent.*—To establish a right to recover rent, a zamindar must show that either by assessment in due course of law or by agreement the tenant is liable to pay it. GAYASOODEEN *v.* KHUDA BUKSH

[1 N. W., 87: Ed. 1873, 139

KRISHNA GHOSE *v.* RAM NARAIN MOHAPATTUR

[25 W. R., 214

18. ———— **Right to recover rent**—*Sharer in undivided talukh—Agreement to pay rent.*—A sharer of an undivided talukh may be entitled to recover his share of the rent due from the talukh generally, but it does not follow that he is entitled to recover from the jotedar of a particular jote in the talukh unless there is an agreement to that effect. SHAMA SOONDUREE DEBIA *v.* KRISTO CHUNDER ROY

[13 W. R., 316

19. ———— *Purchase of land—Contract, express or implied, for payment of rent.*—*Held* that the plaintiff, not having been put into the possession of land purchased by him, and holding on contract, express or implied, from the holder of the land for payment of rent, was not competent to sue the defendant (occupant of the land) for rent thereof. RAM DASS SINGH *v.* RAM NARAIN

[2 Agra, Rev., 9

20. ———— **Liability to pay rent**—*Occupation after deprivation under decree.*—A party stripped by a decree or order of proprietary interest in land does not by mere subsequent occupation of it become vested with the character of a tenant, and therefore he is not liable to distraint for rent. He must have become a tenant by agreement or act of law to render him liable for rent. MUKURDHOOJ SINGH *v.* RAM CHURN

[1 N. W., 14: Ed. 1873, 12

21. ———— Implied contract to pay rent.—Under certain circumstances, a contract to pay rent to the zamindar on the part of the tenant will be implied, but no implication of a contract to pay rent to the zamindar on the part of the tenant can arise in a case in which the defendant has been paying rent to another zamindar than the one suing for a kabuliat. DIGAMBUR MITTER *v.* HUROPERSHAD ROY CHOWDHRY . **7 W. R., 126**

22. ———— Transferee of landlord—*Attornment, Necessity of.*—In a suit for rent where the defendant held under a lease from a party who subsequently gave a lease to plaintiff which gave him the right to collect rents from the defendant in accordance with the terms of the former (the defendant's) lease,—*Held* that no attornment was necessary, and that the relationship of landlord and tenant existed between the parties so that the suit could be instituted in a Revenue Court under the Rent Act. SREE CHAND *v.* BUDHOO SINGH

[13 W. R., 301

23. ———— Ex-proprietary tenant—*Suit for arrears of rent—Determination of rent—Act XII of 1881 (N.-W. P. Rent Act), ss. 14, 95 cl. (l)—Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 190.*—Except where there has been an arrangement or agreement between the parties, a landholder cannot sue his ex-proprietary tenant for rent until, as a condition precedent, he or the tenant has obtained a determination of the amount thereof, either by application to the Settlement officer under s. 14 or to the Revenue Court under cl. (*l*), s. 95 of the Rent Act, or it has been fixed by the Collector or Assistant Collector according to s. 190 of Act XIX of 1873. PHULAHRA *v.* JEOLAL SINGH . . . . **I. L. R., 6 All., 52**

24. ———— Suit for arrears of rent prior to order—*N.-W. P. Rent Act (XII of 1881), s. 95—N.-W. P. Land Revenue Act (XIX of 1873), ss. 72 and 77—Determination of rent by Settlement officer.*—In March 1884, the rent payable by an occupancy-tenant was fixed by the Settlement officer under s. 72 of Act XIX of 1873 (N.-W. P. Land Revenue Act). In 1885 the landholder brought a suit to recover from the tenant arrears of rent at the rate so fixed for a period antecedent to the Settlement officer's order, as well as for the period subsequent thereto. The lower Appellate Court dismissed the claim for rent prior to the 1st July 1884, and decreed such as was due subsequently to that date, but without interest. *Held* that the Court could not decree any amount as arrears due until the rent payable had been fixed by private contract or by a competent Court; that, under s. 77 of the N.-W. P. Land Revenue Act, the rent fixed by the Settlement officer was payable from the 1st July following the date of his order, but not before; that for the period prior to the 1st July 1884 no rent had been fixed; that it could not be fixed in the present suit, neither the Court of first instance nor the High Court having jurisdiction to fix it; and that the claim for rent for the period in question must therefore be dismissed. *Mahadeo Prasad* v. *Mathura, I. L. R., 8 All. 189,* distinguished. *Phulahra* v. *Jeolal Singh, I. L. R., 6 All., 52,* referred to. RADHA PRASAD SINGH *v.* JUGAL DAS

[I. L. R., 9 All., 185

25. ———— Extinguishment of proprietary right by partition—*Contract for payment of rent.*—Where a partition was made and the proprietary right of one of the co-sharers in a portion which fell to another was consequently extinguished and he became a mere tenant,—*Held* that, though the rent was exigible, the claim for arrears of rent could not be decreed in the absence of express or implied contract for the same. ZALIM RAI *v.* DOORGA RAI

[1 Agra, Rev., 69

26. ———— Claim to rent—*Arrears of rent—Failure to prove liability to pay rent.*—A claim for arrears of rent cannot be sustained where the claimant fails to prove that rent has ever been paid. SHEO SAHAI *v.* ATA HOSSEIN

[2 Agra, Rev., 10

See GUMANI KAZI *v.* HURRYHUR MOOKERJEE

[B. L. R., Sup. Vol., 15

Or proves a contract to pay rent. LUCHMEEPUT DOSS *v.* ENAET ALI . . . **22 W. R., 346**

27. ———— *Assessment and determination of rate of rent—Rent-free lands.*—A suit for arrears of rent cannot be maintained in respect to rent-free land until the land has been assessed and the rate of rent determined. NOOR ALI *v.* IMTEAZOODEEN KHAN . **3 Agra, Rev., 2**

28. ———— *Suit for arrears of rent—Non-payment of rent for long period—Allegation of rent-free tenure.*—A landlord cannot maintain a suit for arrears of rent where a claim to hold the land rent-free by some title of exemption is set up, and the question for enquiry in such a suit is not whether the land is or is not subject to assessment, but whether, referring to the circumstances under which rent has been withheld, the land can be regarded as rent-paying land. The mere fact of the land being entered in the settlement papers as assessed, or that the annual papers contain entries, is not sufficient to justify a decree for arrears of rent. CHOONEELAL *v.* CHITOWLA . . . . **2 Agra, 137**

29. ———— *Decree for kabuliat—Suit for arrears of rent previous to kabuliat.*—Where a party, after obtaining a decree establishing his title to land, sues for and gets a decree for a kabuliat against another who was holding the land adversely to him without any contract, express or implied, for the payment of rent, he cannot maintain a suit for arrears of rent for a period previous to the kabuliat, which cannot have retrospective effect. JAN ALI *v.* GOOROO DAS ROY

[8 W. R., 338

30. ———— *Mortgagor after redemption and grantee of mortgagee.*—No such relation as that of landlord and tenant exists between a mortgagor (after redemption) and the grantee of the mortgagee, and such mortgagor must establish his right to collect rent before he can sue to have the amount thereof ascertained. ADJOODHYA SINGH *v.* GIRDHAREE . . . . **2 N. W., 197**

31. ——— *Purchaser of rent-paying tenure—Privity with zamindar.*—There is sufficient privity of estate between the purchaser of a rent-paying holding and the zamindar to entitle the latter to claim rent. KOLOO MISR *v.* BHYRO KULWAR . . . . **2 N. W., 258**

32. ——— *Liability of heir of deceased lessee for rent—Mokurrari lease—Kabuliat.*—The heir of a lessee is liable to the lessor for rent payable by virtue of a kabuliat, notwithstanding he is not in possession of the land. TARINEEPERSAD GHOSE *v.* SREEGOPAL PAUL CHOWDHRY **[Marsh., 476 : 2 Hay, 593**

33. ——— *Registered owner, Suit by, where the relationship of landlord and tenant is not shown to exist—Beng. Act VII of 1876, s. 78.*—The mere fact of a person being registered under the provisions of Bengal Act VII of 1876 as proprietor of the land in respect of which he seeks to recover rent is not sufficient to entitle him to sue for it. Where a landlord who was registered as owner of the land in respect of which he claimed rent sued the occupier for such rent, but was only able to prove the fact that he was the registered owner and was unable to show that the relationship of landlord and tenant existed, or that he had a good title to the estate of which he was the registered owner,—*Held* that the suit was rightly dismissed. RAMKRISTO DASS *v.* HARAIN **[I. L. R., 9 Calc., 517 : 12 C. L. R., 141**

34. ——— *Presumption of relationship of landlord and tenant.*—Where a defendant in a suit for enhancement of rent admits that he has paid for many years and is still paying a sum of money to the holders of the patni in plaintiff's possession, without being able to show it was paid as anything but rent, there is sufficient to raise the presumption that the parties stand to each other in the relation of landlord and tenant. BEHAREE LALL MOOKERJEE *v.* MODHOO SOODUN CHOWDHRY **[8 W. R., 474**

35. ——— *Beng. Regs. V of 1799, s. 5, and V of 1827, s. 3—Sub-tenure taken charge of by Collector.*—Under the provisions of Regulation V of 1799, s. 3, and Regulation V of 1827, s. 3, the Collector took charge of a sub-tenure as administrator of a deceased person to whom the sub-tenure belonged. *Held* the Collector was in no sense the tenant of the superior landlord, and consequently no suit would lie against him under Act X of 1859 for rent alleged to be due in respect of the sub-tenure. COLLECTOR OF BOGRAH *v.* DWARKANATH BISWAS **[4 B. L. R., Ap., 80 : 13 W. R., 194**

36. ——— *Occupation by trespasser.*—Occupation by a trespasser does not create a claim to rent, though it may give grounds for an action for damages. BICHOOK PANDEY *v.* NARAIN DUTT . **1 N. W., 26 : Ed. 1873, 24**

37. ——— *Right of persons in possession under decree against person with subsequent decree for possession.—Attornment, Absence of.*—Where *A* and *B* were in possession of lands by virtue of a decree of Court, their tenants could not be called upon to pay rent to *C*, to whom they had not attorned, but who subsequently obtained a decree for the lands in suit, so long as no decree of Court had declared the title of *C* to be superior to that of *A* and *B*. *C*'s remedy in such case is an action against the persons who were wrongfully in possession for mesne profits, and not in a suit for rent against their tenants, who had in good faith dealt with the persons who were the ostensible proprietors in possession under a decree. Lands may be cultivated by a mere trespasser, and in that case the cultivator would not be liable to a suit for rent, but to a suit for mesne profits. Owners of land may take advances for the cultivation of indigo, and the persons by whom the advances were given may find it necessary to enter on the land and look after the cultivation and harvesting of the crop, but if they did so, they could not be sued as tenants for rent. To render a person liable to pay as a tenant, it must be proved that he has by an express or implied agreement promised to pay rent, or that he has been assessed with rent in due course of law. MUNOHUR DOSS *v.* DEEN DYAL . . . . **3 N. W., 179**

38. ——— *Liability for rent from use and occupation without registration.*—Parties in possession make themselves tenants by use and occupation, and may be sued for rent, even though not registered by the zamindar. LALUN MONEE *v.* SONA MONEE DABEE . . **22 W. R., 334**

39. ——— *Suit for rent—Tenant settled on the land by a trespasser, Position of—Bengal Tenancy Act, s. 157.*—A suit was brought by the plaintiffs against a tenant for the entire rent, making the co-sharer landlords also defendants to the suit. The defence of the tenant, defendant No. 1, was denial of relationship of landlord and tenant, and payment to the co-sharer landlords. The co-sharer landlords *inter alia* pleaded that, as the tenant-defendant was settled on the land by them at a time when they were claiming to be entitled exclusively to the possession thereof, under a title derived from their auction purchase, they must be taken to have been trespassers on the land so far as the plaintiff's share was concerned, and that consequently defendant No. 1, who was settled on the land by them, must also be treated as a trespasser as against the plaintiffs. *Held* that the defendant No. 1 could not be treated as a trespasser as against the plaintiffs, and that the plaintiffs were entitled to claim rent for use and occupation from the defendant No. 1. *Nityanund Ghose* v. *Kissen Kishore, W. R. (1864), Act X, 82; Lalun Monee* v. *Sonamonee Dabee, 22 W. R., 334; Lukhee Kanto Doss Chowdhry* v. *Sumeeruddin Lusker, 13 B. L. R., 243 : 21 W. R., 208; Surnomoyee* v. *Dino Nath Gir, I. L. R., 9 Calc., 908; Binad Lal Pakrasi* v.

Kalu Pramanik, I. L. R., 20 Calc., 708, referred to. AZIM SIRDAR *v.* RAMLALL SHAHA
[I. L. R., 25 Calc., 324

40. ———— *Person in possession of land served with notice to quit or pay rent and remaining.*—When a person is in possession of land without paying rent, and is served by the landlord, under whom he previously held, with notice that he must either quit or pay a reasonable rent, and chooses to remain in possession, he must be taken to have assented to become a tenant and is liable to pay rent. SREEGOPAUL MULLICK *v.* DWARKA NATH SEIN . . . . . . **15 W. R., 520**

But *see* BURODA KANT ROY *v.* RADHA CHURN ROY . . . . . . **13 W. R., 163**

41. ———— **Receipt of rent**—*Ratification of lease.*—If a person being aware that another is in possession claiming to hold under a lease accepts rent from him, he thereby ratifies the lease so far as he has the power to do so; and if he wishes to protect himself from the ordinary inference that he recognizes the lease, he is bound to give distinct notice to the tenant that he intends to dispute its validity, so as to leave the tenant an opportunity of refusing payment. JUGGESHUR BUTTOBYAL *v.* ROODRO NARAIN ROY . . . . . **12 W. R., 299**

See NUBO KISHEN MOOKERJEE *v.* KALA CHAND MOOKERJEE . . . . **15 W. R., 438**

RAM GOBIND ROY *v.* DUSHOOBHOOJA DEBEE
[18 W. R., 195

42. ———— *Transferee of intermediate tenure.*—Where rent is recovered without objection by successive landlords from the transferee of an intermediate tenure from the date of transfer, such receipt acts as a full and complete acknowledgment by the proprietor that he accepts the new tenant in the place of the old one. ALLENDER *v.* DWARKANATH ROY . . . . **15 W. R., 320**

43. ———— *Lease granted by trespasser—Ratification—Acceptance of rent—Transfer of Property Act (IV of 1882), s. 107.*—Defendants held under a thika lease granted to them by *P*. In a suit which was subsequently brought against *P* by the vendor of the plaintiff, it was held that *P* had no title. The plaintiff's vendor had accepted rent from the defendants and showed by his conduct that he intended to consider himself bound by the terms of the lease and no new lease granted. *Held* that the lease was not binding on the plaintiff, and the question of ratification did not arise, inasmuch as neither the plaintiff nor his vendor was in any way privy to the lease which was given by *P*, his adversary who was keeping him out of possession. *Held* also that by acceptance of the terms of the old lease the relationship of landlord and tenant could not be created having regard to the provisions of s. 107, Transfer of Property Act. LALA SHEO CHARAN LAL *v.* LALA PARBHOW DAYAL
[1 C. W. N., 142

44. ———— *Bengal Tenancy Act (VIII of 1885), s. 157—Dismissal of former suit for rent.*—Plaintiff brought this suit to obtain a declaration that he had a right to the land in suit, and that the defendant No. 1 was a kursa raiyat under him, and to recover khas possession upon ejectment of the defendant No. 1; plaintiff had previously brought a suit for rent against the defendant No. 1, who in that suit denied the existence of the relationship of landlord and tenant between him and the plaintiff, and alleged that a third party, who was made a defendant in this suit, was his real landlord; the rent-suit having been dismissed, plaintiff brought the present suit, and in the course of the suit plaintiff withdrew the claim for ejectment and sought for a declaration of his title to the land and for recovery of rent from defendant No. 1. *Held* by PRINSEP, O'KINEALY, and BANERJEE, *JJ.*—That s. 157 of the Bengal Tenancy Act was applicable to the present case, and that a right to claim rent may arise under that section upon the establishment of the plaintiff's right to the land in dispute notwithstanding that his previous suit for rent was dismissed. DWARKA NATH ROY *v.* RAM CHAND AICH **3 C. W. N., 266**
[I. L. R., 26 Calc., 428

45. ———— *Creating new tenancy.*—The receipt of rent for 1268 by the landlord bars his right to eject the tenant for non-payment of rent due up to the end of 1267, the receipt for rent being an affirming of tenancy for that period. The receipt of rent for 1268 has the same effect as if the landlord had at the commencement of 1268 created a new tenancy. PEERBUX *v.* MOWZAH ALLY . **W. R., F. B., 10 : 1 Ind. Jur., O. S., 7**
[Marsh., 25 : 1 Hay, 89

46. ———— *Suing for arrears of rent.*—A landlord, by taking rent from a party, and by suing him for arrears of his predecessor's rent, acknowledges him as a tenant, and cannot eject him, or enhance the rent, except according to law. MAHOMED AZMUR *v.* CHUNDEE LALL PANDEY
[7 W. R., 250

47. ———— *Acknowledgment of nature of tenancy—Receipt of rent as from particular tenure.*—Where the nature of a tenant's tenancy and the right of his lessor to create it are in question, the genuineness of a pottah does not settle the question: and even where an owner has been receiving rents under a pottah granted by a predecessor in title, no such receipt can make the lease valid and binding against him as to the nature of the tenancy if it were not originally so, unless the receipts were signed by him acknowledging the nature of the tenant's tenancy. BHOLANATH MITTER *v.* KALOO
[25 W. R., 222

48. ———— *Permitting occupation of land and taking rent—Right to resume land so taken.*—By permitting a patnidar to take a quantity of land in addition to what is already held by him in patni, and by receiving rents from him for such additional land for a series of years, a proprietor cannot, in the absence of any kabuliat from the patnidar or verbal agreement giving him the extra land in perpetual lease, be held to be debarred from resuming possession. KISHORE BULLUBH MITTER *v.* BISTOO CHUNDER GHOSE [**12 W. R., 188**

49. ——— *Acquiescence in party holding after death of tenant having right of occupancy.*—The defendant had been associated in the occupation and cultivation of certain land with *I*, a tenant with a right of occupancy, and after *I's* death continued the occupation and paid rent to the plaintiffs for nine years. *Held* that this acquiescence in his occupation must be regarded as a recognition by the plaintiffs of his having been associated with *I*, and in a suit to eject him held the plaintiffs were not entitled to succeed. CHATOOR SINGH *v.* HEERA KOOER . . . . . . **5 W. R., 191**

50. ——— *Acceptance of rent from agent.*—Acceptance of rent from a person acting as the agent of another is not a recognition of the agent as a tenant. BANEE LALL *v.* RAM BHUROSE CHOWBEY . **1 N. W., Ed. 1873, 63**

51. ——— *Ratification of —Grant prior to Beng. Reg. V of 1812.*—The acceptance of rent for forty years ratifies the original grant of a mokurari pottah granted prior to Regulation V of 1812. UMRITHNATH CHOWDHRY *v.* KOONJ BEHARY SINGH . **W. R., F. B., 34**

52. ——— *Effect of acceptance of rent from tenant holding over—Renewal of tenancy.*—By indenture, dated 1st February 1856, *A* leased certain premises to *B* in Calcutta for a term of ten years from 1st November 1855 at a rent of R100 per month, payable monthly. *A* covenanted with *B* to grant her on request, to be made within three months of the expiry of the term, a fresh lease on the same terms for three years. The defendant in August 1858 became the assignee of the lease without notice to *A*, and continued to occupy the premises and paid the rent in the name of *B* up to August 1866. No renewal of the lease (which expired on 31st October 1865) was ever demanded by *B* or by any one claiming through her. The plaintiffs became *A's* representatives in June 1866, and gave notice to quit in September 1866, from the 1st November 1866. *Held* that the acceptance of rent by *A* and his representatives from the defendant holding over after the expiration of the original term did not constitute a renewal of the lease for three years. BROJONAUTH MULLICK *v.* WESKINS [**2 Ind. Jur., N. S., 163**

53. ——— *Assent by zamindar to transfer of tenure.*—By accepting rent the zamindar assents to the transfer of a tenure, whether the whole is sold or a part only. BHARUT ROY *v.* GUNGANARAIN MOHAPATTUR . **14 W. R., 211**

54. ——— *Alienation by cultivators—Acceptance of rent from alienee.*—Although in a mouzah cultivators may not possess the right of alienating their holdings, yet if, with a knowledge of such an alienation, the zamindar accepts rent from the alienee, he recognizes the alienee's position, and is as much bound as if he had expressly assented to the alienation. RUMMUN SINGH *v.* ESHREE PERSHAD . . . **2 Agra, 144**

55. ——— *Recognition of an under-tenure by the zamindar—Result of his receiving rent in respect of it—Deposit of rent by tenure-holder under Bengal Tenancy Act (VIII of 1885), s. 61, and acceptance by zamindar.*—A widow in possession of her widow's estate in a zamindari made a grant of a patni tenure under it to a lessee at a rent. In this suit brought by the reversionary heir, on her death, with the object of having the grant set aside as invalid as against him, the patni lease was not proved to have been made with authority or from necessity justifying the alienation by the widow. *Held* that the patni was, on the death of the widow, only voidable, and not of itself void; so that the plaintiff, the next inheritor of the zamindari, might then elect to treat it as valid. The plaintiff had done so. He had accepted rent in respect of the tenure, as that tenure was specified in a petition which accompanied the patnidar's deposit of the rent in a Court under the Bengal Tenancy Act (VIII of 1885), s. 61. This was *primâ facie* an admission that the patni was still subsisting. In the absence of evidence to put a different construction upon the plaintiff's act and to negative its effect, there was a sufficient *primâ facie* case of an election to affirm the validity of the patni. MODHUSUDAN SINGH *v.* ROOKE . **I. L. R., 25 Calc., 1**
[**L. R., 24 I. A., 164**
1 C. W. N., 433

56. ——— *Admission of status of purchaser from raiyats.*—*Held* that a zamindar, by taking the rent of the plaintiff's purchased lands after the rent was deposited by him in the Collector's treasury, virtually admitted the plaintiff's status as purchaser from the former raiyats, and that he had attorned to him as landlord: and that, as this payment was made long before the zamindar sued the former raiyats for enhanced rent under Act X of 1859, the decrees obtained in that suit must have been collusive. GUDADHUR BANERJEE *v.* KHETTERMOHUN SURMAH . . . **7 W. R., 460**

57. ——— *Transfer of tenure—Acceptance of rent from transferee.*—Where a tenure is transferred by a raiyat without sanction of his landlord, and the latter nevertheless receives rent from the transferee, and gives him dakhilas for the year in which he is in possession, the landlord cannot oust him afterwards under a decree for the rent of previous years. ABDOOL KUREEM *v.* MUNSOOR ALI . **12 W. R., 396**

58. ——— *Purchaser at sale in execution of decree—Leases made after decree.*—The purchaser at a sale in execution of a decree obtained by a mortgagee in satisfaction of his mortgage-debt is not bound by leases executed by the mortgagor after decree, unless he has recognized the leases after his purchase by receiving rent

LANDLORD AND TENANT—*continued.*

2. CONSTITUTION OF RELATION—*concluded.*

from the lessees as such. HUNOOMAN DOSS *v.* KOOMEROONISSA BEGUM **[W. R., F. B., 40: 1 Ind. Jur., O. S., 42**

S. C. KOOMEROONISSA BEGUM *v.* HUNOOMAN DOSS . . . **Marsh., 122 : 1 Hay, 266**

59. ——— *Evidence of confirmation of tenure—Giving receipts for rent.*—The giving of receipts for rent, coupled with the fact of payment of rent at the old rate down to the present time, is evidence of confirmation of the tenure by the auction-purchaser and his successor. TARA CHAND DUTT *v.* WAKENOONISSA BIBEE **[7 W. R., 91**

60. ——— *Lease by naib of zamindar—Transfer of tenure.*—When a zamindar dispossessed the purchaser of a jungleboory tenure, the title of whose vendor was acquired from the zamindar's naib, who had no power to grant such a pottah,—*Held* that the receipt of rent by the zamindar from the plaintiff and his vendor did not amount to a ratification of the plaintiff's right to hold under the pottah transferred to him by the vendor. A zamindar is not bound to recognize tenures not created by himself or by any authorized agent on his part. BISSUMBHUR POORKAET *v.* BHUGGOBUTTY CHURN POORKAET . . **W. R., 1864, 292**

3. OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION.

61. ——— **Presumption of ability to give possession**—When a zamindar gives a lease, the presumption is that he is in a position to give possession of the property leased. DONZELLE *v.* TEK NARAIN SINGH . . . **2 W. R., Act X, 103**

62. ——— **Implied contract for possession**—*Peaceable possession.*—In every agreement to lease land there is an implied contract that the lessor will give peaceable possession of the land leased to the lessee. MUNEE DUTT SINGH *v.* CAMPBELL . . . . . . **11 W. R., 278**

Affirmed on review . . . . **12 W. R., 149**

63. ——— **Lessee without possession**—*Right to rent—Condition precedent.*—A landlord cannot claim rent under a kabuliat where the lessee has never obtained possession, delivery of possession being ordinarily a condition necessary for the maintenance of an action for rent. HURISH CHUNDER KOONDOO *v.* MOHINEE MOHUN MITTER **[9 W. R., 582**

ASHRUFOONISSA BEGUM *v.* TOSUDDUCK HOSSEIN **[22 W. R., 260**

64. ——— **Right of tenant to be continued in quiet possession**—*Right to rent.*—The right of a landlord to receive rent from a farmer depends upon his securing to the latter quiet possession, and giving him proper and lawful means of realizing rents from the tenants. KRISTO SOONDUR SANDYAL *v.* CHUNDER NATH ROY **[15 W. R., 230**

LANDLORD AND TENANT—*continued.*

3. OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION—*continued.*

65. ——— **Possession not obtained by lessee**—*Right to rent.*—A suit for rent will not lie where the lessee has never obtained possession of the land leased to him. BULLEN *v.* LALIT JHA **[3 B. L. R., Ap., 119**

66. ——— **Lessee kept out of possession**—*Right to rent—Dispossession by or through landlord.*—A suit for rent will not lie unless the relation of landlord and tenant be established, and a tenant cannot be made liable for rent if it be established that he has been kept out of the possession of the tenure by the landlord. ABDOOL GUNNEE *v.* KHERODE CHUNDER ROY . **2 Hay, 409**

ABDOOL GUNNEE *v.* POORNO CHUNDER ROY **[2 Hay, 524**

67. ——— **Dispossession of tenant**—*Obligation of landlord to indemnify tenant.*—In the absence of any express agreement to the contrary, a landlord is under the implied obligation to indemnify his tenant against ouster or disturbance of possession by his own act, or by the acts of those who claim under him, or have a right paramount to his, but not against the wrongful acts of third parties. RASSAM *v.* DONZELLE . **23 W. R., 121**

68. ——— **Implied covenant for quiet enjoyment**—*Interruption of tenant's enjoyment by order of plague officials—Suit for rent.*—A lessor sued to recover from his lessee rent for fifteen months from 1st August 1897 to 31st October 1898, under an agreement for lease for ten years dated 1st September 1890, *i.e.*, prior to the application of the Transfer of Property Act (IV of 1882) to Bombay. The defendant contended that in the agreement there was an implied covenant for quiet enjoyment, and that, as he had been compelled by the plague authorities to vacate the premises from 5th February 1898 to 1st April 1898, there had been a breach of the covenant. He claimed therefore to deduct the rent for that period or to be allowed it as a counterclaim as damages for disturbance. *Held* (giving judgment for plaintiff) that, even assuming that in the agreement for the lease a covenant for quiet enjoyment was to be implied, such a covenant could only be one for quiet enjoyment by the defendant so long as it was lawful for him to enjoy the property. No guarantee against the acts of Legislature could be read into the implied covenant for quiet enjoyment. MERWANJI MANCHERJI CAMA *v.* ALI KHAN . . . **I. L. R., 23 Bom., 510**

69. ——— **Failure to give possession**—*Agreement to give lease—Procedure by tenant.*—When consideration-money has been paid for a patni lease with a view to khas possession, and such possession is not obtained, the proper course is to repudiate the lease and bring an action immediately. MOKOOND CHUNDER ROY *v.* PRANKISSEN PAUL CHOWDHRY . . . **W. R., 1864, 287**

70. ——— **Lease given without authority and afterwards set aside**—*Liability*

LANDLORD AND TENANT—*continued.*

3. OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION —*concluded.*

for rent after dispossession.—Where a lease was granted by a Deputy Collector without authority, and his act set aside by the Collector, the tenant, who was turned out of possession without any beneficial occupation for the short period of his lease, was held not to be liable for rent. KALEE DOSS BANERJEE *v.* NUBEEN CHUNDER CHATTERJEE [24 W. R., 91

71. ———— Dispossession by stranger —*Liability for rent.*—A tenant dispossessed by any person not claiming under the landlord is still liable for the rent; his remedy is against the wrong-doer for damages. GALE *v.* CHEDI JHA . 2 Hay, 591

72. ———— Failure of lessor to protect possession of lessee—*Liability for rent—Dispossession.*—If a lessor fails by remissness to do that which he alone can do to protect his lessee in possession, even independently of any protective provision in the lease, he cannot claim rent from the lessee in respect of the portion of the property from which the latter has been evicted. WAJED ALI *v.* CHUNDRABUTTY KOOERER . . . . 22 W. R., 542

73. ———— Disturbance by landlord of peaceable possession—*Suspension and apportionment of rent.*—Where the act of a landlord is not a mere trespass, but something of a graver character, interfering substantially with the enjoyment, by the tenant, of the demised property, the tenant is entitled to a suspension of rent during such interference, even though there may not be actual eviction. If such interference be committed in respect of even of a portion of the property, there should be no apportionment of rent where the whole rent is equally chargeable upon every part of the land demised. But if the interference is in respect of only a certain portion of the demised property, the rent for which is separately assessed, there should be apportionment. DHUNPUT SINGH *v.* MAHOMED KAZIM ISPAHAIN [I. L. R., 24 Calc., 296

74. ———— Failure to keep tenant in entire possession—*Surrender by tenant on being partly dispossessed—Liability for rent.*—Where a plaintiff brought a suit to recover the rents of some lands which he had leased out to defendant, but defendant pleaded that he had relinquished the lands because, in a suit brought against him by a third party, who claimed a portion of the lands, a decree had given the said party possession of the portion claimed by him; and the question arose whether defendant was justified in relinquishing the lands, seeing that this decree had been reversed on appeal, and that defendant, if he had waited, would have been put in possession of all the land covered by his lease, —*Held* that defendant was right in submitting to the decree of a Court of competent jurisdiction; that he could not be expected to content himself with the residue of the land left untouched by the decree, or to wait for a decree which might restore the portion taken away from him; and that, having given up his lease to the plaintiff, he was not liable for any rents. LABI KONWAR *v.* CARTER . . 25 W. R., 492

LANDLORD AND TENANT—*continued.*

4. OBLIGATION OF TENANT TO KEEP HOLDING DISTINCT.

75. ———— Confusion of boundaries - *Person holding land on lease and land of his own.*—A tenant is bound to keep distinct from his own land during the tenancy, and to leave clearly distinct at the end of it, the land of his landlord. Where, owing to the negligence of the tenant, the land demised becomes confounded with his own, the tenant, unless he can ascertain the former, is bound to deliver to the landlord a portion of the lands of which the boundaries have been confounded equal in value to the land demised. DUGAPPA CHETTI *v.* VIDHIA PURNA TIRTHASAMI . . . I. L. R., 6 Mad., 263

DOORGA KANT MOZOOMDAR *v.* BISHESHUR DUTT CHOWDHRY . . W. R., 1864, Act X, 44

76. ———— *Interference of Civil Court to fix them.*—In equity, if through the default of a tenant or a copy-holder, who is under an implied obligation to preserve the boundaries of separate estates which he holds, there arises a confusion of boundaries, the Court will interfere as against such tenant or copy-holder to ascertain and fix them. In a case in which the boundaries of three talukhs had been found to be unascertainable, it was decreed that they should be defined and fixed in such a manner that the produce of the total land in each talukh should bear the same proportion to the jama payable by such talukh as the produce of the whole of the said lands bore to the total of the jamas payable on account of the three talukhs. KHEMAMOYEE *alias* KHEMESSUREE DEBIA *v.* SHOSHEE BHOOSUN GANGOOLY . . . . . 9 W. R., 95

77. ———— Obliteration of boundary-marks by cultivation—*Effect of, on claim to rent.*—A claim to rent for certain land must not be dismissed merely because the defendant, by planting indigo, has obliterated the boundary-mark of that land. It must be ascertained who, by previous enjoyment, is entitled to receive the rents of the land, if the plaintiff is not so entitled. BROJONATH ROY *v.* GILMORE . . . . 2 W. R., Act X, 48

78. ———— Tenant allowing encroachment on tenure—*Obligation of lessee to avoid dispossession or encroachment on lessor's property.* —It is a general principle of law that it is incumbent upon every lessee to protect his lessor's property from encroachment or unlawful eviction, and that, if he fails to do so, he exposes himself to an action for damages by his landlord. PROSUNNO MOYI DASI *v.* KALI DAS ROY . . . . 9 C. L. R., 347

5. LIABILITY FOR RENT.

79. ———— Proof of liability—*Production and proof of kabuliat.*—The production of a kabuliat and proof of its execution by the tenant is sufficient to charge him with rent without the production of the pottah. MAHOMED HYDER HOOSEIN *v.* JEEAWUN . . . 1 N. W., Ed. 1873, 43

80. ———— Non-completion of contract —*Mad. Regs. XXX of 1802, s. 6, and V of 1822,* *s. 9.*—Where no pottahs and muchalkas have been exchanged between the parties, occupants of lands cannot, in accordance with Regulation XXX of 1802, s. 6, and Regulation V of 1822, s. 9, be sued for its proceeds, even though they have admitted the plaintiffs to be the proprietors. TANUVIYAN *v.* VALANAGANDA . . . . **1 Mad., 3**

81. ——— **Interruption of tenancy**—*Interruption of occupation by landlord.*—No subsequent interruption by *A* in *B*'s occupation and enjoyment of land would be an answer to *A*'s claim for rent which had previously accrued. *B*'s eviction by *A* will not relieve him from liability for rent which accrued due prior to the eviction. MADHUB CHUNDER MOZOOMDAR *v.* SIDHEE NUZEER ALI KHAN . . . . . . **8 W. R., 54**

82. ——— *Dispossession of tenant in middle of year—Right to rent accrued due on interruption of occupation.*—A landlord, by dispossessing his tenant in the middle of the year, does not, in all cases, forfeit his right to rents which have already accrued due. Whether he does or not must depend on circumstances, *e.g.*, upon the question whether the raiyat has enjoyed all the year's profits, or has been prevented from enjoying any by the landlord's act of interference. BUNSEE DHUR GHOSE *v.* BHEEM LALL SAHOO . **24 W. R., 219**

83. ——— *Dispossession, and recovery of mesne profits for.*—In a suit for rent in which defendant pleaded that during the period for which rent was claimed the tenants had been out of possession of the land, having been ousted by a third party to whom the zamindars (plaintiffs) had given a lease of the land,—*Held* that the zamindars were precluded from suing defendants for rent on account of such period, even though the latter had recovered a decree with wasilat for the period of dispossession. KADUMBINEE DOSSIA *v.* KASHEENAUTH BISWAS . . . . . . **13 W. R., 338**

84. ——— *Wrongful act of superior tenure-holders—Ouster.*—In a suit by a landlord to recover arrears of rent from tenants who had been forcibly compelled by the superior holders of a tenure over the plaintiff to execute a kabuliat to themselves and to pay rent accordingly,—*Held* that such wrongful act of the intervenor defendants (the superior holders) was not in law sufficient to constitute an ouster of the plaintiff, but gave the tenant defendants a cause of action against them for damages. CHUNDER NATH BHUTTACHARJEE *v.* JUGGUT CHUNDER BHUTTACHARJEE . **22 W. R., 337**

85. ——— *Rent after loss of possession—Ejectment by zamindar.*—A zur-i-peshgidar cannot compel his lessees to pay rent when both he and they are evicted by the zamindar. BISHEN DYAL SINGH *v.* PROBHOO DASS **1 W. R., 1**

86. ——— **Assignment of right to recover rent**—*Subsequent suit for arrears of rent.*—A tenant was authorized by his landlord to pay a certain portion of his rent to *T*, a creditor of the landlord. *T* afterwards obtained a decree against the tenant for the amount of rent he was required by his landlord to pay to him. The landlord brought a suit for the entire amount of the arrears. *Held* that he was entitled to recover only the surplus beyond the amount for which *T* had obtained a decree, notwithstanding such decree was unsatisfied. LALLAH GOUR NARAIN *v.* KARRON LALL THAKOOR [**Marsh., 363 : 2 Hay, 447**

87. ——— **Rent paid to some one else with landlord's acquiescence**—*Subsequent suit for such rents.*—A tenant cannot afterwards be held liable for rents which he pays to a third party (co-sharer) with the acquiescence of his landlord, expressed or implied; and where the relation of landlord and tenant ceases with the consent of the landlord, the landlord cannot again claim rent unless he shows how or when the relation revived. MUDDUN MOHUN ROY CHOWDHRY *v.* CHUNDER SEKHUR BHUTTACHARJEE . . . . . **25 W. R., 115**

88. ——— **Rent between date fixed for leaving and actual previous departure.**—Where there were no terms of agreement settled between the parties, but the defendant, after occupying the house for a time, wrote that he would vacate the house on the 1st June,—*Held* that, though he actually left on the 16th May, he was liable for rent up to the 1st June. RUFF *v.* STOKOE [**9 W. R., 213**

89. ——— **Purchaser of house**—*Notice of rate of rent—Liability of tenant at fixed rent.*—Where the right, title, and interest of the owner of a house are purchased at a sale in execution, and the purchaser finds the house in the occupation of a lessee at a fixed rent, his giving the lessee notice that, after a certain date, he intends to charge him at a particular rate does not give him a right to rent at that rate. If not content with the rate fixed in the lease, he can only get such sum as the Court finds to be a fair and reasonable rent for the use and occupation by the defendant; in deciding what rate is fair and equitable, the state of the house when he entered on the occupation and the reasonable and necessary repairs executed by him since his entry can be taken into consideration. FEGREDO *v.* MAHOMED MODDESSUR [**10 W. R., 267**

90. ——— **Auction-purchaser of orchard from zamindar**—*Orchard included in settled area of village.*—An auction-purchaser of the rights and interest of the zamindar in an orchard cannot be treated by the latter as his raiyat, because the area of the orchard is included in the settled area of the village of which he is the proprietor, and a suit by the latter to impose rent on the garden and for delivery of kabuliat is not maintainable. MOOTEE *v.* ROORA . . . . . . **3 Agra, 159**

91. ——— **Purchaser in execution of decree**—*Payment for period subsequent to purchase - Notice.*—An auction-purchaser, with notice of a payment in advance, made by the tenant to the former proprietors of rent due for a period subsequent

to the date of purchase, is bound by such payment. RAM LALL SHAW *v.* JOGGENDRO NARAIN ROY
[18 W. R., 328

92. ———— **Purchaser of a portion of tenure, whether liable for rent before date of purchase**—*Joint liability of purchaser of a fraction of a tenure.*—A purchaser of a tenure is not personally liable for its rent which fell due before the date of purchase, although the tenure may be liable for such rent. *Rash Behary Bandopadhya* v. *Peary Mohun Mookerjee, I. L. R., 4 Calc., 346,* followed. *Chatraput Singh* v. *Girindra Chunder Roy, I. L. R., 6 Calc., 389,* and *Moharanee Dasya* v. *Harendra Lal Roy, 1 C. W. N., 458,* distinguished. The transferree of a part of a tenure is jointly liable with his co-sharer for the whole rent, for although the privity between the parties may be one of estate only, it is in respect of the whole of the tenure, though the transfer was of a part, by reason of the indivisibility of the tenure without the landlord's consent. The fact of the lease being for a limited time does not make any difference. *Shib Das Bandopadhya* v. *Baman Das Mookhopadhya, 8 B. L. R., 237 ; Hare* v. *Cator, Cowp., 766 ; Halford* v. *Hatch, 1 Doug., 182 ;* and *Curtis* v. *Spitty, 1 Bing. N. C., 757,* distinguished. *Kristo Bulluv Ghose* v. *Kristo Lal Singh, I. L. R., 16 Calc., 642 ; Chintamoni Dutt* v. *Rash Behari Mondul, I. L. R., 19 Calc., 17 ;* and *Sourindra Mohun Tagore* v. *Surnomoyi, I. L. R., 26 Calc., 103,* referred to. JOGEMAYA DASSI *v.* GIRINDRA NATH MUKERJEE
[4 C. W. N., 590

93. ———— **Purchaser of specific share**—*Proportionate liability for rent.*—The purchaser of a specific share of a talukh, which with other talukhs was held by the same jotedar, can be held liable only for the rent due upon the share purchased ; and there can be no difficulty in determining the rent payable if each tenure has a separate jama, and each shareholder holds a specific share. KHEMA MOYEE *alias* KHEMESSUREE DEBIA *v.* RADHA PEAREE DEBIA CHOWDHRAIN . . . . 8 W. R., 469

94. ———— **Suit for balance of amount of decree against one tenant only**—*Successful claim by another party after decree.*—Plaintiff, a patnidar, got a decree for rent against *B's* wife, the ostensible dar-patnidar. Shortly afterwards *B's* nephew brought a suit against *B* for an 8 annas share of the dar-patni, which he claimed as joint family property, and obtained a decree. Before this last decree was executed, the dar-patni was sold to satisfy the rent decree, but the proceeds were insufficient. In a suit for the balance remaining due, —*Held* that *B* and his nephew were jointly liable for the amount. PROMOTHO NATH BANERJEE *v.* JOGENDRO NATH ROY . . 12 C. L. R., 15

95. ———— **Assessment of rent**—*Land covered with trees—Act X of 1859, s. 23, cl. 1.*—*Held* that the defendants, whose proprietary title at the time of settlement was recognized in the land then covered with trees, were not liable to assessment by zamindars, under the provisions of cl. 1, s. 23 Act X of 1859, on account of the trees having since disappeared and the land having been brought into cultivation. JADOO RAI *v.* MAHOMED TUQUEE
[1 Agra, Rev., 24

See MOOSEY KHULEREY *v.* MAHOMED TUQUEE
[1 Agra, Rev., 3

96. ———— **Misrepresentation by landlord**—*Cross-suit.*—A plea that the defendant was deceived into taking a lease by the misrepresentation of the plaintiff cannot be pleaded as an answer to an action for rent. Such a defence should be made the subject of a cross-suit. ISHREE PERSHAD RAE *v.* BEHAREE LAL . . . . 2 N. W., 243

97. ———— **Liability of the transferee of a fractional share of patni to pay rent**—*Reg. VIII of 1819, s. 6—Personal liability of patnidar for rent, notwithstanding a stipulation in the patni lease that arrears of rent should be realized by auction sale of the patni—Bengal Tenancy Act (VIII of 1885), s. 65.*—Although the transferee of a fractional share of a patni cannot enforce registration of his name on payment of the necessary fee and tender of the requisite security, yet the transfer is not altogether void, and he is liable for rent severally and jointly with the registered tenant, if the landlord chooses to recognize him as one of the joint holders of the patni, and he is also liable for the entire rent of the patni estate. Notwithstanding a stipulation in the patni lease that on default of any instalment of rent the landlord shall be entitled to realize the same by auction sale of the patni mehal, the patnidar is also personally liable for the rent of the said mehal. *Fotick Chunder Dey Sircar* v. *Foley, I. L. R., 15 Calc., 492,* and *Tarini Prosad Roy* v. *Narayan Kumari Debi, I. L. R., 17 Calc., 301,* referred to. SOURENDRA MOHAN TAGORE *v.* SURNOMOYI . I. L. R., 26 Calc., 103
[3 C. W. N., 33

98. ———— **Failure to pay Government assessment**—*Land Revenue Code (Bom. Act V of 1879), ss. 56, 57, 81, 214 (e) and (i)—Lease—Forfeiture—Payment of the arrears by tenant actually in possession—Forfeiture not followed by sale of occupancy—Lease not destroyed by the forfeiture—Tenant's liability for rent subsequent to the forfeiture.*—A registered occupant of land having failed to pay the arrears of Government revenue, his occupancy was forfeited under s. 56 of the Land Revenue Code (Bombay Act V of 1879), but the forfeiture was not followed by sale of the occupancy, the Collector having allowed the registered occupant's tenant under a lease to be registered as occupant on his paying up all arrears of Government revenue due on the land. Afterwards a question having arisen as to the tenant's liability for rent under the lease subsequent to the forfeiture,—*Held* that the tenant was liable. When a registered occupant's tenancy is forfeited under s. 56 of the Land Revenue Code, and that forfeiture is not followed by sale of the occupancy (the Collector allowing the person actually in possession to be registered as occupant on his paying up all arrears of Government revenue due on the

land), the lease by which the person actually in possession was holding from the former registered occupant is not destroyed by the forfeiture, and the lessee is still under liability to his landlord. GANPARSHIBAI *v.* TIMMAYA. SHIVAPPA *v.* HALEPOIT

[I. L. R., 24 Bom., 34

99. ———— Occupancy-raiyat dying intestate—*Liability of the heirs of a deceased occupancy-raiyat to pay rent—Surrender of holding—Bengal Tenancy Act (VIII of 1885), ss. 5, 26, and 86.*—The heirs of an occupancy-raiyat, dying intestate, are liable to pay rent, whether they occupy the land or not, until they surrender the holding in the manner prescribed by s. 86 of the Bengal Tenancy Act, 1885. PEARY MOHUN MOOKERJEE *v.* KUMARIS CHUNDER SIRKAR

[I. L. R., 19 Calc., 790

100. ———— Occupancy-tenant—*Liability of holder of right of occupancy for arrears of rent which accrued in lifetime of his predecessor.*—An occupancy-tenant in possession who has accepted the occupancy-holding is liable to be sued for arrears of rent, not barred by limitation, which accrued in the lifetime of the person from whom the right of occupancy has devolved on him. LEKHRAJ SINGH *v.* RAI SINGH . **I. L. R., 14 All., 381**

101. ———— Lease to one partner on behalf of himself and his co-partners—*Suit for rent—Making co-partners parties—Use and occupation.*—When one partner *A* takes a lease of premises in his own name, though on behalf of the partnership, and with the assent of his partners *B* and *C*, *B* and *C* are not liable to be sued by the lessor for the rent reserved by the lease. A lease is not a mere contract; it is a conveyance, and effects a transfer of property. The lessee can only be the person named in the lease. If that person becomes a lessee on behalf of some one else—as he may do—the law regards him as a trustee for that other person, and does not consider that other person as the lessee, since there is no demise or conveyance to him. The covenant to pay rent may be made on behalf of another person, but, as far as the lessor is concerned, it must be deemed to be only on behalf of the person to whom the demise is made. Neither are *B* and *C* liable to be sued by the lessor as for use and occupation of the premises occupied by them. Having demised the property to *A*, the lessor had no power to suffer or permit any one to occupy the premises during the continuance of the lease, and therefore the foundation of a claim for use and occupation was necessarily wanting. RAGOONATHDAS GOPALDAS *v.* MORARJI JUTHA . **I. L. R., 16 Bom., 568**

102. ———— Lease—Assignment by Official Liquidator of lease held by a company in liquidation—*Assignment not in writing registered—Transfer of Property Act, s. 2 (d).*—In the course of the winding up of a company, the Official Liquidator, with the sanction of the Cour sold the remainder of a lease for a long term of years, reserving a rent, which was held by the company. No written assignment was ever executed, but the Official Liquidator handed over the lease to the purchaser, who entered into possession. In a suit by the lessors against the purchaser for rent,—*Held* that whether the assignment was invalid because not in writing and registered, or whether it fell within s. 2 (*d*) of the Transfer of Property Act (IV of 1882), the defendant, even if not liable as assignee in law of the lease, was liable for rent as for the use and occupation, and under such circumstances the rent fixed by the lease would be a fair basis for the amount to be decreed. GAYA PRASAD *v.* BAIJ NATH . . . . **I. L. R., 14 All., 176**

103. ———— Liability of agent for rent—*Honorary secretary to a school maintained by a foreign society.*—The plaintiff sued the defendant to recover possession of a certain house in Bombay and for arrears of rent. The defendant pleaded that the house in question was occupied by the Beni-Israel school of Bombay which was maintained by the Anglo-Jewish Association of London, that he was honorary secretary of the school, and as such, and not in his personal capacity, had hired the house, and that he had never paid the rent or expenses of the school out of his own pocket. He contended that he was not liable to be sued personally. *Held* that the defendant was liable for the rent. There was nothing to show that the contract for the house was made on the personal credit of any one except the defendant. BHOJABHAI ALLABAKHIA *v.* HAYEM SAMUEL . . **I. L. R., 22 Bom., 754**

104. ———— Liability of purchaser of khasgi (private or personal) land of a khoti sharer—*Mortgage of the khoti takshim (share)—Sale in execution of a decree on the mortgage—Partition among the khoti sharers—Interest acquired by the purchaser at the execution sale—Agreement by the mortgagor to be responsible for the revenue—Agreement coming to an end with the extinction of the equity of redemption.*—*Primâ facie* all land not shown to be alienated is liable to assessment, and the mere fact that no revenue was paid by a khoti co-sharer in respect of khasgi (private or personal) land in his occupation is not sufficient to prove its exemption from liability when it has passed into the hands of a stranger. One *S*, a sharer in a khoti village, mortgaged his khasgi land appertaining to his share in the khoti to the plaintiff, and undertook to pay the Government dues on it. Plaintiff got a decree on his mortgage, and in execution the land was sold, and purchased by defendant in the year 1878. In the year 1881, the khoti sharers effected partition. In 1883 defendant took possession of the land. In 1884, and again in 1885, *S* having mortgaged his takshim (share), including the khasgi land to plaintiff, the latter as mortgagee brought a suit to recover makta (fixed) rent in kind payable for the khasgi land purchased by the defendant. *Held* that, as the partition between the khoti sharers took place after the execution-sale, only the occupancy of the land was sold to the defendant, and that the plaintiff was entitled under the circumstances to recover a fair assessment.

Held, disallowing the defendant's contention as to exemption from payment of the rent, that the agreement by the mortgagor to be responsible for the revenue came to an end with the extinction of the equity of redemption by the Court-sale. BALKRISHNA MHADSHET *v.* VISHVANATH KESHAV JOG [I. L. R., 19 Bom., 528

105. ——— **Suit for arrears of rent**—*Dispossession by landlord—Limitation—Cause of action—Mesne profits, Refund of.*—*M,* having been dispossessed by the landlords from a raiyati holding purchased by him, brought an action and obtained a decree for possession and mesne profits. *M* obtained delivery of possession in execution of decree in 1891, and in 1892 mesne profits for the years 1295 (1887-88) to the Bhadui season of 1299 (1891-92) were awarded to him. At the time of the ascertainment of mesne profits, the landlords claimed to set off the rent against each year's profits, but they were referred to a separate suit, and set-off was not allowed. The present suit for refund of profits or rent for the period aforesaid was brought in August 1892, and one of the objections raised was that the claim to the rents of 1295 and 1296 was barred by limitation. The plaint alleged that the cause of action accrued upon the date of ascertainment of profits and the rejection of the claim to set-off in 1892, and it was urged that at all events it did not accrue before delivery of possession in 1891. *Held* that the objection was valid and the claim to the rents in question was barred by limitation. *Swarnamayi* v. *Shashi Mukhi Barmani, 2 B. L. R., P. C., 60 : 11 W. R., P. C., 5 : 12 Moore's I. A., 244,* and *Din Dayal Paramanik* v. *Radha Kishori Debi, 8 B. L. R., 536 : 17 W. R., 415,* distinguished. *Kadumbinee Dossia* v. *Kashinath Biswas, 13 W. R., 338,* followed. *Eshan Chunder Roy* v. *Khajah Assanoollah, 16 W. R., 79,* and *Huro Pershad Roy Chowdhry* v. *Gopal Das Dutt, L. R., 9 I. A., 82 : I. L. R., 9 Calc., 255,* referred to. MAHOMED MAJID *v.* MAHOMED ASHAN [I. L. R., 23 Calc., 205

106. ——— **Liability of representatives**—*Suit to recover arrears of rent from representatives of tenant at fixed rates.*—*Held* that the legal representatives of a deceased tenant at fixed rates, who had died leaving the rent payable by him in arrear, were liable for payment of the arrears to the extent of the assets of the tenant which had come into their hands, and that this liability was not affected by the question whether or not they took over the tenancy of the deceased themselves. *Lekhraj Singh* v. *Rai Singh, I. L. R., 14 All., 381,* referred to. MAHARAJA OF BENARES *v.* DALJIT SINGH . . . . I. L. R., 19 All., 352

107. ——— **Suit for rent by unregistered proprietor**—*Beng. Act VII of 1876, s. 78—Application for registration as proprietor.*—S. 78 of the Land Registration Act, 1876, precludes a person claiming as proprietor from suing a tenant for rent until his name has been actually registered as such under the Act. A mere application to be registered is not sufficient for the purpose. SURYA KANT ACHARYA BAHADUR *v.* HEMANT KUMARI DEVI [I. L. R., 16 Calc., 706

DHORONIDHUR SEN *v.* WAJIDUNNISSA KHATOON [I. L. R., 16 Calc., 708 note

6. RENT IN KIND.

108. ——— **Suit for share of rent or money-equivalent**—*Valuation of crop.*—A landlord sued his tenant, paying rent in kind, for the share of the crop due to him, or rent, or for its money-equivalent. *Held* that the prices at which the landlord was entitled to have the crop valued were those which prevailed at the time the crop was cut, and when it should have been made over to him. LACHMAN PRASAD *v.* HOLAS MAHTOON [2 B. L. R., Ap., 27 : 11 W. R., 151

109. ——— **Rent in kind, Demand for**—*Landlord and tenant.*—Acquiescence in a mode of payment different from that agreed on cannot alter the original contract. A landlord may demand payment of rent in kind in accordance with the original contract, although the tenant has paid rent in money for some years. SOHOBUT ALI *v.* ABDOOL ALI [3 C. W. N., 151

7. TENANCY FOR IMMORAL PURPOSE.

110. ——— **Lodgings let to prostitute**—*Suit for rent of.*—A landlord cannot recover the rent of lodgings knowingly let to a prostitute who carries on her vocation there. GAURINATH MOOKERJEE *v.* MADHUMANI PESHKAR . 9 B. L. R., Ap., 37

S. C. GOUREENATH MOOKERJEE *v.* MODHOOMONEE PESHAKUR . . . . . 18 W. R., 445

8. PAYMENT OF RENT.

(*a*) GENERALLY.

111. ——— **Payment to co-lessors after distress**—*Claim for rent—8 Anne, c. 14—Distress—Co-landlords.*—Two daughters, as co-partners, were owners of certain property, each having an eight annas share therein. On June 30th, 1868, they executed a lease of the property, in which it was provided that a monthly rent should be paid in separate payments to each of the two owners respectively, they giving separate receipts for the same. The tenant having failed to pay rent, one of the owners brought a suit for her share in her own name only, and obtained a decree. In execution of this decree, she seized and sold property belonging to the tenant. The sale took place on the 12th of February 1869. On the 15th of February the other owner brought an interpleader suit, the tenant having likewise failed to pay rent to her. She claimed to have what was due to her paid out of the proceeds realized by the sale under the decree. *Held* that she was not entitled to have it so paid. *Held* also *per* PEACOCK, *C.J.*—The Stat. 8 Anne, c. 14, does not apply to this

LANDLORD AND TENANT—*continued.*

8. PAYMENT OF RENT—*continued.*

country. *Held* that it would not, at any rate, apply to a case in which a claimant seeks to enforce payment of her rent from another creditor for rent, even if it would where the claim was against an ordinary execution-creditor. PADAMANI DASI *v.* JAGADAMBA DASI [3 B. L. R., O. C., 56

112. ——— Payment to superior landlord after grant of intermediate lease—*Payment without notice of assignment—Liability to intermediate tenant.*—A tenant paying rent to the superior landlord, after the grant of an intermediate lease, but without notice of it, is not liable to the intermediate lessee in respect of the same rent. ATTAPYEE MOWLAH *v.* SUKHAWUT ALLY [Marsh., 102: W. R., F. B., 30: 1 Hay, 240

113. ——— Payment to a third person by landlord's directions—*Plea of payment.*—Payment by a tenant under the landlord's directions to another, or for a special purpose, of a sum equivalent to the amount claimed as rent, is tantamount to a payment to the landlord himself, and is a sufficient answer to the landlord's suit for rent. Such a defence, being rather one of payment than of a set-off, was open to a defendant in a suit under Act X of 1859. JOY KOOER *v.* FURLONG . **W. R., 1864, Act X, 112**

114. ——— Payment by tenant of revenue to save estate from sale—*Payment or set off in suit for rent.*—Where a tenant is left in that condition in which he is compelled to pay his landlord's debt to save his own security from forfeiture, the circumstances constitute a sufficient authority to make the payment,—*e.g.*, the payment of Government revenue to save the estate from sale,—and it will be treated as a payment to the landlord in a suit for rent. HILLS *v.* WOOMA MOYEE BURMONEE [15 W. R., 545

115. ——— Presumption of payment of rent for former years—*Suit for rent of current year—Beng. Reg. VII of 1799.*—Under Regulation VII of 1790, a plaintiff could only sue for and recover the rent of the current year. No legal presumption arose from his doing so that the rent of prior years had been satisfied. MIRTHERJEET SINGH *v.* CHOKER NARAIN SINGH . . . **2 W. R., 58**

116. ——— Presumption of payment of rent—*Payment of rent of subsequent year, Effect of.*—The payment of the entire rent of a subsequent year affords a presumption in favour of the payment of the rent for the previous year. SOLANO *v.* DOOLHIN UMRIT KOER . **W. R., 1864, Act X, 65**

SORUTH SOONDERY DABEE *v.* BRODIE [1 W. R., 274

117. ——— Appropriation of payments—*Arrears and current rent—Unspecified payment.*—A payment for rent should be credited to the oldest rents first, and not to current rent, unless so specifically stated by the party making it. SURNOMOYE *v.* SINGHROOP BIBEE . **W. R., 1864, Act X, 133**

118. ——— Payment to one of joint lessors.—Payment to one of several joint proprietors is a payment to all. OODIT NARAIN SING *v.* HUDSON . . . . **2 W. R., Act X, 15**

RAMNATH SINGH *v.* GONDEE SINGH [10 W. R., 441

SAMBHU *v.* KAMOLRAO VITHALRAO [I. L. R., 22 Bom., 794

And payment by one of several joint lessees is payment by all. NILLUMBHUR MASTOPHY *v.* DOORGA CHURN BISWAS . . . . **2 W. R., Act X, 94**

119. ——— *Discharge of debt.*—Payment of rent by the lessee to one of several joint lessors, and at his request, discharges the debt as to all, as also payment made at his request to one of several joint creditors. KRISHNARAV RAMCHANDRA *v.* MANAJI BIN SAYAJI . . . **11 Bom., 106**

120. ——— Presumption of mode of payment.—Where it does not appear that rent is payable in instalments, it must be assumed to be payable annually. SURREESHOOLLAH *v.* RAM COOMAR GOOPTA . . . . **25 W. R., 556**

121. ——— Obligation as to mode of payment—*Instalments.*—Where a patnidar's rent is payable in monthly instalments, he agreeing to pay the revenue out of the rent and to file the Collector's receipts as payment, he is not entitled to deduct from an instalment of rent any portion of the Government revenue which may not be payable until after the instalment is due. He is bound to pay either in cash or partly in revenue receipts; failing to pay in both shapes, he may be sued for an arrear of rent. RADHAMONEE CHOWDHRAIN *v.* GRAY . **12 W. R., 295**

122. ——— Place of payment—*Bengal Tenancy Act (VIII of 1885), ss. 54, 67—Interest—Arrears of rent.*—The tenants, residents of Calcutta, were mokuraridars of a village in Midnapur, where the landlord had no office for collecting rent and the tenants refused to continue to pay rent at landlord's residence in Burdwan and offered to pay the same at Calcutta. The landlord did not appoint a convenient place, and the tenants were in arrears which the landlord now sued to recover with interest. *Held* that a tenant's liability to pay rent remains notwithstanding that the landlord has no village office, and that he has not appointed a convenient place for payment. Where there is no controlling agreement, the tenant must go to his landlord and pay the rent as it falls due. Rent falling into arrears under such circumstances will carry interest under s. 67 of the Bengal Tenancy Act. *Quære*—Whether s. 54 (2) of the Bengal Tenancy Act applies to the circumstances of this case. FAKIR LAL GOSWAMI *v.* BONNERJI [4 C. W. N., 324

(*b*) NON-PAYMENT.

123. ——— Appointment of sezawal on default in payment—*Determination of tenancy.*—It was stipulated in defendant's lease that, on his failing to pay any instalment of the rent, plaintiff might appoint a sezawal to collect direct from the under-tenants. *Held* that the appointment of such a sezawal did not determine defendant's lease, and that he was still liable for any deficiency in the rent after the sezawal's collections were credited. FAKIRUDDIN MAHOMED ASHAN *v.* PHILLIPS

[3 B. L. R., Ap., 53 : 11 W. R., 464

OMBITNATH TEWAREE *v.* BUGGOO SINGH

[W. R., 1864, 269

Contra, DALRYMPLE *v.* BRAJAN SAHA

[3 B. L. R., Ap., 54 note

JHOOMUCK CHOWDHRY *v.* ANDERSON

[6 W. R., Act X, 23

124. ———————— A kabuliat, after the usual stipulations, provided for the cancellation of the lease on the tenant failing to pay any of the instalments, and left it optional with the zamindar to appoint a sezawal to collect the rents. The tenant having defaulted in payment of rent, a sezawal was appointed. *Held* that the lease having been cancelled by the default, the appointment of a sezawal had reference only to the back rents to be collected. RADHA PERSHAD SINGH *v.* BAJHAWUN OOPADHYA . . . . . . **24 W. R., 116**

125. ———— **Effect of non-payment**—*Onus probandi—Suit for rent.*—When the relationship of landlord and tenant has once been proved to exist, the mere non-payment of rent, though for many years, is not sufficient to show that the relationship has ceased; and a tenant who is sued for rent and contends that such relationship has ceased is bound to prove that fact by some affirmative proof, and more especially is he so bound when he does not expressly deny that he still continues to hold the land in question in the suit. RUNGO LALL MUNDUL *v.* ABDOOL GUFFOOR **I. L. R., 4 Calc., 314 : 3 C. L. R., 119**

126. ———————— *Adverse possession.*—Mere non-payment of rent to the landlord does not render possession by tenants adverse to the landlord. GANGABAI *v.* KALAPA DABI MAKRYA

[I. L. R., 9 Bom., 419

127. ———————— *Onus probandi—Suit for rent—Adverse possession.*—Where the relation of landlord and tenant is proved to have existed, it lies on the defendant in possession of the land to prove that the relation was put an end to at such a period anterior to the suit as would entitle the defendant to rely on his possession as adverse to the plaintiff for twelve years. Non-payment of rent for upwards of twelve years and a grant of a pottah by Government to defendant for five years do not, when Government claims no interest adverse to plaintiff and plaintiff does not consent to defendant becoming tenant to Government, create any possession in defendant adverse to plaintiff. *Rungo Lall Mundul* v. *Abdool Guffoor, I. L. R., 4 Calc., 314,* approved. TIRUCHURNA PERUMAL NADAN *v.* SANGUVIEN

[I. L. R., 3 Mad., 118

HARI VASUDEB *v.* MAHADAJI APPAJI

[5 Bom., A. C., 85

128. ———————— *Adverse possession.*—Non-payment of rent by tenant for more than twelve years does not constitute adverse possession. When possession may be referred to the contract of tenancy under which the tenant entered, mere length of enjoyment without payment of rent does not, under ordinary circumstances, affect the relation of parties. DADOBA *v.* KRISHNA

[I. L. R., 7 Bom., 34

MAHOMED INAYETOOLLA *v.* AKBER ALI

[2 Agra, 25

TROYLUKHO TARINEE DOSSIA *v.* MOHIMA CHUNDER MUTTUCK . . . . **7 W. R., 400**

DAVIS *v.* ABDOOL HAMED . . **8 W. R., 55**

129. ———————— *Adverse possession.*—The plaintiff sued for possession of a piece of ground, alleging that he was the owner of it. The defendants denied the plaintiff's title and claimed ownership in themselves. The Subordinate Judge found that the plaintiff had originally held the property from the defendants, but that, as he had occupied it for more than twelve years without paying any rent or acknowledging the defendants as his landlords, he was entitled to be considered as owner by adverse possession. The District Judge, in appeal, upheld the decree of the first Court. On appeal to the High Court,—*Held* that the District Judge was wrong in holding that mere non-payment of rent was sufficient to constitute adverse possession. TATTIA *v.* SADASHIV . . . **I. L. R., 7 Bom., 40**

130. ———————— *Non-payment of rent by occupancy raiyat—Title to land—Admission by tenant of liability to pay rent—Limitation.*—The non-payment of rent for a term of twelve years and more does not relieve an occupancy raiyat from the status of a tenant so as to give him a title to the land. Rent falls due at certain periods and the failure to pay it becomes a recurring cause of action, and therefore, where the right to take rent is admitted by the raiyat, no question of limitation can arise. PORESH NARAIN ROY *v.* KASSI CHUNDER TALUKHDAR . . . . . **I. L. R., 4 Calc., 661**

131. ———————— *Adverse possession—Determination of tenancy.*—The plaintiffs in this suit, alleging that *S*, through whom they claimed, had given *B*, who was represented by the defendants in July 1828, the lease of a certain house on the condition that *B* should pay a certain annual rent for such house, and if he failed to pay such rent that he should vacate the house, such conditions being contained in a keraianama executed by *B* in *S*'s favour, sued the defendants for the rent of such house for two years, and for possession of the same, alleging the breach of such condition. *Held* (SPANKIE, *J.*, dissenting) that, supposing that a tenancy had arisen in the manner alleged, the mere non-payment of rent by the defendants for twelve years prior to the institution of the suit would not suffice to establish that the tenancy had determined, and that the defendants had obtained a title by adverse possession, so as to defeat the claim; for if once the relation of landlord and tenant were established, it was for defendants to establish its determination by affirmative proof, over

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and above the mere failure to pay rent. PREM SUKH DAS *v.* BHUPIA . . . **I. L. R., 2 All., 517**

132. ——————— *Acquiescence of landlord, Effect of—Subsequent suit by landlord for possession—Inam land—Sub-alienee—Wrongful surrender by the village inamdar to Government—Limitation—Remand.*—The plaintiff, a sub-alienee from an inamdar of certain inam, leased it to *D* prior to the year 1858. In 1860, the land was wrongfully surrendered by the inamdars of the village to Government as lapsed old service inam and was made khalsat. In 1863, the plaintiff protested against this being done: and the Collector referred him to a civil suit against the inamdars. From the year 1863, the plaintiff received no rent from *D* or after *D*'s death from his heirs, who paid the assessment to Government. In 1889, the plaintiff brought the present suit against the representatives of *D* and the village inamdars to recover possession. The District Judge dismissed the suit on the ground that the plaintiff must be held to have acquiesced in the loss of the land, and by his conduct since 1863 must be taken to have designedly abandoned all his interest in the land, and that his suit was barred. *Held* that the plaintiff did not acquiesce in the surrender by the inamdar in 1860 to Government, as he distinctly protested against it in 1863, and that as to his conduct since 1863 nothing had taken place to deprive him of such legal rights as he possessed against the tenant *D* in 1863, if they were not barred by the Statute of Limitation; and as to limitation,—*Held* that, as the District Judge had decided the point under the influence of the view taken by him as to the plaintiff's conduct, the case should be remanded for a fresh finding on that point. *Held* further that the mere circumstance that *D*, after the land was treated as khalsat, paid assessment to Government, and had not paid rent to plaintiff, could not affect the relationship of landlord and tenant which admittedly existed between them in 1863. RAMBHAT *v.* BABABHAT

[I. L. R., 18 Bom., 250

133. ——————— *Diluvion, Disappearance of land by—Subsequent re-appearance of land—Relinquishment of tenancy, Evidence of—N.-W. P. Rent Act (XII of 1881).*—Act XII of 1881, and the Acts of a like nature which preceded it, assume that a tenancy of agricultural lands once entered upon continues until determined by effluxion of time, or by mutual consent, or in one of the ways provided for by statutory enactment, but mere non-payment of rent does not of itself determine the tenancy. Hence where the lands of certain tenants became submerged by the action of a river, and the tenants, though they ceased to pay rent during the period of the submersion, made no overt indication of their intention to relinquish the said lands, but, on the contrary, on the river again shifting its course, laid claim to lands which had emerged, and which they alleged to be identical with their former holding; it was *held* that there had been no relinquishment. *Hemnath Dutt* v. *Ashgur Sirdar, I. L. R., 4 Calc., 894,* not followed. MAZHAR RAI *v.* RAMGAT SINGH

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134. ——————— **Presumption as to nature of tenancy**—*Yearly tenant.*—Where there is nothing to show on what tenure a tenant holds from his landlord, the presumption is that he is a yearly tenant. ENDAR LALA *v.* LALLU HURI

[7 Bom., A. C., 111

GOORDIAL *v.* RAMDUT

[Agra, F. B., 15: Ed. 1874, 11

135. ——————— **Holding for long period with payment of rent**—*Tenancy from year to year.*—In a suit to recover a village alleged by the plaintiff to have been let to defendant on service-tenure by the ancestor of the plaintiff, and to be resumable at the pleasure of a successor, the only facts proved in evidence were a holding for a long period of years, and a payment of rent to the plaintiff, the zamindar. *Held* that such facts established merely a tenancy from year to year. VASUDEVA PATRUDU *v.* SANYASIRAZ PEDDABALIYARA SIMHULU

[3 Mad., 1

136. ——————— **Long continuance of a tenancy at a low and unvaried rent**—*Zamindar's right against tenant—Origin and special purpose of the tenancy—Cessation to use the land for such purpose—Burden of proving permanent tenure—Inference of tenancy-at-will, or from year to year.*—The evidence having shown the origin and particular purpose of a tenancy, long continued at a low and unvaried rent, *viz.*, from 1798 until 1873, when the tenant ceased to use the land for the purpose. *Held* that it was not to be inferred from that evidence that an agreement had been made between the parties that the tenant should hold a permanent tenure; and *held* that on such cessation the tenant could only resist a suit to eject him by proving, or giving grounds for the inference of, an agreement with the owner of the land that he should have something more of a lease than the ordinary tenancy-at-will, or from year to year; also that the facts here presented did not lead to that inference. SECRETARY OF STATE FOR INDIA *v.* LUCHMESWAR SINGH . . . . **I. L. R., 16 Calc., 223**

[L. R., 16 I. A., 6

137. ——————— **Lease for construction of permanent works**—*Permanent tenure—Conduct of lessor.*—The defendants and their predecessors in title held of the plaintiffs and their predecessors certain land under a pottah which, though not expressly stated to grant a permanent lease, was granted for the purpose of constructing "a brick-built dock, building, etc., and workshops." The works were constructed; and during a period of 42 years the interest of the lessees were from time to time transferred, without any conduct on the part of the lessors or their successors indicating that they regarded the interest of the lessees as not permanent. Some years after the construction of the dock it ceased to be used as such. *Held* that the tenure created by the pottah was of a permanent nature. *Secretary of State for India* v. *Luchmeswar Singh,* *I. L. R., 16 Calc., 223 : L. R., 16 I. A., 6,* distinguished. RUNGO LALL LOHEA *v.* WILSON

[I. L. R., 26 Calc., 204
2 C. W. N., 718

138. ———— **Perpetual tenancy**—*Long possession—Presumption arising from such possession—Bombay Land Revenue Act (V of 1879), s. 83—Burden of proof.*—The plaintiff's predecessor in title acquired the lands in dispute in A. D. 1780. The defendants were in possession as tenants. They proved their possession so far back as 1812. But it did not appear that they were put in possession first in that year. There was no evidence either of the commencement or of the duration of their tenancy. *Held* that, under s. 83 of the Bombay Land Revenue Code (Bombay Act V of 1879), the defendants' tenancy should be presumed to be perpetual, and that it lay on the plaintiff to prove the contrary. DAULATA *v.* SAKHARAM GANGADHAR

[I. L. R., 14 Bom., 392

139. ———— **Tenure in property, Proof of**—*Long possession at an invariable rent—Local usage or custom.*—A tenure in perpetuity cannot be established merely by evidence of long possession at an invariable rent, unless it appears that such tenancy may be so acquired by local usage. *Babaji* v. *Narayan, I. L. R., 3 Bom., 340,* referred to. NARAYANBHAT *v.* DAVLATA

[I. L. R., 15 Bom., 647

140. ———— **Tenancy not more than forty years old**—*Bombay Land Revenue Act (Bom. Act V of 1879), s. 83—Tenancy not permanent.*—S. 83 of the Land Revenue Code (Bombay Act V of 1879) is applicable only when the evidence as to the commencement and duration of the tenancy is not forthcoming by reason of its antiquity, which, in the case of a tenancy at most only forty years old, there is no reason for presuming will be the case. KALIDAS LALDAS *v.* BHAIJI NARAN

[I. L. R., 16 Bom., 646

141. ———— **Tenancy forty years old**—*Evidence of commencement and origin of tenancy—Bombay Land Revenue Code (Bom. Act V of 1879), s. 83.*—S. 83 of the Land Revenue Code (Bombay Act V of 1879) does not apply to a tenancy which commenced about forty years ago, but it applies to a tenancy with respect to which there is no satisfactory evidence to show the commencement as well as the terms of the tenancy. LAKSHMAN *v.* VITHU . . . . **I. L. R., 18 Bom., 221**

142. ———— **Permanent tenancy**—*Bombay Land Revenue Code (Bom. Act V of 1879), s. 83—Absence of local usage.*—The mere fact that a tenancy has commenced subsequently to the commencement of the landlord's tenure does not prevent the application of s. 83 (*1*) of the Bombay Land Revenue Code (Bombay Act V of 1879), in cases where, by reason of the antiquity of the tenancy, no satisfactory evidence of its commencement is forthcoming. *G* held certain lands as a tenant under *M*, an inamdar. The lands continued in *G*'s family for nearly 80 years. It was found that, owing to this antiquity of the tenancy, its commencement or duration could not be satisfactorily established by evidence. *Held* that in the absence of any local usage to the contrary *G*'s tenancy must be presumed to be permanent. RAMCHANDRA NARAYAN MANTRI *v.* ANANT . . . **I. L. R., 18 Bom., 433**

143. ———— *Right of occupancy—Undisturbed possession—Construction of grant—Conduct of parties.*—In a suit for ejectment brought by the trustee of a temple, the defendants set up a right of occupancy as permanent tenants. It appeared that the defendants' ancestor had held the village from the Collector (then in charge of the temple properties) under a lease which expired in 1831, when he offered to hold it for two years more. The Collector made an order that, if the tenant would not hold the land at the existing rate permanently, he should be required to give security for two years' rent. Two "permanent" muchalkas were subsequently, taken from the tenant successively, but they were returned as not being in proper form. No further document was executed, but the tenant and his descendants remained in undisturbed possession at the same rate of payment up to 1888. In that year the plaintiff sent a notice of ejectment to the then tenant, who, however, set the plaintiff at defiance and remained in possession till the present suit was brought in 1890. *Held* that it should be inferred that the defendants were in possession under a permanent right of occupancy. VARADARAJA *v.* DORASAMI . **I. L. R., 16 Mad., 131**

144. ———— *Sheri and khata lands—Rights of khata tenants not holding under express contract, how proved—Evidence as to similar tenants in similar villages admissible—Custom—Mirasidars—Liability to enhancement of rent.*—In a suit for ejectment for non-payment of enhanced rent the defendants pleaded (1) that they were permanent tenants; (2) that the plaintiff had no power to enhance; (3) that the enhancement by the plaintiff was unreasonable. The lower Courts held that the defendants were permanent tenants, but were bound to pay a reasonable rent. Their decision was not based on evidence given in the case, but on what was termed a "well-known distinction between the sheri or private lands of an inamdar and the khata or raiyatwar lands held by recognized tenants." The exercise of certain rights of transfer or inheritance, etc., were regarded as evidence of fixity of tenure at a reasonable rent. On second appeal by the plaintiff the High Court *held* that they were not bound by the findings of the Judge, as it did not appear that it was admitted that the distinction drawn between sheri and khata tenants was correct, or that every khata tenant, as such, exercised the right described by the Subordinate Judge. In determining the rights of khata tenants who held under no express contract, the best evidence no doubt, if possible, would be the evidence of custom in the particular village in question, but evidence of similar

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tenants in similar villages would not be excluded. Mirasidars in an inam village cannot always claim to hold at a fixed rent. An inamdar can enhance their rents within the limits of custom. VISHVANATH BHIKAJI *v.* DHONDAPPA . **I. L. R., 17 Bom., 475**

145. ———————— *Lease by temple-trustee—Ulavadai mirasidars—Long possession—Necessity for lease presumed.*—In 1813, the manager of a temple gave a permanent lease of one-half of certain lands to *C*, the ancestor of the defendants 1 to 14, and the other half to *N*. In 1820, *N* transferred his half share to *V*, the son of *C*. In 1831, *V* and *S*, the ancestor of the other defendants, addressed a petition to the Collector, the then manager of the temple. In 1832, *V* and *S* executed a fresh lease and a security bond in favour of the temple, in both of which documents *V* and S were described as ulavadai mirasidars, that is, persons with an hereditary right, to cultivate. There was no evidence adduced to prove for what purpose the lease of 1832 was executed, but the defendants held possession as tenants from 1832 to date of suit. *Held* that the words ulavadai mirasidars used in the deeds of 1832 as describing the tenants denoted that they were persons with hereditary right to cultivate, and that the lease was therefore of a permanent nature. *Held* also that, after the lapse of so great a period of time, the Court would presume, under the circumstances, that the original grants were made for a necessary purpose and were binding on the temple. CHOOKALINGAM PILLAI *v.* MAYANDI CHETTIAR
[I. L. R., 19 Mad., 485

146. ———————— *Cultivating raiyat on permanently-settled estate.*—A raiyat cultivating land in a permanently-settled estate is *primâ facie* not a mere tenant from year to year, but the owner of the kudivaram right in the land he cultivates. VENKATANARASIMHA NAIDU *v.* DANDAMUDI KOTAYYA . . **I. L. R., 20 Mad., 299**

147. ———————— *Presumption arising from facts of permanency of tenancy—Long possession at an unvaried rent—Admissibility in evidence of judgments in former suits.*—A zamindar claimed the proprietary right and possession of mouzahs within the limits of his zamindari, against tenants who by themselves and their predecessors in title, had held the land from before the Decennial Settlement in Bengal, an unvaried rent having been paid to the zamindar. The first defendant alleged a grant to his ancestor of a mokurari tenure by a ghatwal then holding land within the zamindari: the other defendants alleged title as dar-mokuraridars under the first. Part of the evidence for the defence consisted of judgments, among which was one of the year 1817, and another of 1843, to which the zamindar's predecessors had not been parties. These had been given in suits brought by the successor of the ghatwal which had been resisted by the first defendants' ancestors on the ground of their having had fixity of tenure. *Held* that they could be received as evidence of long anterior possession at a rent, and of the title, on which the defendants now relied, having been openly asserted long ago. Taken with other evidence, they established possession by the defendants at a uniform rent paid to the zamindar, thus leading to the inference that the tenure had been, and still was, of a permanent character. RAM RANJAN CHAKERBATI *v.* RAM NARAIN SINGH . **I. L. R., 22 Calc., 533**
[L. R., 22 I. A., 60

148. ———————— *Presumption as to tenancy being permanent—Long possession—Transfers of holding and erection of buildings.*—Where a tenancy was created by a kabuliat, which on the face of it contained nothing to imply permanency in the tenure created, which contained no words of inheritance, nor anything to show that the land was taken for residential or building purposes; that though the land passed by successive transfers, there was nothing to show that the landlord had knowledge of them or registered the transferee as tenant; that though there were pucca buildings on the land, they had not been in existence for such a length of time as would warrant an inference that the lease was one for building purposes; that there was nothing to show that they were erected under circumstances from which acquiescence of the landlord and the creation of an equitable right in the tenant could be inferred; or that they were erected with the knowledge of the landlord; these facts are not sufficient to warrant an inference that the tenancy was, when first created, intended to be permanent, or was subsequently by implied agreement converted into a permanent one. IMAIL KHAN MAHOMED *v.* JAIGUN BIBI **I. L. R., 27 Calc., 570**
[4 C. W. N., 210

149. ———— **Construction of lease**—*Monthly tenancy.*—By indenture, dated 1st February 1856, *A* leased to *B* certain premises in Calcutta for a term of ten years from 1st November 1855 at a rent of R100 per month payable monthly. The defendant became the assignee of the lease without notice to *A* from August 1858, and continued to occupy the premises and paid the rent in the name of *B* up to August 1866, though the lease had expired on 31st October 1865. *Held* that the tenancy after the expiration of the lease was a monthly tenancy in the name of *B* and terminable by a monthly notice to quit. BROJONAUTH MULLICK *v.* WESKINS . . **2 Ind. Jur., N. S., 163**

150. ———— **Holding over after expiry of lease**—*Monthly or yearly tenancy—Notice to quit.*—*A* and *B* let a house and premises in Calcutta to *C* under a Bengali lease, for a period of three years, from 1st Assar 1273 (14th June 1866). Upon expiration of the term, *C* continued in possession of the house, and *A* and *B*, after repeatedly calling upon him to deliver up possession, served on him, on 18th March 1873, in a letter written by their attorney, a notice to quit "on or before the 1st day of Jaishta 1280 B.S., corresponding with the 13th day of May next." *Held* that *C*, after the end of his lease, held merely from month to month, and that the tenancy was terminable by a month's

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notice. *Held,* further, that the letter of the 18th March 1873 was a sufficient notice. There is nothing which makes it a necessary inference that a tenancy in Calcutta is a tenancy by the year, in the absence of any special agreement to the contrary. So far as there is any custom in Calcutta, or any inference of fact to be drawn from mere occupation accompanied by payment of a monthly rent, it is that the tenancy is a monthly one. NOCOORDASS MULLICK *v.* JEWRAJ BABOO . **12 B. L. R., 263**

151. ———— **Duration of tenancy**—*Transfer of Property Act (IV of 1882), ss. 106, 107—Presumption of yearly tenancy—Evidence—Burden of proof in action of ejectment by zamindar against tenant as to nature of tenancy.*—Suit for ejectment by a zamindar against two tenants holding under him subject to the payment of an annual cist or assessment. The zamindar was the owner of the kudivaram as well as of the melvaram right, and it was admitted that the tenants' possession was derived from him. *Held* that these facts alone were not enough to raise the presumption of a tenancy from year to year. *Per* SHEPHARD, *J.*—It is not the general rule that the tenants in an ordinary zamindari hold their lands as yearly tenants or as tenants from year to year. Many of the occupants of zamindari lands are not tenants in the proper sense of the word, and the fair presumption is that when new occupants are admitted to the enjoyment of waste or abandoned lands, the intention is that they should enjoy on the same terms as those under which the prior occupants of zamindari lands held, it being open to the zamindar to rebut that presumption, either by proving that the usual condition of thing does not prevail in his estate or that a particular contract was made between him and his tenant. *Per* SUBRAHMANIA AYYAR, *J.*—The presumption of tenancies from year to year which is well known to English law, because of the general prevalence in England of tenancies in the strict legal sense of the term, would also arise in this country if the tenancies here were proved to be similar. But inasmuch as practically the whole of the agricultural land on zamindaris is cultivated by raiyats who are generally entitled to hold them so long as they desire to do so, subject to the performance of obligations incident to the tenure, there is insufficient foundation from which such a presumption may be raised. Nor is the fact that the zamindar is the owner of the kudivaram right as well as the melvaram right sufficient to shift on to the raiyat the burden of proving that the tenancy is not one from year to year. In order to discharge the onus which is on him in a case of ejectment, the zamindar must do more than merely show that the land when it passed into the hands of the raiyat was at his disposal as relinquished or as immemorial waste land. He must show that the defendants' possession is inconsistent with the *primâ facie* view that it is held under the usual and ordinary form of holding prevalent in the zamindaris. *Achayya* v. *Hanumantrayudu, I. L. R., 14 Mad., 269,* explained. CHEEKATI ZAMINDAR *v.* RANASOORU DHORA **[I. L. R., 23 Mad., 318**

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10. HOLDING OVER AFTER TENANCY.

152. ———— **Tenant holding over after lease**—*Tenancy from year to year—Agricultural lease.*—When a tenant holds over, after the expiration of his lease, he does so on the terms of the lease, on the same rent and on the same stipulation as are mentioned in the lease until the parties come to a fresh settlement. There is no general rule of law to the effect that the lease of an agricultural tenant in this country who holds over must be taken as renewed from year to year, and if any contract is to be implied, it should be taken to have been entered into so soon as the term of the lease expired rather than at the beginning of each year. KISHORE LAL DEY *v.* ADMINISTRATOR-GENERAL OF BENGAL **[2 C. W. N., 303**

153. ———— **Terms of holding over after lease has expired**—*Terms of lease.*—When a tenant holds on after the expiration of a lease, he does so at the same rent and on the same terms and stipulations as are mentioned in the lease, until the parties come to a fresh settlement. ENAYATOOLAH *v.* ELAHEE BUKSH **[W. R., 1864, Act X, 42**

SHIB SAHAE *v.* MUKBOOL AHMED . **2 N. W., 204**

TARA CHUNDER BANERJEE *v.* AMEER MUNDOL **[22 W. R., 395**

ALLAH BIBEE *v.* JOOGUL MUNDUL **[25 W. R., 234**

154. ———— *Current rates for similar land.*—A raiyat who holds over after the expiry of his lease, in spite of his landlord, is liable to pay at the rates current for the same kind of land in the village. TOMMY *v.* SOOBHA KURIM LAL **[2 W. R., Act X, 73**

155. ———— *Evidence of rate of rent.*—Where a tenant continues to hold land after his term, his pottah will be evidence of the rent at which he is holding over, in the absence of evidence to the effect that the rent was altered subsequently to its expiration. SHEO SAHOY SINGH *v.* BEOHUN SINGH . . . **22 W. R., 31**

156. ———— *Conditions of tenure.*—Where on the expiration of a lease the lessee is allowed to continue in possession as a yearly tenant, he does so on the terms contained in the expired lease, so far as they are consistent with a yearly holding. SAYAJI *v.* UMAJI . **3 Bom., A. C., 27**

157. ———— **Right of tenant holding over**—*Holding over by acquiescence of landlord after lease has expired—Notice to quit.*—A landowner who, after the expiration of a lease, continues to receive rent for a fresh period, must be considered to have acquiesced in the tenant continuing to hold upon the terms of the original lease, and cannot turn out the tenant, or treat him as a trespasser, without giving him a reasonable notice to quit. RAM KHELAWAN SINGH *v.* SOONDRA . . **7 W. R., 152**

158. ———— *Liability to ejectment—Notice to quit.*—A tenant holding over for some time without renewal of his lease is entitled, whether he has any right of occupancy or not, to retain possession of his tenure until either he resigns it or is ejected in due course of law. OOMA LOCHUN MOJOOMDAR *v.* NITTYE CHUND PODDAR [14 W. R., 467

159. ——— *Notice to quit.*—Where a tenant has been allowed to hold over leases on the expiry of their terms, and has continued in possession under those leases, it must be supposed that there is an implied agreement between him and the landlord, and the tenant under such circumstances is entitled to hold on until served with a legal notice to quit. JUMANT ALI SHAH *v.* CHOWDRY CHUTTURDHAREE SAHEE . 16 W. R., 185

160. ——— *Notice to quit.*—There is no difference in law between the position of a raiyat holding without a pottah and that of one holding over, after the expiry of the term covered by a pottah, with the consent of his landlord. Such a tenant cannot be evicted without a reasonable notice to quit being given; and the relationship does not come to an end at the expiration of each year, without some act on the part of the landlord and tenant jointly, or of either of them. *Ram Khelawan Singh v. Soondra, 7 W. R., 152,* followed. CHATURI SINGH *v.* MAKUND LALL [I. L. R., 7 Calc., 710: 9 C. L. R., 240

161. ——— **Liability of tenant holding over** —*Ejectment, Liability to.*—If a tenant holds his land for a term of years, and no new tenancy is created by the zamindar on the termination of the original lease, either by receipt of rent or in any other way, and if the tenant has no other title to the land beyond that conceded in the original lease for a term of years, the zamindar is entitled to evict the tenant on expiration of the lease without the intervention of a Court. CHOWDHRY IZHAROOL HUQ *v.* BHOOSEE MAHTOON . . . . . 25 W. R., 201

162. ——— *Tenant-at-will, Rate of rent for.*—A zamindar who allows a tenant to remain on his land without express contract can only demand a fair rate of rent,—*i.e.*, the full market rate. MONEERODDEEN MERDHA *v.* KEENNIE [4 W. R., Act X, 45

GOPAUL LAL THAKOOR *v.* BUDUROODEEN [7 W. R., 28

163. ——— *Trespasser.*—Where a lessee whose lease has expired, and who is unwilling to give the increased rent demanded by the landlord, retains possession in the hope of obtaining a new lease without such increase, parties entering upon the land as cultivators with the consent of the landlord are not called upon to show the ex-lessee their authority. GALE *v.* MAHARANEE SREEMUTTY . . . . 15 W. R., 133

164. ——— *Increase of rent—Agreement for specified period.*—The defendant being, under a settlement originally obtained from the Government, bound to pay a particular rent to the plaintiff, who had, subsequently to that settlement, obtained an ijara from the Government, the plaintiff in 1879 sued to enhance that rent and obtained a decree upon which a compromise was made, the defendant agreeing to pay a higher rent for the years 1281 and 1282. The defendant having paid no rent for 1283 and 1284, the plaintiff sued for the arrears at the higher rent. *Held* that no proper proceedings for enhancement having been taken or fresh contract with the defendant entered into, the special arrangement came to an end at the expiration of 1282 and the original arrangement revived, and therefore the plaintiff was not entitled to demand more than the original rent payable. BURHUNUDDI HOWLADAR *v.* MOHUN CHUNDER GUHA . . 8 C. L. R., 508

This case was distinguished where there was no agreement for a specified period. BURHUNUDDI HOWLADAR *v.* MOHUN CHUNDER GUHA [8 C. L. R., 511

165. ——— **Acquiescence of landlord in tenants holding over**—*Right of occupancy.*—The mere fact of a landlord permitting a tenant to hold over for a year beyond the term of his lease cannot create any right of occupancy in the tenant's favour. The landlord's cause of action in such a case arises when he is refused the right to re-enter. KABEEL SAHA *v.* RADHA KISSEN MULLICK [16 W. R., 146

166. ——— **Dispossession of tenant holding over**—*Right to possession on being dispossessed.*—Where a tenant, holding over after the expiration of his lease, is wrongfully dispossessed, he has a right to be restored to possession; and he has the same right if, having been ejected during his lease, his lease expires pending a suit to recover possession. As against every one except the landlord, he is still the person entitled to possession. ARUB *v.* ASHRUF . . . . . 24 W. R., 335

167. ——— **Suit against tenant holding over**—*Suit on contract or for use and occupation.*—Where there is an express contract, the zamindar can only sue on the terms of the contract, and cannot sue for use and occupation. WATSON & CO. *v.* TARINEE CHURN GANGOOLY . 17 W. R., 494

DHUNUNDRO CHUNDER MOOKERJEE *v.* LAIDLAY [20 W. R., 400

168. ——— *Use and occupation of building under unregistered lease.*—A party who retains and holds a building under an unregistered kabuliat is liable, though the kabuliat cannot be enforced for want of registration, to pay a reasonable compensation for the use and occupation of it. PUROMA SOONDAREE DOSSEE *v.* PROLLAD CHUNDER DOSS . . . . 12 W. R., 289

169. ——— *Liability to change of rent—Notice—Use and occupation of land.*—In cases not governed by Bengal Act VIII of 1869, a landlord, by merely giving his tenant notice, cannot bind him to pay a particular rent; but he can put an end to the tenancy on its former terms, and

LANDLORD AND TENANT—*continued.*

10. HOLDING OVER AFTER TENANCY —*continued.*

if the tenant continue to hold, he does so without any rent having been fixed. A suit by the landlord to recover his dues in such a case would be not a suit for rent, but for reasonable compensation for the use and occupation of the land, and the Court would have no power to fix the rent for the future. KYLASH CHUNDER SIRCAR *v.* WOOMANUND ROY [24 W. R., 412

See LALUNMONEE *v.* AJOODHYA RAM KHAN [23 W. R., 61

170. ——— *Termination of tenancy and alteration of rent after notice to quit—Suit for use and occupation.*—A landlord who can terminate his tenant's tenancy by a reasonable notice to quit can also, without giving a positive notice to quit, raise the tenant's rent by serving a reasonable notice upon him that in the ensuing year he will require a higher rent. In a suit to recover such rent whether governed by Bengal Act VIII of 1869 or not, the Court has power to find the tenant liable to pay a reasonable sum for occupation. BUDUN MOLLAH *v.* KHETTUR NATH CHATTERJEE [24 W. R., 441

171. ——— *Consent of landlord—Trespasser—Damages for use and occupation.*—To justify a holding over after expiry of lease, a direct consent on the part of the landlord is requisite. No implication of consent can or ought to be received when there has been every opportunity of consent in express terms, and particularly in the face of a special warning from the landlord that he should re-enter on the land when the term expired. When tenants have no right to hold over, their use and occupation of the land is a trespass, and they are liable, not for rent as tenants, but for damages as trespassers. MACKINTOSH *v.* GOPEE MOHUN MOJOOMDAR [4 W. R., 24

172. ——— *Settlement with tenant containing a clause for re-entry—Compensation in lieu of rent—Use and occupation—Trespassers.*—The plaintiff made a settlement of certain land with *A* and *B* for five years, there being in the settlement a stipulation that, if the tenants failed to pay rent, the plaintiff might accept another tenant. *A* died during the tenancy, and *B* left the place and the property without paying rent, and thereupon the plaintiff entered into possession of the property and held khas possession of it for two years, when he in 1870 entered into a settlement of it with defendant No. 1 for six years. In 1878 *B* died, and defendants Nos. 2 and 3, alleging themselves to be the chela and dasiputra of *B*, took upon themselves to collect rent from the tenants. The plaintiff thereupon brought a suit against the three defendants, treating them as trespassers, but at the same time asked for the amount of rent due and for eviction. *Held* that defendants Nos. 2 and 3 had no right on the property at all, and that defendant No. 1, who might have been considered as holding over after the expiration of his lease, if he had been in actual sole possession, should not be made liable for the whole rent when defendants Nos. 2 and 3 were in possession as much as he was; but that, as the plaintiff had elected to waive the trespass, all the defendants might, on the authority of *Lalun Monee* v. *Sona Monee Dabee*, *22 W. R., 333*, and *Lukhee Kant Dass Chowdhry* v. *Sumeeruddi Lusker, 13 B. L. R., 243*: *21 W. R., 208*, be treated as tenants, and a decree for use and occupation given against them. SURNOMOYEE *v.* DINONATH GIR SUNNYASEE [I. L. R., 9 Calc., 908 : 13 C. L. R., 69

173. ——— *Ejectment, Delay in executing decree for—Possession of tenant until execution—Suit for damages.*—A plaintiff who had obtained a decree for ejectment under s. 25, Act X of 1859, and did not execute that decree for some months after, is not entitled to a decree in a suit subsequently brought for damages, in respect of the same lands, for the period included between date of the institution of the ejectment suit and the execution of the decree in that suit, the occupation of the defendants being the occupation of tenants-at-will and not of trespassers. AYMEL ISLAM *v.* JARDINE, SKINNER & Co. . . . . 8 W. R., 501

11. DAMAGE TO PREMISES LET.

174. ——— **Damage by fire**—*Negligence—Defect in building.*—The plaintiff hired a thatched bungalow of the defendant, entered into possession, and after living in the house some time lit a fire in the fire-place in one of the rooms. The chimney took fire, and the plaintiff's furniture was destroyed. He subsequently ascertained that the chimney had been thatched over, of which fact he had been all along ignorant. *Held* that the landlord, defendant, was liable in damages for the loss sustained by him. *Per* KEMP, *J.*—The landlord should have given the plaintiff notice of the defective construction of the chimney. The plaintiff had a right to assume that it was properly built. RADHA KRISHNA *v.* O'FLAHERTY [3 B. L. R., A. C., 277 : 12 W. R., 145

175. ——— **Damage by storage of goods** —*Warehouse—Damage—Suit for negligence—Onus probandi.*—The plaintiff let to the defendants a godown on an upper storey over his own godown for the purpose of storing goods, the only stipulation in writing being that no combustible or hazardous goods should be stored there. The plaint alleged that the premises were taken by the defendants on the understanding that the defendants should use the same in a tenant-like manner, yet the defendants used them in an untenant-like manner, and loaded an unreasonable and improper weight on the floor, whereby it broke through and damaged the plaintiff's goods below. The evidence showed that the godown had been used by former tenants for storing light goods, but, in addition to light goods, the defendants had, at the time the floor broke, stored upon it several casks of white and red lead and some cases containing tin plates. The evidence of professional witnesses

LANDLORD AND TENANT—*continued.*

11. DAMAGE TO PREMISES LET—*continued.*

showed that a warehouse floor ought to be able to bear 1½ cwt. per superficial foot, and there was evidence to show that the pressure on the portion of the floor which fell was, at the time, 1 cwt. 1 qr. 6 lbs. The floor gave way in the part where the heavy goods were stored, but there was nothing to show that they were improperly stored. Evidence was given that it was not usual to store heavy goods on an upper floor, but that heavy goods were sometimes stored on upper floors. The evidence of the professional witnesses was to the effect that the floor was not a proper one upon which to store merchandise, but that 1½ cwt. was not a dangerous weight for a warehouse-floor to bear, and that no unprofessional person could have anticipated danger from it in the present instance. There was also evidence to show that the girders were not sufficient for the floor of an upper storey to be used as a godown. In a suit for damage sustained by the plaintiff by reason of the breaking of the floor, —*Held* (*per* MACPHERSON, *J.*, and on appeal) that it lay upon the plaintiff to show that the defendants had acted in an improper and untenant-like manner, and that he had failed to show that any improper or unreasonable weight had been placed by the defendants upon the floor, or such as a tenant exercising ordinary caution might not have placed there. KOEGLER *v.* YULE

[5 B. L. R., 401: 14 W. R., O. C., 45

176. ——— **Destruction of plants by fire**—*Transfer of Property Act (IV of 1882), s. 108, cl. (e)—Lease of coffee garden—Voidability of lease.*—The plaintiff was the assignee of the right and title of the lessor, and the defendant was the lessee of a coffee garden under an instrument which was held to constitute a lease of the coffee plants only. In a suit to recover the annual payment reserved under the lease, it appeared that the coffee plants had been destroyed by fire, and the garden had been consequently abandoned by the defendant before the period to which the claim related. *Held* that the plaintiff was not entitled to recover. KUNHAYEN HAJI *v.* MAYAN

[I. L. R., 17 Mad., 98

177. ——— **Destruction of premises before expiration of lease**—*Lease for a year—Whole rent paid in advance—Right of tenant to a refund of rent paid in advance—Apportionment—Transfer of Property Act (IV of 1882), s. 108, cl. (e)—Contract Act (IX of 1872), s. 65.*—In April 1896, the defendant let to the plaintiffs one compartment in a certain godown for storing goods for twelve months for a sum of R1,459 and a second compartment in the same godown for twelve months for R1,368. The plaintiffs entered into possession. In August 1896, in accordance with the practice, the plaintiffs paid the said two sums in advance to the defendant and got a receipt. On the 30th October 1896, without any default of the plaintiffs the whole godown including the said two compartments was destroyed by fire and rendered wholly unfit for the purpose of storing goods. The plaintiffs thereupon sued for a refund of a proportionate part of the money paid to the defendant, relying upon s. 108, cl. (*e*), of the Transfer of Property Act and s. 65 of the Contract Act. *Held* that they were entitled to recover. The consideration was for the whole year. The lease, *i.e.*, the whole contract, had become void, and therefore under s. 65 of the Contract Act the defendant, who had received the whole consideration, was bound to make compensation for that portion which had failed. DHURAMSEY SOONDERDAS *v.* AHMEDBHAI HUBIBBHOY

[I. L. R., 23 Bom., 15

12. DEDUCTIONS FROM RENT.

178. ——— **Right to hajuts or remissions of rent**—*Discretion of landlord.*—A raiyat can have no claim in law to hajats (or remissions), which being acts of grace on the part of the landlord rest solely on his discretion. PANAOLLAH NASHYO *v.* NUBODEEP CHUNDER SHAHA . **15 W. R., 270**

13. REPAIRS.

179. ——— **Liability for repairs**—*Construction of lease.*—Where certain premises were let under an agreement in which the tenant covenanted as follows: "I will make the necessary repairs to the buildings at my own cost; if by reason of my not so repairing any injury occur to a building, or it become broken, I will restore it," it was held that it would not be a fair construction to hold that if, whilst the buildings were in good repair, and the tenant had done all the necessary repairs, they were blown down or injured by a cyclone, the liability to restore them should fall upon the tenant. The agreement bound the tenant only to restore buildings, which it became necessary to restore in consequence of his not repairing them. Any loss occasioned by the natural operation of time ought to fall upon the landlord, and not upon the tenant. ANUND MOYEE DOSSEE *v.* RAJ COOMAR ROY . **23 W. R., 34**

180. ——— *Deduction from rent.*—In a suit for house-rent, the tenant cannot be allowed to set off a sum expended by him in repairing the house without authority from the plaintiff. ZUMMEERUNNISSA *v.* GAYER . **6 W. R., Civ. Ref., 26**

181. ——— *Covenant to renew lease—Lessee's liability to keep demised premises in repair—Extent of lessor's liability—Compensation for lessee's loss for non-repairs by lessor—Transfer of Property Act (IV of 1882, as amended by Act III of 1885), s. 105.*—In the absence of express covenant in the lease how far lessor is bound to make structural repairs during the continuance of the lease or on its renewal when such option is given,—*Held* the lessor is not bound to make such repairs. Although the lessee is bound to yield up the premises in good repair after expiry of lease, except in case of damage done by act of God or inevitable accident, a corresponding liability is not imposed on the lessor. No such obligation is imposed by the Transfer of Property Act (IV of 1882, as amended by Act III of 1885), nor does any principle of equity require such a result. *Held* further that, if

13. REPAIRS—*concluded.*

by any act of God or inevitable accident any material portion of the property became unfit for the purpose for which it was let, the lessee had the option to avoid the lease, but no right to claim damages against the lessor. STUART *v.* PLAYFAIR . **2 C. W. N., 34**

182. ———— *Lease—Covenant to "keep premises wind and watertight and in habitable condition"—Damage by earthquake, Liability to repair—Transfer of Property Act (IV of 1882), s. 108, cl. (m).*—Where a lessee covenanted to "keep the premises wind and watertight and in habitable condition," and the premises were subsequently damaged by earthquake,—*Held* that the lessee was bound by his covenant whether or not the damage was caused by an earthquake or other irresistible force; that the covenant was a contract to the contrary within the meaning of s. 108, Transfer of Property Act, and cl. (*m*) of that section did not apply; and that the defendant was not liable to do all and every repair that became necessary by reason of the earthquake, but only to make good the damage caused to the premises by the earthquake to the extent of making them wind and watertight and in habitable condition. *Proudfoot* v. *Hart, L. R., 25 Q. B. D., 44,* referred to. HECHLE *v.* TELLERY **[4 C. W. N., 521**

14. TAX.

183. ———— **Liability for tax**—*House built by tenant.*—The owner of the land is not liable for the tax assessed on a house built upon the land by his tenant . WOOMA NUNDO ROY *v.* BROWNE **[6 W. R., Civ. Ref., 30**

15. ALTERATION OF CONDITIONS OF TENANCY.

(*a*) POWER TO ALTER.

184. ———— **Mortgagee of tenant**—*Change of nature of tenure without authority from landlord.*—When the conditions of a tenure have been settled by a compromise between the landlord and tenant, a subsequent mortgagee has no power to change the conditions so as to bind the landlord unless he has power expressly given him in that behalf, and the tenant is estopped from denying the conditions. HUR PERSHAD *v.* OODIT NARAIN **[1 Agra, Rev., 60**

(*b*) DIVISION OF TENURE AND DISTRIBUTION OF RENT.

185. ———— **Change in position of tenants and rent payable for each portion of land.**—A landlord, who has let out land at a certain rent, payable in one sum for the whole, cannot, without the consent of the tenant, alter the position of the latter and say that in future so much shall be payable in respect of one parcel only, and so much in respect of another. KALEE CHUNDER AICH *v.* RAMGUTTY KUR . . . . **25 W. R., 95**

15. ALTERATION OF CONDITIONS OF TENANCY—*continued.*

186. ———— **Breaking up tenures without consent of tenants**—*Liability for rent.*—Where tenants hold land by different agreements, the zamindar has no right without their consent to break up existing holdings and redistribute lands so as to alter the extent and nature of the holdings. RUHEEMUDDY AKUN *v.* POORNO CHUNDER ROY CHOWDHERY **[22 W. R., 336**

187. ———— **Splitting claim for rent**—*Suit for rent under a lease of several estates where the rent is a lump sum.*—Where the rent reserved by a lease of several estates is a lump sum, a claim to recover it under the lease cannot be split and apportioned. OOSMAN KHAN *v.* CHOWDHRY SHEORAJ SINGH . . . . . . **5 N. W., 42**

188. ———— **Division of holding by tenant**—*Recognition of, by landlord.*—A zamindar may recognize the division of a holding either formally, by actually dividing it into parts, or impliedly, by receiving rent from parties holding separately. OOMA CHURN BANERJEE *v.* RAJLUCKHEE DEBIA **[25 W. R., 19**

189. ———— *Consent of landlord—Act X of 1859, s. 27.*—Under s. 27, Act X of 1859, no division of tenure or distribution of rent is valid or binding without the consent in writing of the landlord. UPENDRA MOHUN TAGORE *v.* THANDA DASI . . **3 B. L. R., A. C., 349**

S. C. WOOPENDRO MOHUN TAGORE *v.* THANDA DOSSIA . . . . **12 W. R., 263**

SADHAN CHANDRA BOSE *v.* GURU CHARAN BOSE **[8 B. L. R., 6 note: 15 W. R., 99**

190. ———— *Acquiescence by landlord.*—But where a zamindar himself put up a tenure for sale in separate lots, and took rents from two of the purchasers separately, it was held that no written consent was necessary in order to his being bound to recognize the partition. NUBO KISHEN MOOKERJEE *v.* SREERAM ROY . **15 W. R., 255**

191.* ———— *Consent of landlord—Power to consent—Farmer.*—*Held* by a majority of the Court (*dissentiente* STEER, J.) that the farmer of a Government khas mehal, as the party entitled to the rents, can accept a surrender of a tenure, and therefore is competent to assent to the division of a raiyati holding within his farm into several distinct and separate holdings. HUREE MOHUN MOOKERJEE *v.* GORA CHAND MITTER **[2 W. R., Act X, 25**

192. ———— **Agreements as to division**—*Act X of 1859, s. 27—Liability for rent.*—The provision of Act X of 1859, which requires that every agreement as to division or distribution of rent should be in writing, applies only to division or distribution made after the Act came into operation. ALLENDER *v.* DWARKANATH ROY . . **15 W. R., 320**

LANDLORD AND TENANT—*continued.*

15. ALTERATION OF CONDITIONS OF TENANCY—*continued.*

(*c*) CHANGE OF CULTIVATION AND NATURE OF LAND.

193. ——— **Allowance of time for change of cultivation**—*Irrigated and unirrigated land.*—Where a landlord claimed to revert to nanjai rates of rent (rent assessed on irrigated land), on the ground that he had repaired a tank, which for years had been unrepaired,—*Held* that a reasonable time must be allowed to the tenant to prepare for change of cultivation. LAKSHMANAN CHETTI *v.* KOLANDAIVELU KUDUMBAN **I. L. R., 6 Mad., 311**

194. ——— **Changing the nature of the land**—*Using land for brick-making—Injunction—Acquiescence of landlord.*—In a suit for a perpetual injunction against the principal defendants to stop the business of brick-making carried on by them on lands which they had taken under temporary leases from their co-defendants, who were holders of small jotes within the plaintiff's zamindari and to recover damages for alleged injury done to the lands, where the evidence showed such a continued use of the land for twenty-five years for the purpose of brick-making, as raised a strong presumption of acquiescence on the part of the landlord, and that, so far from injuring the land, the defendants had placed it in a better condition than it had been in previously,—*Held* that no case had been made out for the issue of an injunction. TARINEE CHURN BOSE *v.* RAMJEE PAL . **23 W. R., 298**

195. ——— *Right of tenant to change nature of land.*—No tenant taking land is entitled, without some specific agreement on the subject, to change the nature of that land, or to make any permanent alteration in the state of the landlord's property. If a person wishes to lease lands for the purpose of making bricks, that should be the subject of a special agreement between the parties, in the same way as when parties take lands for building purposes. ANUND COOMAR MOOKERJEE *v.* BISSONATH BANERJEE . . **17 W. R., 416**

196. ——— *Forfeiture—Waste—Planting a mango tope on dry land.*—In the absence of local custom, tenants are not entitled to convert land under cultivation into a mango grove. Tenants from year to year are not at liberty to change the usual courses of husbandry without the consent of the landlord. LAKSHMANA *v.* RAMACHANDRA . . . . **I. L. R., 10 Mad., 351**

(*d*) DIGGING WELLS OR TANKS.

197. ——— **Right to dig well**—*Mokurrari tenure, Holder of.*—A mokurrari raiyat may build a well on his land or do anything that does not so entirely destroy the land as to endanger the zamindar's ground-rent. DHEPUT SINGH *v.* HALAL KHOORY CHOWDHRY . . . . **W. R., 1864, 279**

198. ——— *Right of tenant to dig well for use of himself and other residents in village.*—A tenant with a right of occupancy, who failed to show that he had a right, by custom or otherwise, to construct a well without his landlord's permission, is not justified in constructing one, and thereby infringing his landlord's rights, on the plea that he built it for the use of himself and the other residents of his village. SKINNER *v.* MAHTAB **[4 N. W., 160**

199. ——— *Custom—Acquiescence of zamindar.*—Where a cultivator was in the habit of digging wells to irrigate his field, described as irrigated chobee, and from the practice which had arisen under the old proprietors, the consent of the zamindar had not been thought necessary,—*Held* that the cultivator was entitled to insist on his old right until by a new contract the old terms of his holding were superseded. MAHOMED FYZOODDEEN *v.* IMRUT **[3 Agra, 285**

200. ——— **Breach of covenant not to dig tank**—*Suit by zamindar.*—For breach of a covenant by an ijaradar not to excavate a tank on the lands leased to him, or, if so, to be liable to eviction by the zamindar, and to pay the cost of filling up the tank, no suit will lie at the instance of the zamindar for the recovery of a fractional portion of the lands covered by the lease, but the zamindar may declare the lease cancelled and resume the whole of the lands, or he may sue for cancellation of the lease, and he may also sue for damages occasioned by the excavation of the tank. BEER CHUNDER MANICK *v.* HOSSEIN **[17 W. R., 29**

201. ——— **Digging well or planting trees without permission**—*Ejectment—Forfeiture of lease as for breach of condition.*—The act of digging a well or planting trees may not necessarily imply or assert a proprietary right in the land in which the well is dug or the trees are planted, yet by the general law of the North-West Provinces a raiyat, even having a right of occupancy, being prohibited from doing certain acts, such as planting of trees or digging wells, without his landlord's consent, makes himself liable to ejectment, unless protected by local usages, from his holding, if he were to dig a well or plant trees without the landlord's consent. S. 6, Act X of 1859, which provides that a raiyat who has held or cultivated the land for more than twelve years acquires a right of occupancy in it so long as he pays rent for the same, must be read consistently with cl. 5, s. 23 of that enactment, which provides that a raiyat is liable to ejectment from his holding for breach of contract, and not as importing that a raiyat having a right of occupancy, so long as he pays the rent claimable from him, is at liberty to use and deal with the land as he pleases. The useful or beneficial nature of an act is not a justification of it if it be a breach of contract. A condition not expressly made between the parties to a contract may nevertheless be attached to such contract by custom. The general rule that a raiyat is liable to ejectment on the digging of a well without the consent of the zamindar may be varied by particular local usage or express contract. KOONJ BEHARY PATUCK *v.* SHIVA BALUK SINGH **[Agra, F. B., 119: Ed. 1874, 89**

LANDLORD AND TENANT—*continued.*

15. ALTERATION OF CONDITIONS OF TENANCY—*continued.*

202. ——— **Power of tenants to construct wells without consent of landholder** —*N.-W. P. Rent Act (XII of 1881), s. 44.*—*Held* that, having regard to s. 44 of the N.-W. P. Rent Act, 1881, an occupancy tenant may, if such well be an improvement within the meaning of the section, construct either a kutcha or pucca well on his holding without any reference to the consent of the zamindar. *Raj Bahadur* v. *Birmha Singh I. L. R., 3 All., 85,* and *Muhammad Raza Khan* v. *Dalip, Weekly Notes, All., 1899, p. 103,* referred to. DHARAMRAJ KUNWAR *v.* SUMERAN SINGH . **I. L. R., 21 All., 386**

203. ——— **Rule prohibiting tenant from digging wells**—*Forfeiture for breach of condition—Liability to ejectment.*—Any rule which prohibits a tenant from improving his holding is one which, on grounds of public policy, Courts are bound to restrain within its strictest limits. When a zamindar insists on his right to prohibit the construction of kutcha wells, he should be required to prove that the right claimed by him customarily exists on the estate. Forfeiture is not bound to be deemed the invariable penalty for breach of contract occasioned by the construction of a well. When such forfeiture is claimed, and the right to claim it is proved, the Court should consider whether an adequate remedy cannot be secured to the landlord without depriving the tenant of his whole interest in the holding; and if it finds that such a remedy can be given, and that the tenant has not deliberately invaded his landlord's rights, but, admitting his own position as tenant, has acted in what he believed to be the exercise of a right, or in the honest belief that his act would not meet with objection on the part of the landlord, it should refuse to oust the tenant, and leave the landlord to seek a remedy which would be more proportionate to the injury he has sustained, and amply relieve him from its effects. SHEOCHURN *v.* BUSSUNT SINGH. RAMJUTHUN SINGH *v.* MEHDEE

[3 N. W., 282: Agra, F. B., Ed. 1874, 258

204. ——— **Prohibition to excavation of tank**—*Sub-tenant—Breach of stipulation in lease—Excavation of tank.*—The plaintiff let a piece of land to *M*, and by the terms of the lease it was stipulated that the lessee should not excavate a tank on the land. *M* sub-let the land to *J* and *N*, who, in the course of their occupation, excavated a considerable plot of ground. The plaintiff thereupon brought a suit against *M, J,* and *N* to have the ground restored to its former condition, or for damages. The first Court gave a decree for the plaintiff. The Judge was of opinion that *J* and *N*, not being parties to the original lease, could not be made liable in the suit, and he dismissed the suit as against them. The plaintiff appealed, making *J* and *N* only respondents. *Held* that *J* and *N* had no right to use the land in contravention of the terms of the lease, and that, if the plaintiff proved that their acts were in breach of the stipulation in the lease to *M*, he was entitled to the assistance of the Court in getting the land restord as nearly as possible to its former condition. MONINDRO CHUNDER SIRKAR *v.* MONEERUDDEEN BISWAS

[11 B. L. R., Ap., 40 : 20 W. R., 230

(*e*) ERECTION OF BUILDINGS.

205. ——— **Right to erect buildings**—*Tenant of non-agricultural land—Injunction to restrain erection.*—Although where land is let for building pucca houses upon it, or where the tenant with the knowledge of the landlord does in fact lay out large sums upon the land in buildings or other substantial improvements, that fact, coupled with a long-continued enjoyment of the property by the tenant or his predecessors in title, might justify a Court in presuming a permanent grant, especially if the origin of the tenancy could not be ascertained; yet the mere circumstance of a tenant occupying buildings upon property will not justify such a presumption, unless it can be shown that they were erected by him or his predecessors, because a landlord might let property of that kind as agricultural land at will or from year to year. *Prosunno Coomaree Debea* v. *Rutton Bepary, I. L. R., 3 Calc., 696 : 1 C. L. R., 377,* considered. *Lal Sahoo* v. *Deo Narain Singh, I. L. R., 3 Calc., 781,* distinguished. Where land has, with the consent of the landlord, ceased to be agricultural, and the tenant has since built a homestead or used part of it for tanks or gardens, the nature of the tenure is not thereby changed, nor is the tenant thereby deprived of any right of occupancy which he might have acquired. See *Nyamatoollah Ostagar* v. *Gobind Charan Dutt, 6 W. R., Act X, 40.* PROSUNNO COOMAR CHATTERJEE *v.* JAGUN NATH BAISAK . **10 C. L. R., 25**

Reversing decision in JAGGANATH BAISAK *v.* PROSONNO COOMAR CHATTERJEE . **9 C. L. R., 221**

206. ——— *Erection of buildings by tenant-at-will or tenant from year to year—Determination of tenancy—Notice to quit.*—There is no law in this country which converts a holding at will from year to year, or for a term of years, into a permanent tenure, merely because the tenant, without any arrangement with his landlord, builds a dwelling-house upon the land demised. PROSONNO COOMAREE DEBIA *v.* RUTTEN BEPARY

[I. L. R., 3 Calc., 696 : 1 C. L. R., 577

207. ——— *Grant of land—Presumption as to nature of tenure—Erection of buildings—Bastu land—Suit to evict.*—Where it is conceded that lands were not let out for agricultural purposes, but that they had apparently been let out more than sixty years before suit for building purposes, the defendant's ancestors having erected thereon a house more than sixty years before suit, and having, with the defendants, resided there from first to last, the Court is at liberty to presume that the land was granted for building purposes, and that the grant was of a permanent character. *Prosonno Coomar Chatterjee* v. *Jagun Nath Bysack, 10 C. L. R., 25,* followed. *Prosunno Coomaree Debea* v

Rutten Bepary, I. L. R., 3 Calc., 696, distinguished. GUNGA DHUR SHIKDAR *v.* AYIMUDDIN SHAH BISWAS **[I. L. R., 8 Calc., 960**

S. C. GOVINDA CHUNDRA SIKDAR *v.* AYINUDDIN SHA BISWAS . . . **11 C. L. R., 281**

208. ——————— *Occupancy of homestead land—Tenancy, Determination of.*—The mere record of the name of a tenant, who is found in occupation of a particular piece of land, in settlement proceedings, and of the rent payable by him, does not invest him with any permanent title to hold it. Where an estate, at one time the property of the Government, was as a khas mehal settled raiyatwari for a period of thirty years from 1247, and where in such settlement *A* was recorded as tenant of the land at a stated rent,—*Held* that the Court was not bound to presume that the origin of *A*'s title was a grant to continue in permanent possession. *Prosunno Coomaree Debea* v. *Rutton Bepary, I. L. R., 3 Calc., 696,* and *Addaito Charan Dey* v. *Peter Das, 13 B. L. R., 17,* followed. ARUT SAHOO *v.* PRANDHONE PYKURA . . . **I. L. R., 10 Calc., 503**

209. ——————— **Suit to compel tenants to clear lands of buildings and trees**—*Currency of lease—Cause of action.*—Certain landlords' suits to compel their lessee's tenants to clear certain lands of houses and trees, and to restrain them from building or encroaching in future, were held to be premature while the lease was running; their cause of action as regards any erection or planting subsequent to the date of the lease not arising until the lease had expired. LOOTF ALI *v.* SHIB DYAL SINGH . **8 W. R., 512**

210. ——————— **Suit to eject tenant and remove buildings**—*Unsubstantial or temporary building.*—A claim to occupy a building cannot be maintained on the ground of a previous tenant's long occupancy of the land as against a landlord who has since the death of such tenant exercised rights of ownership over the land. A decree for the removal of a building upon his land may be given to the owner, even though he has stood by and allowed the defendant to construct it, provided the building is not substantial and has not cost much, and the materials may be removed without difficulty. SUFDUR ALI KHAN *v.* JEO NARAIN SINGH . . **16 W. R., 161**

211. ——————— **Ejectment suit**—*Tenant expending money on the premises.*—In a suit for ejectment it appeared that the defendants and their father had occupied the premises in question for over forty years, and that the house, which had originally been a cow-house, had been altered by the defendants and converted into a dwelling house. The District Judge found that, as the plaintiff had allowed the defendants to rebuild and virtually erect a new house, it would not be equitable to allow him to eject them from it, and he accordingly refused the plaintiff a decree for ejectment, but gave him a decree against the defendants for three years' rent. On appeal to the High Court, the decree was varied by directing that the plaintiff should recover possession of the land and house, there being no evidence that the defendants had entered on the land for building purposes or had built "in the hope or encouragement by the plaintiff of an extended term or an allowance for expenditure" (*Ramsden* v. *Dyson, L. R., 1 H. L. at p. 170),* and consequently the defendants had no equity against the plaintiff. ONKARAPA *v.* SUBAJI PANDURANG. SUBAJI PANDURANG *v.* ONKARAPA . . **I. L. R., 15 Bom., 71**

212. ——————— **Perpetual injunction**—*Specific Relief Act (I of 1877), s. 54, cls. (b), (c)—Injury to interest in immoveable property—Inapplicability of remedy by compensation—Erection of dwelling-house on agricultural land—Ameliorating waste.*—A zamindar sued for an injunction to compel the defendant, who held agricultural lands comprised in the zamindari with occupancy-rights, to demolish a dwelling-house which he had erected thereon for purposes not connected with agriculture, and to restrain him from altering the character of the land. *Held* that the plaintiff was entitled to the injunction sued for. RAMANADHAN *v.* ZAMINDAR OF RAMNAD **[I. L. R., 16 Mad., 407**

213. ——————— **Law of landlord and tenant as to building by the tenant on the land**—*Acquiescence of lessor—Equitable estoppel preventing ejectment—Onus of proof.*—A lessor is not restrained by any rule of equity from bringing a suit to evict a tenant, the term of whose lease has expired, merely by reason of that tenant's having erected permanent structures on the land leased, such building having been within the knowledge of the lessor, and there not having been any interference on his part to prevent it. To raise an equitable estoppel against the lessor precluding him from suing, on the determination of the tenancy, for possession, the tenant should show facts sufficient to justify the legal inference that the lessor has by plain implication contracted that the right of tenancy should be changed into a right of permanent occupancy. Acquiescence by the lessor in this case was a legal inference to be drawn from such facts as were found. The onus of establishing sufficient cause for an equitable estoppel had not been discharged by the tenant in this instance. *Ramsden* v. *Dyson, L. R., 1 E. & I., Ap., 129,* and s. 108 of the Transfer of Property Act, 1882, referred to. BENI RAM *v.* KUNDAN LAL

[I. L. R., 21 All., 496: L. R., 26 I. A., 58
3 C. W. N., 502

214. ——————— **Erection of buildings by tenant on land**—*Acquiescence of landlord—Compensation to tenant—Transfer of Property Act (IV of 1882), s. 108.*—To resist ejectment by a tenant on the ground that the tenancy is a permanent one, and that the landlord stood by and permitted him (the tenant) to erect pucca buildings on the land in the belief that the said tenancy was a permanent one, it is incumbent on the tenant to show that in erecting the buildings he was acting under an honest belief that he had a permanent right in the land, and the landlord, knowing that he (the tenant) was acting

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15. ALTERATION OF CONDITIONS OF TENANCY—*concluded.*

under such belief, stood by and allowed him to go on with the construction of the buildings. *Beni Ram* v. *Kandan Lal, L. R., 26 I. A., 58; Ramsden* v. *Dyson, L. R., 1 E. & I., Ap., 129; Jug Mohan Dass* v. *Pallonjee, I. L. R., 22 Bom., 1; De Busche* v. *Alt, L. R., Ch. D., 286; Kunhamed* v. *Narayanan Mussad, I. L. R., 12 Mad., 320,* referred to. Where it is proved that the tenancy is not a permanent one, that the tenant erected a pucca building on the land without the consent of the landlord, the tenant on eviction is not entitled to any compensation for the building from the landlord. *Dattatraya Rayaji Pai* v. *Hridhor Narayan Pai, I. L. R., 17 Bom., 736; Yeshwada* v. *Ram Chunder, I. L. R., 18 Bom., 66,* distinguished. ISMAIL KHAN MAHOMED *v.* JAIGUN BIBI . **I. L. R., 27 Calc., 570 [4 C. W. N., 210**

16. TRANSFER BY LANDLORD.

215. ———— **Assignee of lessor**—*Assignee of right to recover rent—Acquiescence of lessee.*—Where a landlord assigns his right to another, his lessee cannot put an end to the obligation to pay rent, if, after becoming aware of the arrangement, he made no objection. If the assignee dispossesses the lessee, he cannot sue the latter for rent. GOUR DYAL SINGH *v.* HUBEEL HOSSEIN **14 W. R., 83**

216. ———— *Right to rent—Attornment by lessee.*—A party succeeding to the proprietary rights of a lessor and dispossessing the lessee cannot sue such lessee in the Collector's Court for rent due from him as tenant, unless the latter has previously attorned to him. RAM LALL MISSER *v.* CHUNDRABULLEE DABEE . . **13 W. R., 228**

217. ———— *Liability for rent to assignee of person admittedly in possession.*—A party holding an assignment from the landlord to recover rents from *C*, a registered tenant, having sued both *C* and *D* as co-tenants of the tenure, the suit against *D* was dismissed by the lower Courts. *Held* that, as the assignment respected the rents of that tenure and *D* had admitted being in possession of the land, the suit ought to have been allowed to proceed against both. DHOOLEE CHUND *v.* RAJROOP KOOER . . . . . **15 W. R., 107**

218. ———— *Change in proprietary title of estate—Right of patnidar to eject tenant.*—A mere change in the proprietary title of an estate does not entitle a patnidar, who holds from the new proprietor, to eject a tenant who can prove a right of occupancy. RAM GHOSE *v.* RADHA CHURN GANGOOLY . . . **15 W. R., 416**

219. ———— *Transfer by landlord or person having right to receive rent—Right of assignee to realize rent.*—*A*, a zamindar, granted lands on kaul to *B*. *B* assigned to *C*, but the lands being mostly in the hands of cultivators, *C* only occupied those that had been in *B*'s possession. The kist fell into arrear, and *A* attached property of *C*'s. Notice of the attachment was given

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16. TRANSFER BY LANDLORD—*continued.*

before, but the property was not seized till after the whole of the arrears claimed had become due. *C* resisted *A*'s claim on the ground, substantially, that the sum demanded included arrears which had accrued on the lands not occupied by him. *Held* that, as to the lands of which *C* had obtained the actual possession, there was such a privity between *A* and *C* as gave *A* a right to realize the amount of kist outstanding in respect of those lands. *Held* also that this right was not affected by failure to prove the execution of a muchalka by *C* to *A*, or by the omission to furnish *C* with a list of the property attached. KAMALA NAYAK *v.* RANGA RAU **[1 Mad., 24**

220. ———— *Sale of zamindar's rights—Right of purchaser to rent.*—If, when a judgment-debtor's rights and interests in property are sold, the property is lawfully in the possession of tenants, the proper course is not to dispute their lawful possession and occupation, but to place the purchaser in a condition to receive from them the rents in the place of the judgment-debtor. UNCOVENANTED SERVICE BANK *v.* PALMER **2 N. W., 456**

221. ———— *Purchaser of zamindari, Right of, to rent.*—Where a party purchases another's zamindari rights in an estate in which that other had created an under-tenure with a fixed rent, the circumstance that payment of rent on account of such tenure was suspended while the zamindari was in the hands of the former proprietor does not affect the rights of his successor or the fixity of the rent. GUDADHUR LALL *v.* RAM JHAN GUNDEREE . . . . . **10 W. R., 212**

222. ———— *Suit for rent—Bengal Tenancy Act (VIII of 1885), ss. 72 and 73—Rule 3, Ch. I of the Rules made by the Local Government under cl. (2) of s. 189 of the Bengal Tenancy Act—Liability for rent on change of landlord—Notice of transfer—Transfer of patni right over a specific area, whether valid—Reg. VIII of 1819, ss. 3 and 6—Transfer of Property Act (IV of 1882), s 6.*—Patni right over a specific area lying within a patni talukh is transferable. Sub-s. (*1*) of s. 72 of the Bengal Tenancy Act does not require that the notice therein contemplated should be given in any particular manner. MADHUB RAM *v.* DOYAL CHAND GHOSE **[I. L. R., 25 Calc., 445 2 C. W. N., 108**

223. ———— *Position of tenant-at-will paying rent and the purchaser.*—Where a party occupies land within a zamindari with the zamindar's permission as a tenant-at-will, on the terms of paying rent, a purchaser of the zamindari has a right to treat him as his tenant unless the zamindar has transferred his right, *e.g.*, by granting a patni for the land to a third party. In a suit by such purchaser against such tenant, in which the third party intervened, the issue whether the zamindar transferred his rights to the plaintiff or had previously transferred them to the intervenor was material. GOOROO PROSUNNO BANERJEE *v.* SREEGOPAL PAL CHOWDHRY . . **20 W. R., 89**

224. ———— *Purchaser at sale for arrears of revenue—Alteration in payment of rent.*—The purchasers of a zamindar's right by having their shares separately recorded in the Collector's office under Act XI of 1859 do not acquire any right to alter the position of tenants as regards the manner in which rent is to be paid, so long as the latter hold over after the expiry of a settlement. DELAUNY *v.* KOFILOODDEEN . **25 W. R., 35**

225. ———— *Suit by purchaser of moiety of talukh for rent.*—Where the plaintiff, after purchasing from *S* a moiety of a talukh which had been previously let in ijara on a lump jumma to *T*, brought a suit under Act X of 1859 against the lessee to recover that portion of the whole rental property accruing on the talukh purchased, and the suit was dismissed on the ground that the ijara kabuliat did not specify the proportion of rent due upon the talukh, it was held in a subsequent suit brought against *S* and *T*, for a declaration of title and for rent from the time of the purchase, that, as the lessee had no explicit notice of the purchase and no apportionment had been made with her consent of the rent payable on the share sold, she would be justified in continuing to pay the rent as a whole to the original lessor. TARAMONEE DOSSEE *v.* PUNCHANUN BOSE . . **18 W. R., 508**

226. ———— *Arrangement between landlord and tenant binding an purchaser.*—A purchaser of land is bound by a contract between his vendor and a tenant, which is secured by the rent of the land remaining in the hands of such tenant, the contract being in the nature of an assignment of rent of the property sold. CHOORAMUN SINGH *v.* PATOO KOOER . . . . . . **24 W. R., 68**

227. ———— *Mortgagee after foreclosure and tenant of mortgagor.*—A mortgagee who has foreclosed his mortgage is not entitled to rent from a tenant of the property from the date of the foreclosure, but from the date on which he has perfected his title and the tenant has notice of his having done so. RAISUDDIN CHOWDHRY *v.* KHODU NEWAZ CHOWDHRY . . **12 C. L. R., 479**

228. ———— *N.-W. P. Rent Act (XII of 1881), ss. 7, 95 (l)—Determination of rent by Revenue Court—Suit for arrears of rent as so determined for period prior to such determination.*—An application was made in the Revenue Court under s. 95 (*l*) of the N.-W. P. Rent Act (XII of 1881) by the purchaser of proprietary rights in a mehal, for determination of the rent payable by his vendors, who had become, under s. 7, his ex-proprietary tenants in respect of the land they had previously held as sir. The Revenue Court, by an order dated the 18th February 1884, fixed the rent at a particular sum payable annually, after making the deduction of four annas in the rupee required by s. 7 of the Rent Act. In May 1884 the purchaser sued the ex-proprietary tenants to recover from them arrears of rent at the sum so fixed, for a period of three years prior to the Revenue Court's order. *Held* by the Full Bench that the plaintiff was entitled to recover arrears of rent for the years in suit at the amount determined by the Revenue Court's order of the 18th February 1884, subject to any question of limitation that might arise. MAHADEO PRASAD *v.* MATHURA **[I. L. R., 8 All., 189**

17. TRANSFER BY TENANT.

229. ———— **Right to sub-let**—*Tenant with permanent right of occupation.*—A tenant who has a permanent right to the occupancy of land subject to payment of fair and equitable rent has, as a matter of course, a right to sub-let the land to the extent of his own interest therein. KHOSHAL MAHOMED *v.* JOYNOODDEEN . . **12 W. R., 451**

230. ———— *Limit of power—Under-lease specifying no term.*—A lessee cannot make an under-lease for a longer time than his own lease, nor is he the agent of the landlord so as to bind him by granting leases for any time he may think fit. Where an under-lease specifies no term of tenancy, it cannot be construed to have effect beyond the interest of the grantor. HURISH CHUNDER ROY CHOWDHRY *v.* SREE KALEE MOOKERJEE **[22 W. R., 274**

231. ———— *Limit of power—Expiration of primary lease.*—*Held* that no farmer can, during the term of his lease, create for him a sub-tenure which is to endure after the lease expires, to the prejudice of the owner whose *locum tenens* he is; and that no occupancy or jotedari rights, which relate to a specific extent of land, could be acquired in respect of an undivided share of an estate. SHOORUT SOONDRY DABEE *v.* (BINNY) JARDINE, SKINNER & Co. . . . . . **25 W. R., 347**

232. ———— *Sub-lease—Position of sub-tenant—Privity of contract—Ejectment—Notice to quit—Bombay Land Revenue Code (Bombay Act V of 1879), s. 84.*—A sub-lease differs from an assignment of lease in that it creates no privity of contract between the sub-tenant and the landlord. The landlord has to deal with his lessee and not with the sub-tenants of the latter. A landlord putting an end, by proper notice, to the tenancy of his tenant thereby determines the estate of the under-tenants of the latter. TIMMAPPA KUPPAYYA *v.* RAMA VENKANNA NAIK . **I. L. R., 21 Bom., 311**

233. ———— *Sub-letting—Sub-lessee, rights and liabilities of—Sale of lessee's interest, effect of.*—*B* held certain land as a lessee under *M*. The lease did not contain any covenant against sub-letting, or any forfeiture clause. *B* sub-let a portion of the land demised to *A*. *M* obtained a decree against *B* for arrears of rent, and in execution attached and sold the entire holding including *A's* interest as a sub-lessee. *Held* that the sale in execution did not affect the sub-lessee's interest in the land or put an end to the sub-lease. VISHNU ATMARAM *v.* ANANT VISHNU . . **I. L. R., 14 Bom., 384**

234. ———— *N.-W. P. Rent Act (XII of 1881), s. 9—Ex-proprietary tenant, power to sub-let—Right of occupancy.*—An ex-proprietary tenant can sub-let the whole or any part of his occupancy holding, and such a sub-letting is not forbidden by s. 9 of Act XII of 1881. Khiali Ram *v.* Nathu Lal . . **I. L. R., 15 All., 219**

235. ———— *N.-W. P. Rent Act (XII of 1881), s. 9—Occupancy-tenant, power of, to sub-let—Perpetual lease by occupancy tenant.*—The effect of a perpetual lease made by an occupancy tenant of his occupancy holding to a person not a co-sharer in the right of occupancy considered. Mahesh Singh *v.* Ganesh Dube **I. L. R., 15 All., 231**

236. ———— *N.-W. P. Rent Act (XII of 1881), s. 31—Lease of occupancy holding—Relinquishment of holding pending term of lease.*—Where an occupancy tenant grants a lease of land forming part of his occupancy holding for a term of years, he cannot during the subsistence of such term relinquish his holding to the zamindar so as to put an end to his lessee's rights under the lease. *Khiali Ram* v. *Nathu Lal, I. L. R., 15 All., 219; Hoolassee Ram* v. *Porsutum Lal, 3 N. W., 63; Heeramonee* v. *Ganganarain Roy, 10 W. R., 384;* and *Nehalunnissa* v. *Dhunoo Lal Chowdry, 13 W. R., 281,* referred to *Sukru* v. *Tafazzul Husain Khan, I. L. R., 16 All., 398,* distinguished. Badri Prasad *v.* Sheodhian **I. L. R., 18 All., 354**

237. ———— *Bengal Tenancy Act (VIII of 1885), s. 85—Landlord and tenant—Sub-lease of a raiyati holding by a registered instrument for a period of more than nine years whether valid.*—A sub-lease of a holding by a raiyat without the consent of the landlord, though created by a registered instrument, is altogether void under s. 85 of the Bengal Tenancy Act. Srikant Mondul *v.* Saroda Kant Mondul . **I. L. R., 26 Calc., 46**

238. ———— **Transfer of tenancy**—*Yearly tenancy—Consent of landlord.*—A yearly tenancy cannot be transferred without the lessor's consent, and the fact that the lessee had had enjoyment under the pottah for a very long series of years does not alter the character of the interest originally created by the pottah. Lalljee Sahoo *v.* Bhugwan Doss . . . . . **8 W. R., 337**

239. ———— *Consent of landlord—Purchaser from tenant.*—The purchaser of a raiyati tenure is bound to communicate with the zamindar and obtain his consent to the transfer of the tenure; without this being done, a gomastah's receipts of rent are not binding on the zamindar. Bhojohuree Banick *v.* Aka Golam Ali . **16 W. R., 97**

240. ———— *Transfer of non-transferable tenure—Right of purchaser against transferee of raiyat.*—Where proprietors purchased a tenant's rights and sued to eject one, who alleged that he held the pottah from the tenant, it was held that the tenant, being a simple raiyat without transferable rights, could not give a third party any right of possession as against the proprietors of the estate, and that the holder of the pottah from the tenant was a mere trespasser. Omar *v.* Abdool Guffoor . . . . . **9 W. R., 425**

241. ———— *Kurpha tenant—Transferable tenures.*—The jummai rights of a kurpha under-tenant are not transferable without the consent of the raiyat-landlord. Bonomali Bajadur *v.* Koylash Chunder Mojoomdar **I. L. R., 4 Calc., 135**

242. ———— *Transfer by tenant of mirasi rights—Acknowledgment of transfer by landlord.*—The right of transfer of mirasi rights, although by no means commonly enjoyed by tenants in these provinces, is nevertheless in some places sanctioned by local usage. Where a person has made such a transfer without authority, it should nevertheless be enquired into whether or not the landlord has sanctioned such transfer by accepting the assignee as tenant and receipt of rent. Kooerya *v.* Doorga Pershad . . . **2 N. W., 139**

243. ———— *Suit for rent of transferable tenure—Possession of holder.*—The person into whose hands a transferable tenure comes is bound to pay rent to the landlord, unless kept out of possession and enjoyment by the fault of the landlord, and the landlord's right to claim rent from his tenant does not depend upon the fact of possession by the tenant. Gobind Chunder Chunder *v.* Kristo Kanto Dutt . . . . **14 W. R., 273**

244. ———— *Liability for rent—Party in possession.*—A landlord seeking to recover rent is not bound to proceed against any person who may have any latent beneficial right to the tenure in respect of which the rent has fallen due, but against that person only who may be found in possession thereof with a legal right. Tilock Chunder Chuckerbutty *v.* Gourmonee . **2 Hay, 364**

245. ———— *Liability for rent—Registered tenant.*—When arrears of rent become due, a zamindar is not bound to look beyond his book for the party liable, except when he has recognized other persons as his tenants either by receipt of rent or in other ways. Anund Moyee Dassee *v.* Mohindro Narain Dass . . **15 W. R., 264**

246. ———— *Suit for rent against person in possession though unregistered.*—An action for rent does not lie against a person said or shown to be in possession of a tenure which is written in the books of the zamindar in the name of a different person unless there is a contract for rent, express or implied. Eshan Chunder Ghossal *v.* Burno Moyee Dossee . . **16 W. R., 233**

247. ———— *Liability for rent—Unregistered transfer.*—Where there has been neither an entry of the transfer of the holding in the serishta of the zamindar nor anything in the way of acceptance or recognition by the zamindar of the transferee as his tenant, the original tenants are not exempted from their responsiblity to pay the rent. MOTEE ROY *v.* MEAJAN . . **20 W. R., 443**

SUROOP CHUNDER MITTER *v.* DHONAYE BISWAS **[23 W. R., 103**

248. ——— *Transfer of raiyati jote—Unregistered occupier—Person in possession.*—In the case of transfer of a mere raiyat's jote, the person in possession is liable for the rent, whether he is registered or not. GUNGA RAM SIRDAR *v.* BIRESSUR BANERJEE . **6 W. R., Act X, 32**

MISSLEBACK *v.* LUCHMEE NARAIN **[17 W. R., 504**

249. ——— *Suit for rent—Possession—Registration of tenants.*—A suit for rent against several parties is maintainable against such of them as are shown to be in possession as tenants, whether they are registered or not. JEBABUTOONISSA KHANUM *v.* RAM CHUNDER DOSS **[6 W. R., Act X, 36**

250. ——— *Non-registration of transfer.*—When a tenure is not transferable, and no transfer has been consented to or adopted by the zamindar, the zamindar is entitled to treat the incoming raiyat as a trespasser, and to evict him even in the middle of the year. But when a tenure is transferable, the mere absence of registration, or of acknowledgment of the zamindar's right by the raiyat, will not make the raiyat such a trespasser as to justify the zamindar in evicting him in the middle of the year. HURRO MOHUN MOOKERJEE *v.* CHINTAMONEE ROY **[2 W. R., Act X, 19**

251. ——— *Non-registration of transfer.*—Non-registration in the zamindar's serishta does not invalidate the sale of a tenure. BHARUT ROY *v.* GANGANARAIN MOHAPUTTER **[14 W. R., 211**

252. ——— *Unregistered transferee.*—The unregistered transferee of a transferable tenure cannot be treated by the zamindar as a trespasser, but, as against the zamindar who has evicted him, has a right to be restored to possession. NOBEEN KISHEN MOOKERJEE *v.* SHIB PERSHAD PATTUCK . . . . . **8 W. R., 96**

Upheld on review . . . **9 W. R., 161**

253. ——— *Unregistered transferee.*—*Per* KEMP, *J.*—On the death of a registered patnidar, a zamindar is not bound to recognize any one as his tenant without registration in his serishta; nor is he prevented from putting in a sezawal to collect the rents until a declaration of the rights of the deceased patnidar's heirs. RAM CHURN BANDOPADHYA *v.* DROPO MOYEE DOSSEE **[17 W. R., 122**

254. ——— *Acknowledgment of tenancy—Non-registration and mutation of names.*—A zamindar is bound to sue the actual tenant, when known to him, though the tenant's name has not been registered in his serishta. There can be a legal and valid recognition by a landlord of the vendee of a saleable under-tenure as tenant, notwithstanding that no mutation of names has taken place in his books. MEAH JAN *v.* KURRUNAMAYI DEBI **[8 B. L. R., 1**

255. ——— *Act X of 1859, s. 27—Division of rent or tenure.*—The lessor is not bound to recognize the title of any one except the person with whom he deals, whatever that title may be as between the lessee and the members of his family. UPENDRA MOHUN TAGORE *v.* THANDA DASI **[3 B. L. R., A. C., 349**

S. C. WOOPENDRO MOHUN TAGORE *v.* THANDA DOSSIA . . . . . **12 W. R., 263**

SADHAN CHANDRA BOSE *v.* GURU CHARAN BOSE **[8 B. L. R., 6 note; 15 W. R., 99**

256. ——— *Liability for rent—Mortgagee in possession—Transfer of Property Act (IV of 1882), ss. 65, 76.*—Where the subject of a mortgage is leasehold property, and the mortgagee is put into possession under circumstances which amount to an assignment or transfer of the leasehold interest, the mortgagee becomes liable, as a rule, to pay the rent; but where the mortgagee is in possession and his name is registered in the landlord's books as the tenant, there can be no doubt as to his being liable for the rent. KANNYE LALL SETT *v.* NISTORINY DOSSEE . **I. L. R., 10 Calc., 443**

257. ——— *Purchaser of khas mehal—Registration of tenures.*—The purchaser of a Government khas mehal is not bound by the transfer of the rights of any of the original tenants, which have never been registered or recognized by himself or by Government, but can sue the original tenants for their arrears of rent. HURO MOHUN MOOKERJEE *v.* RAM COOMAR MITTER **[1 W. R., 225**

It is otherwise if they are registered. HUROMOHUN MOOKERJEE *v.* GOLUCK MUNDUL **[1 W. R., 351**

SUTTO CHURN GHOSAL *v.* OBHOY NUND DOSS **[2 W. R., Act X, 31**

258. ——— *Failure to obtain registry of name—Purchaser, Position of.*—Where the purchaser of a patni talukh fails to obtain registry of his name in the zamindar's books, a third party who claims to derive his title from the purchaser's vendor has no right on the ground of such failure to treat the purchaser as his tenant. RAM NARAIN DOSS *v.* TWEEDIE . **12 W. R., 161**

259. ——— *Right of purchaser—Under-lessees.*—*A* agreed to take at a stipulated rent a portion of the property leased to *B* for the remainder of *B*'s lease. Almost immediately after, *B* surrendered his lease to the landlord (*S*), who gave a fresh lease to *R*, to whom he afterwards sold all his rights. *A* continued in occupation some time, and on relinquishing was sued for rent at the stipulated rates. *A* denied liability, alleging that he had made no agreement with *R*, but, from the time of *R*'s purchase, had held under him as a tenant-at-will. *Held* that *A* was bound, under the terms of his contract, to pay the rent for as many years as the lease had to run to his lessor, or to the person who represented his lessor. **RUSHTON v. ATKINSON** . . . . . **11 W. R., 485**

260. ———————— *Liability for rent accruing before tenant's possession—Liability of transferee of lease for rent.*—Except under special circumstances, which the plaintiff must prove, a tenant-defendant cannot be held liable for the rent which has accrued due prior to his taking possession. Hence if *A* leases land to *B*, who transfers the lease to *C*, and *C* mortgages to *D*, who afterwards forecloses his mortgage and takes possession of the demised premises, *D* cannot be held liable for any rent which has accrued due prior to his taking possession. **MACNAGHTEN v. LALLA MEWA LALL**
[3 C. L. R., 285

261. ———————— *Non-registration of tenure—Recognition of transfer of tenure.*—A patnidar is not bound to recognize any purchaser by private sale as his dar-patnidar until he registers his name in the zamindar's serishta, and any proceeding held against the old dar-patnidar for the recovery of arrears of rent without making the purchaser a party to it is perfectly legal. **BISSOMOYEE DOSSEE v. MACKINTOSH** . . . . **2 Hay, 14**

262. ———————— *Transfer of permanent hereditable tenure—Forfeiture—Sarbarakari tenure.*—A zamindar is not bound to recognize the transfer of a permanent hereditable tenure effected without his consent, and cannot be compelled to register such transfer in his serishta; but the fact of such improper transfer does not deprive the old sarbarakar of his rights, or entitle the zamindar to get khas possession. **KASHEENATH PUNEE v. LUKHMONEE PERSHAD PATNAIK** . **19 W. R., 99**

263. ———————— *Transfer defeating right of re-entry.*—Even where a lessee's interest is transferable, the landlord is not obliged to recognize a transfer, if the effect of so doing would be to defeat his own right of re-entry. **NUND KISHORE SINGH v. ISMED KOOER** . . . **20 W. R., 189**

264. ———————— *Liability for rent—Registration of tenant—Transfer without landlord's knowledge.*—Where a landlord registers a new tenant with his express or implied consent in the place of the old tenant, the new tenant becomes for the future as much personally liable for the rent as the old tenant was; and this personal liability continues, notwithstanding a fresh transfer or devolution of the tenure, unless proper steps are taken to apprise the landlord of the change and to have it registered in his serishta. **DWARKA NATH MITTER v. NOBONGO MUNJORI DASSI** . **7 C. L. R., 233**

265. ———————— *Acknowledgment of tenancy—Registration of transfer—Deposit of rent.*—The mere deposit of rent in the Collector's office by the purchaser of an under-tenure in his own name and that of the registered tenant is not sufficient notice to the zamindar of such purchase; nor is the mere acceptance by the zamindar of rent so paid an acknowledgment on his part of the purchaser as his under-tenant, but it is otherwise when there is acceptance with notice, notwithstanding that the transfer has not been registered. **MRITYUNJAYA SIRCAR v. GOPAL CHANDRA SIRCAR**
[2 B. L. R., A. C., 131

S. C. **MIRTUNJOY SIRCAR v. GOPAL CHUNDER SIRCAR** . . . . . . **10 W. R., 466**

266. ———————— *Transfer by registered tenant—Sale in execution of decree—Receipt of rent—Acknowledgment of tenancy—Bengal Act VIII of 1865, s. 16.*—The plaintiffs were shareholders with one *B* in a tenure, of which *B* was the registered tenant, but of which he had assigned part to the plaintiffs without the consent of the zamindar. In execution of a decree against *B* for arrears of rent, the plaintiffs' portion was sold and purchased by the defendant. In a suit by the plaintiffs to set aside the sale and recover their property,—*Held* they were pecuniarily liable for the rent with *B*, unless the zamindar had made a separate agreement with them; that the whole tenure was rightly seized and sold in execution of the decree; and that the taking of the rent from them by the zamindar was no such recognition as to bind him or create a valid incumbrance under s. 16, Bengal Act VIII of 1865. **SRINATH CHUCKERBUTTY v. SRIMANTO LASHKAR**
[8 B. L. R., 240 note: 10 W. R., 467

267. ———————— *Without consent of zamindar—Right of zamindar to sell tenure for arrears of rent—Recognition of transferee.*—A tenant cannot, by merely alienating his tenure, deprive the zamindar of the right which he would otherwise have to sell it in execution of a decree for arrears of rent. A zamindar can sell the tenure in the hands of the transferee, not being one of the judgment-debtors, if he does so with reasonable promptness: provided he has not done anything to recognize the transfer. Where a zamindar makes a transferee a party to a suit for rent and accepts a decree against him jointly with other persons, he must be held to have recognized the transferee as a tenant, although the latter's name may not have been entered as such in the zamindar's book. **RAM KISHORE ACHARJEE CHOWDHRY v. KRISHNO MONEE DEBIA**
[23 W. R., 106

268. ———————— *Liability for rent—Non-registration of tenure.*—*A*, the lessee of a transferable tenure, transferred his interest to *B*, but after the transfer the name of *A* remained as registered tenant. Subsequently the zamindar brought a suit against *A* for arrears of rent which accrued due partly before and partly after the purchase, and obtained a decree for the sale of the tenure. *Held* that the decree might be executed against the tenure, though the latter was in *B's* possession before it was passed, it not appearing that the zamindar had knowledge of the transfer before the date of the decree. **WOOMA CHURN CHATTERJEE v. KADAMBINI DABEE** . . **3 C. L. R., 146**

See Nobin Chunder Sen Chowdhry *v.* Nobin Chunder Chuckerbutty . . **22 W. R., 46**

269. ———— *Position of purchaser—Act X of 1859, s. 21.*—A decree against a vendor obtained before a Collector cancelling a pottah of a jote which has been sold is not binding on the purchaser of the jote, if the purchase was made before the transfer of the tenure to him took place. The purchaser, having entered into possession, became a "raiyat holding under a pottah, the term of which had not expired," within s. 21, Act X of 1859, and therefore could not be ejected otherwise than in execution of a decree made in a suit against himself. Lalljee Sahoo *v.* Bhugwan Doss . **8 W. R., 337**

270. ———— *Suit for rent—Liability of tenure for rent—Rent due by former tenant.*—A decree for rent obtained by a landlord against his registered tenant renders the tenure comprised in the decree liable for sale, although such tenure may have passed into other hands than those of the judgment-debtor. The landlord's remedy is, however, in such case strictly confined to the sale of such tenure under his decree. He cannot make a tenant personally liable for rent which accrued due before such tenant became the owner of the tenure. The remedies which are provided by the Rent Law for enforcing the payment of rent by sale of the tenure or by distress are remedies *in rem.* The personal liability of one tenant cannot be transferred to another. Rash Behary Bundopadhya *v.* Peary Mohun Mookerjee . **I. L. R., 4 Calc., 346**
[3 C. L. R., 116

271. ———— *Enhancement of rent, Suit for—Transferable tenure—Mutation of names—Tenant who has transferred his holding, Liability of, for rent.*—The main object of a suit for enhancement is to have the contract between the landlord and tenant as regards the rate of rent re-adjusted. In a suit for enhancement it was found that the defendant had, prior to institution, sold his holding, which by custom was transferable without the consent of the landlord, to a third party. There had been no mutation of names, or payment of a nazar, or execution of fresh lease; but the landlord had received rent from the third party and was fully aware of the transfer. *Held* that the connection of the defendant with the holding had come to an end, and the suit against him did not lie. Abdul Aziz Khan *v.* Ahmed Ali . **I. L. R., 14 Calc., 795**

272. ———— *Mortgage of occupancy holding—"Act inconsistent with the purpose for which the land was let"—Suit to eject mortgagee in possession—N.-W. P. Rent Act (XII of 1881), ss. 9 and 93.*—A mortgage of his holding by an occupancy tenant, under which the mortgagee obtains possession, is not an act "detrimental to the land" or "inconsistent with the purpose for which the land was let" within the meaning of s. 93 (*b*) of the N.-W. P. Rent Act (XII of 1881). An act detrimental to the land means an act which injures the land itself. An act inconsistent with the purpose for which the land was let must be some such act as the making of a tank, or the altering the character of the land, as, for instance, turning it from agricultural land to building land. But a mortgage with possession, whether the possession is given at the time of the granting of the mortgage, or is obtained later by virtue of the mortgage, is a transfer within the prohibition of s. 9 of the N.-W. P. Rent Act. Madho Lal *v.* Sheo Prasad Misr
[I. L. R., 12 All., 419

273. ———— *Transfer of portion of mokurari tenure—Bengal Tenancy Act (VIII of 1885), ss. 17, 18, and 88—Rights of purchaser or transferee of tenure—Right of suit.*—There is nothing in s. 88 of the Bengal Tenancy Act to prevent a person who has purchased a share in a mokurari holding from bringing a suit for a declaration of his right to that share and for possession of the same after setting aside a sale held in execution of a decree for rent to which he was not made a party. Ss. 17 and 18 of the Bengal Tenancy Act recognize the transfer of a share of a holding, and enable the transferee to be regarded as one of the tenants in respect of the holding. Mohesh Chunder Ghose *v.* Saroda Prasad Singh
[I. L. R., 21 Calc., 433

274. ———— *Transfer of Property Act (IV of 1882), s. 108, cl. (j)—Transfer by lessee—Lessor's right to sue both lessee and his transferee.*—The provision in s. 180 of the Transfer of Property Act that a lessee may transfer, absolutely or by way of mortgage or sub-lease, the whole or any part of his interest in the property, and that the lessee shall not, by reason of such transfer, cease to be subject to any of the liabilities attaching to the lease, does not prevent the transferee being also liable to the lessor, who may at the same time sue the lessee upon his express covenant, and the transferee upon the privity of estate, though he can have execution against one only. Kunhanujan *v.* Anjelu . . . **I. L. R., 17 Mad., 296**

275. ———— *Transfer of Property Act (IV of 1882), s. 108—Transferability of agricultural and non-agricultural holding—Law before the passing of the Transfer of Property Act.*—Before the Transfer of Property Act was passed, there was no distinction drawn between agricultural and non-agricultural tenancies, and there was no law under which, before the passing of the Transfer of Property Act, agricultural holdings could be transferred against the will of the landlord or sub-divided without his consent. Madhab Chandra Pal *v.* Bejoy Chand Mahatab . **4 C. W. N., 574**

276. ———— *Transfer of Property Act (IV of 1882), s. 108, cl. (j)—Liability of a lessee for rent after transfer—Leases of non-agricultural character.*—To suits brought by a landlord against his lessee for rent based upon kabuliats, the leases being of a non-agricultural character, an assignee of the lessee was made a party defendant on his own application. It was contended on behalf of the lessee that under the common law of India it was competent for the tenant to rid himself of his liability by assignment or at any rate by assignment and notice thereof to his landlord. *Held* that, if there was such a common law in India enabling the tenant to put an end to his liability by transfer and notice, it did not at all events extend to leases of a non-agricultural character; and that s. 108, cl. (*j*), of the Transfer of Property Act, which governed the case, must be construed without reading it as governed by, or interpreted with reference to, any such principle; and that, after a transfer by the lessee and notice thereof to the landlord, the liability of the lessee would not cease, merely at his pleasure, without any act or consent on the part of the landlord. SASI BHUSHUN RAHA *v.* TARA LAL SINGH DEO . . . . **I. L. R., 22 Calc., 494**

277. ———— *Bengal Tenancy Act (VIII of 1885), ss. 18 and 50—Presumption—Occupancy raiyats—Raiyats holding at fixed rent—Incidents of tenancy—Transferability of tenure—Alienation of part of a tenure—Suit for khas possession and for declaration that alienation was invalid—Form of decree.*—In a suit brought in 1893 for a declaration that a holding was not transferable, and that the alienation of a portion thereof was invalid, and also for khas possession of the land on the ground of such alienation, it was found that the rate of rent payable for the holding had never been changed since 1831, and that there was nothing to rebut the presumption raised by s. 50 of the Bengal Tenancy Act (VIII of 1885). *Held* (1) that the alienation did not work a forfeiture, and the plaintiffs were not entitled to khas possession, but they were entitled to the declaration that the alienation was not binding upon them; (2) that the presumption created by s. 50 does not operate to convert an occupancy raiyat into a raiyat holding at fixed rates, nor does it render the tenancy subject to the incidents of a holding at fixed rates as prescribed by s. 18 of the Act. BANSI DAS *alias* RAGHU NATH DAS *v.* JAGDIP NARAIN CHOWDHRY **[I. L. R., 24 Calc., 152**

Dissented from in DALHIRI GOLAB KOER *v.* BALLA KURMI . . . **I. L. R., 25 Calc., 744**

278. ———— *Mulgeni lease—Alienation by mulgenidar—Alienation contrary to the terms of the lease—Absence of any clause as to re-entry—Suit by mulgar for possession.*—In the absence of any clause for re-entry in the event of alienation by the mulgenidar (permanent tenant) contrary to the terms of the lease, the mulgar (landlord) cannot treat the alienation as void and recover possession from the alienee. NARAYAN DASAPPA *v.* ALI SAIBA . . **I. L. R., 18 Bom., 603**

279. ———— *N.-W. P. Rent Act (XII of 1881), s. 9—Mortgage by occupancy-tenant—Surrender of holding by heirs of mortgagor—Suit on mortgage—Sale and purchase by mortgagee—Subsequent suit by zamindar for recovery of occupancy-holding.*—*A*, an occupancy-tenant to whom the second and third paragraphs of s. 9 of Act XII of 1881 applied, gave a simple mortgage of his occupancy-holding to one *S*. During the continuance of the mortgage, *A* died and his sons surrendered the occupancy-holding to the zamindar. *S* then brought a suit for sale on his mortgage, obtained a decree, had the mortgaged property sold, and purchased it himself. On suit by the zamindar, who had not been made a party to any of the previous proceedings, against *S* for recovery of the holding, it was held that *S* took nothing by his purchase under the decree obtained as above described, and that the zamindar was entitled to recover. SUKRU *v.* TAFAZZUL HUSAIN KHAN . . **I. L. R., 16 All., 398**

280. ———— *Alienation contrary to terms of lease—Absence of any clause as to re-entry—Suit for ejectment—Forfeiture.*—A clause in a lease whereby the lessee covenanted not to alienate, unaccompanied by any clause for re-entry upon breach of the covenant, held to be a covenant merely and not a condition, and a suit for ejectment brought by the lessor was dismissed. *Narayan Dasappa* v. *Ali Saiba, I. L. R., 18 Bom., 603*, followed. MADAR SAHEB *v.* SANNABAWA GAJBANSHAH . . . . **I. L. R., 21 Bom., 195**

281. ———— *Transfer by tenant without consent of landlord—Original tenant remaining in possession as sub-tenant of the transferee—Abandonment of tenure—Liability to ejectment.*—Where the defendants had purchased the rights of the original tenants of certain jote lands, without obtaining the consent of the landlord to the transfer of the tenures, and the original tenants had remained in possession as sub-tenants of the transferees,—*Held* that the principle laid down in *Kabil Sardar* v. *Chunder Nath Nag Chowdhry, I. L. R., 20 Calc., 590*, was not applicable, and that the landlord was entitled to a decree for ejectment against the transferees. KALLINATH CHAKRAVARTI *v.* UPENDRA CHUNDER CHOWDHRY **I. L. R., 24 Calc., 212**

282. ———— *Transfer by tenant of land on which he has by permission of zamindar built a house for his own occupation—Rights of zamindars in land forming part of the abadi—Customary law of the North-Western Provinces.*—According to the general custom prevalent in the North-Western Provinces, a person, agriculturist or agricultural tenant, who is allowed by a zamindar to build a house for his occupation in the abadi, obtains, if there is no special contract to the contrary, a mere right to use that house for himself and his family so long as he maintains the house, that is, prevents it falling down, and so long as he does not abandon the house by leaving the village. As such occupier of a house in the abadi occupying under the zamindar, he has, unless he has obtained by special grant from the zamindar an interest which he can sell, no interest which he can sell by private sale or which can be sold in execution of a decree against him, except his interest in the timber, roofing, and wood-work of the house. *Narain Prasad* v. *Dammar, Weekly Notes, All., 1888, p. 125*, and *Chajju Singh* v. *Kanhia, Weekly Notes, All., 1881, p. 114*, referred to. GIRDHARIJI MAHARAJ *v.* CHOTE LAL . . . . **I. L. R., 20 All., 248**

283. ——————— *Payment into Court by tenant, and withdrawal of money by landlord—Effect of withdrawal as showing consent of landlord to transfer.*—When a non-transferable holding was advertised for sale in execution of a decree for arrears of rent and the judgment-debtor put in the money due under the decree stating that he had procured the money by selling his holding to the defendant No. 1, and the landlord, the plaintiff, took out the money out of Court,—*Held* that it could not be inferred from the above circumstances that the landlord had given his consent to the transfer, inasmuch as the plaintiff had a right to draw the money out of Court without regard to the manner in which or the source from which the judgment-debtor had procured it. Where a tenant transfers his non-transferable holding and abandons possession of it, the landlord is entitled to reject the transferee. *Norendra Narayan Roy Chowdhry* v. *Ishan Chandra Sen, 13 B. L. R., 274,* followed. *Kobil Sardar* v. *Chunder Nath Nag Chowdhry, I. L. R., 20 Calc., 590,* distinguished. WILSON *v.* RADHA DULARI KOER . . . . **2 C. W. N., 63**

18. ACCRETION TO TENURE.

284. ——— **Right to increment to tenure.**—The law gives an increment to a tenant or under-tenant in possession, without reference to the nature of his title. NARAIN DOSS BEPARY *v.* SOOBUL BEPARY . . . . **1 W. R., 113**

285. ——————— *Tenant-at-will.*—A tenant-at-will is entitled to occupy an accretion to his holding so long as he retains possession of his original holding. BHUGABUT PRASAD SINGH *v.* DURG BIJAI SING . . . **8 B. L. R., 73**
[16 W. R., 95

Contra FINLAY, MUIR & CO. *v.* GOPEE KRISTO GOSSAMEE . . . . . **24 W. R., 404**

286. ——— **Right to pottah from the zamindar for accreted land**—*Jote paying rent to Government.*—In case of an accretion to land by alluvion, the raiyat is not entitled to a pottah from the zamindar in respect of the accretion, if it is an accretion to a jote the rent of which is payable to Government. CAMPBELL *v.* KISHEN DHUN AUDHICAREE . . . **Marsh., 67 : 1 Hay, 233**

KISHEN DHUN AUDHICAREE *v.* CAMPBELL
[W. R., F. B., 22 : 1 Ind. Jur., O. S., 79

287. ——— **Terms of holding accreted lands**—*Beng. Reg. XI of 1825—Assessment of accreted lands.*—Lands accreting to a tenure are, under Regulation XI of 1825, to be held under the rates and on the conditions imposed upon the original tenure itself. MAHOMED WASSIL *v.* ZULEKHA KHATOON . . . . **2 Hay, 515**

288. ——————— *Beng. Reg. XI of 1825, s. 4, cl. 1.*—*Held* that, under s. 4, cl. 1, Regulation XI of 1825, tenants have a right to the land accreted to their holding; and if the tenant has acquired a right of occupancy in his original holding, he would enjoy a similar right in the alluvial land, although he may not establish that he has held such alluvial land for twelve years. OODIT RAI *v.* RAMGOBIND SINGH . . . **2 Agra, Pt. II, 206**

289. ——————— *Land accreted to muafi tenure—Beng. Reg. XI of 1825, s. 4, cl. 1.*—Where alluvial land has been formed in front of and contiguous to an old muafi which had been resumed and settled with the muafidars,—*Held* that, in the absence of any custom to the contrary, the first clause of s. 4, Regulation XI of 1825, applies, and the portion so thrown up in front of the muafi becomes an increment to the holding of ex-muafidars. FUZL-OOD-DEEN *v.* IMTEEAZ-OON-NISSA
[3 Agra, 152

290. ——————— Where lands become annexed to a jote by gradual accretion within the meaning of s. 4, Regulation XI of 1825, the jotedar is entitled to hold them on the same principle and under the same legal conditions as he holds the parent estate. GOBIND MONEE DEBIA *v.* DINO BUNDHOO SHAHA . . . . . . **15 W. R., 87**

291. ——————— *Beng. Reg. XI of 1825, s. 4, cl. 1.*—Cl. 1, s. 4, Regulation XI of 1825, refers only to under-tenants intermediate between the zamindar and the raiyat, and to khoodkasht or other raiyats who possess some permanent interest in their lands, and not to tenants from year to year. ZUHEEROODEEN PAIKAR *v.* CAMPBELL
[4 W. R., 57

292. ——————— *Beng. Reg. XI of 1825, s. 4, cl. 1.*—Cl. 1, s. 4, Regulation XI of 1825, prescribes that the right to the occupancy of accreted land is with the owner of the parent mehal or subordinate tenure, as the case may be. But so far from saying that it is revenue or rent-free, or that the original revenue or rent assessment covers the demand both for the original estate or original subordinate tenure and for the accreted land, the very reverse is contemplated by the section, which provides for payment of revenue or rent, if payable under law or usage. Accreted lands, when liable to enhancement at the ordinary neighbouring rates, are entitled to a deduction of 10 per cent. for collection charges, and 10 per cent. for talukhdari profits. JUGGUT CHUNDER DUTT *v.* PANIOTY **6 W. R., Act X, 48**

293. ——— **Accretion to zimma tenure**—*Beng. Reg. XI of 1825.*—Cl. 1, s. 4, Regulation XI of 1825, and s. 22, Act X of 1859, will not allow a suit for the assessment of lands accreted to a zimma tenure; and holders like the zimmadar, in a case of this nature, are not liable under s. 15, Act X of 1859, for additional rent for chur land, until they are shown by the zamindar to be holders of tenures subsequent to the Decennial Settlement not having a fixed jama, and then only liable for the talukhdari rates paid by others of the same class for similar lands. PANIOTY *v.* JUGGUT CHUNDER DUTT
[9 W. R., 379

294. ——— **Accretion to holding of mirasi jotedar**—*Right of occupancy.*—A mirasi jotedar with a right of occupancy has a right to lands which accrete to his jote, and the zamindar cannot take them away and settle them with other parties. ATTIMOOLLAH *v.* SAHEBOOLLAH

[15 W. R., 149

295. ———— **Jote tenure**—*Beng. Reg. XI of 1825, s. 4, cl. (1)—Occupancy right—Raiyat.*—A raiyat who has a right of occupancy is entitled to the benefit of s. 4, cl. (1), of Regulation XI of 1825. *Gobind Monee Debia* v. *Dinobundhoo Shaha, 15 W. R., 87 ; Attimoollah* v. *Saheboollah, 15 W. R., 149 ;* and *Bhagabat Prasad Sing* v. *Durg Bijai Singh, 8 B. L. R., 73 : 16 W. R., 95*, followed. *Finlay, Muir & Co.* v. *Gopee Kristo Gossamee, 24 W. R., 404*, not followed. GOURHARI KAIBURTO *v.* BHOLA KAIBURTO . I. L. R., 21 Calc., 233

296. ———— **Rent of accreted land**—*Beng. Reg. XI of 1825, s. 4, cl. 1—Liability to increased rent.*—When the area of land held by a tenant under a permanent tenure has been increased by accretion, the tenant becomes subject to pay an increased rent on account of the land gained by accretion, on the conditions laid down in Regulation XI of 1825, s. 4, cl. 1. RAMNIDHEE MANJIE *v.* PARBUTTY DASSEE . . . I. L. R., 5 Calc., 823

S. C. SHOROSSOTI DOSSEE *v.* PARBUTTI DOSSEE

[6 C. L. R., 362

BROJENDRA COOMAR BHOOMICK *v.* WOOPENDRA NARAIN SINGH . . I. L. R., 8 Calc., 706

See BAKRANATH MANDAL *v.* BINODE RAM SEIN

[1 B. L. R., F. B., 25 : 10 W. R., F. B., 33

HURROSOONDEREE DOSSEE *v.* GOPI SOONDEREE DOSSEE . . . . . 10 C. L. R., 559

297. ———— **Lands formed by the drying-up of a beel or marsh**—*Trespasser—Encroachment.*—Although where a tenant encroaches upon any land of his landlord outside of his tenure, it is open to the landlord to treat him as tenant and not as a trespasser and the tenant has no right to compel the landlord to treat him as a tenant, yet it does not follow that because the landlord has this option he can treat the tenant as trespasser at any time after having exercised his option in treating him as a tenant for some time. The principal defendants held a holding under the plaintiffs and their co-sharers ; subsequent to the creation of the original holding defendants took possession of certain lands by gradual encroachment ; plaintiffs brought a suit for recovery of their share of the encroached lands or for assessment of rent and made their co-sharers parties. *Held* that the plaintiff not having treated the defendants as trespassers from the beginning the defendants must be treated as tenants of those lands apart from their tenancy in respect of their holding. KHONDAKAR ABDUL HAMID *v.* MOHINI KANT SAHA

[4 C. W. N., 508

298. ———— **Accretion to parent estate, Assessment of rent in respect of**—*Reg. XI of 1845, s. 2, cl. (1)—Act XI of 1855, s. 1—Reg. VII of 1822—Act IX of 1847—Act XXXI of 1858—Bengal Tenancy Act (VIII of 1885), s. 52.*—In a suit brought by the talukhdar of a certain mouzah against the dar-talukhdar for a declaration that he was entitled to get rent at a certain rate annually, also for arrears of rent at that rate, and in the alternative for compensation for use and occupation of the disputed land which was an accretion to the said mouzah, and in respect of which a settlement was made with him by Government treating it as a separate estate, the defence (*inter alia*) was that the suit was not maintainable unless a rental was assessed in the first instance, and that no arrears of rent could be claimed, as there was no relationship of landlord and tenant between the parties. *Held* the landlord could not treat it as a separate tenure altogether ; that the increment was to be regarded as part of the parent estate, and treating it as part and parcel of the parent estate he was entitled to get assessment of rent on the disputed land ; but he was not entitled in the suit to back rent or compensation for use and occupation. ASSANULLAH BAHADUR *v.* MOHINI MOHAN DAS . I. L. R., 26 Calc., 739

299. ———— **Lessee under Government**—*Right of lessee to accretions to his tenure.*—The lessee of a mouzah ordinarily being in the position of zamindars, a lessee holding lands from Government, in the absence of any stipulation in his lease to the contrary, is entitled to the benefit of all accretions formed upon such lands during the term of his holding and may sue the occupants for a fair and equitable rent. MUTURA KANT SHAHA *v.* MEAJAN MUNDUL . . . . . 5 C. L. R., 192

300. ———— **Land in excess of tenure**—*Accretions to parent tenure—Rate of rent—Beng. Reg. XI of 1825, s. 4, cl. 1.*—In a suit for arrears of rent, it appeared that the defendant had, in 1260 (1853), executed a kabuliat, in which the boundaries of the land were given and the rate of rent fixed, and which provided that the land might be measured after 1261 (1854). In 1281 (1874), a measurement was made, and it was found that some land had accreted ; and the plaintiff now sued for rent for the accreted land, at rates varying with its nature and quality. *Held* that the accreted land should be governed by the terms and conditions applicable to the parent tenure, and that the same rent was payable for it as for the land included in the kabuliat. The meaning of Regulation XI of 1825, s. 4, cl. 1, is, that the incidents of the original tenure attach to the increment. GOLAM ALI *v.* KALI KRISHNA THAKUR

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301. ———— *Submergence of occupancy-tenant's land—Diluvion—Liability for rent—Resumption by landholder — Custom — Act XII of 1881 (N.-W. P. Rent Act), ss. 18, 31, 34 (b), 95 (n).*—A landholder,—alleging that by local custom when land was submerged, and the tenant ceased to pay rent for the same, his right to it abated, and when the land re-appeared the landholder was entitled to possession thereof ; that certain land belonging to him had been submerged and the occupancy-tenant thereof had ceased to pay rent for it ; and that

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such land had re-appeared and had come into his possession under such custom,—sued such tenant in the Civil Court for a declaration of his right to the possession of it. *Held* that, inasmuch as ss. 18 and 31 of the N.-W. P. Rent Act, 1881, showed that notwithstanding the submergence of the land the tenancy still subsisted, and as the tenant could not lose his right to the land except by relinquishment or ejectment under the provisions of that Act, and as the custom set up by the landholder was opposed to the provisions of s. 34 (*b*) of that Act, the suit was not maintainable. KUPIL RAI *v.* RADHA PROSAD SINGH **[I. L. R., 5 All., 260**

302. ———— *Suit for increased rent for lands found in excess on measurement.*—In a suit to recover a kabuliat at enhanced rates for excess lands, where defendant filed a pottah on which were endorsed the numbers of certain daghs of a measurement made by the zamindar, and composing a mokurari tenure, and also pleaded that part of the excess land was lakhiraj, it was held, in regard to the land claimed as lakhiraj, that plaintiff's remedy lay in a suit for resumption and assessment; and with regard to the land covered by the pottah, that defendant was entitled to hold the whole of the lands comprised within the daghs, notwithstanding that a recent measurement showed a greater extent of area than had been formally ascertained. MODEE HUDDIN JOWADAR *v.* SANDES . **12 W. R., 439**

RASHUM BEEBEE *v.* BISSONATH SIRCAR **[6 W. R., Act X, 57**

DAVID *v.* RAM DHUN CHATTERJEE **[6 W. R., Act X, 97**

RAJMOHUN MITTER *v.* GOOROO CHURN AYCH **[6 W. R., Act X, 106**

303. ———— **Land held in excess of tenure** — *Mirasi istemrari pottah* — *Right to enhance rent.*—Where a mirasi istemrari pottah had been granted by a patnidar whose patni had been created while the mehal was under temporary settlement and who had to pay a higher rent to the zamindar when the latter obtained a permanent settlement from Government at a higher jama, it was held that the fact of the patnidar having to pay a higher rent to the superior holder did not, under the circumstances, warrant his raising his lessee's rent. Where a patnidar sued for enhancement of rent on the foregoing ground, he was held not to be entitled to a decree for enhancement of excess land in defendant's possession, or to treat him as a trespasser in respect of such excess. BINODE BEHAREE ROY *v.* MASSEYK **[15 W. R., 494**

304. ———— *Rate of rent assessable for.*—In respect to excess area it was held (PHEAR, *J.*) that plaintiff was entitled to a fair and equitable rate; (BAYLEY, *J.*) that excess land should, as a part of the same lease, be liable to the same terms as the other land originally given under it. GOLAM ALI *v.* GOPAL LALL TAGORE . **9 W. R., 65**

305. ———— *Suit for rent —Encroachment.*—*A*, the holder of an independent istemrari tenure lying in *B*'s zamindari, let it to *C*, who, under cover of his lease, encroached upon the zamindari lands. *Held* that there was no implied contract of tenancy between *C* and *B*, and *B* could not sue *C* for rents on account of the excess lands. JAYNARAYAN SINGH *v.* MATILAL JHA **[1 B. L. R., A. C., 21**

306. ———— *Encroachment by tenant, Presumption of English law as to.*—The presumption of English law as to encroachments made by a tenant during his tenancy upon the adjoining lands of his landlord is that the lands so encroached upon are added to the tenure and form part thereof for the benefit of the tenant, so long as the original holding continues, and afterwards for the benefit of the landlord, unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit. Where lands encroached upon have been added to the tenure, the tenant, if his tenancy is permanent, or he has a right of occupancy, cannot be ejected from them while the tenure lasts; but when rent is re-adjusted, these lands may be brought into the calculation. GOOROO DOSS ROY *v.* ISSUR CHUNDER BOSE . . . **22 W. R., 246**

307. ———— *Fazendari tenure—Encroachment of tenant added to the tenure.*—An encroachment made by a tenant on the property of his landlord—*e.g.*, by a person holding under fazendari tenure—should not be presumed to have been made absolutely for his own benefit and against his landlord, but should be deemed to be added to the tenure, and to form part thereof. *Gooroo Doss Roy* v. *Issur Chunder Bose, 22 W. R., 246,* followed. ESUBAI *v.* DAMODAR ISHVARDAS **[I. L. R., 16 Bom., 552**

308. ———— *Encroachment by a tenant—Effect of such encroachment—Position of such tenant—Trespasser.*—When a tenant encroaches upon the land of his landlord, he does not by such encroachment become the tenant in respect of the land encroached upon against the will of the landlord. PROHLAD TEOR *v.* KEDARNATH BOSE **[I. L. R., 25 Calc., 302**

309. ———— *Landlord's right—Encroachment acquiesced in by landlord.*—If a tenant during his tenancy encroaches upon the land of a third person, and holds it with his own tenure until the expiration of the tenancy, he is considered to have made the encroachment not for his own benefit, but for that of his landlord; and if he has acquired a title against the third person by adverse possession, he has acquired it for his landlord, and not for himself. NUDDYARCHAND SHAHA *v.* MEAJAN . . . **I. L. R., 10 Calc., 820**

310. ———— *Tenant bringing jungle land into cultivation—Assessment of rent—Improvements by tenant.*—A raiyat who brings jungle land into cultivation is liable, after a reasonable period, to pay the full pergunnah rates of cultivated land. A raiyat who does more than bring uncultivated land into cultivation,—*i.e.*, converts,

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by means of special works and special labour, unculturable into culturable land,—is entitled to hold at exceptionally low rates. Chowdhry Khan *v.* Gour Jana . . . **2 W. R., Act X, 40**

19. RIGHT TO CROPS.

311. ———— **Right to crops on death of occupancy raiyat**—*Legal representatives, Right of, against zamindar.*—A zamindar cannot lay claim to the crops on the ground at the raiyat's death, even supposing that the occupancy right lapsed in his favour, as it forms a part of the property belonging to the deceased, and passes to his legal representatives. Doorga Pershad *v.* Doochur Pershad **[3 Agra, 188**

312. ———— **Right to crops when stored**—*Bhag-jote tenure.*—When lands are held under a bhag-jote tenure and the tenants are bound by agreement to cut and store the crops on their landlord's chuck, where it is afterwards to be divided, the dominion over the crops till division is in the landlord. Horro Narain *v.* Shoodha Kristo Berah **I. L. R., 4 Calc., 890: 4 C. L. R., 32**

313. ———— **Standing crops**—*Effect of order of ejectment under Bengal Rent Act, 1869.*—The effect of an order of ejectment under the Bengal Rent Act is to dispossess the raiyat not only of the land, but also of the crop standing thereon. In the matter of Durjan Mahton *v.* Wajid Hossein **[I. L. R., 5 Calc., 135**

20. PROPERTY IN TREES AND WOOD ON LAND.

314. ———— **Right to trees for timber**—*Right to cut down trees.*—A zamindar has a right in the trees grown on the land by the tenant, and although the tenant has a right to enjoy all the benefits of the growing timber during his occupancy, he has no power to cut the trees down and convert the timber to his own use. The zamindar may sue to have his title in the growing trees declared. Abdool Rohoman *v.* Dataram Bashee **[W. R., 1864, 367**

315. ———— **Right to trees planted by raiyat**—*Death of raiyat.*—*Held* that the plaintiffs, the owners of the lands on which trees stand, are, in default of heirs, entitled to proprietary possession of trees as "lawarisee" which had been planted by the deceased raiyat. Bhairow Deen *v.* Mookta Ram . . . . . . **1 Agra, 13**

316. ———— **Right to trees already planted**—*Lease in perpetuity.*—Where a lease is granted in perpetuity at a fixed rent and the lessor reserves no reversionary interest in the land or in the trees growing on it, the lessees are entitled to the ownership of the trees. Sharoda Soondari Debia *v.* Gonee Sheik . . . . **10 W. R., 419**

317. ———— **Assessment in respect of trees**—*Profits realized by erection of huts for pilgrims.*—A landlord is entitled to assessment in respect of trees as being the produce of the soil, but not in respect of profits realized by the use of stalls or huts erected by the tenant for the use of pilgrims frequenting a fair annually held on the land in honour of an idol which the defendant has there. Kewajah Chyemun Kajah *v.* Jan Ally Chowdhry . . . . . . **1 W. R., 46**

318. ———— **Evidence of property in trees**—*Proof of acts of ownership.*—A person's title or property in a tree may be proved by showing that the tree grows on his land, without proof of any act of ownership over the tree. Chutoor Bhooj Tewaree *v.* Villaet Ali Khan **[W. R., 1864, 223**

319. ———— **Trees planted by lessee**—*Right to growing trees under grant of homestead or waste land.*—A peshcushi sanad, or grant at a quit rent of homestead and waste land, being construed to assign a heritable right in a tract of land capable of yielding fruits by virtue of which the holder, during the continuance of his right, possessed absolutely the entire use and fruits thereof,—*Held* that the lessor or grantor had no more right to the trees planted by the lessee than he had to the crops sown by him. Goluck Rana *v.* Nubo Soonduree Dossee . . **21 W. R., 344**

320. ———— **Presumption as to ownership of trees**—*Suit for possession of tree—Presumption in favour of lessee.*—In a suit to recover possession of a tree and of its produce, where defendant was admitted to be plaintiff's tenant as to the land on which the tree stood,—*Held* that, the tree was rightly presumed to be included in the lease, and that it was for the plaintiff to establish that he was entitled to remain in possession of the tree notwithstanding the lease. *Held* that the fact of a part of defendant's allegation—*viz.*, that the tree had been planted by his ancestor—having proved untrue, did not entitle plaintiff to a decree. Mahomed Ali *v.* Bolakee Bhuggut . . . **24 W. R., 330**

321. ———— **Right of tenant to remove trees**—*Determination of tenancy—Purchaser of rights of tenant after expiry of tenure.*—*Held* that trees accede to the soil and pass to the landholder with the land on the termination of a tenancy, and unless the tenant uses, during the term of his tenancy, his privilege, where he has it, of removing the trees, he cannot do so afterwards; he would then be deemed a trespasser. *Held* also that, where a tenant has been ejected in the execution of the decree of a Revenue Court for arrears of rent from the land forming his holding, his tenancy then terminates, and with it all right in the trees standing on such land or power of dealing with them. A person, therefore, who purchases the rights and interests of a tenant after his ejectment in the execution of such a decree, cannot maintain a suit for the possession of the trees standing on the tenant's holding. Ram Baran Ram *v.* Salig Ram Singh . **I. L. R., 2 All., 396**

LANDLORD AND TENANT—*continued.*

20. PROPERTY IN TREES AND WOOD ON LAND—*continued.*

322. ——— **Property in timber**—*Right to trees on land—Transfer of trees by tenant.*—The presumption of law and the general rule is that property in timber on a tenant's holding rests in the landlord in the same way as, and to no less an extent than, the property in the soil itself. *Soonar* v. *Khuderun, 2 N. W., 251; Ajudhia Nath* v. *Sital, I. L. R., 3 All., 567; Abdool Rohoman* v. *Dataram Bashee, W. R., 1864, p. 367; Ruttonji Edulji Shet* v. *Collector of Thanna, 11 Moore's I. A., 295: 10 W. R., P. C., 13,* referred to. *Held,* therefore, where an occupancy-tenant transferred his holding, that the transfer was not only invalid in respect of the holding, but in respect also of the trees on the holding. KASIM MIAN *v.* BANDA HUSAIN . **I. L. R., 5 All., 616**

323. ——— **Lease of produce of trees**—*Effect of lease to pass property in trees.*—A lease which gave a right to the produce of trees held not to pass any property in the trees. MAHOMED ALI *v.* DEO NARAIN SINGH . . . **1 W. R., 352**

324. ——— **Property in trees passing with the land.**—Trees so long as they are not severed or cut are *primâ facie* to be taken as passing with the land on which they grow, and a sale of a house and compound would comprise the trees thereon unless it could be shown that they were specially excepted. SOONAR *v.* KHUDERUN **2 N. W., 251**

325. ——— **Sale of trees in execution of decree against tenant**—*Trees planted by occupancy-tenant with landlord's consent—Transfer of right of occupancy—Act XII of 1881 (N.-W. P. Rent Act), s. 9.*—An occupancy-tenant, whose orange trees, planted with the landholder's consent, had been sold in execution of a decree against him, made a collusive resignation of his land to the landholder, who thereupon sued the purchaser and the occupancy-tenant for possession of the land with or without the trees. *Held* that, as the purchase did not involve a transfer of the tenancy of the land in the sense of s. 9 of the N.-W. P. Rent Act, nor any change in the relations between the landholder and the occupancy-tenant such as was prohibited by that law, the landholder was not entitled to possession of the land. LALMAN *v.* MANNU LAL

I. L. R., 6 All., 19

326. ——— **Right of occupier of land**—*Bom. Act I of 1865, s. 40—Right to trees on land.*—The occupier of land who does not come under s. 40 of the Bombay Survey and Settlement Act, 1865, has not, in the absence of agreement, any proprietary right to the trees growing on his land. GOVIND PURSHOTAM KOLATKAR *v.* SUB-COLLECTOR AND DEPUTY CONSERVATOR OF FORESTS OF COLABA . . . . **6 Bom., A. C., 188**

327. ——— **Lien of mortgagee of guava trees after ejectment of tenant**—*Trees planted by tenant.*—A raiyat mortgaged certain guava trees which he had planted on a portion of his holding. Subsequently the zamindar obtained a decree against the raiyat for ejectment, and after his ejectment the mortgagees obtained a decree on their mortgage deed. *Held,* in a suit between the mortgagees and the zamindar, that their lien on the trees was destroyed by the ejectment of the raiyat. PEARUN *v.* RAM NARAIN SINGH *alias* RUNNOO SINGH . . . **1 N. W., Ed. 1873, 213**

328. ——— **Right to hypothecate trees**—*Tenant with right of occupancy.*—A tenant with a right of occupancy can only make a valid hypothecation of the trees on the land he holds for the term of his tenancy; with his ejectment from such land and the cessation of his tenancy, such an hypothecation ceases to be enforceable. AJUDHIA NATH *v.* SITAL . . **I. L. R., 3 All., 567**

329. ——— **Right of usufructuary mortgagee**—*Right to trees planted by him during tenure.*—*Held* that, although defendant, usufructuary mortgagee of a share in a joint estate, would not acquire any right to the trees planted by him in his mortgage term, yet, as co-parcener in the estate, he would be sharer in the trees. BAHADOOR KHAN *v.* KORA MULL . . . . **1 Agra, 281**

330. ——— **Ex-proprietary tenant, Right of**—*Nature of the right of occupancy—N.-W. P. Rent Act (XII of 1881), s. 7—Trees.*—In a suit for recovery of possession of zamindari property conveyed by sale-deed, including certain plots of land which were the defendant-vendor's sír, the lower Courts held, with reference to s. 7 of the N.-W. P. Rent Act (XII of 1881), that the defendant was entitled to hold possession of the said plots as ex-proprietary tenant; but as it appeared that they had fruit and other trees upon them, the Courts awarded the plaintiff possession of these trees on the ground that the nature of an ex-proprietary tenure did not entitle the holder to resist a claim of this kind as to the trees upon the land forming the area of such tenure. *Held* that this decision was erroneous, and that the plaintiff's claim to possession of the trees upon the plots in question must be dismissed. *Per* MAHMOOD, *J.*, that the principle of the maxim *cujus est solum ejus est usque ad cœlum* was applicable to the case by way of analogy, and that an ex-proprietary tenant had all the rights and incidents assigned by jurisprudence to the ownership of land, subject only to the restriction imposed upon the occupancy-tenure by the statute which created it, and that hence he would be entitled to the trees on the land, and to use them as long as the tenure existed. *Sohodwa* v. *Smith, 12 B. L. R., 82; Narendra Narain Roy Chowdhry* v. *Ishan Chandra Sen, 13 B. L. R., 274; Gopal Pandey* v. *Parsotom Dass, I. L. R., 5 All., 121; Goluck Rana* v. *Nubo Soonduree Dassee, 21 W. R., 344; Mahomed Ali* v. *Bolakee Bhuggut, 24 W. R., 330; Ram Baran Ram* v. *Salig Ram Singh, I. L. R., 2 All., 896;* and *Debi Prasad* v. *Har Dyal, I. L. R., 7 All., 691,* referred to. Also *per* MAHMOOD, *J.*, that it would be impossible to give effect to the lower Court's decrees without disturbing the ex-proprietary tenant's rights, for if the plaintiff were entitled to possession of the trees, he would be entitled to enter upon the land to get at the trees, because when the law gives a right, it must be understood to allow everything necessary to give that right effect. DEOKI NANDAN *v.* DHIAN SINGH **[I. L. R., 8 All., 467**

331. ——————— *Trees—Sale in execution of decree—N.-W. P. Rent Act (XII of 1881), ss. 7, 9.—Held* by the Full Bench that an ex-proprietor, who, under s. 7 of Act XII of 1881 (N.-W. P. Rent Act), gets occupancy-rights in his sír land, obtains analogous rights in the trees upon such sír land. A purchaser of proprietary rights in zamindari property at a sale in execution of a decree for money held by himself applied in execution of the decree for the attachment and sale of certain trees growing on the judgment-debtor's ex-proprietary holding. *Held* by the Full Bench, with reference to the provisions of ss. 7 and 9 of Act XII of 1881 (N.-W. P. Rent Act), that the trees were not liable to attachment and sale in execution of the decree. *Per* STRAIGHT, *J.*—When a proprietor sells his rights, and becomes entitled under s. 7 of the Rent Act to the righ ts of an ex-proprietary tenant, he holds all rights in the land *quâ* such tenant, which he formerly held in his character as proprietor, and paying rent in his capacity as tenant. Where there are trees upon the sír land held by him at the time when he lost his proprietary rights, neither the purchaser of those rights nor he himself can cut down or sell them *in invitum* to each other. Short of cutting the trees down, he has the same right to enjoy the trees as he originally had. JUGAL *v.* DEOKI NANDAN . . . **I. L. R., 9 All., 88**

332. ——————— **Property in trees growing on land**—*Bengal Tenancy Act (VIII of 1885), s. 23—Right of occupancy tenant to cut down trees—Right of occupancy-tenant to appropriate trees when cut down—Onus of proof—Custom—Suit for damages.*—The property in trees growing on land is, by the general law, vested in the proprietor of the land, subject, of course, to any custom to the contrary. Under s. 23 of the Bengal Tenancy Act, the onus is on the landlord to show that a tenant with occupancy right is debarred from cutting down the trees on the land, and not on the tenant to prove a custom giving him the right to do so. The right to appropriate them when cut down, however, is a different question. In a suit by landlords against their tenants who had a right of occupancy for appropriating some mango trees growing on their land which they had cut down,—*Held* that the onus was rightly thrown on the tenants of proving a custom they alleged, giving them the right to sell the trees, and, on failure to prove such custom, they were liable to damages for so appropriating them. NAFAR CHANDRA PAL CHOWDHURI *v.* RAM LAL PAL **[I. L. R., 22 Calc., 742**

333. ——————— An occupancy tenant has a right to cut down trees unless a custom to the contrary is proved by the landlord. GRIJA NATH ROY *v.* MIA ULLA NASOYA **[I. L. R., 22 Calc., 744 note**

NAFAR CHANDRA PAL CHOWDHRY *v.* HAZARI NATH GHOSE . **I. L. R., 22 Calc., 748 note**

NUFFER CHUNDER GHOSE *v.* NUND LAL GOSSYAMY . . **I. L. R., 22 Calc., 751 note**

Contra PYARI LALL PAL *v.* NARAYAN MANDAL **[I. L. R., 22 Calc., 746 note**

where it was held that the onus lay on the tenant to prove a custom allowing him to cut down trees.

334. ——————— **Trees growing on land**—*Lease for purpose of clearing jungle land.*—Where a lease of a mouzah was granted for the express purpose of clearing jungle land and bringing it under cultivation, and no reservation of the right in the trees was made in the lease,—*Held* that the lessee had the right to appropriate the trees when cut. MON MOHINI GOOPTA *v.* RAGHOONATH MISSER **[I. L. R., 23 Calc., 209**

335. ——————— **Right of occupancy-raiyat to cut down trees**—*Bengal Tenancy Act (VIII of 1885), s. 23—Onus of proof—Custom—Suit for damages.*—Certain occupancy-raiyats were by the custom of the zamindari entitled, after obtaining the permission of the village barua (headman), to cut down and appropriate agachha (valueless) trees for fuel. No payment was ever made for such permission. The defendants, the raiyats, cut down and appropriated some agachha trees grown upon the lands after they entered into possession. The zamindar sued the defendants for damages. *Held* that, even if permission to cut the trees had not been given, the zamindar had in no way suffered damage, and had no cause of action. *Held* also that in such a case the onus of proving the custom of the zamindari was on the zamindar. *Grija Nath Roy* v. *Mia Ulla Nasoya, I. L. R., 22 Calc., 744 note,* and *Nafar Chandra Pal Chowdhuri* v. *Ram Lal Pal, I. L. R., 22 Calc., 742,* applied. SAMSAR KHAN *v.* LOCHIN DASS **[I. L. R., 23 Calc., 854**

336. ——————— **Trees, Sale of**—*Occupancy-tenant—Such sale invalid—Act XII of 1881, s. 9.*—The trees upon an occupancy-holding, whether planted by the tenant himself or not, belong and attach to such holding, and like it are not susceptible of transfer by the tenant. IMDAD KHATUN *v.* BHAGIRATH . . **I. L. R., 10 All., 159**

337. ——————— **Right of tenant to cut down and sell trees.**—The property in trees growing on a tenant's holding is by the general law vested in the zamindar, and a tenant is not entitled, in the absence of special custom, the burden of proving which is on him, to cut down and sell such trees. *Imdad Khatun* v. *Bhagirath, I. L. R., 10 All., 159; Nafar Chandra Pal Chowdhuri* v. *Ram Lal Pal, I. L. R., 22 Calc., 742;* and *Ruttonji Edulji Shet* v. *Collector of Thanna, 11 Moore's I. A., 295,* referred to. KAUSALIA *v.* GULAB KUAR **[I. L. R., 21 All., 297**

LANDLORD AND TENANT—*continued.*

20. PROPERTY IN TREES AND WOOD ON LAND—*concluded.*

338. ———— **Suit for possession of fallen wood of self-sown trees growing upon an occupancy-holding**—*Burden of proof.*—A zamindar claiming a right to the fallen wood of self-sown trees which had been growing on an occupancy-holding must prove some custom or contract by which he is entitled to take such wood. The English law as to ownership under similar circumstances cannot be applied, and (*sed quære*) there is no general rule in India to decide that there is a right in the landlord or a right in the tenant by general custom to the fallen wood of self-sown trees. NATHAN *v.* KAMLA KUAR . . . **I. L. R., 13 All., 571**

21. FORFEITURE.

(*a*) BREACH OF CONDITIONS.

339. ———— **Condition for forfeiture, Construction of.**—A condition of forfeiture should not be extended beyond the words in which it is expressed, unless, perhaps, it is impossible without so extending it to give a reasonable construction to the instrument in which it appears. RAM NURSINGH CHUCKERBUTTY *v.* DWARKANATH GANGOOLY **[23 W. R., 10**

340. ———— **Condition for forfeiture**—*Concurrent remedies for breach of conditions in lease—Damages.*—There is nothing incompatible in the two remedies of damages and forfeiture for breach of the conditions of a lease. Where there is an obligation (as in this case by a lessee) to do several successive acts, the obligation is broken if any one of the acts is omitted when the time for its performance comes. The lessor is not obliged to wait until the expiration of the term; nor is the lease liable to several successive suits for each partial breach of the condition, and then to one general penalty for the whole. Nor is it usual, when a penalty is provided for breach of condition, to bring two suits—one to enquire into the existence of the breach, and the other to enforce the penalty. CHUNDER NATH MISSER *v.* SIRDAR KHAN . . **18 W. R., 218**

341. ———— *Conveyance with agreement to re-purchase—Lease.*—*A* conveyed land to *B*, with a collateral agreement to re-purchase within a certain period; the right to redeem, however, being dependent upon the due performance by *A* of the conditions of a certain lease of the land in question which *A*, remaining in possession, agreed to take from *B*. The rent falling in arrear, *B* sold the land to *C*, within the period allowed *A* to redeem. On appeal the High Court set aside the sale, holding that there was no natural connection between the lease and the condition to redeem, and that the clause for forfeiture was so vaguely worded as to have the appearance of a mere threat, as in equity, in the absence of specific mention of the nature of the failure which is to bring down the penalty of forfeiture, that penalty ought not to be enforced. ANONYMOUS . . . **1 Ind. Jur., O. S., 130**

S. C. CHIDAMBARA PILLAI *v.* MANIKKA CHETTI **[1 Mad., 63**

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342. ———— *Perpetual lease granted for consideration—Clause providing for forfeiture on rent being in arrears—Whether repayment of the consideration is a condition precedent to surrender of the lands.*—Consideration paid for a lease is exhausted by the grant of the lease, and a tenant's forfeiture of the lease cannot, in the absence of a provision to that effect, operate so as to convert the original consideration into a debt which must be paid before the forfeiture can be enforced. KAMMARAN NAMBIAR *v.* CHINDAN NAMBIAR . . . . **I. L. R., 18 Mad., 32**

343. ———— **Breach of conditions in lease.**—A breach of any of the stipulations in a lease does not cancel the lease or give a right to eject, unless there has been an express provision to that effect in the lease. AUGUR SINGH *v.* MOHINEE DUTT SINGH . . **2 W. R., Act X, 101**

MAHOMED FAEZ CHOWDHRY *v.* SHIB DOOLAREE TEWAREE . . . . . **6 W. R., 103**

TUMEEZOODDEEN CHOWDHRY *v.* SURWAR KHAN **[7 W. R., 209**

344. ———— *Ejectment—Raiyat with right of occupancy.*—A raiyat with a right of occupancy, though holding under a temporary pottah for a term of years, cannot be ejected by his landlord, unless the latter can prove a stipulation under s. 7, Act X of 1859. SHEEB DYAL PAULEET *v.* DWARKANATH SOOKUL **2 W. R., Act X, 54**

345. ———— *Improper use of land—Ejectment.*—Where a tenant has been guilty of a breach of duty in the use of his land, such as making a tank in it, building on it improperly, or changing the character of the cultivation, such conduct does not necessarily operate as a forfeiture so as to render the tenant liable to ejectment. NOYNA MISSER *v.* RUPIKUN **[I. L. R., 9 Calc., 609 : 12 C. L. R., 300**

346. ———— *Destruction of trees and alteration of cultivation by tenant—Right of re-entry.*—Some of the trees in a grove were destroyed, and the tenant brought the land on which they had existed into cultivation. His act operated to create a right of re-entry on so much of the land in favour of the landholder. AMIR SINGH *v.* MOAZZUM ALI KHAN . . . . **7 N. W., 58**

347. ———— *Forfeiture for neglect to cultivate—Construction of lease.*—Where it was a condition in the kabuliat that the tenant's holding would be forfeited if he neglected to cultivate the land without reasonable excuse,—*Held* that the condition could not be regarded as a mere *ad terrorem* clause, since, if it came to the selling up of the tenure for default, it made a great difference to the landlord whether the land had been properly cultivated or not. GOLAM ALI CHOWDHRY *v.* BHOSAI **[25 W. R., 227**

348. ———— **Right to cancel tenancy**—*Zamindar—Resumption of land for non-cultivation.*—A zamindar cannot put an end to the relation

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

of landlord and tenant, except in the manner provided by law. A tenancy is not determined by the mere fact that the tenant has allowed the land to remain uncultivated. DINABHANDU *v.* LOKANADHASAMI
[I. L. R., 6 Mad., 322

349. ———— *Non-payment of rent.*—Omission to pay rent may be a good ground for a suit for arrears of rent or for ejectment, but not for the cancelment of a pottah not otherwise impugned. UMRITHNATH CHOWDHRY *v.* KOONJ BEHARY SINGH . . . **W. R., F. B., 34**

350. ———— *Non-payment of rent.*—The right to cancel a lease for non-payment of rent by a lease-holder not having a permanent or transferable interest in the land being given by s. 22, Act X of 1859, need not be provided for in the lease. KADIR GAZEE *v.* MOHADEBEE DOSSIA
[6 W. R., Act X, 47

351. ———— **Liability to have tenancy cancelled**—*Gatkuli tenant—Non-payment of assessment.*—Where a gatkuli tenant omits to pay the assessment on his gatkuli land, he does not lose his right to the land unless some other person is put in possession by Government. Any one simply taking possession is merely a trespasser, against whom the gatkuli tenant would be entitled to recover. MALHARI VALAD RAGHOJI *v.* TUKARAM VALAD DARKOJI
[6 Bom., A. C., 86

352. ———— **Non-payment of rent**—*Lease, Construction of—Conditions for forfeiture.*—Where a lease of 1847 contained two provisions, one for the payment of R1,300 as rent and the other was stipulation for forfeiture and re-entry on default of payment, and by a solehnamah of 1848 that rent was put an end to, and in lieu thereof the lessor received back a portion of the land leased in 1847, but by a subsequent solehnamah of 1858 the lessees agreed to pay R334 as rent, but no new provision was made for re-entry, and no fresh stipulation for forfeiture,—*Held* that the clause of forfeiture and re-entry in respect of the R1,300 under the lease of 1847 did not apply to the R334 under the solehnamah of 1858. RUHMOONISSA *v.* SOOPUN JAN
[18 W. R., 244

353. ———— *Ejectment—Right of occupancy—Beng. Act VIII of 1869, s. 52.*—The mere omission to pay rent for five years does not of itself amount to forfeiture of a raiyat's right of occupancy, and will not be sufficient to sustain an action by the landlord for the recovery of the raiyat's holding. A raiyat having a right of occupancy cannot be legally ejected, unless under an order regularly obtained under s. 52 of the Rent Law,—that is under a decree for arrears of rent unsatisfied within fifteen days from the passing of the decree. MUSYATULLA *v.* NOORZAHAN
[I. L. R., 9 Calc., 808

354. ———— *Bengal Tenancy Act (VIII of 1885), s. 3, cl. 5, ss. 179, 195 (e).*—A stipulation in a patni lease that by reason of non-payment of rent by the patnidar he would forfeit his tenancy is not valid. MOHABUT ALI *v.* MAHOMED FAIZULLAH . . **2 C. W. N., 455**

355. ———— **Failure to pay rent at due date**—*N.-W. P. Rent Act, XVIII of 1873, s. 93, cl. (c)—Suit for cancelment of lease—Breach of conditions involving forfeiture.*—The plaintiff, the representative in title of a leassor, sued under cl. (c), s. 93 of Act XVIII of 1873, for the cancelment of a lease, on the grounds, among others, that the lessees had paid the rent to the Collector, on account of the revenue due in respect of the estate, instead of to him; secondly, on the ground that they had failed to pay certain instalments of rent on the due dates; thereby committing breaches of the conditions of the lease involving its forfeiture. *Held* on the construction of the lease, with reference to the first ground, that as the lease was intended to be perpetual, and as the rent had been paid to the Collector for many years under an arrangement effected between the parties to the lease, and it was not shown that the plaintiff had repudiated this arrangement (even if he had the power of so doing) or demanded payment of the rent directly to himself, payment of rent by the lessees to the Collector did not amount to a breach of the conditions of the lease: with reference to the second ground, that the lease being intended to be perpetual, and no arrears of rent being due, irregularity and unpunctuality in the payment of the instalments of rent in question were not breaches of the conditions of the lease involving its forfeiture. ABLAKH RAI *v.* AHMAD KHAN . . **I. L. R., 2 All., 437**

356. ———— *Breach of conditions of lease—Delay in payment of rent—Right to interest.*—In strict law a farmer forfeits his lease by the withdrawal of the personal security given by him at the time of taking the farm. But cases of forfeiture are not favoured when no injury has resulted, or when a money compensation is a sufficient remedy. Mere unpunctuality in the date of payment of rent is no ground for forfeiture. The zamindar, if he has sustained injury by such unpunctuality, may sue for the interest due during the period in which the different instalments remained unpaid and for conditional forfeiture, but he cannot demand at once the absolute forfeiture of the property. ALUM CHUNDER SHAW CHOWDHRY *v.* MORAN
[W. R., 1864, Act X, 31

357. ———— **Right to re-enter, Accrual of**—*Relief against forfeiture for non-payment of rent.*—It is not absolutely necessary for a lessor to take legal measures for obtaining possession of the demised property on accrual of right of re-entry for breach of covenant. He may (if he can do so peaceably and quietly) take possession thereof without having recourse to civil proceedings (which are only necessary in case he apprehends resistance); and if he does so re-enter, he cannot be sued for trespass, inasmuch as the interest of the lessee becomes forfeited, and the lessor enters on what is in fact his own property. The mere fact of demanding rent in one year is not sufficient to create an obligation to make such a demand in subsequent years, or on failure thereof to debar the right of re-entry. Relief may be granted by the Courts in India against forfeiture for non-payment of rent. A lessor who has re-entered on the demised property for breach of a particular condition can, when called upon to defend his position, plead other breaches which might have justified the re-entry, and cannot be restricted to prove only that under which he originally claimed re-entry. GREAT EASTERN HOTEL COMPANY *v.* COLLECTOR OF ALLAHABAD . . . **2 Agra, Ex., O. C., 1**

358. ———— *Use and occupation—Re-entry—Demand of rent—Stat. 32 Hen. VIII, c. 34—Waiver.*—A covenant in a lease reserved to the lessor, on default of payment of rent, a power of re-entry; there being no mention in such covenant of a similar power being also reserved to his "heirs, successors or assigns." The lessor sold his rights in the property leased to third persons, and such third persons endeavoured to re-enter under the covenant. *Held* that although re-entry was reserved only to the lessor, yet his vendees could take advantage of the covenant, the operative part of the Stat. 32 Hen. VIII, c. 34, being wide enough to admit of this, notwithstanding the wording of the preamble. *Held,* further, that the forfeiture having been waived by subsequent demands for rent, and there being no legal demand for rent on the last day on which rent at a date subsequent to the waiver fell due, the vendees were not entitled to make use of their right of re-entry. KRISTO NATH KOONDOO *v.* BROWN **[I. L. R., 14 Calc., 176**

359. ———— **Relief against forfeiture**—*Penalty—Non-payment of rent.*—Third defendant, purchaser of the interest of first and second defendants, held certain lands under the terms of a permanent kanam (A) which contained the following condition: "And (I have also agreed) that on failure to pay the said quantity of paddy the kanam amount of 550 fanams shall be received by me, and the land restored." In a suit by the kanamdar to recover possession for non-payment of rent,—*Held* that this condition of redemption was intended as a penalty to secure regular payments of the rent, and that, such being the original intention of the parties, the penalty was one which ought to be relieved against. KOTTAL UPPI *v.* EDAVALATH THATHAN NAMBUDIRI **6 Mad., 258**

360. ———— *Forfeiture for non-payment of rent—Transfer of reversion—Transfer of Property Act (IV of 1882), s. 6, cl. (b).*—A condition in a lease providing that the landlord may re-enter on non-payment of rent is penal and will be relieved against, apart from the provisions of the Transfer of Property Act. *Semble*—The transfer of the reversion based on a clause for forfeiture is not invalid by reason of Transfer of Property Act, s. 6, cl. (*b*). VAGURAN *v.* RANGAYYANGAR **[I. L. R., 15 Mad., 125**

361. ———— *Condition in mokurari lease for forfeiture on non-payment of rent.*—Where, in a mokurari lease, there was a condition that, in case of non-payment of one year's rent, and its falling into arrears, the mokurari settlement was to be cancelled, and default was made and a suit for ejectment was brought,—*Held* that, independently of the Rent Act, the defendants should be allowed in equity a reasonable time to pay the landlord's dues in order to prevent forfeiture. MAHOMED AMEER *v.* PERYAG SINGH . **I. L. R., 7 Calc., 566 [9 C. L. R., 185**

362. ———— *Mulgaini lease, void for non-payment of rent or alienation—Relief against penalty.*—Where a perpetual lease was granted subject to a condition that if the rent was not paid in any year or if the land was alienated by the tenant the lease became void and all rights to improvements effected by the tenant forfeited,—*Held* (1) that a sale of the tenant's right in execution of a decree for arrears of rent, obtained by the landlord and transferred by him to a stranger, was not a breach of the condition against alienation; (2) that the landlord having already sued for arrears of rent for three years without claiming recovery of the land could not again sue to recover the land on the ground of non-payment of rent during those years; (3) that the forfeiture could not be enforced against the purchaser of the tenant's rights at the execution-sale for non-payment of rent which accrued subsequently to those three years, as the condition must be held to have been intended to secure payment of the rent, and the penalty ought to be relieved against. SUBBARAYA KAMTI *v.* KRISHNA KAMTI **I. L. R., 6 Mad., 159**

363. ———— *Condition restraining alienation—Alienation by act of law—Sale in execution of decree.*—By a clause in a lease it was stipulated that the lessee would not transfer the land leased to him, and that, if he did so, the sale was to be void. The land was sold to the defendants in execution of a decree obtained against the lessee. *Held* that, the land having been sold against the will of the lessee by the act of a Court, the lessee could not be said to have voluntarily transferred his interest. *Tamaya* v. *Timapa Ganpaya, I. L. R., 7 Bom., 262,* and *Subbaraya* v. *Krishna, I. L. R., 6 Mad., 159,* approved. NIL MADHAB SIKDAR *v.* NARATTAM SIKDAR . . . **I. L. R., 17 Calc., 826**

364. ———— *Mulgaini lease—Non-payment of rent—Penal clause.*—In a mulgaini lease dated 1849, it was stipulated that, if the rent fell in arrear in any year, the lease should be cancelled. *Held* that this clause must be construed as a penal clause which should be relieved against. *Kottal Uppi* v. *Edavalath Thathan Nambudri, 6 Mad., 258,* followed. NARAYANA SANABHOGA *v.* NARAYANA NAYAK . . **I. L. R., 6 Mad., 327**

365. ———— *Non-payment of rent.*—The Court will not relieve against the forfeiture of a lease caused by non-payment of rent, although the lessor on previous occasions has waived the forfeiture. CUTENHO *v.* SOUZA . **1 Mad., 15**

366. ———— **Planting trees** — *Liability to ejectment—Consent of landlord.*—*Held* that a raiyat having a right of occupancy forfeits his holding and is liable to ejectment therefrom if he plants trees on a portion of his holding without the landlord's consent. JEWA RAM *v.* FUTTEH SINGH. TEZ SINGH *v.* RAM DASS . **Agra, F. B., 125 : Ed. 1874, 94**

367. ——— *Right of tenants to plant trees without consent of zamindar.*—The question whether tenants have a right to keep up or renew existing baghs by planting new trees without the consent of zamindar must be determined with reference to the custom of the country. JHONA SINGH *v.* NEAZ BEGUM . **2 Agra, Pt. II, 183**

368. ——— *Waste—Planting a mango tope on dry land.*—In the absence of local custom, tenants are not entitled to convert land under cultivation into a mango grove. Tenants from year to year are not at liberty to change the usual course of husbandry without the consent of the landlord. LAKSHMANA *v.* RAMACHANDRA **[I. L. R., 10 Mad., 351**

369. ——— *Agricultural land—Change in the nature of cultivation—Waste.*—The defendant held from the plaintiff irrigable land which was cultivated with paddy, raggi, etc.; he had an occupancy right in his holding and paid a fixed money rent. The defendant having planted cocoanut trees on the land, the plaintiff sued to eject him and to have the trees removed. *Held* that the acts of the defendant did not constitute waste or a breach of the terms of his tenancy, and that the suit should be dismissed. VENKAYYA *v.* RAMASAMI **[I. L. R., 22 Mad., 39**

370. ——— *Muafidars of Government.*—*Held* that the plaintiffs, being mere muafidars of a moiety of the right of Government, had no right to plant trees themselves or to prevent the zamindars from planting the trees, as they had no right to the land. AZURROODEEN *v.* MOHUR SINGH . . . . **2 Agra, 165**

371. ——— *Ejectment for planting trees.*—In an action of ejectment for planting trees, the penalty of forfeiture is not to be enforced as a matter of strict right; the Court may make a decree for removal of the trees. KOORA *v.* DICK **[3 N. W., 322**

372. ——— *Ejectment—Liability to forfeiture of entire holding by planting on one portion.*—A tenant planted trees on one of the plots of land comprising his holding, an act which rendered him liable to ejectment. He paid rent, not in respect of each plot of land, but in respect of the entire holding. *Held* that he was liable to ejectment, not merely from the plot on which he had planted the trees, but from his entire holding. BHOLAI *v.* RAJAH OF BANSI . . **I. L. R., 4 All., 174**

373. ——— *Prohibition against planting trees and sinking wells.*—The plaintiff, the representative-in-title of the lessor, sued under cl. (*c*), s. 93 of Act XVIII of 1873, for cancelment of a lease on the ground, amongst others, that the lessees had planted trees and sunk wells and had allowed their tenant to do the same without the lessor's consent, thereby committing a breach of the conditions of the lease involving forfeiture. *Held* that the condition as to the planting of trees and sinking wells being merely a prohibition, and not a condition the breach of which involved the forfeiture of the lease, could not be cancelled because the lessees had planted trees or sunk wells, and allowed their tenants to do the same, without the lessor's consent. *Held* also that, assuming that the lessor was entitled, on that ground, to the cancelment of the lease, cancelment was not to be deemed the invariable penalty for the breach of such a condition as that mentioned in that ground. The Full Bench ruling in *Sheo Churun* v. *Busunt Singh, 3 N. W., 282*, followed. ABLAKH RAI *v.* SALIM AHMED KHAN **I. L. R., 2 All., 437**

374. ——— **Sub-letting**—*Right of tenants to let their houses.*—Whether tenants are entitled to let their houses, or whether, in the event of their letting houses, the zamindar can claim forfeiture, must be determined with reference to the custom of the village. RAM BUKSH SINGH *v.* PURDUMUN KISHORE . . . **2 Agra, Pt. II, 202**

375. ——— *Covenant not to sub-let, What constitutes breach of.*—Where there is a covenant not to sub-let, what constitutes a sub-lease causing forfeiture? *Held* that the lessee must transfer all his rights of collecting rents and of suing for them in the Courts; and that, although a sub-lease may not be so absolute and complete as to make the lease *ipso facto* void, yet it may be such a fraudulent evasion of the terms of the covenant as to entitle the plaintiff to equitable relief. The mere fixing of a sum to be paid by the sub-tenant to the farmer, and the declaration of the sub-tenant's right to all sums collected beyond that amount, are not sufficient to convert an agency into a sub-lease. ALUM CHUNDER SHAW CHOWDHRY *v.* MORAN **[W. R., 1864, Act X, 31**

376. ——— *N.-W. P. Rent Act (XII of 1881), s. 93 (b)—Act inconsistent with the purpose for which the land was let—Sub-lease of agricultural land to a theatrical company.*—An agricultural tenant, at a time when there were no crops growing on his holding, let part of it temporarily to a theatrical company for the purpose of their holding performances thereon. *Held* that this was not an act sufficient to cause a forfeiture of the tenancy within the meaning of s. 93 (*b*) of Act XII of 1881. YUSUF ALI KHAN *v.* HIRA . **I. L. R., 20 All., 469**

377. ——— **Alienation of tenure**—*Liability to forfeiture.*—A tenant who alienates his tenure does not thereby subject it to forfeiture. DWARKANATH MISREE *v.* KANAYE SIRDAR **[16 W. R., 111**

And *see* CASES UNDER RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

378. ——— **Transfer of lease**—*Effect of unlicensed transfer of lease—Suit for ejectment.*—The plaintiffs were mokurari lease-holders, prior to whose lease the proprietor granted a pottah of the same land to *A*, with a stipulation that *A* should not let the land to others without leave. *A* afterwards, with the proprietor's consent, sold his lease to *B*, who again, without such consent, sold his rights to the defendants. The plaintiffs sued to eject the defendants as trespassers. *Held* that, as there was nothing in the condition on which the plaintiffs (as exercising the proprietor's rights) rely that implies right of re-entry upon the land in case of a breach of that condition, the only effect of the want of the plaintiffs' consent on the part of the plaintiffs to *B*'s sale was to maintain unimpaired *B*'s liability to the landlord, without reference to the arrangement between *B* and any other parties. And therefore the plaintiffs were not entitled to eject the defendants. GORDON, STUART & CO. *v.* TAYLOR

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379. ———— **Transfer of tenure**—*Transfer of non-transferable tenure.*—The transfer of a tenure not transferable by the custom of the country gives the zamindar no right to take actual possession so long as the rent is paid by the recorded tenant or his heirs, and not by a stranger. JOY KISHEN MOOKERJEE *v.* RAJ KISHEN MOOKERJEE

[5 W. R., 147

380. ———— *Cuttack, Tenures in—Sarbarakari tenures—Alienation without consent of landlord—Alienation by one of several co-sharers.*—The alienation of a sarbarakari tenure in Cuttack, and *à fortiori* the alienation of any portion of such tenure, is invalid without the consent of the landlord. Assuming that the sale of such a tenure would entitle the landlord to re-enter as upon a forfeiture, the sale of a portion thereof by one of several co-sharers would not work a forfeiture of the whole tenure. DASSORATHY HURI CHUNDER MAHAPATTRA *v.* RAMA KRISHNA JANA

[I. L. R., 9 Calc., 526 : 13 C. L. R., 114

381. ———— *Bengal Tenancy Act (VIII of 1885)—Occupancy-raiyat transferring part of his holding without notice to the landlord—Forfeiture, Ground of.*—*D* was an occupancy-raiyat of the plaintiff, a 14 annas shareholder in a zamindari, and unknown to the plaintiff sold half of his holding to the sons of his brother. The plaintiff then sued *D* for arrears of rent. *D* pleaded that he could not be sued for the whole amount, as he was only in possession of half of the holding. Subsequently to that the rent was paid into the Collectorate by *D* and by his brother's sons. In a suit by the plaintiff to eject *D* and his transferees on the ground that *D* had forfeited his rights by transferring half of his holding,—*Held* that under the Bengal Tenancy Act (VIII of 1885) the sale or parting with the whole or part of a holding is not a ground of forfeiture. KABIL SARDAR *v.* CHUNDER NATH NAG CHOWDHRY . . **I. L. R., 20 Calc., 590**

See CHANDRA MOHUN MOOKHOPADHAYA *v.* BISSESSAR CHATTERJEE . . **1 C. W. N., 158**

KALINATH CHAKRAVARTI *v.* UPENDRA CHANDRA CHOWDHRY . . **I. L. R., 24 Calc., 212**

and WILSON *v.* RADHA DULABHI KOER

[2 C. W. N., 63

382. ———— *Tenant parting with portion of his holding—Right of landlord to eject sub-tenant and recover possession.*—The transfer by a raiyat with a right of occupancy of a part of his holding does not entitle the landlord to recover possession of the land transferred by ejecting the transferee, in the absence of evidence to show that by custom such transfer is not allowed. *Durga Charan Roy* v. *Pandab Nath, Letters Patent appeal in Appeal from Appellate Decree No. 1440 of 1892*, followed. *Kabil Sardar* v. *Chandra Nath Nag Chowdhry, I. L. R., 20 Calc., 590*, referred to. *Tirthanund Thakur* v. *Motty Lal Misra, I. L. R., 3 Calc., 744; Dwarka Nath Misser* v. *Harrish Chandra, I. L. R., 4 Calc., 925;* and *Narendra Nath Roy* v. *Ishan Chandra Sen, 13 B. L. R., 274: 22 W. R., 22*, distinguished. DOORGA PRASAD SEN *v.* DOULA GAZEE . . . **1 C. W. N., 160**

383. ———— The transfer by a raiyat of a portion of his non-transferable tenure without the consent of the landlord does not work a forfeiture and the landlord is not entitled to recover khas possession, but is entitled to a declaration that the transfer of a portion of his holding which has not been made with his written consent is not binding on him as provided by s. 88 of the Bengal Tenancy Act. *Kabil Sardar* v. *Chunder Nath Nag Chowdhry, I. L. R., 20 Calc., 590*, followed. GOZAFFER HOSSEIN *v.* DARLISH

[1 C. W. N., 162

384. ———— *Assignment of lease contrary to term of lease—Waiver of forfeiture, Effect of—Damages on forfeiture for breach of covenant to repair.*—An assignment by way of mortgage of leasehold property in terms appropriate to fazendari property, the lease and mesne assignments being handed over to the mortgagee of execution of the deed and a subsequent assignment of the equity of redemption of the same property in terms appropriate to freehold property, will, in the absence of any circumstance to lead the assignees to believe that the assignor had any further interest in the property, operate as assignments of the lease. Where there is a proviso in a lease for forfeiture on assignment without previous license of the lessor, the acceptance by the lessor of rent or insurance premia from the assignee without license or the entering into an agreement with him in respect of repairs, operates as a waiver of any and all causes of forfeiture of which the lessor is at the time aware. Where assignments of leaseholds are invalid as being in breach of a covenant not to assign without previous license and so causing forfeiture of the lease, but are valid in all other respects, on waiver of the forfeiture the assignments become operative and those taking under them become assignees of the lease with the consent of the lessor, and are subject to all the liabilities of such assignees. The rule in *Joyner* v. *Weeks, L. R., 1891, 2 Q. B., 31 at p. 43*, that when there is a lease with a covenant to leave the premises in repair at the end of the term, and such covenant is broken, the lessee must pay what the lessor proves to be a reasonable and proper amount for putting

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the premises into the state of repair in which they ought to be left, applies where a term has ceased by forfeiture as well as where it has expired by efflux of time. Sarafali Tayabali *v.* Subbaya Batebaya . . . **I. L. R., 20 Bom., 439**

385. ———— **Waiver of forfeiture**—*Acceptance of rent.*—The acceptance of the rent by the landlord after the institution of a suit to recover possession of the land is not a waiver of a forfeiture by the tenant under a condition in the lease. A tenant, upon payment of all costs of the suit, will be relieved from the consequence of such forfeiture, in accordance with the practice of Courts of Equity in England and America. Timmarsa Puranik *v.* Badyia . . . **2 Bom., 70: 2nd Ed., 66**

386. ———— *Acceptance of rent.*—Receipt of rent is not *per se* a waiver of every previous forfeiture; it is only evidence of a waiver. Chunder Nath Misser *v.* Sirdar Khan **[18 W. R., 218**

387. ———— *Acceptance of rent.*—A lease provided that every four years a measurement should be made either by the lessor or by the lessees, and additional rent paid for accretion to the land leased. It then provided for failure on the lessee's part to execute a kabuliat for the excess lands in the following terms: "If at the fixed time stated above, we do not take an Ameen and cause measurement to be made, you will appoint an Ameen and cause the entire land of the said chur to be measured, and no objection on the ground of our recording or not our presence on such measurement chitta shall be entertained, and we will duly file a separate dowl kabuliat for the excess rent that will be found after deducting the settled land of the dowl executed by us from the land settled therein. If we do not, we will be deprived of our right of obtaining a settlement of such excess land, as well as of the land which will accrete in future to the said chur, and no objection thereto on our part shall be entertained." In a suit by the lessor, alleging that in 1876 he had caused a measurement to be made, and had called on the lessees to execute a kabuliat for the rent of certain excess lands, and praying that the lessees might be ejected, the lessees pleaded that the lessor had waived his right to enforce the forfeiture by subsequent receipt of rent. It appeared that payments had been made to the lessor by the lessees, which were accepted as rent, but were kept in suspense, subject to payment by the lessees of the "remaining amount." *Held* that such a qualification did not make the payments anything else than payments of rent, and that the lessor had waived his right to insist on re-entry on the lessees' failure to measure the lands, or execute a kabuliat when called on to do so. *Davenport* v. *Queen, L. R., 3 App. Cas., 155,* followed. Kali Krishna Tagore *v.* Fuzle Ali Chowdhry **[I. L. R., 9 Calc., 843: 12 C. L. R., 592**

(*b*) Denial of Title.

388. ———— **Denial by tenant of title of landlord**—*Refusal to pay rent where decree is obtained for possession against landlord.*—As a general rule, where a person takes land from another and pays rent to him, he cannot deny the title of his landlord; but he is not precluded or estopped from proving, when sued for rent, that that title has expired. He is not warranted, however, in refusing to pay rent simply on the apprehension that he may be called on to pay the rent by a party who is said to have obtained a decree against the landlord for the land. Even if a decree has been passed against the person from whom the landlord derives his title, he is entitled to recover his rent until the decree is put in force. Burn & Co. *v.* Busho Moyee Dassee **[14 W. R., 85**

389. ———— *Non-payment of rent—Relief against—Co-sharers—Lease from one of several co-sharers—Denial of lessor's title —Estoppel.*—A person taking a lease from one of several co-sharers cannot dispute his lessor's exclusive title to receive the rent or sue in ejectment. The plaintiff sued to eject the defendant, his tenant, for failure to pay rent, on the ground that such failure operated as a forfeiture under the terms of the lease. The defendant pleaded (1) that he had paid rent to plaintiff's co-sharer, and (2) that the plaintiff alone could not sue without joining his co-sharer. The Subordinate Judge disallowed both these pleas, and passed a decree declaring the plaintiff entitled to eject the defendant, unless the latter paid up all arrears of rent up to date of decree, together with interest and costs of suit, within three months. This decree was reversed by the District Judge on appeal, who awarded possession of the land to the plaintiff, on the ground that the defendant, having in his written statement denied the plaintiff's exclusive title, was not entitled to be relieved against the forfeiture clause in the lease. *Held,* reversing the decree of the lower Appellate Court, that the plaintiff's alleged cause of action being, not a disclaimer or denial of his title, but merely non-payment of rent, forfeiture for breach of such a covenant in the lease could be relieved against by a Court of Equity. Jamsedji Sorabji *v.* Lakshmiram Rajram **I. L. R., 13 Bom., 323**

390. ———— *Assignee of landlord.*—The fact of a tenant having stated in a former suit that he had a good title as against a person alleging himself to be the assignee of the original landlord, does not constitute a forfeiture of the tenure in favour of the landlord or warrant a suit by the landlord for khas possession. Doorga Kripa Roy *v.* Janoo Lathak . . **18 W. R., 465**

391. ———— *Liability to ejectment.*—Where it is proved that one man has been the tenant of another, it is necessary, before the former can be ejected, to show that the tenure has, in some way or other, come to an end, and the tenant cannot be said to have put an end to his relation with his landlord or denied his title if, in order to save himself from ejectment, he, for a time, attorned to a third person who legally put himself in the place of landlord. Haradhun Mudduck *v.* Dinobundhoo Mojoomdar . . . . **25 W. R., 319**

392. ——— *Forfeiture of tenure—Ejectment.*—The weight of authority of the decisions of the High Court is in favour of the view that when a tenant directly repudiates the relation of landlord and tenant and sets up an adverse title in himself, the landlord is entitled to take possession irrespective of the period during which the tenant may have been in possession. SHUMSHER ALI *v.* DOYA BIBI . . . . . **8 C. L. R., 150**

393. ——— *Right of landlord to evict on tenant's denying his title.*—A tenant, repudiating the title under which he entered, becomes liable to immediate eviction at the option of the landlord. VISHNU CHINTAMAN *v.* BALAJIBIN RAGHUJI **[I. L. R., 12 Bom., 352**

394. ——— *A*, a raiyat with right of occupancy, in a rent-suit brought against him by *B*, the purchaser of an aima mehal, denied the existence of the relationship of landlord and tenant between himself and *B*, on the ground that the lands occupied by him were not included in the aima mehal purchased by *B*. *B's* rent suit having been dismissed for failure of evidence on this point, *B* afterwards brought a regular suit to evict *A*, and for mesne profits. *Held* that *A*, by denying the title of *B* in the rent suit, thereby forfeited his rights of occupancy, and became liable to eviction. MOZHURUDDIN *v.* GOBIND CHUNER NUNDI **[I. L. R., 6 Calc., 436**

See SUTTYABHAMA DASSEE *v.* KRISHNA CHUNDER CHATTERJEE . . . **I. L. R., 6 Calc., 55** **[6 C. L. R., 375**

and ISHAN CHUNDER CHATTOPADHYA *v.* SHAMA CHURN DUTT . . **I. L. R., 10 Calc., 41** **[12 C. L. R., 414**

395. ——— *Bengal Tenancy Act (VIII of 1885), s. 178—Forfeiture completed before passing of Act.*—The plaintiffs, purchasers of a mokurari jama, sued to eject the defendants, on the ground that they had in their written statement in a former suit for rent which had been decided in the plaintiffs' favour, denied the plaintiffs' title, and had thereby forfeited their tenures. The denial took place in March 1885, before the Bengal Tenancy Act came into operation. *Held* that the forfeiture being complete before the passing of the Act, the case was not affected by s. 178 of that Act, and must be governed by the old law. Under the decided cases before the Bengal Tenancy Act such a denial by a tenant of his landlord's title created a forfeiture. *Satyabhama Dassee* v. *Krishna Chunder Chatterjee, I. L. R., 6 Calc., 55*, and *Ishan Chunder Chattopadhya* v. *Shama Churn Dutt, I. L. R., 10 Calc., 41*, referred to. But *semble*—Since the passing of that Act, in any case to which it applies, there cannot be any eviction on the ground of forfeiture incurred by denying the title of the landlord, that not being a ground enumerated in the Act, and therefore expressly excluded by s. 178. DEBIRUDDI *v.* ABDUR RAHIM **[I. L. R., 17 Calc., 196**

396. ——— *Law as to denial of title before Bengal Tenancy Act.*—A denial by the tenant of the landlord's title before the Bengal Tenancy Act was passed would operate as a forfeiture of the tenant's right, whether the case is governed by the Transfer of Property Act or by the ordinary Rent Law which was in force before the passing of the Bengal Tenancy Act. ANANDA CHANDRA MONDUL *v.* ABRAHIM SOLEMAN . **4 C. W. N., 42**

397. ——— *Bengal Tenancy Act (VIII of 1885), s. 49, cl. (b), and s. 178.*—The plaintiffs sued to eject the defendant from certain land alleging that it formed part of their holding, and that the defendant was their sub-tenant. The defendant denied the plaintiff's title, and set up the title of a third person adverse to that of the plaintiffs. The lower Appellate Court found that the defendant was the plaintiff's tenant, and both the lower Courts held that the defendant, by denying the title of his landlord, had forfeited his rights as a tenant, and was therefore liable to be treated as a trespasser, and as such to be evicted without notice. *Held* that in all cases to which the Bengal Tenancy Act applies there can be no eviction on the ground of forfeiture incurred by denying the title of the landlord, and that, it having been found by the lower Appellate Court that the defendant was an under-raiyat of the plaintiffs, he could not be evicted from his holding except after notice to quit, as prescribed in s. 49, cl. (*b*), of the Bengal Tenancy Act. *Debiruddi* v. *Abdur Rahim, I. L. R., 17 Calc., 196*, followed. DHORA KAIRI *v.* RAM JEWAN KAIRI . . . . **I. L. R., 20 Calc., 101**

398. ——— *Suit to recover khas possession—Successful denial of the relationship of landlord and tenant in previous rent-suits, Effect of—Forfeiture—Estoppel.*—The plaintiffs, owners of a dar-patni talukh, had sued defendant No. 1 for the rents of 1296-97. The defendant denied the relationship of landlord and tenant, and the plaintiffs withdrew the suit. They brought another suit for the rents of 1298-99, and were met by the same defence; this suit was ultimately dismissed on the ground that there was no relationship of landlord and tenant between the parties. Upon this the plaintiffs brought this suit to recover khas possession; here also the defendants denied the title of the plaintiffs, and repudiated any relationship of landlord and tenant existing between them. The first Court decreed the plaintiffs' suit; the lower Appellate Court, however, on the ground that the denial of the relationship of landlord and tenant does not operate as a forfeiture, modified the Munsif's decree by declaring the plaintiff's title as landlord and holding that they were not entitled to khas possession. *Held* that the rule that a denial of the relationship of landlord and tenant does not entail a forfeiture does not apply where that denial is given effect to by a decree of Court. It having been found in this case that the land belonged to the plaintiffs and it having been found in the previous suit that the defendants are not their tenants, the defendants have no right to remain upon the land, and the plaintiffs are entitled to khas possession. *Debiruddi* v. *Abdur Rahim, I. L. R., 17 Calc., 196,* distinguished. Nilmadhab Bose *v.* Anant Ram Bagdi [2 C. W. N., 755

399. ———— *Suit for ejectment.*—In a suit for ejectment, where it is alleged that the defendant has forfeited his tenure by denying his landlord's title, the forfeiture must be strictly proved. It must be proved what the defendant said, and the judgment in the suit in which he is alleged to have denied the title is not sufficient. Ahullya Debia *v.* Bhyrub Chunder Pattro [25 W. R., 147

400. ———— *Ejectment, Suit for.*—To a suit brought to recover rent in 1877, the defendant set up his lakhiraj title; this suit was dismissed. In 1880, in a suit brought by the same plaintiff to obtain khas possession of the land in question in the former suit, against the same defendant and three others claiming under the same title as himself, the defence that the land was lakhiraj was set up by all. *Held* that the case fell within the principle of the case of *Suttyabhama Dassee* v. *Krishna Chunder Chatterjee, I. L. R., 6 Calc., 55,* and that the plaintiff, who had successfully proved that he had collected rents from the predecessors of the defendants, was entitled to evict them as trespassers on their failure to prove their lakhiraj title. Ishan Chunder Chattopadhya *v.* Shama Churn Dutt . I. L. R., 10 Calc., 41 : 12 C. L. R., 414

401. ———— *Setting up permanent tenure.*—In a suit for ejectment, where the defendants set up a right as a permanent tenant,—*Held* that the setting up of this right was a repudiation of the landlord's title for which he was liable to immediate ejectment. Baba *v.* Vishvanath Joshi [I. L. R., 8 Bom., 228

402. ———— *Suit for ejectment—Cause of action—Written statement.*—*P* and *R* brought a suit for ejectment on the allegation that their tenants had failed to come to a settlement in respect of a certain jote, and that a notice to quit had thereupon been served on them. The defendants (tenants) in their written statement denied the landlords' title. The lower Courts found that the jote belonged to the plaintiffs, and the defendants had been and still were in possession of the same as tenants; but dismissed the suit on the ground that the service of notice had not been proved. *Held* (on second appeal) that, inasmuch as the cause of action must be based on something that accrued antecedent to the suit, the denial by the defendants of their landlord's title in the written statement would not entitle the plaintiffs to a decree on the ground of forfeiture. Prannath Shaha *v.* Madhu Khulu [I. L. R., 13 Calc., 96

403. ———— *Forfeiture by alienation—Written statement—Cause of action.*—Lands in Malabar were demised on anubhavom tenure. Some of them were alienated by the tenant, but the landlord subsequently accepted rent. More than twelve years after the alienation, the landlord sued to eject the tenant on the ground that the tenure was thereby forfeited. The tenant for the first time in his written statement denied the landlord's title. *Held* that the plaintiff could not recover in this suit on the ground of the denial of his title in the written statement. Madavan *v.* Athi Nangiyar . I. L. R., 15 Mad., 123

404. ———— *Suit for ejectment—Repudiation of title—Setting up different tenure from that alleged by landlord.*—The plaintiff in 1870 brought a suit for rent, in which the defendant set up and filed a permanent howladari lease, but admitted that he held at the rent alleged by the plaintiff, and that suit was decreed, the Court thinking it unnecessary to decide the question of the validity of the tenure set up by the defendant. In a suit brought after a notice to quit, which was found to be invalid, to eject the defendant, and for a declaration that he had no such permanent howladari tenure as he alleged, the defendant again set up the howladari lease under which he admitted he had paid a fixed rent to the plaintiff. *Held* that, though the defendant repudiated the particular holding which the plaintiff attributed to him, he did not question the plaintiff's right to receive the rent, and therefore did not in any sense repudiate his landlord's title. What he did amounted merely to questioning the right of the landlord to enhance the rent, which was not such a disclaimer as would result in law in a forfeiture of his tenure. The plaintiff therefore was not entitled to eject the defendant without giving him a proper notice to quit. *Vivian* v. *Moat, L. R., 16 Ch., 730,* distinguished, on the ground that the principle on which it is based is wholly inapplicable in Bengal. *Baba* v. *Vishvanath Joshi, I. L. R., 8 Bom., 228,* dissented from. Kali Krishna Tagore *v.* Golam Ally . I. L. R., 13 Calc., 248

The principle laid down in *Vivian* v. *Moat, L. R., 16 Ch. D., 730,* is not applicable to this country. Kali Kishen Tagore *v.* Golam Ali [I. L. R., 13 Calc., 3

405. ———— *Tenant setting up a permanent lease—Notice to quit—Ejectment suit.*—The plaintiff sued for possession of certain land which had been demised to him by the first defendant. The fourth defendant set up a previous purchase from the third defendant, who, he alleged, was a permanent lessee from the first defendant's father, and he contended (*inter aliâ*) that his vendor not having been served with a notice to quit, he could not be ejected. The lower Appellate Court held that the plaintiff could sue the defendant No. 1 only for specific performance, and could not eject the former tenants with or without notice. On appeal by the plaintiff to the High Court, it was contended for him that the defendant No. 4, having set up a permanent lease, had denied the landlord's title, and was not therefore entitled to any notice to quit. *Held,* confirming the lower Appellate Court's decree, that the plaintiff could not recover, in ejectment, without previous notice to quit. By his statement, that his alienor (defendant No. 3) was a permanent tenant and

LANDLORD AND TENANT—*continued.*

21. FORFEITURE—*continued.*

had not received notice to quit, the defendant pleaded an alternative defence he was entitled to make, and could not therefore be regarded as having consented to the contract of yearly tenancy (which was alleged by the plaintiff) being treated as cancelled. PURSHOTAM BAPU *v.* DATTATRAYA

[I. L. R., 10 Bom., 669

406. ———— *Assertion of mulgeni (permanent) tenure—Right to notice to quit.*—The setting up of a mulgeni right by a tenant is not a disclaimer of title such as disentitles him to a notice to quit in determination of the tenure. UNHAMMA DEVI *v.* VAIKUNTA HEGDE

[I. L. R., 17 Mad., 218

407. ———— *Bombay Land Revenue Code (Bom. Act V of 1879), s. 84—Transfer of Property Act (IV of 1882), ss. 111 and 117—Yearly tenancy—Denial of lessor's title prior to suit—Necessity of notice to quit.*—In cases not falling under s. 117 of the Transfer of Property Act (IV of 1882), a denial of the lessor's title prior to suit is, notwithstanding s. 84 of the Land Revenue Code (Bombay Act V of 1879), a sufficient cause of action to enable the lessor to recover possession without notice to quit. The object of s. 84 of the Land Revenue Code is to define the nature of contract of tenancy; but the landlord's right of forfeiture arising from denial of his title is no part of the contract of tenancy, but is a right which the law implies in all cases from the relationship of landlord and tenant. If the Legislature had intended to exclude the right of forfeiture in cases of annual tenancies, there would have been express provision to that effect. VENKAJI KRISHNA NADKARNI *v.* LAKSHMAN DEVJI KANDAR

[I. L. R., 20 Bom., 354

408. ———— *Permanent lease—Transfer of Property Act (IV of 1882), ss. 105, 108, and 111.*—A lease, notwithstanding that it is permanent, is liable to forfeiture under the provisions of the Transfer of Property Act if the tenant denies the title of the landlord. Leases which are permanent and which came into existence before the passing of the Transfer of Property Act are governed by the general rule that a tenant who impugns his landlord's title renders his lease liable to forfeiture, which rule is only a particular application of the general principle of law that a man connot approbate and reprobate. KALLY DASS AHIRI *v.* MONMOHINI DASSEE . . . **I. L. R., 24 Calc., 440**

[1 C. W. N., 321

409. ———— *Denying landlord's title or parting with holding—Bengal Tenancy Act (VIII of 1885), s. 44—Grounds of forfeiture.*—Parting with possession of a holding or dening the title of the person under whom a non-occupancy-raiyat holds is not a ground of forfeiture, and a non-occupancy-raiyat cannot be ejected except on the grounds enumerated in s. 44 of the Bengal Tenancy Act. CHANDRA MOHUN MOOKHOPADHAYA *v.* BISSESSWAR CHATTERJEE . . **1 C. W. N., 158**

See DURGA PROSAD SEN *v.* DOULA GAZEE

[1 C. W. N., 160

410. ———— *Transfer of Property Act (IV of 1882), s. 2 (b) and (c) and ss. 105, 111 (g)—Maurasi-mokurari tenure.*—A lessor brought a suit for ejectment of the lessee for denying his title and asserting title in herself. The defendant in the Court below denied having renounced the title, and pleaded that a maurasi-mokurari tenure was not subject to forfeiture. The lower Court gave a decree for the plaintiff. The defendant appealed against the decree. *Held* the defendant having denied her landlord's title, and a maurasi-mokurari lease being only a lease in perpetuity as defined in s. 105 of the Transfer of Property Act, and not a conveyance in fee, it is subject to forfeiture by renunciation of the lessor's title under s. 111 (*g*). S. 2 (*b*) and (*c*) do not apply, as even before the Transfer of Property Act such a lease under similar circumstances would have been liable to forfeiture under the general law. MONMOHINI DASSI *v.* KALI DAS AHIRI . . . . . **2 C. W. N., 292**

411. ———— *Plea of sale by landlord to his tenant—Suit for possession by landlord before Mamlatdar.*—In a possessory suit before a Mamlatdar, though it is not competent to a tenant to deny his landlord's title at the date of his lease, it is open to him to show that it has since determined, *e.g.*, by sale to him by the landlord, in which case the tenant no longer holds under a title derived from the landlord. VEDU *v.* NILKANTH . . **I. L. R., 22 Bom., 428**

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE.

412. ———— **Verbal relinquishment**—*Sufficiency of relinquishment.*—The mere use of the words "অন্যকে বিলিকর" in conversation by the tenant, when called upon by the zamindar to pay increased rent, were held to be insufficient to constitute a relinquishment where there was no acceptance of the same and not even a verbal notice to quit, or to justify the zamindar in letting the tenure to another. BONOMALEE GHOSE *v.* DELU SIRDAR

[24 W. R., 118

413. ———— **Cultivating raiyat leaving land uncultivated**—*Relinquishment of land—Verbal relinquishment.*—When a cultivating raiyat goes away from the land which he has occupied and neither cultivates nor pays rent for it, he has wholly relinquished the land. The relinquishment need not be in writing. MUNEERUDDEEN *v.* MAHOMED ALI

[6 W. R., 67

414. ———— *Relinquishment of tenure.*—When a raiyat, without giving any notice, goes away from the land he has occupied, and neither

cultivates it nor pays rent, the landlord is justified in assuming that he has relinquished it: and the raiyat has no right to ask to be reinstated in possession on the ground that he has never formally relinquished the land. RAM CHUNG *v.* GORA CHAND CHUNG
[24 W. R., 344

415. ——— *Determination of tenancy—Abandonment of tenure.*—Plaintiff, a mirasidar, purchased certain land in 1850 which he allowed to lie waste from 1853. In 1866, on the application of the first defendant who was also a mirasidar to the second defendant, the local Revenue authority, the land was granted to the first defendant and made over to his possession. Plaintiff was admittedly in arrears of kist. In a suit by plaintiff to recover the land, it was contended that non-cultivation and non-payment of rent for a considerable time warranted the Revenue authorities in entering upon and disposing of the land. *Held* in special appeal that plaintiff's tenancy could only be determined by his resignation or abandonment of his holding, or by the procedure laid down in Act II of 1864; that the letting land lie fallow does not necessarily lead to the inference of abandonment; and that in the present case plaintiff, not being found to have abandoned the land, had been ejected in a manner which the law does not recognize. *Special Appeal No. 139 of 1858, Mad. S.D.A., 1859, p. 21 : S.C., 482 of 1860, Mad. S. D. A., 1861, p. 112 ; Genju Reddi* v. *Asal Reddi, 1 Mad., 12 ; Kumaradeva Mudali* v. *Nallatambi Reddi, 1 Mad., 407 ;* and *Sanumathaiyan* v. *Samviathaiyan, 4 Mad., 153,* considered. RAJAGOPALA AYYANGAR *v.* COLLECTOR OF CHINGLEPUT . . . . . . **7 Mad., 98**

416. ——— *Surrender of tenancy.*—Mere non-occupation and non-cultivation were held not to amount to a surrender of the tenancy so as to get rid of liability to pay the rent: nor does the denial by the defendant in a former suit that he occupied the land amount to a notice of surrender. BALAJI SITARAM NAIK SALGAVKAR *v.* BHIKAJI SOYARE PRABHU KANOLEKAR
[I. L. R., 8 Bom., 164

VENKATESH NARAYAN PAL *v.* KRISHNAJI ARJUN
[I. L. R., 8 Bom., 160

417. ——— **Non-cultivation of portion of jote**—*Relinquishment.*—The non-cultivation of a small portion of an ancestral jote by the admitted holders for one year owing to their minority does not amount to relinquishment as laid down in *Muneeruddeen* v. *Mahomed Ali, 6 W. R., 67.* RADHA MADHUB PAL *v.* KALEE CHURN PAL . . **18 W. R., 41**

418. ——— **Abandonment of portion of jote**—*Liability for rent of entire jote.*—As long as a raiyat retains possession of any portion of his jote, he is liable for the rent of the whole. SARODA SOONDUREE DEBEE *v.* HAZEE MAHOMED MUNDUL
[5 W. R., Act X, 78

419. ——— **Abandonment of share of holding**—*Separated member of Hindu family.*—Where a separation takes place in a joint Hindu family, and one member becomes the owner of a khas share, being a portion of land with a house, which (after living in it for some time) he eventually abandons, the zamindar is entitled to deal with it in the same way as he is entitled by law to deal with the abandoned holding of a cultivating raiyat. LALLA NUKCHED LALL *v.* FUTTEH BAHADOOR LALL
[24 W. R., 39

420. ——— **Voluntary abandonment of permanent tenure**—*Express relinquishment —Determination of tenancy.*—A voluntary abandonment of a permanent and transferable tenure for a long period, without any inevitable force, merger or other cause beyond the power of the holder, is tantamount to an express relinquishment. If a man so abandon his holding for years, neither he, nor any one under him, can reclaim it. CHUNDERMONEE NYABHOOSUN *v.* SUMBHOO CHUNDER CHUCKERBUTTY
[W. R., 1864, 270

SHOODAN KURMAKAR *v.* RAM CHURN PAL
[2 W. R., 137

421. ——— **Non-payment of rent with loss of possession.**—Non-payment of rent, coupled with the fact that the plaintiff was for five years out of possession, was held to amount to a relinquishment of land. NUDDEAR CHAND PODDAR *v.* MODHOOSOODUN DEY PODDAR . . . **7 W. R., 153**

422. ——— **Non-payment of rent for some years**—*Claim to eject tenant put in by landlord after relinquishment.*—In a suit for ejectment it appeared that the plaintiff had purchased the house which stood upon the plot in dispute thirteen years prior to the institution of the suit; that he had occupied it for four years and then left the district for business purposes, paying no rent for the seven or eight years of his absence, during which the zamindar put the defendant in possession and took rent from him. *Held* that, even if the plaintiff had a right when he went away to occupy the land if he chose to do so, as he did not do so, he had no right on his return to eject the defendant. MUTTY SOONUR *v.* GUNDUR SOONUR . . . **20 W. R., 129**

423. ——— **Desertion of land and house by tenant**—*Right of landlord to take possession.*—When the house had fallen to the ground and the land been deserted by the tenant, the zamindar was held justified in taking possession of the land as abandoned. BADAM *v.* MICHEL
[1 Agra, 266

BUNNOO BEBEE *v.* SHEO BUNS KANDO
[3 Agra, Rev., 9

424. ——— **Land left vacant by tenant**—*Zamindar's right to possession.*—A zamindar who without unlawful means enters upon the land after the raiyat's tenancy is at an end, and takes possession, cannot be sued for illegal ejectment. MAHMOOD ALI KHAN *v.* GUNGA RAM . **3 Agra, 304**

425. ———— **Desertion by one of two tenants**—*Relinquishment by the other—Lease by landlord—Right of deserter to claim land subsequently.*—One of the two proprietors of a jote having deserted the land, the other proprietor, while ostensibly in possession of the entire jote, relinquished it to the landlord, who let it to the defendants. Some years after such relinquishment, the plaintiff, who claimed to have purchased the right of the proprietor who had relinquished, sued to eject the defendant on the ground that the relinquishment was not valid. *Held* that, whether or not the relinquishment was in fact valid, the landlord was under the circumstances entitled to induct another tenant on the land, and that the plaintiff could not eject the defendant. See *Ishen Chunder Mowleek* v. *Poorno Chunder Chatterjee, 3 W. R., 153,* and *Manirullah* v. *Ramzan Ali, 1 C. L. R., 293.* BOIDONATH MAJI KOYBURTO *v.* AUPURNA DABEE . . . **10 C. L. R., 15**

426. ———— **Condition for liability for rent until express surrender**—*Lessor and lessee—Kabuliat—Suit for rent—Notice of surrender—Surrender of land by tenant.*—The plaintiff was a mortgagee of certain land, and sued the defendant for the rent thereof for the three years 1871, 1872, and 1873. He alleged that in 1866 the defendant had passed to him a kabuliat for one year; that the defendant did not vacate the land on the expiry of his term; that he (plaintiff) had sued him in 1868 and 1870 for rent, and obtained decrees against him; that the defendant had not yet surrendered the land, and had not paid the rent, and hence the present suit. The defendant answered that he had not occupied the land during the years in dispute, and that it had been in the possession of the owner (the mortgagor). The Subordinate Judge awarded the plaintiff's claim; but the District Judge in appeal rejected it, holding that the plaintiff had failed to prove that the defendant had occupied the land during the three years in dispute, and that the defendant's conduct in the former suits was ample notice to the plaintiff that he (defendant) *had surrendered* the land. On appeal to the High Court,—*Held* that the result of the former suits was to establish the fact that the defendant's tenancy or liability as a tenant had continued until the end of the cultivating year 1870. By the terms of the lease the defendant was liable until he restored the property to the lessor. He had therefore to show, as against the plaintiff's claim for rent, that he (defendant) had terminated the tenancy by some intimation to the lessor (plaintiff) and put him in the way of acting on it by a re-entry on the premises. The High Court accordingly, finding that there was no evidence in the case either of notice given to the plaintiff or of an opportunity afforded to him of resuming possession of the land, remanded the case for the determination of that question, observing that, if such notice were given and such opportunity afforded, the plaintiff could not legally claim rent after the end of the cultivating year. VENKATESH NARAYAN PAI *v.* KRISHNAJI ARJUN . **I. L. R., 8 Bom., 160**

427. ———— **Omission to make express surrender**—*Notice of surrender of land by tenant—Splitting up of the cause of action—Son's liability on the father's contract of tenancy.*—On the 22nd April 1848, one *A* mortgaged certain land to the plaintiff. *S* (the father of *B*, the defendant), who was then tenant in possession of the land, attorned to the mortgagee (plaintiff) by a kabuliat, dated the 1st June 1848. *S* died in 1870 in possession as tenant. In 1877 the plaintiff sued the defendant *B* as heir of *S* for three years' rent from 1871-72 to 1873-74. The defendant answered that he had had no possession or occupation of the land since the death of his father in 1870. It was decided in that suit that the defendant had occupied the land up to 1874, and a decree was made against him for the rent claimed. In July 1878 the plaintiff brought the present suit for rent for the subsequent three years, *viz.*, from 1875-76 to 1877-78. The defendant answered that he had given up the land in 1871-72. He did not assert, either in the former or in the present suit, that he had given notice to the plaintiff of his intention to terminate his tenancy by surrendering the land to the defendant, nor did he allege that the plaintiff had assented to a surrender of it by the defendant without such notice. The lower Courts found the kabuliat proved, but threw out the plaintiff's claim on the ground that he failed to prove the defendant's occupation of the land during the three years for which rent was claimed. In the second appeal it was contended for the plaintiff that the tenancy continued until the mortgage was paid off. *Held* that *S* became a yearly tenant of the plaintiff under the kabuliat, but that he was not bound to continue his tenancy until the mortgage was paid off. *Held* also that neither the plaintiff nor *S* as yearly tenant could, without the consent of the other, terminate the tenancy without six months' notice ending with the cultivating year (30th June). *Held*, further, that the defendant, as the son and heir of *S*, was responsible on his father's contract of yearly tenancy, so far as he (defendant) had assets of his father, and in order to free those assets from a continuing liability under that contract he was bound to give a six months' notice of surrender to the plaintiff. The mere denial by the defendant in the former and present suit, that he had ever occupied the land, could not operate as such notice, and his non-occupation or non-cultivation alone could not relieve him from his liability to pay the annual rent to the mortgagee (plaintiff), unless the latter assented to a surrender or abandonment of the land by the defendant. *Held* also that the right of the plaintiff to the rent for the year 1875-76 depended upon whether he might have included it in the former suit. The High Court reversed the decrees of the Courts below, and made a decree for the plaintiff for the rent for 1876-77 and 1877-78. *Venkatesh Narayan Pai* v. *Krishnaji Arjun, I. L. R., 8 Bom., 160,* referred to and followed. BALAJI SITARAM NAIK SALGAVKAR *v.* BHIKAJI SOYARE PRABHU KANOLEKAR

I. L. R., 8 Bom., 164

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*continued.*

428. ———— **Relinquishment by some of lessees**—*Joint lease.*—Where a joint lease was given to many persons, with an entirety and equality of interest among the tenants, the resignation of some of the joint lessees does not necessarily operate to void the lease. MOHIMA CHUNDER SEIN *v.* PETAMBUR SHAHA . . . **9 W. R., 147**

429. ———— **Relinquishment by manager for joint family**—*Joint lease.*—Where a member of a joint family is registered as jotedar in a zamindar's serishta, not as for himself only, but as manager for the family, his relinquishment of the jote is not sufficient in law to authorize the zamindar to make arrangements with any others he pleases. BYKUNT NATH DOSS *v.* BISSONATH MAJHEE **9 W. R., 268**

430. ———— **Relinquishment, Effect of**—*Liability for rent.*—The mere fact of a tenant relinquishing the land will not excuse him from payment of rent if he is otherwise liable, unless he makes some terms with his landlord. MAHOMED AZMUT *v.* CHUNDEE LALL PANDEY . . . **7 W. R., 250**

431. ———— *Liability for rent.*—Where land relinquished by the original tenant is settled by the zamindar with other raiyats, the former raiyat cannot be held liable for rent, even though his relinquishment was not accompanied by notice given in writing. MAHOMED GHASEE *v.* SHUNKER LALL . . . **11 W. R., 53**

432. ———— *Relinquishment by tenant having a right of occupancy.*—Ordinarily tenants having a right of occupancy may, on the expiry of any agricultural year, relinquish their holdings by giving the landlord due notice; and the determination of the tenure of the tenant, whether by forfeiture or relinquishment, will put an end to the tenure of the shikmi holding under the tenant. The relinquishment of the holding will ordinarily put an end to the sub-tenures, provided such relinquishment be accepted by the landlord in good faith. Where the landlord procures the relinquishment of the holding to defeat the under-leases, he should be held bound by such under-leases, although custom may not authorize the tenant to grant leases to enure beyond the duration of his own interest. HOOLASEE RAM *v.* PURSOTUM LAL

[3 N. W., 63: Agra, F. B., Ed. 1874, 250

433. ———— *Surrender to landlord, Effect of, on under-tenant.*—When a tenant who holds land for a term with consent of the landlord underlets that land, he parts with his own interest therein to the extent of the interest created by the under-lease, and cannot therefore determine the interest of his under-tenant by surrendering his own term to the landlord. HEERAMONEE *v.* GUNGANARAIN ROY . . . . **10 W. R., 384**

434. ———— *Surrender to landlord, Effect of, on under-tenant.*—Where a lessor gives his lessee power to sublet, and the latter sublets, the sub-lessee obtains rights against both of which he cannot be deprived without his own consent. The lessee's surrender of his lease cannot operate to the prejudice of the sub-lessee. NEHALOONISSA *v.* DHUNNOO LALL CHOWDRY . **13 W. R., 281**

435. ———— *Mokurari tenure—Relinquishment of mokuraridar.*—When a mokuraridar resigns his tenure, the dar-mokuraris created by him come to an end, but the position of raiyats holding rights of occupancy is not affected by the extinction of either the tenure or the undertenures. KOYLASH CHUNDER BISWAS *v.* BISSESUREE DOSSEE . . . . . **10 W. R., 408**

436. ———— *Bengal Tenancy Act (VIII of 1885), ss. 44, 85, 86, cls. (5) and (6)—Surrender by a raiyat—Ejectment of an under-raiyat—Notice to quit if necessary.*—Where a raiyat surrenders his holding, the landlord is entitled to re-enter by ejecting the under-raiyat if he is not protected by s. 85 or 86, cl. (6). In such a case no notice to quit is necessary. NILKANTA CHAKI *v.* GHATOO SHEIKH . . . **4 C. W. N., 667**

437. ———— *Relinquishment of purchaser from whom tenant holds.*—The rights of a tenant cannot be destroyed by the relinquishment of rights by the purchaser from a pattidar from whom the tenant held by pottah. Before the tenant can be ousted, it must be ascertained whether he holds under a legal title and one which gives him a right of occupancy. CHUTTER DHAREE SINGH *v.* JUTTA SINGH . . . . **4 W. R., 76**

438. ———— *Mirasidar.*—A mirasidar does not lose his mirasi rights by relinquishing his pottah. SUBBARAYA MUDALI *v.* COLLECTOR OF CHINGLEPUT . **I. L. R., 6 Mad., 303**

439. ———— **Inability to surrender landlord**—*Mortgage with landlord's consent.*—A tenant who, with the implied consent of his landlord, has mortgaged his holding, cannot resign it to the landlord. He may resign to him the equity of redemption. But till the mortgage has been redeemed, the mortgagee is entitled to retain possession. SHEOUMBUR RAI *v.* SHEOBHUNG RAI

[1 N. W., 45: Ed. 1873, 41

440 ———— *Holder of survey field—Consent of heirs.*—There is no precedent for ruling that the holder of a survey field is incompetent to resign it without the consent of his heirs. DAVALATA BIN BHUJANGA *v.* BERU BIN YADOJI

[4 Bom., A. C., 197

441. ———— *Patnidar—Refusal to pay rent.*—It is not open to a patnidar of his own choice to throw up the patni, and by so doing escape his liability to pay rent. The contract, though not indissoluble, can only be dissolved by an act of the Court, and as the result of proper enquiry. HEERA LALL PAL *v.* NEEL MONEE PAL

[20 W. R., 383

442. ———— *Dar-mirasi mokurari tenure—Notice of relinquishment—Surrender of lease.*—A tenure under a dar-mirasi mokurrari lease of land, which is not let for agricultural purposes, cannot be put an end to by a mere relinquishment on the part of the lessee, although after notice to the landlord. *Per* FIELD, *J.*—The principle laid down in the case of *Heera Lall Pal* v. *Neel Monee Pal, 20 W. R., 383,* where it was held that a patnidar cannot, of his own option, relinquish his tenure, is applicable of all intermediate tenures between the zamindar and the cultivator of the soil, except those held on farming leases. JUDOONATH GHOSE *v.* SCHOENE, KILBURN & CO.

[I. L. R., 9 Calc., 971 : 12 C. L. R., 343

443. ———— **Ex-proprietary tenant**—*Relinquishment of ex-proprietary rights—Act XII of 1881 (N.-W. P. Rent Act), ss. 9, 31.—Held* by the Full Bench that an ex-proprietary tenant is not competent to relinquish his holding to his landlord by private arrangement. *Per* PETHERAM, *C.J.*—S. 31 of the N.-W. P. Rent Act (XII of 1881) was enacted absolutely in the interests of the cultivator, and provides in effect that, although the occupancy tenant may not be turned out, and may not transfer his rights, he is not to be regarded as bound to his holding, that he may relinquish it, and that, in that case, he is not liable for rent; but this provision must not be taken advantage of by letting the zamindar buy the holding, and thus introducing a new cultivator, contrary to the prohibition contained in s. 9. INDAR SEN *v.* NAUBAT SINGH

[I. L. R., 7 All., 847

444. ———— *N.-W. P. Rent Act (XII of 1881), ss. 9, 31—Relinquishment of ex-proprietary rights.*—Though an ex-proprietary tenant cannot transfer his rights as such for a consideration, there is nothing to prevent his voluntarily relinquishing those rights. GAYA SINGH *v.* UDIT SINGH

[I. L. R., 13 All., 396

445. ———— **Surrender by abandonment**—*Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 12.*—In a suit to recover possession of certain land comprised in an unexpired lease granted to the plaintiff by the first defendant it was pleaded that the plaintiff had left the land waste, and had refused to pay rent or give a written relinquishment of the land, and that the first defendant had accordingly let it to the second defendant. *Held* that, although the defence did not disclose a surrender by the plaintiff, recorded as prescribed in the Rent Recovery Act, s. 12, yet inasmuch as a surrender is not necessarily invalid because it has not been so recorded, and an oral relinquishment followed by abandonment of the land is not inoperative as a surrender under s. 12 of that Act, the Court should determine the issue whether there had been a surrender by the plaintiff. NARASIMMA *v.* LAKSHMANA

[I. L. R., 13 Mad., 124

446. ———— **Mulgeni holding**—*Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 12—Right of tenant to relinquish his lease.*—It is not competent to a mulgeni tenant in South Canara to relinquish his lease and free himself from his obligation for rent without the consent of the landlord. KRISHNA *v.* LAKSHMINARANAPPA

[I. L. R., 15 Mad., 67

447. ———— **Surrender of lease**—*Perpetual lease.*—The karnavan of a Malabar kovilagom executed a kuikanom lease of certain land, the jenm of the kovilagom, in 1846, and in 1861 his successor demised the same land to the same tenants in perpetuity. The present karnavan sued in 1889 to recover possession of the land. *Held* that the perpetual lease as being of an improvident character was *ultra vires* and void; and that the original lease was not surrendered by the acceptance of the subsequent lease. RAMUNNI *v.* KERALA VARMA VALIA RAJA

[I. L. R., 15 Mad., 166

448. ———— **Tenant remaining in occupation after passing a rajinama**—*Bombay Land Revenue Act V of 1879, s. 74—Effect of the rajinama — Construction — Practice — Ejectment suit by owner of "inter esse termini."*—The first and second defendants were sub-tenants of the third defendant, who had certain land which was part of the inam village of *D.* In 1883, the third defendant executed a rajinama in the following terms which he gave to the receiver who had been appointed by the Court to manage the village: "Up to the present time my father and I have been cultivating the land, but the land belongs to the inamdar. I have no title over it, and the inamdar can give it for cultivation to any one he pleases." Shortly after the date of this rajinama, the inamdar gave the land to the plaintiff, who now sued to obtain it from the defendants, who had remained in possession. *Held* that the plaintiff was entitled to the land. The rajinama operated as a relinquishment of the tenancy by defendant No. 3 under s. 74 of Bombay Act V of 1879. *Held* also that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land. BHUTIA DHONDU *v.* AMBO . **I. L. R., 13 Bom., 294**

449. ———— **Relinquishment of possession**—*Proof of reconveyance—Receipt of consideration.*—The mokuraridar having granted a dar-mokurari lease of part of his holding, which was afterwards surrendered for good consideration, ikrarnamas to this effect were executed, but not being registered were not receivable in evidence. *Held* that to prove a formal deed of reconveyance was not necessary, the receipt of the money and the relinquishment of possession sufficiently showing what had become of the dar-mokurari interest. IMAMBANDI BEGUM *v.* KAMLESWARI PERSHAD

[I. L. R., 14 Calc., 109
L. R., 13 I. A., 160

450. ———— **Sufficiency of notice of relinquishment of land by tenant**—*Inamdar—Land Revenue Code (Bom. Act V of 1879), s. 74—Remedy of landlord when vacant possession not given—Damages.*—On the 20th March 1893, the defendants, who held seven fields as tenants of the plaintiff, the inamdar of the village of Kaneri, gave him notice of relinquishment of six of them. The notice stated that these six fields were no longer in their possession, and that they would not be responsible for the assessment. The plaintiff notwithstanding brought this suit to recover assessment for the year 1893-94. The Subordinate Judge held that the defendants continued to be tenants of the fields in question and were liable to the assessment on the ground that the notice of relinquishment did not purport to give vacant posesssion to the plaintiff. He thereupon passed a decree for the plaintiff. On appeal the District Judge reversed the decree, holding that the notice was a conditional relinquishment which terminated the tenancy. On appeal to the High Court,—*Held* (confirming the decree of the lower appellate Court) that the defendants were not liable to the assessment. S. 74 of the Bombay Land Revenue Code (Bombay Act V of 1879) only declares the customary common law on the subject of relinquishment of tenancy. A notice of relinquishment is not invalid because it does not purport to give and does not in fact give vacant possession to the inamdar. The result is the same, whether the fact that the possession is not vacant appears on the face of the notice or is shown otherwise. A tenant giving up demised land to his landlord is bound to give him vacant possession. The result, however, of his not doing so is not to continue the tenancy, but to create a claim for damages on the part of the landlord. The tenant is liable in damages to the extent of the loss of rent which the landlord sustains during the actual period for which he is kept out of possession and the expenses he is put to in recovering possession of the land. BALIARAMAIRI RAMCHANDRAGIRI *v.* VASUDEV MORESHVAR NIPHADKAR . **I. L. R., 22 Bom., 348**

451.———— **Construction of a contract in a pottah allowing relinquishment of the land leased, in whole or in part.**—A pottah granted a permanent mokurari lease for mining purposes, and gave to the tenant the privilege of surrendering either the whole or part of the land included in the lease, with a deduction to be made in the rent for the extent of the land that might be found on measurement to have been surrendered. *Held* that this privilege could only be exercised by the tenant upon a strict observance of the conditions expressly declared, or plainly implied, in the lease itself. The lease was of 1,974 bighas. The tenant executed a deed of relinquishment of 1,409 bighas 8 cottahs 9 gundas, whereof possession was surrendered with the exception of two plots, one of 24 and the other of 9 bighas. *Held* that, according to the true construction of the contract, there was error in the judgment of the High Court which decided that the retention of the plots did not altogether deprive the relinquishment of its effect. This retention did more than lessen the area actually surrendered. It was a mistake to suppose that an increased rent to be paid by the relinquishing tenant in proportion to the areas retained and surrendered, respectively, would adjust the point disputed as a matter of law. The contract was that, in case the tenant surrendered a part, the future rent was to be ascertained by the measurement of the area relinquished. To have made a new surrender would have been within the competency of the tenant. But for the tenant to continue to hold possession of part of the area which he had purported to relinquish was not open to him, or consistent with the validity of the surrender, the contract not admitting of approximate equivalents in regard to the possession of the total area professed to be surrendered, but not surrendered. Therefore the surrender upon which rested the defence to a suit by the lessor for the full rent was invalid in law. RAMCHURN SINGH *v.* RANIGANJ COAL ASSOCIATION . . . . **I. L. R., 26 Calc., 29**
[L. R., 25 I. A., 210
2 C. W. N., 697

452.———— **Abandonment of holding**—*Bengal Tenancy Act (VIII of 1885), s. 87—Transfer of holding by a raiyat—Notice.*—In a case in which a raiyat transfers his holding and makes over possession to some one else, it is not the notice under s. 87 of the Bengal Tenancy Act which terminates the tenancy, but the voluntary abandonment coupled with acts on the part of the landlord (not necessarily limited to the giving of notice) indicating that he considered the tenancy at an end, and it would be for the Court in each case to determine whether the tenancy had terminated. LAL MAMUD MANDAL *v.* ABDULLAH SHEIKH . . . **1 C. W. N., 198**

453.———————— *Bengal Tenancy Act (VIII of 1885), s. 87—Transfer of non-transferable occupancy holding—Forfeiture—Ejectment—Notice.*—Where the non-transferable occupancy holding of plaintiff's tenant was purchased by defendant No. 1 at a sale in execution of a decree for money and the latter obtained possession of the land through the Court and pulled down the huts of the tenants standing thereon, and it was found that the said tenant had abandoned the possession of the holding,—*Held* that in a suit for khas possession the plaintiff was entitled to succeed, and a notice under s. 87 of the Bengal Tenancy Act to the old tenant was not necessary. BHAGABAN CHANDRA MISSRI *v.* BISSESSWARI DEBYA CHOWDHURANI
[3 C. W. N., 46

454.———— **Necessity of notice**—*Bengal Tenancy Act (VIII of 1885), s. 87—Ejectment—Non-transferable raiyati holding, Transfer of.*—Where a raiyat sold his non-transferable holding and was no longer in possession of the same and paid no rent for it, and the landlord brought a suit to eject both the transferor and transferee,—*Held* that the landlord was entitled to a decree, and that no notice under s. 87 of the Bengal Tenancy Act was necessary to enable the landlord to obtain khas possession of the holding. *Lal Mamud Mandal* v. *Abdullah Sheikh, 1 C. W. N., 198,* and *Bhagaban Chandra Missri* v. *Bissesswari Debya Chowdhurani, 3 C. W. N., 46,* relied on. *Held* also that the provisions of s. 87 of the Bengal Tenancy Act are not exhaustive. SAMUGAN ROY *v.* MAHATON . **4 C. W. N., 493**

23. EJECTMENT.

(*a*) GENERALLY.

See CASES UNDER EJECTMENT, SUIT FOR.

455. ———— **Interference with tenant by zamindar**—*Inducing sub-tenants to pay rent to zamindar.*—Where a zamindar so interferes with the possession of a tenant not personally occupying the land as to induce the under-tenants to pay rent to him (the zamindar), his interference amounts to dispossession. HOYMOBUTTY DASSEE *v.* SREEKISSEN NUNDEE . . . . **14 W. R., 58**

See RADHA MADHUB PANDA *v.* JUGGERNATH DOOAB . . . . . . **14 W. R., 183**

456. ———— **Right of landlord to eject and re-enter**—*Expiration of lease and omission to take renewal.*—Where an old lease has expired, and the lessee, having the option of renewal on applying within a specified time, does not choose to take a new lease, the landlord's claim to re-entering cannot be styled a penalty in the sense in which forfeiture of a lease would be upon non-performance of a contract. DEB POOREE BOISTOBEE *v.* KENOO SINGH ROY . . . . . . **20 W. R., 357**

457. ———— **Right of lessee of zamindari rights to eject.**—Unless evidence to the contrary be forthcoming, a lessee of zamindari rights must in this country be presumed to have all and the same powers in relation to the location or ejectment of raiyats as are possessed by the zamindar. SUDA NUND *v.* DWARKA SINGH . . **2 N. W., 194**

458. ———— **Right of joint lessor**—*Suit for ejectment.*—One of several joint lessors can eject a lessee after expiry of the lease. MUDUN SINGH *v.* NURPUT SINGH . . **2 W. R., 291**

459. ———— **Right of purchaser**—*Patni talukh—Sale for arrears of rent—"Optimus interpres rerum usus."*—The plaintiff, purchaser of a talukh, sold for arrears of rent under Regulation VIII of 1819, brought a suit for khas possession of a tank within the talukh purchased by him, which had been held by the defendant and her predecessors from a time anterior to the grant of the talukh. *Held* that the relationship of landlord and tenant in which the parties stood did not prevent the application of the maxim *optimus interpres rerum usus*, and it was open to the defendant to show by evidence as to the nature of the enjoyment what the origin of the tenure really was. It being shown that the interest in the tank had been frequently transferred during a period of more than sixty years without any change in the terms of the holding or the amount of rent paid, and that one of the transferees of the tank had been the owner of the talukh in which it was, it was held that the plaintiff was not entitled to a decree for khas possession. NIDHIKRISHNA BOSE *v.* NISTARINI DASI **[13 B. L. R., 416: 21 W. R., 386**

460. ———— *Summary ejectment—Person not in receipt of rent.*—Tenants long in possession and paying rent cannot be summarily ejected in an action by an alleged purchaser suing for possession; they can only be ejected in a suit in the Revenue Court by the person entitled to receive the rent. THAKOOR DOSS ROY *v.* BHYRUB CHUNDER BHUTTACHARJEE . . . **11 W. R., 509**

461. ———— **Liability to ejectment**—*Long tenancy, Nature of.*—Where the defendant had been in possession as tenant for more than thirty years, and there was no lease or agreement showing the nature of the original tenancy, the presumption of law is that he is a tenant from year to year, and therefore liable to be ejected. Regulation V of 1827, s. 1, does not apply to such a case. BAI GANGA *v.* DULLABH PARAG . . **5 Bom., A. C., 179**

462. ———— *Inamdar—Perpetual right of occupancy—Suit for ejectment.*—Where a family of kulkarnis in the Konkan was proved to have been in actual occupation of land under an inamdar for ninety years at a uniform rent,—*Held*, in the absence of proof of any lease for a more limited term as alleged by the plaintiff, that the occupants were entitled to hold as long as they paid the usual rent. ANNAJI APPAJI *v.* KASI ATMAJI **[3 Bom., A. C., 124**

463. ———— *Tenants of inamdar—Right to raise rent—Tenants in possession before grant.*—An inamdar, though he cannot eject his tenants who have been in possession before the grant of the inam, as long as they pay the rent due for their land, may nevertheless raise such rent at his pleasure (they not having acquired a prescriptive title), and is not restrained in doing so by the rates fixed by the Government survey. HARI BIN JOTI *v.* NARAYAN ACHARRYA . **6 Bom., A. C., 23**

464. ———— *Position of sub-lessee under unexpired lease.*—The fact that a person holds under an unexpired lease granted by a mere occupancy raiyat against whom a decree of ejectment has been obtained, is of no avail to enable such person to support his possession against the zamindar. JAFREE BEGUM *v.* HOSSEIN ZAMAN KHAN **[2 N. W., 6**

465. ———— *Status of kashtkar.*—The plaintiff occupied as kashtkar a piece of land in a mouzah which was subsequently leased in farm. The farmer granted a pottah of a portion of the mouzah, including the plaintiff's holding, to *S*, to whom, instead of the farmer, the plaintiff subsequently paid rent. In the absence of any evidence as to the nature of the pottah granted to *S*, and of any consent on the part of the plaintiff to change his status, he did not lose his status of kashtkar, and was not liable to ejectment by reason of the ejectment of *S*. MATAPULUT SINGH *v.* MATA DYAL **[3 Agra, 275**

466. ———— *Lessees from lakhirajdar—Right of zamindar to eject.*—A party in legal possession under a lease from a lakhirajdar cannot be summarily evicted by the zamindar without the intervention of the Court, even if the zamindar is entitled to resume the land as invalid lakhiraj, or as lands which have lapsed on non-performance of stipulated service. INDRABUTTY KOONWAREE *v.* HOLLOWAY . . . . **9 W. R., 168**

467. ———— **Illegal ejectment**—*Right of tenant to be restored to possession if dispossessed before tenure is put an end to.*—In a suit for possession by a tenant who claimed to hold under a permanent tenure, it was found that the tenure under which the plaintiffs claimed had not, though not found to be permanent, been put an end to. *Held* that the plaintiffs were entitled to succeed. CHUNDAR KUMAR GUHA *v.* MUNGUL MOLLAH **[11 C. L. R., 387**

468. ———— *Suit by tenant for possession.*—A tenant, suing to recover possession of an old jote from which he has been dispossessed by his landlord before the termination of his tenancy, is not required to prove a right of occupancy. CROWDY *v.* JHUKREE DHANOOK **[23 W. R., 387**

469. ———— *Act X of 1859, s. 25.*—An ejectment by a zamindar without application made to the Collector under s. 25, Act X of 1859, is not necessarily an illegal ejectment. The illegality of the ejectment must be established by evidence. SHEO RUTTUN SINGH *v.* PHOOL KOOMAREE . . . **W. R., 1864, Act X, 68**

470. ———— *Act X of 1859, s. 23, cl. 6, and s. 25—Limitation Act, 1859, s. 15—Suit for possession by raiyat.*—When a zamindar, of his own authority, and without the intervention of the Collector under s. 25, Act X of 1859, ejects a tenant whose lease has expired, the tenant may recover possession, without reference to the title of the zamindar to eject him, in a suit under s. 15, Act XIV of 1859; but if the tenant sue under cl. 6, s. 23, Act X of 1859, the question is open as to whether the tenancy was at an end or not; and if it was at an end, the tenant must fail in his suit. JONARDUN ACHARJEE *v.* HARADUN ACHARJEE **[B. L. R., Sup. Vol., 1020 : 9 W. R., 513**

URJOON DUTT BONICK *v.* RAM NATH KURMOKAR . . . . . . **21 W. R., 123**

471. ———— *Restoration to tenancy after wrongful eviction.*—If a raiyat, holding at a particular rent, is unlawfully evicted, he does not necessarily cease to hold at that rent; and if he is restored to possession, he is restored to his original holding. RASHBEHARY GHOSE *v.* RAM COOMAR GHOSE . . . . . . **22 W. R., 487**

LUTTEEFUNNISSA BIBEE *v.* POOLIN BEHAREE SEIN . . . . . **W. R., F. B., 91**

472. ———— *Liability to damages for ejectment.*—In a suit by an ejected lessee to recover a year's balance of rent from his lessor, who had given a lease to another party and dispossessed plaintiff,—*Held* that, by granting the later lease, defendant had made himself responsible for any loss which might thereby be occasioned to plaintiff, even though he (the lessor) had not collected the rent himself. GOBIND CHUND JUTTEE *v.* MUN MOHUN JHA . . . . . . **14 W. R., 43**

473. ———— **Effect of order of ejectment**—*Bengal Rent Act, 1869, s. 53—Right to standing crops on land.*—The effect of an order of ejectment under s. 53 of the Rent Act is to dispossess the raiyats, not only of the land, but also of the crop standing thereon, the object of such an ejectment being to terminate completely the connection between the parties as landlord and tenant. IN THE MATTER OF DURJAN MAHTON *v.* WAJID HOSSEIN **[I. L. R., 5 Calc., 135**

474. ———— *Suit for arrears of rent—Bengal Rent Act (Beng. Act VIII of 1869), ss. 22, 52.*—A landlord who sues for arrears of rent, for the whole of one year, and a portion of the next, and also for ejectment, is not entitled to a decree for the latter. The right to ejectment under s. 22 of the Rent Act (Bengal Act VIII of 1869) accrues at the end of the year, and forfeiture or determination of the tenancy thereupon takes place, but if the landlord sues for subsequent arrears, he treats the defendant as his tenant, and the right acquired under that section must be taken to have been waived. JOGESHURI CHOWDHRAIN *v.* MAHOMED EBRAHIM . . **I. L. R., 14 Calc., 33**

475. ———— *Agreement by occupancy-tenant to relinquish his holding—Agreement not enforceable—Suit for specific performance of agreement—Jurisdiction of Civil Courts.*—The defendant, who was a tenant with a right of occupancy in the land cultivated and held by him, executed a kabuliat in respect of the said land in favour of the plaintiffs (his landlords), agreeing that on the expiry of the term fixed in the kabuliat he should have no claim to retain possession of the cultivatory holding, but that he should give it up. Plaintiffs sued for ejectment of the defendant on the basis of the agreement, and obtained a decree from the lower Appellate Court. On second appeal by the defendant,—*Held* that, inasmuch as the plaintiffs sought to enforce the covenant contained in the kabuliat in such a manner as to extinguish the rights of occupancy found upon the facts of the case to have been acquired by the defendant in the land in suit, such suit must fail, as opposed to the policy of the law as shown in the provisions of s. 9 of the Rent Act (Act XII of 1881). Such a tenant may be ousted from his holding by enforcement of the remedies given in that behalf in s. 95 (*d*) and (*f*), but not in the manner sought by the plaintiff in this action. KAURI THAKURAI *v.* GANGA NARAIN LAL **[I. L. R., 10 All., 615**

476. ———— *Evidence Act (I of 1872), s. 116—Estoppel—Kumaki land—Unassessed waste reclaimed by plaintiff—Pottah granted to defendant.*—The plaintiff, who was the holder of a warg in Canara, demised adjacent waste land to one who brought it into cultivation and remained in occupation for two years. The land was not assessed to revenue in the name of either of these persons. At the end of two years the tenant let into occupation a sub-tenant, who subsequently assigned his right to the defendant, the holder of a neighbouring warg.

The defendant obtained a pottah for the land from the Revenue authorities. In a suit by plaintiff to eject the defendant,—*Held* (1) that the defendant was not estopped from setting up a title adverse to the plaintiff, and that his possession became adverse when the pottah was granted to him; (2) that the plaintiff was not entitled to eject the defendant. SUBBARAYA *v.* KRISHNAPPA

[I. L. R., 12 Mad., 422

477. ———— *Mirasi tenure —Suit by an inamdar to recover possession from a trespasser, claiming to have redeemed a mortgage made by mirasidar—Possession not adverse.*—An inamdar sued to eject the defendants from certain lands, alleging them to be trespassers. The Courts found that the lands were mirasi lands, and that one *G* was mirasidar. The defendants had redeemed a mortgage effected by *G* and claimed to hold possession as against the plaintiff. *Held* that, as the land was found to belong to *G* as mirasidar, and as his mirasi tenure was still subsisting, the plaintiff as inamdar was not entitled to eject the defendants, whether or not they had any rights as against the mortgagee. VINAYAK JANARDAN *v.* MAINAI

[I. L. R., 19 Bom., 138

(*b*) NOTICE TO QUIT.

478. ———— **Necessity of notice**—*Mode of determination of tenancy.*—Notice to quit is a necessary part of the landlord's title to eject the tenant. ABDULLA RAWUTAN *v.* PAKKERI MOHOMED RAWUTAN . . . **I. L. R., 2 Mad., 346**

479. ———— *Mode of determination of tenancy.*—In a suit by a lessee to oust the tenant in possession,—*Held* that the tenancy must be shown to have been legally determined by notice to quit, demand of possession, or otherwise. FITZPATRICK *v.* WALLACE

[2 B. L. R., A. C., 317: 11 W. R., 231

NARAIN MUNDUL *v.* BHOOKTO MAHATO

[25 W. R., 56

480. ———— *Surrender of tenant, Effect of, on under-tenants—Bengal Tenancy Act, ss. 85 and 86.*—Where a raiyat surrenders his holding, the landlord is entitled to re-enter and eject the under-raiyats without notice to quit unless they are protected by ss. 85 and 86 of the Bengal Tenancy Act. NILKANTA CHAKI *v.* GHATOO SHEIKH

[4 C. W. N., 667

481. ———— *Raiyat without right of occupancy.*—*Quære*—Can a zamindar eject a raiyat not having a right of occupancy without giving any notice. KOMUL SANGATH *v.* ROMANATH GOSSAMEE . . . . **21 W. R., 332**

482. ———— *Suit for ejectment brought without notice.*—A raiyat whose tenancy can only be determined by a reasonable notice to quit, expiring at the end of the year, can claim to have a suit for ejectment brought against him by his landlord dismissed on the ground that he has received no such notice. RAJENDRONATH MOOKHOPADHYA *v.* BASSIDER RUHMAN KHONDKHAR

[I. L. R., 2 Calc., 146: 25 W. R., 329

483. ———— *Tenant-at-will —Evidence of local custom.*—The nature of a holding, as between landlord and tenant, must always be a matter of contract, either expressed or implied. If there is no express agreement, a tenant becomes a tenant-at-will, or from year to year, and is liable to be ejected upon a reasonable notice to quit, unless some local custom to the contrary is proved. PROSUNNO COOMAREE DEBEA *v.* RUTTON BEPARY

[I. L. R., 3 Calc., 696 : 1 C. L. R., 577

ABDOOL KUREEM *v.* OMER CHAND LAHATA

[24 W. R., 461

TARUKPODO GHOSAL *v.* SHYAMA CHURN NAPIT

[8 C. L. R., 50

484. ———— *Chota Nagpur Landlord and Tenant Procedure Act (Beng. Act I of 1879)—Notice whether necessary in Chota Nagpur.*—In a district in which Bengal Act I of 1879 is in force, no notice to quit is necessary to eject a tenant who holds over after the expiry of his agricultural lease, there being no provision in the Act for such a notice. RAM NARAIN SAHA *v.* MAANGRU URAO . . . . . **4 C. W. N., 792**

485. ———— *Receipt of rent —Creation of tenancy.*—The recognition by the owner of lands of the interest of parties in possession by the receipt of rent from them constitutes a tenancy requiring to be determined by notice or otherwise before such parties can be treated as trespassers. SONET KOOER *v.* HIMMUT BAHADOOR

[I. L. R., 1 Calc., 391: 25 W. R., 239
L. R., 3 I. A., 92

486. ———— *Lease at small rent—Endowed lands—Tenant-at-will.*—Lands forming part of the endowment of a temple were demised by the Collector at a svamibhogam rent of four annas per cottah, the lessee paying the Government tirvai. The lessee entered, improved, and paid his rent for several years. *Held*, reversing the decree of the Principal Sudder Ameen, that the smallness of the rent showed that the lessee was merely a tenant-at-will, and the hakdar of the endowment, having regained possession, might oust him at his pleasure. Regulation V of 1822, s. 8, refers only to zamindars and other proprietors of estates permanently settled under the Regulation of 1802. NALLATAMBI PATTAR *v.* CHINNADEYVANAYAGAM PILLAI . **1 Mad., 109**

487. ———— *Suit for partition and ejectment of raiyats—Right of occupancy.*—In a suit for partition of the joint inam lands of a Hindu family, it was not disputed that the plaintiffs were entitled to the share which they claimed, but they joined as defendants a number of cultivating raiyats whom they sought to eject. The raiyats pleaded that the lands had been reclaimed by their forefathers, and that they and their fathers had been in possession ever since, and that they had thereby acquired a permanent right of occupancy. *Semble*—

That, even if the raiyats had not a permanent tenure, they could not be ejected except upon notice at the end of the Fasli, so long as they paid the rent due upon the lands. SAMINADA PILLAI *v.* SUBBA REDDIAR . . . . . **I. L. R., 1 Mad., 333**

488. ——— *Mittadar, Right of—Kudivaram or tenant-right, Presumption as to—Right to eject.*—The kudivaram (tenant-right) does not necessarily vest in a mittadar, as such, so as to entitle him to eject the raiyats on his mitta on notice as tenants from year to year. SRINIVASA CHETTI *v.* NUNJUNDA CHETTI . **I. L. R., 4 Mad., 174**

489. ——— *Tenure transferable by custom.*—The mere fact that a tenure is transferable under the custom of the district does not make it one which is not terminable by the landlord on sufficient notice. SHAMA SUNDARI DABI *v.* NOBIN CHUNDER KOLYA . **6 C. L. R., 117**

490. ——— *Claims of rival tenants—Pottah by landlord to tenant out of possession.*—In a suit between two rival tenants having the same landlord, the one striving to obtain, and the other to maintain, possession of a particular parcel of land, where it is found that the defendant is still in occupation and has not been ejected by the zamindar, the mere production of a pottah alleged to have been granted to the plaintiff by the zamindar cannot of itself determine the tenancy of the defendant, or enable the plaintiff to stand in the shoes of the zamindar and serve the occupant tenant with a notice to quit. CHUNDER MONEE CHANDA *v.* BRINDABUN NATH . . . **25 W. R., 132**

491. ——— *Permanent tenancy pleaded.*—Suit to eject defendants from certain land held by them from the plaintiff under a chalgeni (yearly) demise of 1869. The defendants pleaded that they were kattugudi (permanent) tenants of the land in question: they had set up their title as kattugudi tenants previous to the chalgeni demise, but it did not appear that they had re-asserted it up to date of suit. *Held* that the issue whether the plaintiff had given a notice to quit, reasonable and in accordance with local usage, should be tried. *Baba* v. *Vishvanath Joshi, I. L. R., 8 Bom., 228,* considered. SUBBA *v.* NAGAPPA . . **I. L. R., 12 Mad., 353**

492. ——— *Notice under s. 84 of Bom. Act V of 1879—Plea of permanent tenancy, raised for the first time in defendants' written statement in ejectment suit—Denial of landlord's title—Objection of want of proper notice raised first in second appeal.*—The plaintiff sued to eject the defendants as tenants holding over after notice to quit. The notice required the defendants to vacate within eight days. The defendants pleaded that they were mirasi or permanent tenants. This plea was not proved. The Court of first instance passed a decree awarding immediate possession. The Appellate Court held that, although the notice to quit was not according to s. 84 of the Bombay Land Revenue Code (Bombay Act V of 1879), still as the suit was brought long after the expiry of the proper period, the plaintiff was entitled to recover possession "at the end of the present cultivating season." *Held* in second appeal that, the notice to quit not being according to law, there was no legal determination of the tenancy. The plaintiff could not therefore succeed. *Held* also that the plea of permanent tenancy set up for the first time in the defendant's written statement in the present case was not such a disclaimer of the landlord's title as to dispense with proof of a legal notice to quit on the part of the plaintiff: *Baba* v. *Vishvanath Joshi, I. L. R., 8 Bom., 228,* dissented from. *Held,* further, that it was open to the defendants for the first time in second appeal to raise the objection of want of proper notice. VITHU *v.* DHONDI **I. L. R., 15 Bom., 407**

See also HAJI SAYYAD *v.* VENKTA
[I. L. R., 15 Bom., 414 note

and RAM CHANDRA APPAJI ANGAL *v.* DAULATJI
[I. L. R., 15 Bom., 415 note

493. ——— *Plea of permanent tenancy—Decree, Forms of.*—The plaintiff sued to eject the defendants from certain land. The defendants pleaded that they were permanent tenants under a lease granted to their ancestor by the plaintiff's grandfather in 1805. The Court of first instance awarded the plaintiff's claim. On appeal, the District Judge held that the lease on which the defendants relied was one determinable on the grantee's death, but as the grantee's heirs (the defendants) had continued in possession paying the stipulated rent, they were entitled to a reasonable notice to quit. The District Judge accordingly passed a decree, directing the defendants to vacate the land at the expiry of six months from the date of the decree. —*Held* that the District Judge could not, in his judgment, give the notice which the plaintiff was bound to give to his tenants. Plaintiff's suit must fail for want of notice. ABU BAKAR SAIBA *v.* VENKATRAMANA VISHVESHVAR . **I. L. R., 18 Bom., 107**

494. ——— *Plea of permanent tenancy—Denial of title—Forfeiture—Waiver—Objection taken in second appeal.*—The plaintiff sued the jaghirdars of a certain village (defendants Nos. 1 to 11) and certain of their tenants (defendants Nos. 12 to 18) for specific performance of an agreement made between the plaintiff and the jaghirdars, by which the jaghirdars agreed to give up to the plaintiff possession of certain lands, which were in possession of the tenants (defendants Nos. 12 to 18). The jaghirdars pleaded that they were unable to give possession, as the tenants (defendants Nos. 12 to 18) were permanent tenants and refused to quit the land. The tenants (defendants Nos. 12 to 18) put in a separate defence, also alleging that they were permanent tenants of the jaghirdars. The lower Appellate Court held that the tenants (defendants Nos. 12 to 18) were yearly tenants and did not hold in perpetuity, and that the jaghirdars had power to eject them. That Court therefore passed a decree for the plaintiff for specific performance of the agreement as against the jaghirdars and for possession as against the other defendants. The latter defendants (the tenants) appealed to the High Court. They there contended that if they were yearly tenants, as held by the decree of the lower Court, they could not be dispossessed without notice to quit, and that no such notice had been given. *Held* (1) that the objection was good, and that no decree against the tenants (defendants Nos. 12 to 18) could be made in favour of the plaintiff, and that he was only entitled to a declaration that the said defendants were mere yearly and not permanent tenants. (2) That the tenants (defendants Nos. 12 to 18) had claimed to be permanent tenants before the suit was filed, and at that time they were not tenants of the plaintiff, but of the jaghirdars. Under the circumstances, that claim could not be taken to have worked a forfeiture of their tenancy as a denial of their landlord's title, or in any case it must be deemed to have been waived by the jaghirdars. The plaintiff therefore could not rely upon it as an answer to the defendants' contention that a notice to quit was necessary. (3) That the objection as to the necessity of notice to quit was one which might be taken in second appeal DODHU *v.* MADHAVRAO NARAYAN GADRE

[I. L. R., 18 Bom., 110

495. ——— *Transfer of Property Act (IV of 1882), s. 106—Denial of landlord's title by defendant prior to suit.*—In a suit by a landlord for ejectment of a tenant, no notice of determination of tenancy, under s. 106 of Act IV of 1882, is necessary where the defendant has, prior to the suit being brought, denied the plaintiff's title as landlord, and that there was any contract of tenancy between them. *Unhamma Devi* v. *Vaikunta Hegde, I. L. R., 17 Mad., 218,* and *Dodhu* v. *Madhavrao Narayan Gadre, I. L. R., 18 Bom., 110,* referred to. HAIDRI BEGUM *v.* NATHU

[I. L. R., 17 All., 45

496. ——— *Disclaimer of title—Khoti Act (Bom. Act I of 1890), ss. 20, 21, 22—Decision of Survey officer as to nature of tenure.*—Where a tenant under a plea of ownership has succeeded in obtaining a possessory order in a suit before a Mamlatdar, it is not necessary for the evicted landlord to give notice to quit before suing in ejectment on his title. It would be otherwise where the possessory order was sought on the ground of a disturbance of an existing tenancy. The plaintiffs were khots and defendants were their yearly tenants in occupation of their khoti khasgi lands. In 1890, the Survey officer purporting to act under s. 20 of the Bombay Khoti Act (Bombay Act I of 1880) decided that defendants were occupancy tenants, but the plaintiffs did not come to know of this decision till 1893, when the botkhat was prepared and signed. Shortly afterwards the plaintiffs took forcible possession of the lands. Thereupon the defendants filed a suit in the Mamlatdar's Court to recover possession, alleging that they were owners of the land, and that they had been illegally dispossessed. The Mamlatdar restored them to possession. In 1896, plaintiffs filed the present suit to eject defendants. Defendants pleaded (*inter aliâ*) that the suit was bad for want of notice to quit, and that the claim was time-barred. *Held* that defendants, having distinctly repudiated the landlord's title in the possessory suit, were not entitled to a notice to quit. MAHIPAT RANE *v.* LAKSHMAN

[I. L. R., 24 Bom., 426

497. ——— *Permanent tenancy—Tenancy from year to year—Ejectment.*—Where the plaintiff sued in ejectment, and the defendant set up a right as a permanent tenant,—*Held* that the setting up of this right was a repudiation of the landlord's title, and absolved him from the obligation which would have devolved on him of giving to the defendant a notice to quit if the defendant had set up a tenancy from year to year. BABA *v.* VISHVANATH JOSHI . **I. L. R., 8 Bom., 228**

498. ——— *Tenant from year to year.*—When there is no custom of the country to the contrary, six months' notice to quit is proper notice. This period must have elapsed before the plaint is filed, and the time occupied in the suit before decree cannot be counted. NANABHAI RUSTAMJI *v.* PESTANJI JAMSETJI **6 Bom., A. C., 31**

499. ——— *Tenant from year to year.*—A notice to quit, running only for ten days, is not a sufficiently reasonable notice on which a landlord can maintain a suit in ejectment against a tenant from year to year. RAM ROTTON MUNDUL *v.* NETTRO KALLY DOSSEE **I. L. R., 4 Calc., 339**

500. ——— *Yearly tenant—Reasonable notice to quit—Disclaimer of landlord's title in the course of pleadings—Transfer of Property Act (IV of 1882), ss. 106, 111 (b), and 116.*—The sections of the Transfer of Property Act (IV of 1882) relating to notice do not apply to suits instituted before that Act came into operation. Before that Act came into operation, a tenant other than a monthly tenant, holding over on the terms of his lease, was entitled to reasonable—that is to say, in the case of lands and in the absence of usage or stipulation to the contrary, to six months'—notice to quit. Disclaimer of a landlord's title in the pleadings after suit brought does not of itself determine the tenancy and render notice to quit unnecessary. AMBABAI *v.* BHAU . . . **I. L. R., 20 Bom., 759**

501. ——— *Tenant of agricultural land—Tenancy-at-will—Yearly tenancy—Rent not payable until the end of the year—Bombay Land Revenue Code (Bom. Act V of 1879), s. 84.*—Where, in the case of agricultural land, the tenant entered into an agreement with the landlord that he would pay the amount of the annual rent every year as long as the landlord would keep the wadi (oart) with him, and would give back the same when the landlord would demand it,—*Held* that the contract between the parties took the case out of s. 84 of the Land Revenue Code (Bombay Act V of 1879), and that, as the rent would not be payable until the end of the year, the landlord might put an end to the tenancy and demand the land at the end of any year without giving any previous notice of any particular period, but he could not demand immediate possession in the middle of a year. Balkrishna Vamanaji Gavankar *v.* Jasha Farsi Shirel

[I. L. R., 19 Bom., 150

502. ——— *Tenant-at-will—Reasonable notice to quit.*—In a suit for ejectment brought against a tenant who had no permanent right in the holding, after a notice to quit within thirty days had been served on the tenant, the lower Appellate Court considered the notice insufficient, but gave the plaintiff a decree for possession on a certain date named in the decree. *Held,* following the case of *Hem Chunder Ghose* v. *Radha Pershad Paleet, 23 W. R., 440,* that the suit was itself a sufficient notice to quit, and that the decree made was correct. Ram Lal Patak *v.* Dina Nath Patak . I. L. R., 23 Calc., 200

503. ——— *Effect of determinating tenancy on sub-tenants—Bombay Land Revenue Code (Bom. Act V of 1879), s. 84.*—A landlord putting an end, by proper notice, to the tenancy of his tenant, thereby determines the estate of the under-tenants of the latter. Timmappa Kuppayya *v.* Rama Venkanna Naik

[I. L. R., 21 Bom., 311

504. ——— *Tenancy reserving an annual rent—What notice a raiyat holding an annual tenancy is entitled to.*—In a tenancy created by a kabuliat with an annual rent reserved, a tenant is entitled to six months' notice expiring at the end of the year of the tenancy before he can be ejected. Kishori Mohun Roy Chowdhry *v.* Nund Kumar Ghosal

[I. L. R., 24 Calc., 720

505. ——— *Bengal Tenancy Act (VIII of 1885), s. 49—Suit for ejectment—Written lease—Holding over.*—A suit to eject an under-raiyat under s. 49, cl. (*b*), of the Bengal Tenancy Act cannot be maintained without a notice to quit, and the suit itself cannot be regarded as a sufficient notice. *Ram Lal Patak* v. *Dina Nath Patak, I. L. R., 23 Calc., 200,* distinguished. Where an under-raiyat was let into occupation under a kabuliat for a year, but held over for a number of years,—*Held* that he was not holding under any written lease, and therefore under cl. (*b*) of s. 49 of the Bengal Tenancy Act he was not liable to be ejected without a notice to quit, although the terms under which he was holding were the same as those under which he had been let in under a written lease. Rabiram Dass *v.* Uma Kant Chuckerbutty

[2 C. W. N., 238

506. ——— *Monthly tenancy.*—By indenture, dated 1st February 1856, *A* leased certain premises in Calcutta to *B* for a term of ten years, as from 1st November 1855, at a rent of R100 per month payable monthly. *A* covenanted with *B* to grant to her on her request, to be made within three months of the expiry of the term, a fresh lease on the same terms for three years. The defendant in 1858 became the assignee of the lease without notice to *A*, and continued to occupy the premises and paid rent in the name of *B* up to August 1866. No renewal of the lease was applied for, and the plaintiffs, who became the representatives of *A* in June 1866, gave notice through their attorneys on 6th September 1866 to *B* to quit on 1st November 1866, and on that date demanded possession from *B* and from the defendant. *Held* that the tenancy after 31st October 1865 was a monthly tenancy in the name of *B*, and was terminated on the 31st October 1866 by the notice of 6th September 1866. Brojonath Mullick *v.* Weskins

[2 Ind. Jur., N. S., 163

507. ——— *Tenant from year to year—Occupancy, Right of.*—If a tenant from year to year receive no notice determining the tenancy at the end of eleven years, and is allowed to remain on the land after the commencement of the twelfth year, he cannot be ejected until the end of the twelfth year, when he will acquire a right of occupancy. Dariao Bishoon *v.* Dowluta

[5 N. W., 9

508. ——— *Limitation—Patni lease—Receipt of rent—Notice.*—*A*, a Hindu, died leaving his widow *B* and his mother *C*. *B* adopted *D*. *C* granted a patni pottah to *E* of certain property belonging to the estate of *A*. During the minority of *D*, *B* received the rent from *E*, and afterwards *D*, on attaining majority, realized rent from *E* by suits under Act X of 1859. Twelve years after attaining majority, *D* sued for cancellation of the patni lease and for obtaining khas possession of the property. *Held* that the suit was not barred. The receipt of rent was no confirmation of the patni lease; it only created the relation of landlord and tenant. *Held* also that the plaintiff was not entitled to khas possession before the relationship of landlord and tenant was legally determined by a reasonable notice. *Semble*—Such notice should expire at the end of the year. Bunwari Lal Roy *v.* Mahima Chandra Knuall

[4 B. L. R., Ap., 86 : 13 W. R., 267

509. ——— *Denial of title—Suit for possession by purchaser at sale in execution of decree.*—In a suit by the plaintiff, a purchaser at a sale in execution of a decree who had obtained possession through the Court, and been subsequently ejected, to recover the lands he purchased, it appeared that *R* and *G*, two of the defendants, had mortgaged the lands in 1867 to *G R*, the third defendant, and in 1870 *G R* had obtained against his mortgagors *R* and *G* a decree on his mortgage in execution of which the lands were sold and purchased by the plaintiff in 1872. The plaintiff alleged that after he got possession in 1872 he had leased the property to *R* and *G*. They denied the letting by the plaintiff, and alleged that they were tenants of *G R*. The plaintiff failed to prove that *R* and *G* were his tenants. *Held* that the plaintiff was entitled to recover. *Held* that, as *R* and *G* claimed only to be tenants of *G R*, they could not retain possession of the land, merely because the plaintiff had failed to prove that he had let the land to them. They denied the plaintiff's title, and were not therefore entitled to any notice to quit. AGARCHAND GUMANCHAND *v.* RAKHMA HANMANT

[I. L. R., 12 Bom., 678

510. —————— *Notice of ejectment—Determination of tenancy—Act XII of 1881, ss. 36, 39 (c), 40—Suit for ejectment and mesne profits—Payment by wrong doer in possession not to be deducted from such profits.*—S. 39 (c) and s. 40 of the N.-W. P. Rent Act (XII of 1881) imply that if a land-holder has failed to give his tenant the written notice of ejectment required by s. 36, the tenancy is not to be treated in law as having ceased on determination of the term provided, but is to be treated as still subsisting. Where upon the expiry of the term of a lease, but without the written notice of ejectment required by s. 36 of the Act having been given by the lessor, possession was taken and rents collected by persons claiming under a subsequent lease,—*Held* that the tenancy of the first lessees did not cease upon the determination of the term of their lease; and that the second lessees were wrongdoers in usurping possession and collecting rents and profits, and were liable in a suit for damages by way of mesne profits after deduction of a sum paid by them for Government revenue, but without deduction of what they had paid the lessor or of the expenses they had incurred in collecting the rents. SHITAB DEI *v.* AJUDHIA PRASAD

[I. L. R., 10 All., 13

511. —————— *Kasavargam tenant—Transfer by tenant without consent of landlord.*—The mirasidars of a village in the Tanjore District sued to recover a manai which had been put into the possession of the ancestors of defendant No. 8, who were village blacksmiths, as kasavargam tenants. Defendant No. 8 had left the village and sold the land as if it were his ancestral property to others of the defendants, who were now in occupation. *Held* that the plaintiffs were entitled to recover the land without proof of notice to quit to the occupants. SUBBARAYA *v.* NATARAJA

[I. L. R., 14 Mad., 98

512. —————— *License to occupy.*—The plaintiffs, who were mirasidars of a village, permitted the defendants to occupy their land on the condition that they should do blacksmith's work for the plaintiffs. The defendants ceased to do the work after a time. *Held* that the plaintiffs were entitled to evict the defendants without notice to quit. ATHAKUTTI *v.* GOVINDA

[I. L. R., 16 Mad., 97

513. —————— *Plea of permanent tenancy.*—In a suit for possession of land, the plaintiffs claimed title under a lease from the shrotriemdars of the village where the land was situated. The defendants, who had obstructed the plaintiffs from taking possession of part of the land, claimed to have permanent occupancy-rights, and asserted that the shrotriemdars were entitled not to the land itself, but to melvaram only. To meet this allegation, the plaintiffs tendered in evidence documents executed by other tenants in the same village showing that they were purakudis merely. The defendants had received no notice to quit before suit. *Held* that the plaintiffs were entitled to eject the defendants without proof of notice to quit, as it did not appear that the latter were in possession as tenants at the time when the suit was filed. VYTHILINGA *v.* VENKATACHALA **I. L. R., 16 Mad., 194**

514. —————— *Suit by tenant to recover possession claiming as full owner—Subsequent claim as yearly tenant unjustly dispossessed—Denial of landlord's title—Variance in statement between pleading and proof.*—A plaintiff sued to recover possession of certain fields, etc., alleging that he was a permanent tenant of the defendant, having purchased the right of occupancy from previous occupants of the land. The lower Court held that the plaintiff's vendors were mere yearly tenants and not permanent tenants, but that the sale of their right to the plaintiff was valid, and that the plaintiff had been wrongfully dispossessed by the defendant, no notice to quit having been given. But *held* that the plaintiff could not recover; for his plaint and the conduct of his case amounted to a denial of his landlord's (defendant's) title. In his suit the plaintiff claimed to be full owner, and he could not afterwards claim to be restored to possession on the ground that he was a yearly tenant entitled to notice to quit, which was not given. LALU GAGAL *v.* BAI MOTAN BIBI

[I. L. R., 17 Bom., 631

515. —————— *Non-occupancy raiyat—Bengal Tenancy Act (VIII of 1885), ss. 44 and 45—Suit for ejectment by a lessor against another holding over after expiry of his lease.*—Certain land was let by the zamindar to the defendants on lease for a term of eight years. After the expiry of the lease, the plaintiffs obtained a lease of the land, and, giving a month's notice to quit to the defendants, who had continued in possession after their lease expired, brought a suit to eject them. *Held* that the defendants could not be considered as trespassers, but that s. 45 of the Bengal Tenancy Act applied to the case, and that the plaintiffs not having complied with its provisions, the suit was rightly dismissed for want of proper notice to quit. GOBURDHONE SAHA *v.* KARUNA BEWA

[I. L. R., 25 Calc., 75

516. —————— *Bengal Tenancy Act (VIII of 1885), s. 49—Ejectment of under-tenant not holding under written lease.*—S. 49 of the Bengal Tenancy Act does not prescribe any period of notice, or that the suit for ejectment shall not be brought until the expiry of a certain term after the expiry of the period of notice. The effect of the section seems to be that the landlord can serve a notice to quit at any time in the course of the year, but that he shall not eject the tenant until the end of the year next following the year in which the notice to quit is served, that is to say, an under-raiyat must, under any circumstances, get a full year expiring at the

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23. EJECTMENT—*continued.*

end of the agricultural year, from the time when the notice is served. NAHARULLAH PATWARI *v.* MADAN GAZI . . . . . 1 C. W. N., 133

517. ——— **Sufficiency of notice**—*Ejectment, Application for.*—A zamindar cannot rightfully seek the assistance of the Collector in ejecting a raiyat during the currency of the agricultural year, nor can an application of this kind for immediate ejectment be received in the light of a notice to the tenant requiring him to resign his holding at the end of the agricultural year. MAHOMED SHAH *v.* USGUR HOSSEIN . . . . 5 N. W., 151

JADOONUNDUN SINGH *v.* FAUJDAR KHAN [5 N. W., Ap., 1

518. ——— *Unreasonable notice.*—A notice to quit within thirty days, served by a landlord on his tenant at a time when the crops are ripening, is unreasonable and insufficient. Where such a notice was given, the Court refused to determine what would have been a sufficient notice, and to make a decree to take effect at a future date on the basis of such notice. *Per* GARTH, *C.J.*—The cases of *Mahomed Rasid Khan Chowdhry* v. *Jodoo Mirda, 20 W. R., 401,* and *Hem Chunder Ghose* v. *Radha Pershad Paleet, 23 W. R., 440,* considered and doubted. JUBRAJ ROY *v.* MACKENZIE [5 C. L. R., 231

519. ——— *Reasonable notice—Tenant other than occupancy-raiyat.*—A tenant other than an occupancy-raiyat is entitled to a reasonable notice to quit. What is a reasonable notice is a question of fact, which must be decided in each case according to the particular circumstances and the local customs as to reaping crops and letting land. It is not necessary that the notice must expire at the end of the year. *Janoo Mundur* v. *Brijo Singh, 22 W. R., 548;* and *Rajendronath Mookhopadhya* v. *Bassider Ruhman Khondkar, I. L. R., 2 Calc., 146,* considered. JAGUT CHUNDER ROY *alias* BASHI CHUNDER ROY *v.* RUP CHAND CHANGO [I. L. R., 9 Calc., 48 : 11 C. L. R., 143

520. ——— *Reasonableness of notice.*—There is no authority for the proposition that a notice to quit to a raiyat other than an occupancy raiyat must terminate at the end of a cultivating year or be a three months' notice. Such a raiyat is only entitled to a "reasonable" notice, and such as will enable him to reap his crop; what is a "reasonable" notice is a question of fact to be decided in each case, having regard to its particular circumstances, and the local customs as to reaping crops and letting land. RADHA GOBIND KOER *v.* RAKHAL DAS MUKHERJI . . I. L. R., 12 Calc., 82

521. ——— *Reasonable notice.*—It is not necessary that the period allowed in a notice to quit by a landlord to his tenant should terminate at the end of the year, but the notice must be in respect of the date of determination of the tenancy as well as in other respects a reasonable notice. A notice to quit served on the 26th of Pous, and allowing two months to the tenant to vacate his holding, such period thus expiring on the 26th Falgun, when it appeared that cultivation began in the months of Magh and Falgun, and that they were the months for letting out land in the district, held not to be a reasonable notice. BIDHUMUKHI DABEA CHOWDHRAIN *v.* KEFYUTULLAH [I. L. R., 12 Calc., 93

522. ——— *Korfa raiyats in Manbhum—Ejectment—Act X of 1859.*—There is no authority for the proposition that notice to quit to a korfa raiyat in Manbhum must be a six months' notice. Such a raiyat is only entitled to a "reasonable notice." What is a reasonable notice is a question of fact, which must be decided in each case according to the particular circumstances and local customs as to reaping crops and letting land. *Kishori Mohan Roy Chowdhry* v. *Nund Kumar Ghosal, I. L. R., 24 Calc., 720,* distinguished. *Jagut Chunder Roy* v. *Rup Chand Chango, I. L. R., 9 Calc., 48; Radha Gobind Koer* v. *Rakhal Das Mukherji, I. L. R., 12 Calc., 82; Bidhumukhi Dabea Chowdhrain* v. *Kefyutullah, I. L. R., 12 Calc., 93;* and *Kali Kishen Tagore* v. *Golam Ali, I. L. R., 13 Calc., 3,* referred to and followed. DIGAMBAR MAHTO *v.* JHARI MAHTO [I. L. R., 26 Calc., 761

523. ——— *Determination of tenancy—Inamdars.*—An inam, existing under grant made in 1811, became in 1863 the subject of arrangement between the zamindar, who had succeeded the grantor in the zamindari, and the inamdars. This resulted in what was either a confirmation of the original grant on terms more favourable to the zamindar, or a new grant of an estate in all respects, save as to the rent, similar to the previously existing estate, which was a tenancy in perpetuity. To a suit brought by certain mortgagees against the inamdars to enforce mortgage rights existing since 1842, the defence was made that possession taken of the inam lands by the Collector in 1845 had determined the original inam rights therein, as well as the lien of the mortgagees. The present zamindar, son and successor of the grantor of 1813, now claiming that he had determined the tenancy by a notice to quit,—*Held* that the tenancy was not determinable by such notice. MAHARAJAH OF VIZIANAGRAM *v.* SURYANARAYANA [I. L. R., 9 Mad., 307
L. R., 13 I. A., 32

524. ——— *Notice ending with cultivating year—Inamdar—Partition.*—An inamdar cannot eject a yearly tenant without six months' notice to quit, ending with the cultivating year. Nor can he eject other tenants, except on the expiration of their term of years or other interest in the land. Where a family of inamdars disagree among themselves, and one of them obtains a decree for partition against the others, he cannot, in execution thereof, eject (without due notice to quit) the tenantry on such portion of the land as may have been allotted to him under that decree in a suit to which such tenantry were not parties, and by which therefore their rights are not barred. NARAYAN BHIVRAV *v.* KASHI . . . . I. L. R., 6 Bom., 67

LANDLORD AND TENANT—*continued.*

23. EJECTMENT—*continued.*

525. ——— *Inamdar.*—Tenants cannot be ejected as mere trespassers. If they are yearly tenants, they are entitled to a clear six months' notice to quit before they can be evicted. If they are tenants for a term of years or for a life or lives, there must be proof of an expiration of the term by effluxion of time or of the falling of the life or lives. PANDURANG SAKHARAM *v.* YEDNESHWAR **[I. L. R., 6 Bom., 70**

526. ——— *Holding from year to year.*—Even in the case of a tenant from year to year, the landlord cannot evict without giving previous notice to quit. To be reasonable, a notice must not be peremptory, but must fix a time within which the raiyat is required to quit the land. BETTS *v.* JAMIE SHAIKH . . . **23 W. R., 271**

See also MAHOMED RASID KHAN CHOWDHRY *v.* JADOO MIRDHA . . . **20 W. R., 401**

527. ——— *Transfer of Property Act (IV of 1882), ss. 106, 111.*—On the 11th December 1882, *A*, who had, on the 1st July 1882, let rooms in a dwelling-house to *B*, sent a letter to the tenant in the following terms: "If the rooms you occupy in the house No. 5, Thornhill Road, are not vacated within a month from this date, I will file a suit against you for ejectment as well as for recovery of rent due at the enhanced rate." On the 1st February 1883 the lessor instituted a suit against the tenant for ejectment, with reference to the above letter. *Held* by OLDFIELD, *J.* (MAHMOOD, *J.*, dissenting), that, with reference to the terms of *s.* 106 of the Transfer of Property Act. the letter was not such a notice to quit as the law required, inasmuch as the notice did not expire with the end of a month of the tenancy; and that this defect was not cured by the circumstance that the lessor waited until the end of the month to enforce his right to eject by suit. *Held* by MAHMOOD, *J.* (OLDFIELD, *J.*, dissenting), that the letter dated the 11th December 1882 was a valid notice to quit under ss. 106 and 111 of the Transfer of Property Act, and sufficient to determine the tenancy, inasmuch as it gave the tenant more than fifteen days' notice, and its terms were such that he could with perfect safety have acted upon it by quitting the premises at the proper time, namely, by the end of the month, which he must be presumed to have known was the right time to leave, without any risk of incurring liability to payment of further rent, the landlord having clearly indicated his intention to terminate the tenancy, and the notice being binding upon him; that the additional time given by the notice must be taken to have been given for the convenience of the tenant, and not with the object of continuing the tenancy; and that the suit for ejectment, not having been brought till long afterwards, was maintainable. *Doe* v. *Smith, 5 Ad. & E., 353; Ahearn* v. *Bellman, L. R., 4 Exch. D., 201; Nocoordass Mullick* v. *Jewraj Baboo, 12 B. L. R., 263;* and *Jagut Chunder Roy* v. *Rup Chand Chango, I. L. R., 9 Calc., 48,* referred to. Also *per* MAHMOOD, *J.*—The words "fifteen days" in *s.* 106 of the Transfer of Property Act imply a fixation of the shortest period of notice allowed by the section; and the term 'expiring" means that the terms of the notice must be such as to make it capable of expiring according to law at the right time, so as to render it safe for the tenant to quit coincidentally with the end of a month of the tenancy, without incurring any liability to payment of rent for any subsequent period. BRADLEY *v.* ATKINSON **[I. L. R., 7 All., 596**

Held, on appeal under the Letters Patent, that, with reference to the terms of *s.* 106 of the Transfer of Property Act, the letter was not such a notice to quit as the law required, inasmuch as it was not a notice of the lessor's intention to terminate the contract at the end of a month of the tenancy. *Per* STRAIGHT, *J.*—*Quære*—Whether the letter was a notice to quit at all. Also *per* STRAIGHT, *J.*—A notice to quit must be certain, at all events in respect of the date of the determination of the tenancy: in other words, there must be a clear and explicit intimation to the tenant as to the date after which he will, if he remains in occupation of the premises, become a trespasser. *Ahearn* v. *Bellman, L. R., 4 Exch. D., 201,* distinguished. The judgment of MAHMOOD, *J.*, reversed, and that of OLDFIELD, *J.*, affirmed. BRADLEY *v.* ATKINSON **[I. L. R., 7 All., 899**

528. ——— *Ejectment by patnidar—Notice to quit, Verbal.*—A patnidar, desirous of ejecting a tenant whose lease has expired, need not give him a written notice to quit; a verbal notice being sufficient. GOLAM MEHDEE *v.* AMJUD ALI . . . . . . **23 W. R., 312**

529. ——— *Tenant without right of occupancy.*—The "reasonable notice to quit" which a raiyat without a right of occupancy may claim from his landlord before he can be ejected, need not be confined to a demand of possession and notice to quit on a certain day. It is sufficient if the landlord asks for a higher rate of rent and gives the raiyat notice to quit if he declines to pay it. A suit for ejectment against a tenant-at-will is a sufficient demand of possession and would justify a decree containing a date fixed for ejectment. HEM CHUNDER GHOSE *v.* RADHA PERSHAD PALEET **[23 W. R., 440**

530. ——— *Notice to quit or pay an enhanced rent—Two-fold claim, both for rent and ejectment, not sustainable—Decree for rent and ejectment—Beng. Act VIII of 1869, s. 14.*—Where *A*, after notice to his tenants to pay rent at an enhanced rate from the commencement of the ensuing year or quit, brought a suit in which he prayed for a higher rate of rent or ejectment in the alternative,—*Held* that in such a suit the plaintiff could not insist upon a two-fold claim for both rent and ejectment, nor obtain a decree for rent for the first quarter and ejectment thereafter. It is doubtful whether a notice in the alternative form to pay enhanced rent from a certain day or quit is a good notice. *Janoo Mundur* v. *Brijo Singh, 22 W. R.,*

23. EJECTMENT—*continued.*

548, doubted. MOHAMAYA GOOPTA *v.* NILMADHAB RAI . . . . **I. L. R., 11 Calc., 533**

531. ——— *Yearly tenancy—Notice to make a fresh agreement with the landlord or to quit at the end of the year.*—On the 28th September 1891, the plaintiff gave defendants, who held his land as annual tenants, a notice in the following terms: "Therefore, within two days from the receipt of this notice, meet us, increase the rent and give us a legal writing, or in default, on the 31st March 1892 we shall keep present two good men and take full possession of the said land with all trees, etc., on that day, and no contention of yours in that matter will avail; and if you raise a contention, we shall have recourse to a regular suit to obtain possession, and you will be responsible, etc." *Held* that the notice was a good and valid notice to terminate the tenancy. KIKABHAI GANDABHAI *v.* KALU GHELA . . **I. L. R., 22 Bom., 241**

532. ——— *Bengal Tenancy Act (VIII of 1885)—Suit for ejectment—Notice including some land of which the defendant is found to be not in possession.*—A notice to quit is not bad in law simply because of a small error in the statement in such notice of the area of the land in consequence of which it included some land which the defendant was found not to hold under the plaintiff. SHAMA CHURN MITTER *v.* WOOMA CHURN HALDAR

[I. L. R., 25 Calc., 36
2 C. W. N., 106

533. ——— *Tenancy created by a kabuliat—Six months' notice requiring the tenant to vacate the holding before the expiry of the last day of the year, whether good.*—In a tenancy created by a kabuliat with an annual rent reserved, a six months' notice to quit requiring the tenant to vacate the holding within, instead of on, the expiry of the last day of a year of the tenancy, is a good notice in law, inasmuch as there was no appreciable interval between the expiry of the notice and the end of a year of the tenancy. *Page* v. *More, 15 Q. B., 684*, distinguished. IMAIL KHAN MAHOMED *v.* JAIGUN BIBI

[I. L. R., 27 Calc., 570
4 C. W. N., 210

534. ——— *Co-owners—Notice to quit by one co-owner—Notice to quit before expiry of term of lease—Suit in ejectment by one co-owner—Parties.*—*K* and *P* were co-owners of certain property in Bombay, and by a writing, dated January 1883, they granted a lease of the whole of the said property to the defendant for a term of three years from the 1st March 1883 to the 28th February 1886, at a monthly rent of R705. Subsequently to the granting of the said lease, *viz.*, on the 1st September 1883, *P* conveyed her equal and undivided moiety of the said property to the plaintiff. On the 30th January 1886, *i e.*, a month before the expiration of the lease, the plaintiff gave the defendant notice to determine the tenancy, and required him to quit on the 1st March then next. The defendant refused, and the plaintiff brought this suit for possession and for occupation-rent from the 1st March 1886. The defendant pleaded that the notice to quit, being given by one of the co-owners only, was invalid, and further that the plaintiff was not entitled to sue alone. *Held* that the notice was a valid notice, and that the suit was maintainable by the plaintiff alone. The second clause of the lease was as follows: "If you mean me to vacate at the completion of the term, you must give one month's notice. In accordance therewith, I will vacate and give up possession to you." *Held* that the notice to quit was not invalid under the above clause of the lease, although given before, instead of after, the expiry of the term. EBRAHIM PIR MAHOMED *v.* CURSETJI SORABJI DE VITRE . **I. L. R., 11 Bom., 644**

535. ——— *Transfer of Property Act (IV of 1882), s. 106—Notice to quit—"Expiring with the end of a month of tenancy."*—Where fifteen days' notice to quit was served upon a tenant on the 7th of Assin,—*Held*, the Court in determining the question of the validity of such a notice should find what in any given case is the "end of a month of the tenancy." If the end of a month of the tenancy in this case was the 23rd Assin 1298 (15 days from the 7th Assin), the notice would be a good one, otherwise not. *Bradley* v. *Atkinson, I. L. R., 7 All., 899*, referred to. SONA ULLAH *v.* TROYLUKHO NATH GORAIE

[2 C. W. N., 383

536. ——— *Transfer of Property Act (IV of 1882), s. 106—Meaning of "fifteen days"—Notice.* The fifteen days' notice to quit referred to in s. 106 of the Transfer of Property Act means notice of fifteen clear days. SUBODINI *v.* DURGA CHARAN LAW . **I. L. R., 28 Calc., 118**

[4 C. W. N., 790

537. ——— **Service of notice** — *Proof of service—Publication in newspaper—Termination of tenancy—Adverse possession.*—Proof of service of a notice to quit on a tenant, which is confined to proving that such a notice, addressed to the tenant, was published in a local newspaper under circumstances which made it highly probable that the notice in question came to the knowledge of the tenant, is not, without more, such proof of service as will suffice to terminate the tenancy, or entitle the tenant to contend that he remained, after the date fixed by the notice for vacation, in adverse possession of the premises. CHANDMAL *v.* BACHRAJ

[I. L. R., 7 Bom., 474

538. ——— *Service of notice to quit by registered letter, Sufficiency of.*—Where a notice to quit was sent by a registered letter, the posting of which was proved, and which was produced in Court in the cover in which it was despatched, that cover containing the notice with an endorsement upon it purporting to be by an officer of the post office stating the refusal of the addressee to receive the letter,—*Held* that this was sufficient service of notice. *Lootf Ali Meah* v. *Peeree Mohun Roy, 16 W. R., 223*, and *Papillon* v. *Brunton, 5*

H. & N., 518, referred to. JOGENDRO CHUNDER GHOSE *v.* DWARKA NATH KARMOKAR **[I. L. R., 15 Calc., 681**

539. ——— *Necessity of proof of service.*—In answer to the plaintiff's suit in ejectment, the defendant denied the plaintiff's title and asserted his own. *Held* that assuming the defendant to be the plaintiff's tenant, yet, inasmuch as the defendant denied the plaintiff's title, it was not necessary for the plaintiff to prove service of notice to quit on the defendant. GOPALRAO GANESH *v.* KISHORE KALIDAS . . **I. L. R., 9 Bom., 527**

540. ——— *Mode of service of notice to quit upon under-raiyat, s. 49, Bengal Tenancy Act, and Rule 3 of Ch. I of the Rules framed by the Local Government—Service through Post office.*—A notice to quit under s. 49 of the Bengal Tenancy Act was sent by post in a registered cover, and it was found that the notice was delivered to the defendant. *Held* that the notice had not been properly served, the mode of service being as described in the Rules made by the Government under the Bengal Tenancy Act. TARA DAS MALAKAR *v.* RAM DOYAL MALAKAR **[2 C. W. N., 125**

541. ——— *Suit for ejectment—Notice to quit by post—Bengal Tenancy Act (VIII of 1885), s. 189—Mode of service of the notice under the Act—Bengal Government Rule 3, Ch. I, under s. 189 of the Bengal Tenancy Act.*—The plaintiffs served a notice, by post, upon the defendant to quit certain khud kasht lands that were alleged to be in his wrongful possession, and subsequently instituted a suit to eject him from those lands. *Held* that the notice was bad in law, and the suit for ejectment based upon such a notice must fail. *Tara Das Malakar* v. *Ram Doyal Malakar, 2 C. W. N., 125,* referred to. LALA MAKHAN LAL *v.* LALA KULDIP NARAIN **[I. L. R., 27 Calc., 774**

542. ——— *Notice to quit—Transfer of Property Act (IV of 1882), s. 106.*—The plaintiff sued the defendant to recover possession of a certain house in Bombay and for arrears of rent. The defendant pleaded that the house in question was occupied by the Beni-Israel school of Bombay which was maintained by the Anglo-Jewish Association of London, that he was honorary secretary of the school, and as such, and not in his personal capacity, had hired the house, and that he had never paid the rent or expenses of the school out of his own pocket. The notice to quit had been sent to the solicitors of the defendant. It was contended that this was not sufficient service under s. 106 of the Transfer of Property Act (IV of 1882). *Held* that the service was sufficient. BHOJABHAI *v.* HAYEM SAMUEL . . **I. L. R., 22 Bom., 754**

543. ——— *Bengal Tenancy Act (VIII of 1885), sch. III, art. 3, and Rule 3, Ch. I, of the Rules framed by the Local Government.* In a suit to eject the defendants under-raiyats) from their holding, a plea was taken in the first Court that the notice to quit was not sufficient, inasmuch as it was not served through the Court. In second appeal the objection to the notice was based on the ground that it should have been served by proclamation and beat of drum under Rule 3 framed by the Local Government under the provisions of the Bengal Tenancy Act. *Held* that there was no rule requiring that the notice should be served through the Court. What is really required is that it should be served in the same manner as provided for in the Civil Procedure Code. That the objection to the notice taken here for the first time cannot be entertained in second appeal. LOKE NATH GOPE *v.* PITAMBAR GHOSE . **3 C. W. N., 215**

544. ——— *Transfer of Property Act (IV of 1882), s. 106—Suit for ejectment Service of notice upon one of several joint-tenants.* In a suit for ejectment under the Transfer of Property Act, a notice to quit which was addressed to all the joint tenants who lived in commensality was handed over to one of them, and he signed an acknowledgment of it. *Held* that the service was a good service. RAJONI BIBI *v.* HAFIZUNNISSA BIBI **[4 C. W. N., 572**

545. ——— *Transfer of Property Act (IV of 1882), s. 106, cl. 2—Service of notice through post office by registered letter.*—Service of notice to quit by a registered letter through the post office is not necessarily a non-compliance with the provisions of cl. 2, s. 106 of the Transfer of Property Act. *Rajoni Bibi* v. *Hafizunnissa Bibi, 4 C. W. N., 572,* followed. SUBADINI *v.* DURGA CHARAN LAW . **I. L. R., 23 Calc., 118** **[4 C. W. N., 790**

24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS.

546. ——— **Removal of buildings by tenant** —*Tenant holding over after expiry of lease.*—By indenture, dated 1st February 1856, *A* leased certain premises in Calcutta to *B* for a term of ten years, as from 1st November 1855, at a rent of R100 per month, payable monthly. *A* covenanted with *B* to grant to her on her request, to be made within three months of the expiry of the term, a fresh lease on the same terms, for three years, and that it should be lawful for *B* at any time during the second lease, or extended lease, to remove or sell and dispose of all, or any part, of the screws and machinery which were at the time of the granting of the lease, or during the term or extended term might be upon the premises, and immediately upon or within two months after the expiration of the term or extended term to remove, etc., the buildings, etc., which then were or might at any time, during the term or extended term, be erected on the premises by *B*, her executors, administrators, or assigns. *B* erected buildings during her tenancy under the lease. The defendant, on 24th August 1858, became, by various mesne assignments, the assignee of the lease, without notice to *A*, and subsequently repaired and erected buildings on the land.

LANDLORD AND TENANT—*continued.*

24. BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS—*continued.*

The defendant continued to occupy the premises, and paid the rent in the name of *B* up to August 1866. No renewal of the lease (which expired on 31st October 1865) was ever demanded by *B* or by any one claiming under her. The plaintiffs, who had become *A's* representatives in June 1866, gave notice, through their attorneys, on 6th September 1866, to *B* to quit on 1st November 1866, and not to remove buildings and fixtures put up since 1st November 1855; and on 1st November 1866 the plaintiffs, in pursuance of the notice of the 6th of September, demanded possession of *B* and of the defendant who was in actual occupation of the premises. *Held* that the acceptance of rent by *A* and his representatives from the defendant holding over after the expiration of the original term did not constitute a renewal of the lease for three years; that the defendant was not entitled to a renewal for three years; that the tenancy after 1st October 1865 was a monthly tenancy in the name of *B*, and was terminated on 31st October 1866 by the notice of 6th September 1866; that the defendant was not entitled to remove buildings erected; but that he might remove the machinery. BROJONATH MULLICK *v.* WESKINS

[2 Ind. Jur., N. S., 163

547. ——— Removal of material of house by outgoing tenant—*Custom of Calcutta—Injunction.*—In an action of ejectment the defendant set up a claim by custom to remove the materials of a house erected by him on the premises in dispute; but the Court granted an injunction to restrain him from doing so, though giving him leave to bring a suit to establish the special custom: in default of such suit being brought, the injunction to be perpetual. DOYAL CHAND LAHA *v.* BHOYRUBNATH KHETTRY . . . . . . **Cor., 117**

548. ——— Huts, Right of tenant to—*Custom for outgoing tenant to remove huts—Acquiescence.*—On a case stating that the plaintiff became tenant to the defendant of certain land in Calcutta, and at their time of becoming such tenant purchased from the outgoing tenant, with the defendant's knowledge, two tiled huts which were then standing on the land; that "it had been the practice in Calcutta for tenants to remove such tiled huts as those of the plaintiff erected upon the land let to such tenants, and such huts were by such practice treated as the property of the tenants, who, by such practice, were in the habit of disposing of them without the consent of their landlords;" that relying on the abovementioned practice, the plaintiff, with the defendant's knowledge, had partially pulled down and rebuilt such huts; that the plaintiff's tenancy was determined, and the plaintiff ejected from the land by the defendant; that before leaving she endeavoured to pull down and remove the huts, but that she was prevented from so doing by the defendant, who claimed the huts as her property,—*Held* that the plaintiff, by the practice stated, was entitled, before giving up possession of the land, to pull down and remove the tiled huts. *Held* further that, apart from the existence of a valid custom entitling the tenant to remove tiled huts, the plaintiff, having bought the huts from the outgoing tenant with the defendant's knowledge, and relying on the practice, and with the defendant's knowledge having partially pulled down and rebuilt the huts, was entitled as against the defendant to remove them. PARBUTTY BEWAH *v.* WOOMATARA DABEE

[14 B. L. R., 201

549. ——— Removal of buildings on land—*Ownership in land and buildings.*—According to the usages and customs of this country, buildings and other such improvements made on land do not, by the mere accident of their being attached to the soil, become the property of the owner of the soil. The general rule is that, if he who makes the improvement is not a mere trespasser, but is in possession under any *bonâ fide* title or claim of title, he is entitled either to remove the materials, restoring the land to the state in which it was before the improvement was made, or to obtain compensation for the value of the building, if it is allowed to remain for the benefit of the owners of the soil; the option of taking the building, or allowing the removal of the materials, remaining with the owner of the land in those cases in which the building is not taken down by the builder during the continuance of any estate which he may possess. IN THE MATTER OF THE PETITION OF THAKOOR CHUNDER PARAMANICK

[B. L. R., Sup. Vol., 595 : 6 W. R., 228

This case contemplates the case of an admitted sale by a vendor in possession, not a case where the title and possession are disputed. MUDHOO SOODUN CHATTERJEE *v.* JUDDOOPUTTY CHUCKERBUTTY

[9 W. R., 115

Held not applicable to other than innocent purchasers. SOHUN SINGH *v.* KEOLA BIBEE

[16 W. R., 169

550. ——— Removal of buildings—*Illegal possession.*—In a suit for possession on the ground that the defendant had become illegally possessed of certain land, the Court, while giving plaintiff a decree, allowed the defendant to remove or get compensation for a house which he had erected thereon. DOORGA CHURN *v.* KOONJ BEHARY PANDEY

[3 Agra, 23

551. ——— *Sale by tenant without consent of landlord—Position of purchaser—Erection of brick-built house by tenant—Right of owner of land to houses built thereon.*—The relation between landlord and tenant is that of parties to a contract. The contract is entire and single. If a portion of a tenure be sold either by the tenant or in execution of a decree of the Civil Court against the tenant in the absence of any consent by the zamindar, the only mode in which effect can be given to the alienation is to treat the purchaser as holding a rent-free tenure subordinate to that of the original tenant. In this country the ownership and right of possession in the soil does not necessarily carry with it a right to the possession of buildings erected thereon. A tenant who held a piece of land on a lease erected a brick house upon the land without the permission of, but without any objection by, his landlord. In execution of a decree of the Civil Court against the tenant in January 1865, the materials of the house and the site on which the house was build were sold separately to two individuals from whom the defendant purchased both. On the 31st July 1866 the tenure itself was sold for arrears of rent to one *N*, from whom the plaintiff purchased it. The plaintiff brought this suit to recover possession of the land free from all incumbrance by the removal of the house. The Court refused to give the plaintiff a decree for possession. SHIBDAS BANDOPADHYA *v.* BAMANDAS MUKHOPADHYA

[8 B. L. R., 237 : 15 W. R., 360

552. ———— *Additions to existing building.*—A tenant making additions to an existing building is not entitled to remove the building, but is only entitled to compensation for the present value of the expenses incurred by him in making such additions. Possibly, in some cases, he may remove the additions if he can do so without in any way injuring the original building. GOPAUL MULLICK *v.* ANUNDO CHUNDER CHATTERJEE

[14 B. L. R., 205 note : 15 W. R., 363

553. ———— *Erection of indigo factory—Right to remove materials.*—Where a lessee of land under an ijara erected an indigo factory thereon, with the knowledge of, and without any objection by, the lessor, upon the determination of the ijara lease, and the delivery of possession to the lessor, the lessee was held entitled to remove the materials. KINOO SINGH ROY *v.* NUSSEEROODEEN MAHOMED CHOWDRY . . . . **17 W. R., 97**

554. ———— *Contract Act, 1872, s. 1.*—The law laid down by *In re Thakoor Chunder Paramanick, B. L. R., Sup. Vol., 595,—viz.,* that a person building on the land of another is *primâ facie* entitled to remove the buildings erected upon the land demised, or to receive compensation,—when applied to a contract of tenancy, is not inconsistent with anything in the Contract Act, and therefore is unaffected by it. RUSSIKLOLL MUDDUCK *v.* LOKENATH KURMOKAR

[I. L. R., 5 Calc., 688 : 5 C. L. R., 492

555. ———— *Ownership in land and buildings—Suits between Hindu inhabitants of Calcutta—21 Geo. III, c. 70, s. 17—Difference in law applicable in Calcutta and the mofussil—Equity and good conscience.*—At a Sheriff's sale one Templeton bought a Hindu widow's interest in certain land in Calcutta; after passing through several hands, the land was purchased by the defendant. Between the possession of Templeton and the defendant an intermediate holder built a house upon the land. The plaintiff, a reversionary heir to the estate after the widow's death, sued the defendant to recover possession of the house and land. The defendant admitted the plaintiff's claim to possession, but contended that he was entitled to be paid a fair price for the buildings, or to remove the materials. *Held* that he was neither entitled to compensation nor to remove the materials, and that the question raised in the suit could not be said to be a question of either succession or inheritance so as to admit of the Hindu law being applied as directed by 21 Geo. III, c. 70, s. 17, but that the law applicable to the case was the law of equity and good conscience as administered by the Courts of Equity in England. The case of *Thakoor Chunder Poramanick, B. L. R., Sup. Vol, 595,* discussed. JUGGUT MOHINEE DOSSEE *v.* DWARKA NATH BYSACK

[I. L. R., 8 Calc., 582

556. ———— *Suit to eject tenant—Right to remove buildings or get value for them.*—In a suit to eject defendants (who held under a lease) from a house-ground and to compel them to remove the buildings thereon erected, the defendants pleaded that the lease was a permanent lease, and that plaintiff had no right to eject. The lease expressly authorized the lessee to build. The Court of first instance, holding that it was not a permanent lease, decreed as sued for. The appellate Court, while concurring with the Munsif as to the construction of the lease, gave the plaintiff the option of paying for the house and resuming the land or of receiving the value of the land from the defendant. *Held* that the decree of the Appellate Court was right. MAHALATCHMI AMMAL *v.* PALANI CHETTI

[6 Mad., 245

557. ———— *Kasavargam tenant—Right to buildings—Compensation on eviction.*—A kasavargam tenant has a proprietary right to his house on the land, and when evicted, he is entitled to compensation for his buildings. BLAKE *v.* SAVUNDARATHAMMAL . **I. L. R., 22 Mad., 116**

558. ———— *Hindu law—Wells dug with consent of landlord.*—Where tenants from year to year, with permission of the landlord, sank wells in the land demised,—*Held* that they were not entitled under Hindu law to any compensation therefor from the landlord after the determination of the tenancy. VENKATAVARAGAPPA *v.* THIRUMALAI . . **I. L. R., 10 Mad., 112**

559. ———— *Malabar kanam—Change in character of land—Passive acquiescence of landlord—Estoppel—Compensation for improvements by tenant.*—Land was demised on kanam for wet cultivation. The demisee changed the character of the holding by making various improvements, which were held to be inconsistent with the purpose for which the land was demised. On a finding that the landlord had stood by while the character of the holding was being changed and had thereby caused a belief that the change had his approval,—*Held,* on second appeal, that the demisee was entitled to compensation for his improvements on redemption of the kanam. *Ramsden* v. *Dyson, L. R., 1 H. L.*

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129, followed. KUNHAMMED *v.* NARAYANAN MUSSAD . . . **I. L. R., 12 Mad., 320**

See RAVI VARMAN *v.* MATHISSEN **[I. L. R., 12 Mad., 323 note**

where, however, compensation was refused for some of the improvements, the landlord not having by his conduct acquiesced in their being made, but though compensation was not allowed, the tenant was allowed to remove them.

560. ———————— *Tenant expending money on land with landlord's knowledge and consent—Acquiescence—Estoppel—Right of tenant on eviction to be recouped the money so expended—Buildings erected on land held under lease, Removal of.*—The defendant entered into occupation of certain land with the permission of the plaintiff, who was the owner, and erected buildings and otherwise expended money upon it. The plaintiff and the defendant were relations and lived near each other. The plaintiff constantly visited the land and knew what the defendant was doing, but made no objection. Subsequently the plaintiff, being anxious to obtain from the defendant an acknowledgment of his (the plaintiff's title, induced (but without misrepresentation or fraud) the defendant to sign a rent-note. The Court found that, although this rent-note was, in terms, a lease for one year, yet the intention of the parties was not that the defendant should at the expiration of the year, or on any subsequent demand, hand over to the plaintiff the land with the buildings which had been erected by the defendant with the plaintiff's implied consent, without being recouped for the expenditure thus incurred; that subsequently to the execution of the rent-note the defendant had erected other buildings, and that the plaintiff knew of this, and made no objection. *Held* that the plaintiff could not recover possession of the land, or require the removal of the buildings without recouping the defendant the money he had expended. The plaintiff was estopped from denying the claim of defendant. He had stood by in silence while his tenant had spent money on his land. DATTATRAYA RAYAJI PAI *v.* SHRIDHAR NARAYAN PAI **I. L. R., 17 Bom., 736**

561. ———————— *Claim of tenant to compensation for buildings erected by him.*—A tenant of land demised to him cannot, on the termination of his tenancy, claim compensation for buildings erected by him. HUSAIN *v.* GOVARDHANDAS PARMANANDAS . . . **I. L. R., 20 Bom., 1**

562. ———————— *Buildings erected by tenant—Acquiescence by landlord—Estoppel—Presumption of grant for building purposes.*—Where a landlord had not objected to buildings erected by his tenant for a period of twenty-five years, and during that time had received rent from the tenant,—*Held* that even if the Court were not justified in holding that the land had originally been granted for building purposes, the landlord would be precluded from ejecting the tenant without compensation. YESHWADABAI *v.* RAMCHANDRA TUKARAM . . . **I. L. R., 18 Bom., 66**

See KRISHNA KISHORE NEOGI *v.* MAHOMED ALI **[3 C. W. N., 255**

563. ———————— *Buildings erected by tenant without consent of landlord.*—Where it is proved that the tenancy is not a permanent one, that the tenant erected a pucca building on the land without the consent of the landlord, the tenant on eviction is not entitled to any compensation for the building from the landlord. *Dattatraya Rayaji Pai* v. *Shidhar Narayan Pai, I. L. R., 17 Bom., 736 ; Yeshwadabai* v. *Ram Chandra Tukaram, I. L. R., 18 Bom., 66,* distinguished. ISMAIL KHAN MAHOMED *v.* JAIGUN BIBI **I. L. R., 27 Calc., 570 [4 C. W. N., 210**

564. ———————— *Additions made by tenant to property of landlord without permission—Acquiescence of landlord—Obligation to compensate tenant—Estoppel.*—Where the lessee of a dwelling-house, being fully aware of his position as such lessee, made certain additions to the leased premises without the permission of his lessor, but apparently with his knowledge and without any interference on his part, and subsequently, when the lessor sued to eject him for non-payment of rent, claimed compensation for such additions,—*Held* that the lessor was entitled to recover possession from the lessee without paying him compensation. *Ramsden* v. *Dyson, L. R., 1 H. L., 129,* and *Willmott* v. *Barber, L. R., 15 Ch. D. 96,* referred to. NAUNIHAL BHAGAT *v.* RAMESHAR BHAGAT **[I. L. R., 16 All., 328**

565. ———————— *Buildings on land—Ownership in land and buildings—Right of tenants to compensation under the Land Acquisition Act for buildings erected by them—Transfer of Property Act (IV of 1882), s. 108, cl. (h).*—A plot of land was acquired under Act X of 1870 for the construction of a road within the town of Calcutta; the tenants who had erected masonry buildings on portions of the land and who were in possession at the time of the acquisition claimed before the Collector the value of their interest; but the owner of the land claiming the whole of the compensation money, the matter was referred to the District Judge, who found that the lands were originally granted for building purposes, and who allowed a share of the compensation money, *viz.,* the value of the buildings, to the tenants. On appeal to the High Court by the owner of the land, on the ground that the respondents' tenures, which were of a temporary character, having come to an end when the land was acquired by the municipality, the buildings standing on the land became his property, and that the tenants were not entitled to compensation,—*Held* that the Judge came to a right finding on the facts, and that the owner of the land was not entitled to the buildings erected by the tenants without being liable to pay them compensation, even if the tenancy had come to an end. *Held* also that, as the land was acquired by the Corporation during the continuance of the lease in the sense that the relationship of landlord and tenant was still subsisting between the parties, and having regard to s. 108, cl. (*h*), of the Transfer of Property Act, which applies to Calcutta as well as to the mofussil, the tenants were entitled to the compensation for the buildings. *Juggut Mohinee Dossee* v. *Dwarka Nath Bysack, I. L. R., 8 Calc., 582,* distinguished. DUNIA LAL SEAL *v.* GOPI NATH KHETRY

[I. L. R., 22 Calc., 820

566. ——— *Lease granted by Hindu widow for long term of years—Death of widow—Voidable lease—Suit by heir to recover property from lessee six years after widow's death—Compensation for tenants' improvements—Acquiescence.*—A Hindu widow adopted a son, but reserved to herself for life the right of managing her husband's property. The adopted son sold his interest in the property to the plaintiff. In 1885, the widow granted a lease of the property to defendants for fifty-nine years at a rent of R50 a year. She died the following year (1886). The defendants continued in possession of the property under the lease and expended money in improvements. In 1892, the plaintiff as purchaser from the adopted son sued for possession. *Held* that he was entitled to recover and to have the lease set aside, but only on payment to the defendants of compensation for the sum properly expended by them in improving the land after the widow's death. The lease granted by the widow was not *ipso facto* void, but only voidable by the plaintiff, on her death. It did not necessarily determine at her death. That being the legal position of the defendants, the plaintiff allowed the defendants to go on improving the property, and took no steps to warn the defendants until he brought this suit to recover possession. His conduct was such as to induce a belief in the minds of the defendants that the lease would be treated as valid. There was not merely a lying by, but a lying by under such circumstances as to induce a belief that a voidable lease would be treated as valid. DATTAJI SAKHARAM RAJADIKSH *v.* KALBA YESE PARABHU **I. L. R., 21 Bom., 749**

567. ——— *Tenant erecting buildings and making improvements under mistaken belief of his landlord, having larger interest in property than he really had.*—A tenant who has erected buildings and effected improvements on the landlord's property is not entitled to be paid their value on the determination of the tenancy, merely because he has acted under the mistaken belief shared by his landlord that he had a larger interest in the property than he really had. JUGMOHANDAS VIMDRAWANDAS *v.* PALLONJEE EDULJEE MOBEDEWA

[I. L. R., 22 Bom., 1

568. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), ss. 1, 2, 4, 6—Mode of assessing compensation for improvements.*—The sum to be allowed for compensation for a tenant's improvements under Madras Act I of 1887 is not to be determined by capitalizing either the annual rent or the annual increment due to the improvement, but a reasonable sum should be awarded, assessed with reference to the amount by which the market-value or the letting-value or both has been increased thereby; and the Court should take into consideration the actual condition of the improvement at the time of the eviction, its probable duration, the labour and capital which the tenant has expended in effecting it, and any reduction or remission of rent or other advantage which the landlord has given to the tenant in consideration of the improvement. In the absence of evidence as to the actual market-value in the place where the land is situated, the reasonable mode of estimating the compensation consists in taking the cost of the improvement and interest thereon and in adjusting the compensation to be awarded with reference to the matters specified in s. 6. VALIA TAMBURATTI *v.* PARVATI. PARVATI *v.* VALIA TAMBURATTI . . **I. L. R., 13 Mad., 454**

569. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), s. 7—General Clauses Consolidation Act s. 6.*—A suit to recover property in Malabar demised on kanom was pending when the Malabar Compensation for Tenants Improvements Act came into force. *Held* on the construction of ss. 1, 5, 7, that the tenants' right to compensation should be dealt with in accordance with the provisions of that Act. MALIKAN *v.* SHANKUNNI

[I. L. R., 13 Mad., 502

570. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), ss. 3 and 6—Cocoanut trees—Valuation of improvements—Redemption of kanom tenure.* In a suit to redeem a kanom in Malabar, it appeared that the plaintiff paid into Court the kanom amount, together with a sum on account of the defendants' improvements, but subsequently withdrew the money, which the defendant had not taken out of Court. The defendant claimed that he was entitled to receive under the head of compensation for improvements the capitalized value of the produce of cocoanut trees planted by him computed with reference to the probable productive life of the trees. *Held* that the plaintiff was entitled to redeem, and that the defendant was not entitled to have the whole of the future annual produce of the trees taken into consideration in computing the value of improvements under the Malabar Compensation for Tenants Improvements Act, 1887. SHANGUNNI MENON *v.* VEERAPPAN PILLAI

[I. L. R., 18 Mad., 407

571. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), s. 3—Suit to redeem kanom.*—The sum to be allowed for tenants' compensation for improvements under Madras Act I of 1887 is to be calculated in proportion to the extent to which the estate has been permanently improved. The improvement for which compensation is payable as defined in s. 3 of the Act is not the tree itself, but the work of planting, protecting, and maintaining it. The calculation must not be based on the future produce of the tree. KUNHI CHANDU NAMBIAR *v.* KUNKAN NAMBIAR . **I. L. R., 19 Mad., 384**

572. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), ss. 6 (c) and 7—Tenant's agreement in 1890 not to claim compensation for improvements already made— Reduction of rent—Claim to make deduction from the value of improvements on account of reduction of rent.*—In an ejectment suit relating to agricultural property in Malabar, it appeared that the tenant was in possession under an agreement executed in 1890, in which it was recited that the tenant's father had been let into possession thirty years previously at a certain rate of rent and had made improvements on the land, and the defendant agreed to hold at a lower rate of rent, and not to demand compensation for the previous improvements. The plaintiff relied on the last-mentioned provisions of the agreement, which admittedly related to improvements made since January 1886. *Held* that the provisions relied on by the plaintiff were invalid under the Malabar Compensation for Tenants Improvements Act, 1887, s. 12. *Held* also *per* SUBRAMANIA AYYAR, *J.* (DAVIES, *J.*, dissenting), that there was no reduction of rent or other advantage given by the landlord to the tenant within the meaning of s. 6 (c), and accordingly that the plaintiff was entitled to evict only on payment of the value of improvements free from any deduction. UTHUNGANAKATH AVUTHALA *v.* THAZHATHARAYIL KUNHALI

[I. L. R., 20 Mad., 435

573. ——— *Compensation for improvements and arrears of rent set off.*—As regards the right to the value of improvements, there is no distinction between a tenant under a kanom and under a verumpattom. The right of the landlord to set off against the value of the improvements any rent due to him must prevail against any alienation made by the tenant of his right to compensation. ERESSA MENON *v.* SHAMU PATTER

[I. L. R., 21 Mad., 138

See ACHUTA *v.* KAL . **L. R., 7 Mad., 545**

574. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), ss 4 and 7—Improvements made before and after 1st January 1886.*—Malabar Compensation for Tenants' Improvements Act, 1887, s. 7, cannot be construed retrospectively so as to invalidate agreements made with respect to improvements prior to the passing of the Act. In computing, therefore, the value of improvements made by a tenant in Malabar, who was let into possession under an agreement before the passing of the Act, it is necessary to ascertain the value of improvements made by him before the 7th January 1887, calculated according to the scales specified in his contract, and also the value of improvements effected subsequently, calculated under the provisions of the Act. VIRU MAMMAD *v.* KRISHNAN **I. L. R., 21 Mad., 149**

575. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887)—Timber trees—Suit to redeem mortgage.*—In a suit to redeem a kanom of land on which timber has grown, the jenmi is not entitled to be credited with half the value of the timber. ACHUTAN NAYAR *v.* NARASIMHAM PATTER

[I. L. R., 21 Mad., 411

576. ——— *Tenant's right to compensation—Mortgage by tenant without notice to landlord—Acceptance of surrender by landlord —Rights of landlord and mortgagee.*—The right of a tenant in Malabar to compensation is analogous to the right to a chose-in-action ; and a transfer of such a right by a tenant to a third party cannot affect the landlord unless the latter has notice of the transfer when he accepts the surrender of the property demised and settles the account with his tenant in reference to arrears of rent and the amount due as compensation. *Quære*—Whether notice to a landlord of such a transfer would affect his right to set off arrears of rent due to him against the amount payable as compensation. VASUDEVA SHENOI *v.* DAMODARAN . . . **I. L. R., 23 Mad., 86**

25. MIRASIDARS.

577. ——— **Nature of tenancy**—*Yearly or permanent tenancy—Right of mirasidars—Custom of country.*—The defendants entered on land as tenants of a mirasidar on terms which they could not prove, but held it at a uniform rent for three generations and for more than fifty years. *Held* that the defendants, in the absence of any special agreement to the contrary, had not acquired by prescription a right of permanent tenancy. Whatever right of permanent tenancy a tenant may, by prescription, acquire as against an inamdar, or a khot, it would be contrary to the custom of the country, and to the nature of mirasi tenure, to hold that he could acquire such a right as against a mirasidar. NARAYAN VISAJI *v.* LAKSHUMAN BAPUJI . **10 Bom., 324**

578. ——— *Right to perpetual tenancy—Sanad—Evidence of title—Perpetual cultivation—Long possession—Local custom.*—Mirasidars who had sanads but who have lost them, and those who never had them, may prove their title by other evidence, and long possession is a strong element in such proof. A sanad is not indispensable to the proof of mirasi tenure. A mirasi right or perpetuity of tenure, like other facts, may be proved by various means. Accordingly, where a plaintiff claimed to hold certain lands in miras and under a right of perpetual cultivation by the custom of the country, and sought to recover the lands from the defendant who claimed as purchaser, at a Court sale, of the right, title, and interest of the inamdar of the said lands, and the lower Courts dismissed the suit on the ground that the plaintiff had failed to prove any right of perpetual cultivation, the District Court, in appeal, observing that no term of occupation as a tenant of inam land would confer a right of perpetual cultivation, and that nothing short of a regular sanad would confer on the plaintiff his alleged right in the lands, the High Court in special appeal reversed the decrees of the Court below, and remanded the case for a new trial on the point whether the plaintiff as a mirasidar or by local usage in virtue of his long possession and uniformity of payment of rent or assessment or otherwise, previously to the Court sale to defendant, had acquired the right to hold the lands in perpetuity on payment of a fixed or other rent ascertainable by local usage. BABAJI *v.* NARAYAN . . . . **I. L. R., 3 Bom., 340**

VISHNUBHAT *v.* BABAJI

[I. L. R., 3 Bom., 345 note

579. ———————— *Mirasi tenures —Right of occupancy in mirasi land.*—The mirasidar is the real proprietor of mirasi land, but raiyats may be entitled to the perpetual occupancy of mirasi land, subject to the payment of the mirasidar's share. Such tenure, however, generally depends on long-established usage, and must be proved by satisfactory evidence. ALAGAIYA TIRUCHITTAMBALLA *v.* SAMINADA PILLAI . . . . . **1 Mad., 264**

580. ———— **Right to dues from sukavasi tenants.**—Plaintiff, claiming as sole mirasidar of a village, sued the defendants as sukavasi tenants of cultivated land within the village for arrears of rent from 1856. Defendants denied plaintiff's title. The Civil Judge (reversing the decree of the Munsif) dismissed the suit on the ground that the plaintiff had not proved the collection of the perquisites claimed within twelve years before the institution of the suit. *Held* (reversing the decree of the Civil Judge) that if the defendants were sukavasi raiyats and the plaintiff was sole mirasidar, and in that right entitled to certain annual dues for all lands cultivated by such raiyats immediately on their being brought under cultivation, plaintiff's suit was not barred, except as to rent payable more than three years before suit. KRISHNAMA CHARYAR *v.* TOPPAI GAUNDAN . . . . . . **3 Mad., 381**

581. ———— **Right to dues from cultivators**—*Custom.*—It can by no means be laid down as a uniform rule that mirasidars are entitled to dues from cultivators holding lands within the area of the mirasi estate under pottahs from the Government. To avoid injustice, where the right is denied, there should be an enquiry whether by custom it prevails on the estate, or, if there are not sufficient instances on the estates to afford grounds for decision, on similar estate in the neighbourhood. There has been no law depriving mirasidars of any privileges they may have customarily enjoyed. On the other hand, in the regulations the intention of the Government is declared to respect the privileges of landholders of all classes. SAKKAJI RAU *v.* LUTCHMANA GAUNDAN . . . **I. L. R., 2 Mad., 149**

582. ———— **Right of occupancy**—*Abandonment—Waste lands—Mad. Act II of 1864.*—The plaintiffs, village mirasidars, sued to eject defendants in possession of the waste lands of the village and to obtain a pottah for the same. The facts were that on three several occasions, beginning in Fasli 1269, applications were made by strangers for permission to cultivate waste lands belonging to the village, and that on each occasion the mirasidars successfully intervened, asserting a preferential right to obtain the lands for cultivation. Pottahs were accordingly made out in their names. But on no occasion did they either cultivate or pay kist for the lands, and subsequent to the last occasion, in 1867, the lands were put up to auction for arrears of kist. The mirasidars bought them in. But the Collector refused to accept the mirasidars as tenants, cancelled the sale, and issued a pottah to the agent of a former applicant. Plaintiffs brought their suit in March 1873, and the District Munsif dismissed it, holding that the conduct of plaintiffs justified the Revenue authorities in the course they had adopted. The District Judge reversed the decree of the Munsif, on the authority of *Rajagopala Ayyangar* v. *Collector of Chingleput, 7 Mad., 98.* On special appeal, the case was heard before MORGAN, *C.J.*, and INNES, *J.*, and on a difference of opinion was referred to a Full Bench (MORGAN, *C.J.*, HOLLOWAY and INNES, *JJ.*). *Held* by MORGAN, *C.J.*, and HOLLOWAY, *J.*, allowing the special appeal, that the Collector's settlement with the mirasidars was in form an annual settlement, and that on the face of the transaction there was nothing which could be regarded as amounting to the creation or recognition of a permanent right in the mirasidars (plaintiffs), such as could be determined only in the manner indicated in the case of *Rajagopala Ayyangar* v. *Collector of Chingleput, 7 Mad., 98*: that it was apparent that the mirasidars had no intention either to cultivate the land or (except on legal compulsion) to pay the assessment, and that in such circumstances it was competent to the Revenue officials to decline to accept the plaintiffs as tenants. By HOLLOWAY, *J.*, that the Darkhast Rules of the Revenue authorities did not constitute rights enforceable in a Court of law, and that, even if the plaintiffs had been wrongfully dispossessed, their only action would be against the Government for such wrongful dispossession, and the relief sought in the present suit was quite incommensurate with the injury complained of. By INNES, *J.* (dissenting), that plaintiffs, having lawfully purchased at a Government sale, had become by the express provisions of the law the occupiers of the land, and that they could not be ejected except for the reasons and by the process prescribed by Madras Act II of 1864; that, not having been lawfully ejected, they were still the rightful holders, and, twelve years not having elapsed since the date of their ejectment, could claim to be restored; and that the special appeal should

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25. MIRASIDARS—*concluded.*

accordingly be dismissed. FAKIR MUHAMMAD *v.* TIRUMALA CHARIAR . . **I. L. R., 1 Mad., 205**

583. ——— **Pottah-holder, Status of**—*Raiyatwar pottah.*—The correctness of the decision of the majority of the Full Bench in *Fakir Muhammad v. Tirumala Chariar, I. L. R., 1 Mad., 205,* that a raiyatwar pottah enures only for a year, and that a pottah-holder is merely a tenant from year to year, questioned. SECRETARY OF STATE FOR INDIA *v.* NUNJA . . . . **I. L. R., 5 Mad., 163**

584. ——— **Relinquishment of pottah**—*Tenure of pottahdar under Government.*—*Per* TURNER, *C.J.*—A mirasidar does not lose his mirasi right by relinquishing his pottah. A pottah issued by Government will, unless it is otherwise stipulated, be construed to enure so long as the raiyat pays the revenue he has engaged to pay. SUBBARAYA MUDALI *v.* COLLECTOR OF CHINGLEPUT
[I. L. R., 6 Mad., 303

LANDMARKS.

——— **Obliteration of—**

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—GENERALLY.
[9 B. L. R., 150

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See DIVORCE ACT, s. 14.
[I. L. R., 20 Bom., 362

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——— **Remuneration of—**

See COSTS—TAXATION OF COSTS.
[I. L. R., 17 Mad., 162

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1. CONSTRUCTION 644
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LEASE—*continued.*

——— **Agreement for—**

See REGISTRATION ACT, s. 17.
[3 B. L. R., Ap., 1
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See STAMP ACT, 1879, SCH. I, ART. 4.
[I. L. R., 17 Calc., 548
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See STAMP ACT, 1879, SCH. I, ART. 5.
[I. L. R., 13 Bom., 87

——— **Breach of condition for forfeiture in—**

See CASES UNDER BENGAL RENT ACT, 1869, s. 52 (ACT X OF 1859, s. 78).

See CASES UNDER LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.

——— **Cancellation of—**

See CASES UNDER BENGAL RENT ACT, 1869, s. 52 (1857, s. 78).

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—RENT . . **I. L. R., 4 Calc., 96**

——— **granted while lessor is out of possession.**

See CASES UNDER TRANSFER OF PROPERTY.

1. CONSTRUCTION.

1. ——— **Rule for construction**—*Nature of possession given by lease.*—In construing a pottah, although such construction was according to the practice of the Court on a question of law, the Court held that it must look to the surrounding circumstances, one of which was the nature of the possession given by the grantor and accepted by the grantee. JANOKEE NATH DUTT *v.* MAHOMED ISRAIL
[22 W. R., 235

2. ——— **Uncertainty as to amount of rent**—*Madras Rent Recovery Act, s. 4.*—An agreement in a pottah to pay whatever rent the landlord may impose for any land not assessed, which the tenant may take up, is bad for uncertainty. RAMASAMI *v.* RAJAGOPALA . **I. L. R., 11 Mad., 200**

3. ——— **"Projah," Meaning of**—*Status of tenant.*—The word "projah" does not define the status of a tenant. KEDARNATH MITTER *v.* SOOKOOMAREE DEBIA . . . **22 W. R., 398**

4. ——— **"Karindah," Meaning of**—*"Nij-jote," Meaning of—Status of tenant.*—The word "karindah," as used in a pottah, was held to be merely a term used to set forth what was the status of the person to whom the pottah was granted, and

to afford no ground for the presumption of the tenants holding previous to the date of that pottah. Nor did the word "nij-jote," as used in the pottah, mean lands cultivated by the cultivator himself, but lands held by the zamindars in their own possession or their own private lands. WAJOODEEN HOSSEIN *v.* MADHOO CHOWDRY . . . **17 W. R., 404**

5. ——— **"Abadkari talukhdari," Meaning of**—*Effect on talukhdari right of accepting farming leases.*—Construction of the term "abadkari talukhdari" in a lease explained. Neither the acceptance of farming leases by the talukhdar *quâ* farmer, subject to the Government proprietary right, nor the sale of that Government right, in any way *ipso facto* extinguishes any talukhdari right existing in the abadkari talukhdar in that capacity, if otherwise valid. HURO PERSHAD BHUTTACHARJEE *v.* BHYRUB CHUNDER MOJOOMDAR **[8 W. R., 391**

6. ——— **Lease to commence in future**—*Temporary lease.*—An instrument which is in terms a temporary lease is as binding on the lessor, *quâ* lease, where the tenancy is to commence at a future day, or on the determination of an existing lease under which another lessee is in possession, as where it commences immediately. PITCHAKUTTI CHETTI *v.* KAMALA NAYAKKAN . **1 Mad., 153**

7. ——— **Duration of lease**—*Lease where no term is specified.*—Where no term is mentioned in a lease, it may be either a tenancy terminable at the end of every year, or one for the life of the tenant, according to the terms of the lease. WATSON *v.* DOST MAHOMED KHAN . **2 Hay, 4**

8. ——— *Lease of land for building purposes without term—Liability to ejectment.*—Where land is given to a lessee for the purpose of building a house to live in, without any term being fixed for the tenancy, the tenure of house and land cannot be taken away from the lessee's heir or his vendee so long as he continues to pay the rent assessed on it. JUHOOREE LALL SAHOO *v.* DEAR **[23 W. R., 399**

9. ——— *Lease for specified term where no provision for continuance is used.*—Where a lease is not in writing, but the terms of holding are specified in a notification addressed by the lessor to his servants, such an acknowledgment is, as against the lessor, conclusive evidence of the terms of the agreement. Where a lease for a fixed term of seven years contains no words to import a continuance of the interest after the death of the grantee, nor any expressions which point to any earlier determination of the interest, the *primâ facie* meaning is a continuance for seven years, and that the lease did not terminate with the death of the original lessee, but survived during the remainder of the term to his heirs and representatives. The onus is on the party who seeks to show that the transaction should be governed by Hindu law that the *primâ facie* construction is contrary to the Hindu law, or the established custom of considering such contracts in Bengal. In this case the lessor, having, on the death of the lessee, granted a patni of his whole estate, including the farm in dispute, was adjudged liable to pay to the representatives of the lessee damages for the time they were deprived of the beneficial enjoyment of the farm, according to the increased rent which the new lessee had undertaken to pay. TEJ CHUND *v.* SREEKANTH GHOSE **[6 W. R., P. C., 48: 3 Moore's I. A., 261**

10. ——— *Construction of lease, as to the inheritance of it by the heir on the lessee's death.*—An ijara for one hundred and twenty-five years granted to a wife stated that it was for the performance of pious acts by her, and that on her death her sons were to take. Her only son died before her, leaving a son. *Held* that the construction that the grandson inherited the term on the death of the lessee was correct. *Tej Chund Bahadoor* v. *Srikanth Ghose, 3 Moore's I. A., 261,* referred to. GOBIND LAL ROY *v.* HEMENDRA NARAIN ROY CHOWDHRY . **I. L. R., 17 Calc., 686**

11. ——— *Tenancy year by year.*—A tenancy which is to continue year by year is a continuing tenancy so long as the parties are satisfied; and though terminable at the option of either party at the end of any year is not *ipso facto* terminated at the end of every year. MALODDEE NOSHYO *v.* BULLUBBEE KANT DHUR **13 W. R., 190**

12. ——— *Tenancy from year to year.*—The words, "you must pay every year Government dues, and enjoy the fields along with the garden lands without disturbance (sukhrup rahani), besides the fixed amount there will be no oppression on account of cesses," do not create a permanent tenancy, but only a tenancy from year to year. GUNGABAI *v.* KALAPA DARI MUKRYA **[I. L. R., 9 Bom., 419**

13. ——— *Lease from year to year—Mode of determining tenancy.*—In a suit for possession of a piece of land and for rent of the same, the plaintiff produced in support of his claim two sarkhats or kabuliats purporting to be executed in his favour by the defendants, and dated respectivly in January 1875 and June 1876. These documents were not registered. The first, after reciting that the executant had taken the land from the plaintiff on a specified yearly rent, and promised to pay the same yearly, proceeded as follows: "If the owner of the land wishes to have it vacated, he shall give me fifteen days' notice, and I will vacate without making objection: if I delay in vacating the land, the owner can realize, by recourse to law, rent from me at the rate of R8 per annum." The second sarkhat, after reciting that the executants had taken the land from the plaintiff on a yearly rent specified for six years, and promised to pay the same year by year, proceeded thus: "And if the said shaikh wishes to have the land vacated within the said term, he shall first give us fifteen days' notice, and we will vacate it without objection." The lower Courts held that the sarkhats were not admissible in evidence, as they required

registration under s. 17 (4) of the Registration Act VIII of 1871, being leases of immoveable property from year to year or reserving a yearly rent. *Held* that the two sarkhats created no rights except those of tenants-at-will, inasmuch as the clause common to both, to the effect that at any time, at the will of the lessor, the lessees were to give up the land at fifteen days' notice, governed all the previous clauses, and the defendants could be asked to quit at any time before the lapse of the term at fifteen days' notice. KHUDA BAKHSH *v.* SHEO DIN **I. L. R., 8 All., 405**

14. ———————— *Right of occupancy—Permanent cultivator—Paracudi.*—The defendant's ancestors or predecessors in title were the cultivating tenants of the lands of a certain temple from a date not later than 1827, in which year they were so described in the paimaish accounts. In 1830 they executed a muchalka to the Collector, who then managed the temple, whereby they agreed among other things to pay certain dues. They were described in the muchalka as paracudis. In 1857, the plaintiff's predecessors took over the management of the temple from, and executed a muchalka to, the Collector whereby he agreed, among other things, not to eject the raiyats as long as they paid kist. In 1882 the dues (which were payable separately), having fallen into arrear, the manager of the temple sued to eject the defendants. *Held* that there was nothing to show that the defendants were more than tenants from year to year. *Chockalinga Pillai* v. *Vythealinga Pundara Sunnady, 6 Mad., 164,* and *Krishnasami* v. *Varadaraja, I. L. R., 5 Mad., 345,* discussed and distinguished. THIAGARAJA *v.* GIYANA SAMBANDHA PANDARA SANNADHI **[I. L. R., 11 Mad., 77**

15. ———————— *Permanent ijara lease—Right of heirs of demisee.*—A fixed permanent ijara pottah confers no rights on the heirs of the demisee. RAJARAM *v.* NARASINGA **[I. L. R., 15 Mad., 199**

16. ———————— *Perpetual tenancy.*—Where the terms of a lease did not appear to create a perpetual tenancy, there being no circumstances in the evidence from which the Court ought to infer that the intention of the parties was to create such a tenancy,—*Held* that the lease was not a perpetual lease. *Gangabi* v. *Kalapa, I. L. R., 9 Bom., 419,* and *Gangadhar Bhikaji* v. *Mahadu, P. J. for 1889, p. 321,* referred to. RAMABAI SAHEB PATWARDHAN *v.* BABAJI . . **I. L. R., 15 Bom., 704**

17. ———————— *Pottah prescribing rent to be paid permanently by tenant.*—In 1840 a mittadar granted to a tenant a pottah for certain land in which the tenant had already a heritable estate, fixing the rent at the reduced rate R40. The document provided "this sum of R40 you are to pay perpetually every year per kistbandi in the mitta catcheri." It appeared that the rent fixed was less than what was payable upon the lands previous to the date of the pottah and also less than that payable upon neighbouring lands of similar quality and description. *Held* that the facts of the case were distinguishable from those of *Rajaram* v. *Narasinga, I. L. R., 15 Mad., 199,* and that the pottah fixing the rent was binding upon the representatives in title of the grantor and the grantee, respectively. FOULKES *v.* MUTHUSAMI GOUNDAN **I. L. R., 21 Mad., 503**

18. ———————— *Permanent tenancy only modifiable by revision of rent—Right of ejectment—Exclusion of lessor's right of terminating lease.*—Ejectment by landlord against tenant. It appeared that the land in dispute was the property of a muttum of which the plaintiff was the trustee, and had been let to the defendant's father under a muchalka (Exhibit A), dated 14th August 1837, entered into with the Collector, the manager of the property on behalf of the Government. The tenancy continued to be regulated by his agreement until plaintiff, in 1867, demanded an increased rent, which the defendant refused to agree to pay. Upon that demand and refusal the plaintiff, at the end of the Fasli, and without tendering a pottah for another Fasli stipulating for the increased rent, brought his suit to eject. The defendant appellant contended that the right to put an end to his tenancy was conditional upon his failure to pay the rent fixed by the agreement. *Held* by SCOTLAND, *C.J.*, upon the construction of the muchalka, that the plaintiff possessed the absolute right to put an end to the tenancy at the end of the Fasli, unless the condition relied upon by the appellant was by force of established general custom (which had not been alleged) or positive law made a part of the contract of tenancy: that neither the Rent Recovery Act nor the Regulations operated to extend a tenancy beyond the period of its duration secured by the express or implied terms of the contract creating it, and that therefore the plaintiff had a right to eject the defendant at the end of a Fasli. By HOLLOWAY, *J.*—That whether the express contract was binding on the pagoda or not, it gave no right to hold permanently, and that there is nothing in any existing written law to render a tenancy once created only modifiable by a revision of rent, but not terminable at the will of the lessor exercised in accordance with his obligations. *Enamandaram Venkayya* v. *Venkatanarayana Reddi, 1 Mad., 75,* and *Nallatambi Pattar* v. *Chinnadeyanayagam Pillai, 1 Mad., 109* doubted. The judgment in the case of *Venkataramanier* v. *Ananda Chetty, 5 Mad., 122,* has gone too far in laying down the rule as to a pottahdar's right of occupation. CHOCKALINGA PILLAI *v.* VYTHEALINGA PUNDARA SUNNADY . . . **6 Mad., 164**

19. ———————— *Permanent tenancy on continuing to pay rent.*—Suit to recover the proprietary right in a village belonging to plaintiff's muttah, which was let to defendant's father under a pottah and muchalka, and which on the death of her father and since the defendant refused to surrender, upon the grounds (1) that the right had been leased permanently, subject to the regular payment of the stipulated rent, which condition had been strictly fulfilled; (2) that her father had expended large sums in making substantial permanent improvements in the village, and that he had by gift transferred the tenancy to her. *Held* that, on the true construction of the terms of the pottah and muchalka only a tenancy from Fasli to Fasli was created. Neither Regulation XXX of 1802 nor Madras Act VIII of 1865 operated to make a tenancy established by ordinary pottah and muchalka of a permanent nature by attaching to it the condition that it should be indeterminable as long as the stipulated rent was paid. *Chockalinga Pillai* v. *Vythealinga Pandura Sunnady, 6 Mad., 164,* followed. FOULKES *v.* RAJAH-RATHNA MUDALI . . . . **6 Mad., 175**

20. ———— **Lease of jungle lands**—*Continuous possession—Commencement of lease.*—In a lease which provides for rent-free possession for twelve years, the rent-free possession contemplated does not necessarily date from the year of the lease, so that in a suit more than twelve years after the granting of the lease the lessee is entitled to plead that he has not yet had possession rent-free for twelve years. BHARUT CHUNDER ROY *v.* ISSUR CHUNDER SIRCAR . . . . . **2 W. R., Act X, 78**

21. ———— **Death of lessee, Effect of**—*Lease not limited to life of lessee.*—Any leasehold estate, when not expressly limited to the life of the lessee, passes to his heirs in the same way as other property, and if the heirs take the estate of the deceased lessee, they take it with all rights and responsibilities. DANOOLLAH *v.* AMANUTOOLLAH

[16 W. R., 147

RADHA KISHORE ROY *v.* SITTOO SIRDAR

[24 W. R., 172

22. ———— *Lease at will of lessee.*—A lease of land, whereby the lessee is given the power of holding the land as long as he pleases, is determined by the death of the lessee. VAMAN SHRIPAD *v.* MAKI . . **I. L. R., 4 Bom., 424**

23. ———— **Death of lessor or lessee**—*Lease for term of years—Joint liability of lessees.*—In the absence of words to the contrary, a lease of zamindari rights for a term of years does not terminate before the expiration of the term by the mere fact of the death of either the lessor or lessee. *Tej Chund* v. *Sree Kanth Ghose, 3 Moore's I. A., 261,* and *Burdakant Roy* v. *Aluk Munjooree Dasiah, 4 Moore's I. A., 321,* relied on. On the question whether the lessees in this case were jointly as well as severally liable,—*Held* that the terms of the lease indicated that the liability of the lessees was intended to be several, but equal in extent. BADRINATH *v.* BHAJAN LAL . . . **I. L. R., 5 All., 191**

24. ———— **Extension of term for which lease is granted**—*Leave to remain till called on to vacate.*—A provision in the lease that the tenant might after six months remain in occupation at a monthly rent till called on to vacate does not extend the term for which the lease is granted. MORA VITHAL *v.* TUKARAM VALAD MALHARJI

[5 Bom., A. C., 92

25. ———— **Tenancy at will**—*Agreement to pay rent—Custom—Notice to quit.*—An agreement to pay rent in the ordinary form of muchalka given by tenants from year to year already in possession is not a lease. A tenancy from Fasli to Fasli is not a tenancy-at-will, but a tenancy from year to year. In the absence of custom to the contrary, no tenant from year to year in this country can be ejected without being served at a reasonable time beforehand with a notice to quit at the period of the year at which the tenancy commenced. ABDULLA RAWUTAN *v.* PAKKERI MOHOMED RAWUTAN

[I. L. R., 2 Mad., 346

26. ———— *Suit for ejectment.*—Disputes arose between the Government and an adjacent proprietor, *M S*, respecting a piece of alluvial land gained by accretion, of which *M S* was then in possession. The Government required the land for public improvements. After some correspondence an agreement was entered into by which *M S* undertook to relinquish in favour of Government all claim to the proprietary right, and to rent the land from Government, upon the latter allowing him to remain in possession until the projected public improvements rendered it necessary for him to vacate the land. Possession was given to Government, *M S* holding the land from Government at a fixed rent and undertaking to quit possession at a month's notice. Improvements in the neighbourhood having been made by Government and *M S* being dead, notice to quit was served on his representatives, who refused to quit, on the ground that the improvements were not such public improvements as were contemplated by the correspondence and agreement. In a suit for ejectment,—*Held* that *M S* was, under the agreement, a mere tenant-at-will, and that the suit was maintainable, and the representatives of *M S* had no defence to the action. ANUNDOMOHEY DOSSEE *v.* DOE D. EAST INDIA COMPANY

[8 Moore's I. A., 43 : 4 W. R., P. C., 51

27. ———— **Lease to widow**—*Re-marriage and death of widow—Right of second husband to possession.*—Upon the death of a tenant under a jaghirdar, his widow passed a kabuliat agreeing to hold the land on the same terms as her late husband; and that, in the event of her marrying again, she should have no right to the holding, but that, if she got her husband to live in her house, she might continue to hold the land. She afterwards remarried, and held the land till her death. In an action brought by the second husband to recover possession of the land, as the heir of his wife,—*Held* (reversing the decrees of both the Courts below) that the plaintiff had no right to recover possession, and his wife had merely a personal interest in the holding, which ceased upon her death. KAMALUDDIN HUSEN KHAN *v.* BHIKA MANJI . . . . **4 Bom., A. C., 49**

28. ———— **Provision for renewal**—*Suit for possession—Stipulation as to duration.*—Where, upon a consideration of the terms set forth in the lease, it was found to be a stipulation that the jote was not to terminate *ipso facto* with the conclusion of the ijara, but that it was open to the parties to make a fresh agreement in respect of the land, upon the quantity and rents being measured and assessed

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

in accordance with the productive power of the land, —*Held* that the plaintiff was entitled to a decree for khas possession the stipulation being extremly uncertain in its character, and the defendants having done nothing for years in response to the proceedings taken by the plaintiff. SHOORUT SOONDRY DABEE *v.* BINNY (JARDINE, SKINNER & Co)

[25 W. R., 347

29. ——— **Nature of grant**—*Intention of parties—Estate for life or inheritance.*—In order to determine the question whether a pottah granted by a zamindar conveyed an estate for life only or an estate of inheritance,—*Held* that it was necessary to arrive, as well as could be done, at the real intention of the parties, to be collected chiefly from the terms of the instrument, but to a certain extent also from the circumstances existing at the time, and further by the conduct of the parties since its execution. WATSON & Co. *v.* MOHESH NARAIN ROY

[24 W. R., 176

30. ——— **Words conveying right to hold at fixed rates.**—It is not absolutely necessary that any particular form of words should be used in conveying rights to hold at fixed rates. UNNODA PERSHAD BANERJEE *v.* CHUNDER SEKHUR DEB . . . . . . 7 W. R., 394

AFSAR MUNDUL *v.* AMEEN MUNDUL

[8 W. R., 502

KAILAS CHANDRA ROY *v.* HIRALAL SEAL. FAKIR CHAND GHOSE *v.* HIRALAL SEAL

[2 B. L. R., A. C., 93 : 10 W. R., 403

31. ——— **Hereditary lease**—*Continuance of lease dependent on continuance of superior tenure.*—Though the lease in this case contained no words importing an hereditary character, yet it was held to have the effect of being hereditary, on the ground that the period of its continuance was not dependent on the life of any party, whether lessor or lessee, but on the continuance of the superior tenure. LEKRAJ ROY *v.* KANHYA SINGH . 17 W. R., 485

32. ——— *Pottah for building purposes—Omission of words defining grant.*—A pottah which gave land for building purposes and recited that no abatement of rent was to be granted at any time or for any cause, and that no increase of jama should ever be demanded, was held distinctly to provide that the land was granted at the rate then fixed for ever, even though no such words were used as "istemrari" or "ba-furzundan." BINODE BEHARY ROY *v.* MASSEYK . . 15 W. R., 494

33. ——— *Absence of words of inheritance in pottah.*—A pottah must not, *primâ facie*, be assumed to give an hereditary interest, though it contains no words of inheritance; "pottah" as used in Act X of 1859 being a generic term, which embraces every kind of engagement between a zamindar and his under-tenants or raiyats. Where proof exists of long uninterrupted enjoyment of a tenure, accompanied by recognition of its hereditary and transferable character, it is sufficient to supply the want of the words "from generation to generation" in the pottah, and the tenant cannot be dispossessed by his superior. DHUNPUT SINGH *v.* GOOMUN SINGH.

[9 W. R., P. C., 3 : 11 Moore's I. A., 433.

34. ——— *Absence of words fixing rent—Lease for building purposes.*—Where a pottah recited that the rent was to be paid from father to son, who were to occupy the land and build a house thereon, although there were no formal words to the effect that the rent was never to be changed, the fixed character of the rent was presumed from long and uninterrupted enjoyment and the descent of the tenure to the present occupant. PEAREE MOHUN MOOKERJEE *v.* RAJ KRISTO MOOKERJEE

[11 W. R., 259

35. ——— *Istemrari—Hereditary tenure.*—Where, by an old pottah, lands forming part of a zamindari had been leased at a specified rent, but there were no words in the pottah importing the hereditary and istemrari character of the tenure, —*Held* that the absence of such words was supplied by evidence of long and uninterrupted enjoyment, and of the descent of tenure from father to son, whence that hereditary and istemrari character might be legally presumed. SATYA SARAN GHOSAL *v.* MAHESH CHANDRA MITTER

[2 B. L. R., P. C., 23 : 12 Moore's I. A., 63 : 11 W. R., P. C., 10

DEEN DYAL SINGH *v.* HEERA SINGH

[2 N. W., 338

36. ——— *Long uninterrupted enjoyment—Onus probandi.*—To rebut the evidence afforded by long uninterrupted enjoyment, and the descent of the tenure from father to son, it lies upon the party asserting the holding to be from year to year only and determinable at will to prove such assertion. DEEN DYAL SINGH *v.* HEERA SINGH

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37. ——— Although a pottah purported to be a grant only to the particular person to whom it was made, yet as it passed from father to son, and son to grandson, and possession was taken under it and continued from between 75 and 80 years, and the pottah did not contain any word or expression barring inheritance or transfer,—*Held* that the tenure might fairly be presumed to be hereditary. NUBO DOORGA DOSSIA *v.* DWARKA NATH ROY

[24 W. R., 301

38. ——— *Assessment, Right of—Assessment in perpetuity.*—Where a lease of lands to be reclaimed from the sea by the lessee, granted by a former Government to plaintiff, stipulated that the lands should be held free of assessment (muafi) for thirty years subject to assessment at R1 per bigha in the thirty-first year, to assessment increasing at the rate of ¼ of a rupee per bigha during the six following years, and at the expiration of that istawa (period of annually increasing assessment) should be held at the full assessment of R3 per bigha,—*Held* that, after the expiration of the first thirty-seven years, the lease was one in perpetuity, subject to the annual payment of the sum named as

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

the full assessment and no more. COLLECTOR OF COLABA *v.* GONESH MORESHVAR MEHENDALE [10 Bom., 216

39. ———— *"Talukh," Meaning of.*—The word "talukh" imports a permanent tenure, and where a chitta describes the land to which it relates as a "talukh," the presumption, in the absence of any evidence to the contrary, is that it implies a permanent interest. KRISHNO CHUNDER GOOPTO *v.* MEER SAFDUR ALI . **22 W. R., 326**

40. ———— *Meaning of ta bahali bundobust sircar.*—A pottah, under the ordinary meaning of the words "ta bahali bundobust sircar," was to endure as long as the settlement. ODIT NARAIN *v.* MOHESHUR BUX SINGH [**Agra, F. B., 52: Ed. 1874, 39**

41. ———— *Mokurari istemrari—Hereditary right.*—The words "mokurari istemrari" contained in a pottah must be taken in themselves to convey an hereditary right in perpetuity. LAKHU COWAR *v.* ROY HARI KRISHNA SINGH . **3 B. L. R., A. C., 226: 12 W. R., 3**

MUNRUNJUN SINGH *v.* LELANUND SINGH [**3 W. R., 84**

LEELANUND SINGH *v.* MONORUNJUN SINGH [**5 W. R., 101**

42. ———— *"Mokurari istemrari."*—*Quære*—Whether, in the absence of any usage, the words "mokurari istemrari" mean permanent during the life of the grantee, or permanent as regards hereditary descent. LILANUND SINGH *v.* MUNORUNJUN SINGH . . **13 B. L. R., 124** [**L. R., I. A., Sup. Vol., 181**

43. ———— *Perpetual lease—Suit for enhancement of rent.*—A zamindar in the district of Cuttack granted the following lease: "In the Chawdnak 1236 Amli, 17th day of the month of Brisa, Sri Hari Chuckerbutty grants to Nared Manti this istemrari (permanent) pottah. For that I execute istemrari pottah of my Khardigi Ayma in mouzah Bhimpore. Jote land, measuring four bighas, being previously to this in our occupation, you will cultivate and cause to be cultivated hereafter. Mokurari (fixed) rent at R8-12 sicca you will pay from year to year. In case of flood or drought you will be allowed a reduction of rent according as such reduction will be allowed to others. To this Hari Chuckerbutty assents." A subsequent purchaser of the zamindari right obtained a fresh settlement of the zamindari under Government. The son and grandson of the grantee held successively under the lease. In a suit by the zamindar against the holder for enhancement of rent,—*Held* that the pottah was a hereditary lease fixing the rent in perpetuity, and that it was binding on the representatives of the grantor. KARUNAKAR MAHATI *v.* NILADHRO CHOWDHRY [**5 B. L. R., 652: 14 W. R., 107**

44. ———— *Mokurari—Words of inheritance.*—In 1798 a mokurari pottah of a portion of a zamindari was granted to *A* at a consolidated jama of R6 for the term of four years, and at a uniform rent of R25 from the expiration of that period, to be paid year after year. The pottah provided that the mokuraridar should make improvements; that profits arising therefrom should belong to him, and not to the grantor; and that he should not dispose of any portion of the land granted without the permission of the grantor. No words of inheritance were used in the grant. The grantee died in 1875, when the heirs of the grantor sued to recover possession of the estate from the heirs and assigns of *A*. The defendants contended that the grant was transferable and hereditary, and that *A*, his heirs, and assigns were entitled to it in perpetuity. *Held* that the grant was for the life of *A* only, and not in perpetuity. The use of the word "mokurari" alone in a lease raises no presumption that the tenure was intended to be hereditary, and therefore, in order to decide whether a mokurari lease is hereditary, the Court must consider the other terms of the instrument under which it is granted, the circumstances under which it was made, and the intention of the parties. SHEO PERSHAD SINGH *v.* KALLY DASS SINGH [**I. L. R., 5 Calc., 543: 5 C. L. R., 138**

In the same case on appeal to the Privy Council,—*Held* the word "mokurari" does not necessarily import perpetuity, although it may do so. Used in connection with the grant of an ijara in a pottah, this word is not inconsistent with such interest being only for life. By a pottah was granted a mokurari ijara at a fixed rent in a mouzah, consisting mainly of waste lands, part of the grantor's zamindari, without words of inheritance. On the death of the grantee, who brought the land under cultivation and died in possession many years after, the question arose whether the pottah was for life, or for a heritable and transferable estate. *Held* that there being in the pottah no words importing perpetuity, notwithstanding the use of the word "mokurari," the question was whether the intention of the parties that the grant should be perpetual was shown with sufficient certainty in any other way,—*e.g.*, by the other terms of the instrument, its objects, the circumstances under which it was made, or the conduct of the parties to it. *Held* also that such intention was not shown. BILASMONI DASI *v.* SHEOPERSHAD SINGH [**I. L. R., 8 Calc., 664: L. R., 9 I. A., 33** **11 C. L. R., 215**

45. ———— *Construction of pottah as to duration—Use of the word "mokurari."*—A ghatwali estate having been sold for arrears of revenue, the purchaser brought suits to set aside under-tenures, and in so doing sued a tenant, who alleged himself to be a ghatwal. The latter compromised the suit, receiving a mokurari pottah not containing any words importing an hereditary interest. *Held* that the above circumstances were no ground for declining to give effect to the pottah as it stood, the word "mokurari" not importing inheritance. PARMESWAR PERTAB SINGH *v.* PADMANAND SINGH [**I. L. R., 15 Calc., 342**

46. ———— *Meaning of the words "istemrari mokurari" in connection with grant of lands—Intention of parties.*—The words

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

"istemrari mokurari" in a pottah granting land do not of themselves denote that the estate granted is an estate of inheritance. Not that such an estate cannot be so granted unless, in addition to the above words, such expressions as "bafurzundan," or "naslan bad naslan," or similar terms are used. Without the latter, the other terms of the instrument, the circumstances under which it has been made, or the conduct of the parties, may show the intention with sufficient certainty to enable the Courts to pronounce the grant to be perpetual; the above words not being inconsistent therewith, though not themselves imparting it. *Held* accordingly that where the words "mokurari istemrari" were used in connection with a grant in a pottah (as it was also held in another case where the instrument was termed "mokurari ijara pottah"), that the question was whether the intention of the parties that the grant should be perpetual had, or had not, been shown with sufficient certainty in any other way,—*e.g.*, by the other terms, by the objects or circumstances, of the grant, or by the acts of the parties. And held that in the present case the intention was so shown. TULSHI PERSHAD SINGH *v.* RAMNARAIN SINGH

[I. L. R., 12 Calc., 117 : L. R., 12 I. A., 205

47. ———— *Istemrari pottahs—Hereditary title—Construction of pottah.*—In an instrument described as a perpetual lease (pottah istemrari) the lessor covenanted as follows: "So long as the rent is paid, I shall have no power to resume the land. The lessees shall have no power to sell the land in any way. I have therefore executed these few words by way of a perpetual lease, that it may be used when needed." Upon the death of one of the lessees, his heir, who was in possession of the land which formed the subject of the lease, claimed to be the lessee of a moiety thereof on the ground that the lease was one creating a heritable interest. The claim was allowed by the Settlement officer, and the lessor thereupon brought a suit to have it declared that he was entitled to eject the defendant, under s. 36 of the N.-W. P. Rent Act (XII of 1881), as being a tenant-at-will, and to set aside the Settlement officer's order. *Held* that the mere use of the word "istemrari" in the instrument did not *ex vi termini* make the instrument such as to create an estate of inheritance in the lessee; that the words "so long as the rent is paid I shall have no power to resume the land" did not show any meaning or intention that the lease was to be in perpetuity; and that the defendant (even should he be the legal heir and representative of one of the lessees) could not resist the plaintiff's claim. *Tulshi Pershad Singh* v. *Ramnarain Singh, L. R., 12 I. A., 205,* followed. *Lakhu Kowar* v. *Harikrishna Singh, 3 B. L. R., 226,* dissented from. GAYA JATI *v.* RAMJIAWAN RAM

[I. L. R., 8 All., 569

48. ———— *Lease containing words of inheritance not inalienable—Khoti Act (Bom.) I of 1880, s. 9.*—The khots of the village of A in 1854 leased certain land to *B* by a lease which declared that "you (*B*) are to enjoy, you and your sons, grandsons, from generation to generation." The rent fixed by the lease was eleven maunds and six-and-a-half pailis of bhat per year. *B* having died, his widow in 1878 transferred the lease to the plaintiff, who entered into possession and offered to pay to the defendants, who were khots of the village and the successors of the grantors of the lease in 1854, the annual rent fixed by the lease. The defendant refused to accept it and contended that the plaintiff was liable to pay the rent paid by other occupying tenants in the village. The plaintiff thereupon sued to have it declared that he was entitled under the lease to hold the lands permanently at the rent thereby fixed. *Held* by the High Court that he was entitled to the declaration. The lease was one to hold in perpetuity at the fixed rent, but there were no words making the lease inalienable. There was no evidence of any custom of the village, nor anything in the Khoti Act (Bombay) I of 1880, which could be construed as a declaration of the existing custom of khoti villages when the Act was passed. VINAYAK MORESHVAR *v.* BABA SHABUDIN . **I. L. R., 13 Bom., 373**

49. ———— **Amount of land leased**—*Boundaries—Estimated area.*—In order to ascertain what land is actually leased, it is necessary to look to the boundaries mentioned in the lease, and not to the estimated area. ABDOOL MANNAH *v.* BARODA KANT BANERJEE . . . . **15 W. R., 394**

50. ———— *Boundaries—Estimated area.*—Where a pottah purports to convey so many bighas of land "more or less" within certain boundaries, the test of what is really conveyed is not the area of the land, but its boundaries. SHEEB CHUNDER MAHNEEAH *v.* BROJONATH ADITYA

[14 W. R., 301

51. ———— *Ascertainment by measurement—Provision for rate of rent.*—Plaintiff let to defendant a quantity of land, of which he was not certain how much was in cultivation and how much was jungle, at a total jama to be eventually settled on the footing of 12 annas per bigha culturable, and 10 annas per bigha jungle, on the number of bighas of each sort which existed at the end of the year next preceding the date of the pottah, the calculation of the rent to be made permanently by effecting a measurement within six months, until which time defendant should pay a provisional jama at 12 annas a bigha on a given number of bighas, amounting to a specified sum. Plaintiff sued for arrears of rent, no measurement having taken place, though years had elapsed. *Held* that, until ascertainment by measurement of a settled jama, the rent due under the terms of the pottah would be the provisional sum mentioned above; but if the delay in such ascertainment were due to default of plaintiff, defendant would be entitled to set up the state of things which he believed would be arrived at if measurement were effected. BHARUTH CHUNDER ROY *v.* BEPIN BEHAREE CHUCKERBUTTY

[9 W. R., 495

52. ———— *Excess land, Rent of.*—*B* having covenanted to take from *A* without enquiry 18 bighas of land at a rent of R1 a bigha, with a stipulation that if on enquiry any excess land should be found he would pay the same rate of rent for such excess; or if the area should be found less than 18 bighas, that he would receive a proportionate deduction from his rent. A measurement took place, and an excess was discovered. *A* then sued *B* for rent on the entire quantity of land. *Held* that *B* was liable to pay rent for the excess at the rate of R1 a bigha, and that the tender of a pottah by *A* to *B* was not necessary. RADHIKA PROSUNNO CHUNDER *v.* NEHALEE CHURN DEY . . **15 W. R., 410**

53. ———— **Grant at fixed annual rent**—*Resumption by Government, Effect of.*—A zamindar granted his zamindari by pottah or lease as a patni talukh at a fixed annual rent. Adjacent to the demised lands were other lands called bheel bhuruttee lands, in which the zamindar had only a temporary interest, but which lands were included in the pottah. The bheel bhuruttee lands were afterwards resumed by Government under Bengal Regulation II of 1819, and assessed separately from the zamindari, the jama being paid by the lessee for a period of nine years. *Held* in a suit brought by the lessees against the lessor's representative for remission of the rent paid on the resumed lands, out of the fixed annual rent, that by the terms of the pottah the bheel bhuruttee lands were not included in the fixed annual rent. PRANNATH CHOWDRY *v.* SURNOMOYE DOSSEE . . . . **9 Moore's I. A., 431**

54. ———— **Covenant in lease to grant a new lease**—*Subsequent lease without covenant for renewal.*—*Held* by the Court of first instance, and confirmed on appeal, that a covenant in a lease for years to grant a new lease on the expiration of the existing term under and subject to all covenants, as in the first lease contained, is satisfied, if such new lease contain the like covenants as the former lease, except the covenant for renewal. PENINSULAR AND ORIENTAL STEAM NAVIGATION COMPANY *v.* KONNOYLALL DUTT . . . . **2 Hyde, 21**

55. ———— **Stipulation to renew lease**—*Re-letting—Holding over.*—Where a kabuliat stipulates that *A*, the tenant, shall not, on the expiry of his lease, be liable to pay a rent higher than that reserved in the lease, and that the landlord shall not then let the land to any other tenant, but that *A* shall not be entitled to erect any permanent building, or to excavate a tank, it was held that under these stipulations the landlord was not bound to re-let the land to *A* at the close of the term of the lease. *Held* also that the fact of his allowing the tenant to hold over did not affect the landlord's right to resume possession after due notice. FUKEEROONISSA BEGUM *v.* CHUNDER MONEE DOSSEE . . **12 W. R., 538**

56. ———— **Covenant for renewal**—*Ambiguous covenant—Right to remove soil and open mines—Interpretation by acts of the parties—Estoppel—Confirmation—Land Acquisition Act, X of 1870.*—A lease for ninety-nine years made in 1794 by the East India Company to *W* contained a covenant that the said Company, upon application of the heirs, executors, administrators, and assigns of the said *W*, would re-grant and renew the said lease thereby made "on the terms and conditions above mentioned," etc. *Held* that the above covenant was not a covenant for perpetual renewal of the lease, but a covenant for a single renewal only. The above lease granted to the said *W*, his heirs, executors, administrators, and assigns, Bhandarvada Hill "*with the house, buildings, offices, stablings, garden and wells, etc., etc., thereon standing and now in his own occupation or possession.*" It was contended that this clause, if not on the face of it granting the right to remove and sell the soil, was, at all events, ambiguous, and had been interpreted by the subsequent conduct of the parties themselves, who had always recognized the right of the holders of the lease to the soil and stones of the land in question. It appeared that in 1864 the holders of the lease had permitted the E. Company to enter upon the land and to remove the earth and stones of the hill for purposes of reclamation; and that on May 10th, 1870, an indenture had been executed to which the Secretary of State, the E. Company, and all persons interested in the lease were parties, which indenture recited the above facts and contained mutual releases by the persons interested in the lease, the E. Company, and the Secretary of State in respect of any claims that might be made against any of them on account of the excavation of the said hill and the removal of the earth and stones therefrom. The said indenture also contained a confirmation, by the Secretary of State, of the lease of 1794. A schedule to the indenture described the property comprised in the lease and specified (*inter aliâ*) the "quarries situated at Bhandarvada Hill." *Held* that the words of the lease of 1794 were not ambiguous, and gave no right to remove the soil and stones, and that the acts of the parties could not be admitted to affect the construction of the lease. *Quære*—Whether the acts of the parties in removing soil, which removal was not proved to have taken place earlier than 1863, could be called in aid of the interpretation of ambiguous words in the lease of 1754. There was no "*contemporanea expositio.*" Even if the words quarries or mines had been used in the lease of 1794, they would have given no right to work quarries or mines other than those open when the tenant came in, which, moreover, he might have worked in the absence of such words. To allow the opening of new quarries or mines, an express power to that effect must be given. *Held* also that the Secretary of State was not estopped by the indenture of May 10th, 1870, from disputing the claimant's right to remove the soil and stones. The claimant's position had not been altered so as to make it inequitable in the Secretary of State now to assert his claims under the lease. *Held* also that the indenture of May 10th, 1870, did not operate as a fresh demise of the premises in their condition at the date of the indenture. A confirmation does not operate so as to make the estate confirmed subject to the incidents which it would have had if granted in the condition at the date of the confirmation. IN RE PURMANANDAS JEEWANDAS . **I. L. R., 7 Bom., 109**

57. ——— *Kabuliat, Construction of—Stipulations as to rent of new chur—Hawaladari tenure—Measurement and assessment of chur land—Landlord and tenant—Beng. Act VIII of 1869, s. 14.*—A kabuliat, executed by the tenant of land held in hawala tenure, provided that on an adjoining chur becoming fit for cultivation the whole land, old and new, held by the tenant should be measured, and the old having been deducted from the total, rent should be paid for the excess land at a specified rate up to five drones, and for any more at the prevailing pergunnah rates. It provided also that either (*a*) rent should be realized according to law with interest thereon; or that (*b*) at the close of the year the owner should, by a notice served on the hawaladar, require him to take a settlement of the excess land, and within fifteen days to file a kabuliat, or (*c*) the excess land might be settled with others. Such a chur having been formed, the zamindar measured without notice to, and in the absence of, the hawaladar. He then served a notice on the latter requiring him to execute a kabuliat within fifteen days for payment of a fixed rent upon the excess land as found by the measurement, or to yield up possession. Disregard of this led to a suit in which the zamindar claimed either khas possession or rent on measurement by order of Court. *Held* that neither the kabuliat nor the terms of s. 14 of Bengal Act VIII of 1869 precluded a suit for assessment of the rent upon measurement; nor did the absence of authentic measurement as prescribed by the kabuliat have that effect, or affect the measurement by the Amin; but that, until both the measurement and the assessment of the rent had taken place (which might be either in the manner prescribed or by judicial termination) the zamindar could not put the hawaladar to his choice between (*b*) executing a kabuliat for the rent and (*c*) yielding up possession. Ramkumar Ghose *v.* Kalikumar Tagore

[I. L. R., 14 Calc., 99
L. R., 13 I. A., 116

58. ——— **Provision for indigo concern passing into hands of others**—*Assignment of lease from two joint lessees to one of them.*—*N* and *D*, having taken a lease of certain lands, jointly give a kabuliat, agreeing that if within the term of the lease they die, or if in any other way the concern passed into the hands of others, then their heirs, or those who would succeed to their rights, would pay the rent. After the kabuliat was given, *N* made over his interest in the lease to *D*. *Held* that, in passing from *N* and *D* to *D* alone, the lease had passed into the hands of "others" within the meaning of the kabuliat, and that *D* occupied the position of the persons contemplated by the terms "those who will succeed to our rights." Bhobanee Chundra Mitter *v.* MacNair . . . **10 W. R., 464**

59. ——— **Joint lease**—*Joint liability for rent.*—When a lease is granted jointly to two tenants, both are jointly liable for the rent due under the lease, and one of them cannot divide this joint liability. Jogendra Deb Roy Kut *v.* Kishen Bundhoo Roy . . . . **7 W. R., 272**

Roopnarain Singh *v.* Juggoo Singh **[10 W. R., 304**

Bholanath Sircar *v.* Baharam Khan **[10 W. R., 392**

Gour Mohun Roy *v.* Anund Mundul **[22 W. R., 295**

60. ——— *Definition of right of each lessee in pottah—Separation of tenures.*—The fact that at the foot of a pottah the right of each lssee was defined was held not to bind the lessor to recognize each part as an independent and separate tenure, and the subsequent separate payments of rents by the tenants was held not to vary the nature of the tenure. Buloram Paul *v.* Suroop Chunder Gooho . . **21 W. R., 256**

61. ——— **Lease of jungle lands**—*Suit alleging interruption of lease to cut trees, etc.—Form of lease.*—Where an application for a lease for farming jungle lands was in its nature general, but the answer was specific and clear, and granted the lease on certain conditions, the answer determined the contract, and was the only contract between the parties. A lessee who sues, alleging that there has been an interruption to his lease to cut or sell the trees on the land included therein, must base his right, first, upon its being a necessary incident of the lease by reason of the objects of the lease; or, secondly, under some positive law; or, thirdly, under some custom to be incorporated in the lease; or, fourthly, under the express terms of the lease. Ruttonjee Eduljee Shet *v.* Collector of Thanna

[10 W. R., P. C., 13 : 11 Moore's I. A., 295

62. ——— **Breach of covenant not to injure trees**—*Construction of kabuliat.*—A kabuliat on which the tenant undertook to preserve certain trees in a jungle and not to injure them in any way, providing that, if he relinquished the talukh after destroying the jungle, he would pay R2,000 as the value of the trees, was construed to contain two distinct covenants, the second being a covenant not to injure the trees, on breach of which damages could be recovered. Wooma Soonduree Dossee *v.* Rajkisto Roy . . . **21 W. R., 366**

63. ——— **Lease of jungle lands by Government**—*Right to cut timber.*—Where jungle land was let by Government to a tenant for the express purpose of being brought into cultivation, and the lease contained no reservation of the rights of the Government in respect of the cutting of timber trees, the Court held that the parties contemplated that the cutting of such trees by the tenant would be necessary for carrying out the purposes of the lease. Kotun Ram Doss *v.* Collector of Sylhet **[22 W. R., 523**

64. ——— **Agreement for certain dues in nature of rent**—*Subsequent Government notification as to tenure.*—By an agreement entered into between the predecessors of the plaintiff, durmakurtahs of a temple, and the defendants, it was provided that the defendants should have a permanent right of cultivating certain lands belonging to the temple upon payment of the circar tirva and a swamibogam mentioned in the agreement. Subsequently to the agreement, the Government notified that the melvarum payable to the Government would be thenceforth permanent and not according to the nerick ascertained by reference to the market prices in certain towns, and the Government stated that any advantage arising from the change of system should go to the raiyats themselves. The plaintiffs sued the defendants to recover the balance of the market value of the produce of the land cultivated by the defendants after deducting the amount of circar kist paid by them. *Held* (reversing the decree of the lower Court) that the defendants were only liable to pay the amount of swamibogam mentioned in the agreement, and that no right was acquired by the plaintiffs by virtue of the subsequent arrangement made by the Government. THESIKAM IYENGAR *v.* GANAPATHY IYER . . . . . **4 Mad., 320**

65. ———— **Fishery pottah**—*Deprivation of fishery by order of Court.*—The provision in a fishery pottah that the lessee cannot sue for recovery if, through his own neglect or otherwise, he fail to catch fish, was held to be no bar to the lessee's claim to a refund of rent from the time that possession of the subject of the lease was taken away, by order of a competent Court, from his lessor, and consequently from him. RAM GOPAL SEIN *v.* ALLUM MULLICK **[7 W. R., 405**

66. ———— **Stipulation in lease for conversion of dry land into wet land**—*Stipulation in accordance with local custom.*—A pottah is enforceable which contains a stipulation that "if nunja cultivation be made on punja land permanently converted into nunja with or without water of the landlord's tank, nunja tirva according to the rate fixed for such cultivation shall be paid," when such stipulation is in accordance with local custom. SATTAPPA PILLAI *v.* RAMAN CHETTI . **I. L. R., 17 Mad., 1**

67. ———— **Agricultural lease—Lease of a coffee garden**—*Transfer of Property Act (IV of 1882), s. 117.*—A lease of a coffee garden is not an agricultural lease within the meaning of the Transfer of Property Act, s. 117. KUNHAYEN HAJI *v.* MAYAN . . . . **I. L. R., 17 Mad., 98**

68. ———— **Payment of rent**—*Provision for payment by instalments.*—Where a pottah, after providing for payment of rent by the dar-patnidar, "year by year, month by month, and kist by kist" contained a distinct declaration that if the dar-patnidar did not at the end of each month pay up the amount due for that month he should from the first day of the succeeding month pay interest upon the amount in arrear, the Court held that the Judge below was not correct in his construction of the pottah that the dar-patnidar was not bound to pay rent in equal monthly kists, nor liable to interest if he did not so pay it. BHYRUB CHUNDER BANERJEE *v.* AMEEROODEEN . . . . **17 W. R., 173**

69. ———— *Payment by instalments.*—It is contrary to usage to pay by monthly kists unless there is a special agreement to that effect. JOY KISHEN MOOKERJEE *v.* JANKEE NATH MOOKERJEE . . . . . **17 W. R., 471**

70. ———— **Proviso for re-letting in case of default in payment of rent**—*Lease in perpetuity.*—A lease purporting to be for a certain term of years contained a proviso that if at any time the lessee should make default in payment of rent the lessor should be at liberty to let the lands to another lessee. *Held* that the introduction of this proviso did not make the lease operate as a grant in perpetuity so long as the rent was paid, but merely had the effect of enabling the lessor to determine the lease within the term, in case of default by the tenant in paying the rent. SHAHYE ROYREE *v.* BARTON **[Marsh., 250 : 2 Hay, 14**

71. ———— **Proviso for default in payment of rent**—*Appointment of sezawal—Condition precedent.*—A lease for a term of years contained a proviso that, if in any year the rent should be three kists in arrear, the lessor might appoint a sezawal, and the lessee would pay his salary; and if, notwithstanding the appointment of such sezawal, the arrears of rent were not paid by the end of the year, the lessor should be at liberty to rescind the lease. *Held* that it was a condition precedent to the right of the lessor to rescind the lease, that he should have appointed a sezawal. LALL LUTCHMEE PERSHAUD *v.* BHOODHUN SINGH . . . . **Marsh., 474**

72. ———— **Right of re-entry for non-payment of rent**—*Act X of 1859, s. 22.*—Where a lease provided that in case of a default in the payment of rent, the lessor should have the power of re-entry without expressly mentioning the mode of effecting it, the lessor was bound to exercise this power according to the provisions of the law, s. 22, Act X of 1859. SOLANO *v.* HOORMUT BAHADOOR **[1 Hay, 573**

73. ———— **Right of re-entry**—*Implied right of re-entry.*—Although a pottah does not contain words specifying the right of re-entry, the Court will give effect to words which, reasonably construed, involve that right. SHADHOO JHA *v.* BHUGWAN CHUNDER OPADHIA . **1 Ind. Jur., N. S., 75 [5 W. R., Act X, 17**

74. ———— *Conditional lease—Right to recover property.*—If a party leases an estate in patni, reserving to himself the right of re-entry on condition of his wishing to hold the property khas, he cannot sue to recover possession for the purpose of leasing it to a third party. RUGHOONATH COONDOO *v.* HURISH CHUNDER ROY **[W. R., 1864, 326**

75. ———— *Hereditary tenures—Lessor's right of re-entry—Cause of action.*—Where there are no words in a lease extending its provisions to other parties beyond the lessee, its term must be interpreted as applicable to the lessee only, unless the Court is able, from the conduct of the parties and the surrounding circumstances, to come to a different conclusion. Where a lease contains a condition whereby the lessor agrees not to pu an end to the mokurari of his lessee, except on the occurrence of a fresh settlement on the part of Government, it does not follow that the lessor intends to constitute a hereditary lease if no Government settlement took place. In such a case a lessor's right to re-enter arises on the death of the lessee; but if the representatives of the lessee have been allowed to hold over by the heirs of the lessor, to whom they have paid rent, the cause of action to a purchaser of the lessor's rights and interests arises on the refusal of the lessee's representatives to permit him to re-enter. LEKHRAJ ROY *v.* KANHYA SINGH

[14 W. R., 262

76. ———— **Proviso against sub-letting** —*Breach of condition in lease—Omission of clause for re-entry—Act X of 1859, s. 23, cl. 5—Suit for ejectment.*—A lease contained a stipulation that the raiyat should give up such part of the land as was unfit for the cultivation of indigo, and should not sublet the same. *Held* that, as the lease contained no proviso for forfeiture, or right of re-entry for the breach of this covenant, the landlord was not entitled upon such breach to maintain a suit under Act X of 1859, s. 23, cl. 5, to eject the raiyat. GOOROOPERSAUD SIRCAR *v.* PHILIPPE **Marsh., 366 : 2 Hay, 451**

77. ———— *Breach of condition.*—Where a lease contained a stipulation against sub-letting without the lessor's consent, and the lease violated this stipulation, it was held that the stipulation was a reasonable one, and that the lessor might either bring an action for damages for its breach, or a suit for an injunction to restrain such sub-letting by the lessee. MOHANA *v.* SADODIN

[7 Bom., A. C., 69

78. ———— **Right to assign or sub-let** —*Conditions attached to zamindar's estate—Construction of lease.*—The right to assign or sub-let is as well established an incident of a tenancy at a rent for a determinate period when the contract of letting is silent on the subject, as it is of an estate for life or of inheritance, and there is nothing in the nature of the conditions attached to a zamindari estate which renders an assignment of a lease of such estate an exception to the general rules. *Held,* on the construction of a lease, that the language did not evidence a contract purely personal to the lessee and his heir so as to exclude the right to assign. VENKATASAMY NAICK *v.* MUTHUVIJIA RAGUNADA RANI KATHAMA NATCHIAR *alias* KULANDAPURI NATCHIAR . . . . . . **5 Mad., 227**

79. ———— **Prohibition against alienation.**– A pottah which provided that the grantor was not to alienate or lease the property to any other party during the term of the pottah, without giving the lessees under the pottah the refusal, was upheld. MOHIMA CHUNDER SEIN *v.* PITAMBUR SHAHA

[9 W. R., 147

80. ———— *Mulgeni tenure, History and nature of—Alienation not a necessary incident—Clause against suffering attachment and sale valid—Right of re-entry—Clauses against*

alienation—Policy of the law—Transfer of Property Act, IV of 1882.—The plaintiff sued to establish his right to attach and sell certain land in execution of a decree obtained by him against a third party who held the land from the defendant under a mulgeni lease. The lease contained a clause which, after forbiding the tenant from alienating it by mortgage, sale, or lease, stipulated that the tenant was not to let it be sold, or attached and sold in satisfaction of judgment-debts, and that, if he did, the landlord might take away the land and give it to others for cultivation. The defendant contended that the land could not be attached and sold by reason of this clause. The lower Courts held that the clause was invalid, both because such a restriction on alienation was repugnant to the mulgeni tenure in contemplation of law, and because, occurring in a lease which was virtually in perpetuity, it would make the land for ever inalienable, and was therefore against public policy. On appeal to the High Court,—*Held* that the clause was not invalid on either ground. The nature and history of the mulgeni tenure considered. The policy of the law, as evidenced by the Transfer of Property Act, IV of 1882, with regard to clauses against alienation, considered. *Held* also that, if the tenant allowed the land to be attached and sold by not taking measures to satisfy his judgment-debts, it would be a breach, both according to the letter and spirit of the clause in the lease, and would give the lessor a right of re-entry. *Held* further that, although technically there would be no breach or right of re-entry until attachment and sale had been suffered by the tenant, yet, as the attachment of itself could be of no use to the creditor, since the debtor was already prevented by his lease from alienating, and as it would be necessary, even if the attachment were allowed, to forbid the sale by a concurrent order, the attachment itself, which would under those circumstances be futile, should not be permitted. VYANKATRAYA *v.* SHIVRAMBHAT

[I. L. R., 7 Bom., 256

81. ———— *Lease to an undivided Hindu family—Partition—Covenant against alienation—Alienation voluntary or by act of law—Attachment and sale—No clause of forfeiture or re-entry—Non-payment of rent—Rights of the muli or landlord.*—The plaintiff leased his land under a mulgeni chetti, or lease at a fixed rent, to defendant No. 1, who then lived in union with his brothers, defendants 2 and 3, and acted as manager of the family. The lease contained a clause against alienation by the lessee by mortgage, sale, gift, or otherwise, but did not provide for re-entry or forfeiture in case of breach. A partition of the land among the brothers subsequently took place. The shares of defendants 1 and 2 were afterwards sold, the former at a Court sale in execution of a decree and the latter by private contract, and were purchased respectively by defendants 4 and 5, who entered into possession. Plaintiff now sued to recover his land, contending that the breach of the covenant against alienation had worked a forfeiture, and likewise for one year's rent, claiming the whole of it from

LEASE—*continued.*

1. CONSTRUCTION—*continued.*

defendant No. 1. *Held*, following the decision in *Vyankatraya* v. *Shivrambhat, I. L. R., 7 Bom., 256,* that the restriction against alienation was valid, but went no further than to prohibit alienation by the act of the parties themselves, and then even did not provide for forfeiture or re-entry on breach, and had no application to the case of an alienation by act of law as by attachment and sale in execution of a decree. That the plaintiff had therefore no right to recover possession from any of the defendants,—his only remedy being in damages for breach of the covenant against alienation. *Held* further that defendants 1, 2, and 3 were severally liable for the whole amount of the rent claimed, as the lease was taken by defendant No. 1 for the benefit of the undivided family; and the plaintiff was no party to the partition, neither had he at any time recognized defendants 4 and 5 as his tenants. TAMAYA *v.* TIMAPA

[I. L. R., 7 Bom., 262

82. ——————— *Osathowla—Re-entry—Forfeiture—Sale in execution of decree—Saleable interest—Alienation by operation of law—Conditions restraining alienation.*—A sued to recover possession of certain land which was leased in osathowla by his father to *B.* The lease expressly prohibited the lessee and his heir from making any assignment of the property either by sale or gift, but it did not contain any provision for forfeiture or for re-entry by reason of an assignment in violation of its terms, nor was there any provision restricting a sale in execution of decree. The osathowla passed to *B's* executor, and was sold in execution of a decree against *B.* *Held* that the sale passed a good title. It is clear law in India, as in England, that a general restriction on assignment does not apply to an assignment by operation of law taking effect *in invitum,* as a sale under an execution. *Vyankatraya* v. *Shivrambhat, I. L. R., 7 Bom., 256; Diwali* v. *Apaji Ganesh, I. L. R., 10 Bom., 342;* and *Tamaya* v. *Timapa Ganpaya, I. L. R., 7 Bom., 262,* referred to. *Held* also that, even if there had been a provision in the lease for forfeiture or for re-entry by reason of an assignment in violation of its provisions, it would not have the effect of invalidating the sale in execution, which has always been held not to be of itself a breach of a covenant not to assign. GOLAK NATH ROY CHOWDHRY *v.* MATHURA NATH ROY CHOWDHRY

[I. L. R., 20 Calc., 273

83. ——————— *Condition restraining alienation—Alienation voluntary or by act of law—Condition for benefit of lessor—Re-entry—Forfeiture—Transfer of Property Act (IV of 1882), ss. 10, 11, 12, 111, cl. (g).*—By a clause in a lease it was stipulated that the lessee would not transfer in writing the land leased to him, and that, if he did so, the sale was to be void. The land was sold to the defendants in execution of a decree obtained against the lessee. In a suit in ejectment by the assigns of the lessors,—*Held* that the condition was void under s. 10 of the Transfer of Property Act, no right of re-entry being reserved to the lessors by the lease. NIL MADHAB SIKDAR *v.* NARATTAM SIKDAR

[I. L. R., 17 Calc., 826

LEASE—*continued.*

1. CONSTRUCTION—*concluded.*

84. ——————— *Covenant by lessee not to purchase under-tenant's holding—Validity thereof—Covenant running with land.*—The defendants, who were patnidars of 10 annas of a certain pergunnah, gave a temporary lease of their share to the plaintiffs, the lease containing the following stipulation: "You shall not purchase the jote right of any of the tenants either in your own names or benami; if you do so, the purchase shall be null and void; after the expiry of the term, the ijara mahals will come to our khas dakhal. You shall not be able to raise any sort of objection thereto; if you raise any such objection, it shall be void." Shortly before this, the plaintiffs had obtained a lease of the remaining 6 annas directly from the zamindar, the lease containing the same stipulation as stated above. During the continuance of these leases, the defendants obtained from the zamindar a patni of 2 annas and a mokurari of another 2 annas out of the 6 annas already leased out by the zamindars to the plaintiffs. The plaintiffs during the term of their lease purchased certain jote rights in execution of decrees for arrears of rent. They brought the present suit for recovery of possession of these jotes on the allegations that the defendants had dispossessed them from the same after expiry of their lease. *Held* that the stipulation in the deed was a valid one and there was nothing against public policy in such a restriction as was contained in those leases, and that the defendants were entitled to the benefit of the stipulation not only in respect of the 19 annas which they originally held as patnidars, but also in respect of the 4 annas which they subsequently acquired, because a covenant such as that contained in the lease of the zamindar is one the benefit of which ought to run with land, and that the defendants were rightly in possession. WATSON & Co. *v.* RAM CHAND DUTT . . **1 C. W. N., 174**

2. ZUR-I-PESHGI LEASE.

85. ——————— **Nature of zur-i-peshgi lease**—*Mortgage.*—A zur-i-peshgi lease is nothing but a simple mortgage, and may at any time be cancelled on the advance being proved to have been discharged with interest from the usufruct, or otherwise liquidated by the mortgagor, notwithstanding the non-expiry of the term mentioned in the deed. NUND LALL *v.* BALUK . . . **2 Agra, 122**

PULTUN SINGH *v.* RESHAL SINGH . **1 W. R., 7**

86. ——————— **Suit to set aside zur-i-peshgi lease**—*Act X of 1859, s. 25—Ejectment.*—A zur-i-peshgi lease (which does not provide for its cancelment in the event of a breach of any of its conditions, but provides for the cancelment of all sub-leases) cannot be set aside because of the act of the zur-i-peshgidar granting a kutkina. The kutkina may be set aside, and the zur-i-peshgidar be liable in damages for any injury which may have accrued to the zamindar. S. 25, Act X of 1859, was not applicable to such a case, but only to cases when the period of the lease had expired. But as a zur-i-peshgi lease has always been treated as a mortgage, a suit to set it aside cannot be brought in the Collector's Court unless the terms of the lease distinctly provide for such a course of procedure in the event of a breach of any of its conditions. Mahomed Ali v. Batook Dao Narain Singh [1 W. R., 52

Ruttun Singh v. Greedharee Lall [8 W. R., 310

87. ——— Rent not paid when due—*Right to set off against advances.*—Where a plaintiff let out in zur-i-peshgi certain property for a fixed period at a certain rental, in consideration of a sum of money advanced, and the defendant withheld and did not tender the rent as it fell due,—*Held* that the plaintiff was entitled to set off the rent so withheld against the money advanced, and was entitled to claim an account as against the defendant, although the period for which the zur-i-peshgi lease had to run had not expired. Nurshing Narayan Singh v. Lukputty Singh . . **I. L. R., 5 Calc., 333**

88. ——— Zur-i-peshgi pottah, Construction and effect of—*Raiyati holding, Creation of.*—The plaintiffs granted to the defendants a zur-i-peshgi pottah which provided for a lease for five years. It provided further that the whole of the rent for that period was to be taken by the zur-i-peshgidars on account of the profits of their zur-i-peshgi with the exception of one rupee which was to be paid yearly to the proprietors; and that, if the zur-i-peshgi money was not paid at the end of the five years, the zur-i-peshgidars would remain in possession until payment. *Held* that this deed did not create a raiyati tenure. *Bengal Indigo Co.* v. *Raghobur Das, I. L. R., 24 Calc., 272,* referred to. Ram Khalawan Roy v. Sambhoo Roy [2 C. W. N., 758

89. ——— Collection of rents by zamindar—*Right to recover rents so collected.*—A zamindar, after he had granted a zur-i-peshgi lease, collected the rents from the raiyats. *Held,* first, that the lessee was entitled to treat the rents so received as a payment of rent under the lease, and, secondly, was entitled to recover from the zamindar the amounts of rents so received in excess of the rent due under the lease. Rampershad Vogut v. Ramtohul Singh . . . **Marsh., 655**

90. ——— Suit by mortgagee for balance uncollected.—A mortgagor granted a ticca lease of the mortgaged land for ten years to *B R,* and under an assignment executed by the mortgagor it was arranged between him and the mortgagee that the latter should pay himself off the ticca rents at a certain rate annually until the realization of the mortgage-debt with principal and interest. *Held* that, until the mortgagee could prove that something had happened to disturb the arrangement made between him and the mortgagor under the terms of the deed of assignment, he could not, either according to law or the terms of the contract, call upon the mortgagor or his representatives to pay the balance of the mortgage-debt or to have that balance realized from the sale of the mortgaged property. Junessur Dass v. Lalla Ramdhunee Lall [17 W. R., 263

91. ——— Usufructuary lease—*Right to have property sold.*—Where a lease gives the lessee the right to continue in possession until money borrowed from him is liquidated, the lessor is put in the position of a mortgagor, and, to the extent of the security given, the lessee is in the position of a mortgagee, but the lessee is not entitled to have the property sold. Kewul Sahoo v. Rash Narayan Singh . . . . . **13 W. R., 445**

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See Security for Costs—Suits.
[7 B. L. R., Ap., 60

LEAVE TO APPEAL.

See Cases under Privy Council, Practice of—Special Leave to Appeal.

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[I. L. R., 18 Mad., 153

See Mortgage—Sale of Mortgaged Property—Rights of Mortgagees.
[I. L. R., 16 Calc., 132, 682
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I. L. R., 19 Calc., 4
4 C. W. N., 474

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[I. L. R., 18 Mad., 153
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[I. L. R., 13 All., 211
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[I. L. R., 18 Bom., 717

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[7 B. L. R., Ap., 61

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[6 B. L. R., Ap., 64
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9 B. L. R., 441

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[I. L. R., 3 Calc., 370, 539

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[I. L. R., 23 Calc., 573

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See Execution of Decree—Mode of Execution—Mortgage.
[I. L. R., 24 Calc., 190

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[1 Ind. Jur., N. S., 218
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I. L. R., 13 Bom., 404
I. L. R., 15 Bom., 93
I. L. R., 17 Bom., 466

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[9 Bom., 429
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[21 W. R., 204
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[I. L. R., 20 Bom., 767
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1 C. W. N., 156

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[I. L. R., 21 Calc., 180, 181 note
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[I. L. R., 17 Bom., 466

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[I. L. R., 21 Bom., 257

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[I. L. R., 18 Calc., 144

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[I. L. R., 18 Mad., 236

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[I. L. R., 1 All., 762, 772

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[I. L. R., 16 Calc., 549

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[16 W. R., 305

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[2 Agra, 171
13 W. R., 354
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[I. L. R., 18 All., 260

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[I. L. R., 21 Calc., 832

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——— to person appointed Executor.

See Succession Act, s. 128.
[I. L. R., 15 Calc., 83

——— Assignment of, to executors— *Void assignment.—Semble*—That an assignment by a legatee to an executor of a legacy is void. Vaughan *v.* Heseltine . I. L. R., 1 All., 753

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[I. L. R., 1 All., 762

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[I. L. R., 1 All., 772

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See Cases under Hindu Law—Alienation—Alienation by Widow.

LEGAL PRACTITIONERS' ACT (XVIII OF 1879).

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[I. L. R., 6 Mad., 252

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[I. L. R., 6 Mad., 252

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[I. L. R., 9 Mad., 375

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See Mukhtear . I. L. R., 4 All., 375

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—*continued.*

———— **s. 13, cl. (f), and s. 14.**

See MUKHTEAR **I. L. R., 27 Calc., 1023**

———— **ss. 14 and 40**—*Irregularity in procedure in dismissing a mukhtear.*—A charge of unprofessional conduct brought against a practitioner holding a certificate under Act XVIII of 1879 having been found to be established by a subordinate Court, which also considered that he in consequence should be dismissed, and the same having been reported, in conformity with s. 14 of that Act, to the principal Court in the province, such dismissal was ordered. *Held* that the practitioner could not be dismissed or suspended under that section without his having been allowed, under s. 40, an opportunity of defending himself before that Court. It is within the duties of a Court, informed of the misconduct of one of the practitioners before it, to take steps to have the matter adjudicated upon. IN THE MATTER OF SOUTHEKAL KRISHNA RAO **I. L. R., 15 Calc., 152**
[L. R., 14 I. A., 154

———— **s. 32.**

See MUKHTEAR . **I. L. R., 4 All., 375**

———— *Outsider practising as mukhtear, his liability to punishment—Mukhtears, their functions—Civil Procedure Code, s. 37.*—Act XVIII of 1875 is an amending as well as a consolidating Act, and one of the respects in which it amended the old law was the conferring upon the High Court power "to make rules declaring what shall be deemed to be the functions, powers, and duties of the mukhtears practising in the subordinate Courts. When a person other than a duly certificated and enrolled mukhtear constantly, and as a means of livelihood, performs any of the functions or powers which the rule framed by the High Court in accordance with the provisions of the Legal Practitioners Act says are the functions and powers of a mukhtear, he practises as a mukhtear and is liable to a penalty under s. 32 of the Act. The words "any person" in s. 32 embrace pure outsiders as well as duly qualified and enrolled mukhtears who have failed to take out their certificates. *G N*, though not a certificated mukhtear, was in the habit of appointing and instructing pleaders in the Civil Courts on account of certain persons who paid him a regular monthly salary for so doing. In a proceeding against him under the Legal Practitioners Act *G N* made this statement: "I receive a letter from the mofussil from a person and act for him, he sending the vakalutnama with his letter. I receive monthly wages from each of the persons who employ me. Each of the employers I have mentioned belongs to a distinct family and lives in a separate village." *Held* that *G N* was neither a private servant nor a recognized agent of any of his employers within the meaning of s. 37 of the Civil Procedure Code, and was liable to a penalty under s. 32 of the Legal Practitioners Act for having practised as a mukhtear. *Held* also that, having regard to the Court in which *G N* practised, the words in s. 32 "to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court" were equivalent to the words "to a fine not exceeding R250." IN THE MATTER OF THE PETITION OF GIRHAR NARAIN. TUSSUDUQ HUSAIN *v.* GIRHAR NARAIN . . . **I. L. R., 14 Calc., 556**

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———— **s. 36.**

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT—CIVIL CASES.
[I. L. R., 21 All., 181
4 C. W. N., 36

———— *Legal Practitioners' Act Amendment Act (XI of 1896), s. 4—Legal proof—Nature of evidence required—Power of superintendence of High Court—Charter Act (24 & 25 Vict., c. 104), s. 15.*—Where a District Judge relying upon an unverified report purporting to come from the Secretary of a Bar Association framed and published the name of the petitioners in the list of touts,—*Held* that the words "proved to their or his satisfaction" in s. 36, Act XI of 1896, refer to proof by any of the means known to the law of the fact upon which the Court is to exercise its judicial determination, and the Judge had acted without having before him any legal evidence as required by s. 36, Legal Practitioners Act. The High Court may interfere in such a case under the wide powers of superintendence given to it by the Charter Act. IN RE SIDDESHWAR BORAL . . . . . . **4 C. W. N., 36**

See IN THE PETITION OF MADHO RAM
[I. L. R., 21 All., 181

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See LEGAL PRACTITIONERS ACT, s. 36.
[4 C. W. N., 36

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LEGAL REMEMBRANCER.

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See PRACTICE—CRIMINAL CASES—RULE TO SHOW CAUSE **I. L. R., 4 Calc., 20**

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See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.
[I. L. R., 17 Mad., 373

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See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.
[I. L. R., 1 Calc., 431

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[6 B. L. R., 392, 459

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[I. L. R., 10 Bom., 422

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[I. L. R., 18 Bom., 636

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[8 Bom., A. C., 195
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[7 Bom., Cr., 6
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[I. L. R., 26 Calc., 188

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[1 C. L. R., 239

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[9 B. L. R., Ap., 42

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See CONSIDERATION.
[2 Ind. Jur., N. S., 243

LETTERS.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—LETTERS.
[12 B. L. R., 317
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See EVIDENCE—CRIMINAL CASES—LETTERS.
[9 B. L. R., 36 : 17 W. R., Cr., 15

———— in post office.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—LETTERS IN POST OFFICE.
[I. L. R., 13 Mad., 242

———— of assignment.

See STAMP ACT, 1869, s. 3, ART. 18.
[I. L. R., 2 Calc., 58

LETTERS OF ADMINISTRATION.

See CASES UNDER CERTIFICATE OF ADMINISTRATION.

See COSTS—SPECIAL CASES—LETTERS OF ADMINISTRATION.
[I. L. R., 2 Bom., 9

See ILLEGITIMACY . 11 B. L. R., Ap., 6

See CASES UNDER PRACTICE—CIVIL CASES—PROBATE AND LETTERS OF ADMINISTRATION.

———— Duty payable on—

See CASES UNDER COURT FEES ACT, SCH. I, ART. 11.

———— with will annexed, Grant of—

See PROBATE—TO WHOM GRANTED.
[I. L. R., 19 Calc., 582
I. L. R., 15 Mad., 360
I. L. R., 22 Mad., 345

See SUCCESSION ACT, s. 258.
[I. L. R., 1 Calc., 149

1. **———— Jurisdiction of High Court**—*British-born subject dying at Moulmein.*—In the case of a British-born subject dying and leaving assets in Moulmein, but none in Calcutta, and a will, dated 5th August 1865, before Act X of 1865 came into operation,—*Held* that the executrix could not obtain probate or letters of administration with the will annexed from the High Court in Bengal. SAUNDERS *v.* NGA SHOAY GEEN . . 8 W. R., 3

2. ——————— *High Court, N.-W. P.—Administrative operation in Bengal.*—A British subject died intestate, leaving property within the jurisdiction of the High Court of the N.-W. P. and of the High Court at Fort William. General letters of administration were granted by the High Court of the N.-W. P. to the Administrator General of Bengal, who was not then aware that the deceased had left property within the jurisdiction of the High Court at Fort William. On discovering that the deceased had left property within the jurisdiction of the latter Court, the Administrator General applied to that Court for general letters of administration, which were granted by the Court on condition that he would apply to have the letters of administration granted by the High Court of the N.-W. P. recalled. The High Court at Fort William has power to grant to the Administrator General letters of administration which shall operate throughout the whole of the Presidency of Bengal. IN THE GOODS OF NECHTERLEIN

[1 B. L. R., O. C., 19

3. ——————— *Attorney of executor—Administrator General.*—The High Court had no power to grant letters of administration to the attorney of the executor of a deceased in respect of assets situate in the Punjab. The High Court has power to grant letters of administration in respect of such assets to the Administrator General. IN THE GOODS OF DUNCAN . . **1 B. L. R., O. C., 3**

4. ——————— *Succession Act (X of 1865), ss. 212, 213—Attorney within jurisdiction of Court.*—Under ss. 212 and 213, Act X of 1865, it is necessary that the attorney applying for letters of administration should be within the jurisdiction of the Court. IN THE GOODS OF NESBITT. IN THE GOODS OF BRIANT . . . . **4 B. L. R., Ap., 49**

5. ——————— *Letters of administration or probate from Supreme Court.*—The obtaining of probate or letters of administration from the late Supreme Court is no ground for subjecting the party obtaining them to the jurisdiction of the High Court in matters connected with the estate in respect to which probate or letters of administration were so obtained. LESLIE *v.* INGLIS . **1 Hyde, 67**

6. ——————— *Widow not resident in any zillah—Act XXVII of 1860—Act VIII of 1865.*—Where a widow, not being resident in any zillah, has not been able to get a certificate under Act XXVII of 1860, letters of administration were, on the consent of the widow, directed to issue to the Administrator General. IN THE MATTER OF DAMOODAR DOSS . . . **Bourke, Test., 6**

7. ——————— **Jurisdiction of Recorder's Court.**—The Recorder's Court had the same powers in respect to the grant of probates to the estates of natives as the High Court before and after the passing of the Indian Succession Act,—*i.e.*, it could not grant probates of the will of a Hindu in any case in which, according to the Hindu law of inheritance and succession, the testator had no power to make a will; and, in dealing with the will after probate has been granted, the Court could not give effect to it, so far as it is contrary to the Hindu law of inheritance. *Quære*—Whether the Recorder's Court has power to grant letters of administration, or such letters with a will annexed, to the estates and effects of a native of British India; but in all cases it must be guided in granting them by the law of inheritance or succession of such native, and it cannot grant administration to the estate of a Hindu, Mahomedan, or Bhuddist which would interfere with such law. IN THE MATTER OF THE PETITION OF FUKEEROODEEN ADAM SHAH . . . . **11 W. R., 413**

8. ——————— **Administration with will annexed**—*Act VIII of 1855, s. 17—Pecuniary legatee—Administrator General.*—A pecuniary legatee is not entitled to letters of administration with will annexed in preference to a creditor, and therefore is not entitled, under ss. 10 and 17 of Act VIII of 1855, to a grant of administration in preference to the Administrator General. IN THE GOODS OF VIRGAL . . . . **1 Bom., 103**

9. ——————— **Ground for refusing letters of administration**—*Act VIII of 1855, s. 30.*—The statement of a belief by the Administrator General that applicants for probate are about to make charges with s. 30, Act VIII of 1855, prohibits, and thereby renders it illegal for them to "receive or retain," is not a sufficient ground for inducing the Court to refuse letters of administration to applicants otherwise well entitled, and whose application is altogether *dehors* the Administrator General's Act. IN THE GOODS OF BELLASIS. FOGGO *v.* LOUDON

[1 Ind. Jur., O. S., 139

10. ——————— *Minor Hindu widow—Guardian—Special citation—Caveat.*—Upon an application by the father of an infant Hindu widow for the grant of letters of administration to him as her guardian and as guardian of the estate of her deceased husband, and of the estate of the husband's mother, it appeared that the only property of the husband consisted of a sum of money ordered to be paid to him under a certain decree, upon his constituting himself the representative of the mother. This he had not done. It also appeared that there were no unliquidated debts due by the husband. The sum of money in question was in the hands of the Official Trustee. *Held* that letters of administration could not be granted to the father, but that the widow could apply when she came of age, and that until that time the Official Trustee could pay the income to her next friend for her maintenance. A special citation had been served on the step-mother of the husband, and she had entered a caveat. *Held* that she had no right to enter a caveat simply because she had received a special citation. IN THE GOODS OF HURRY DOSS BONERJEE . **I. L. R., 4 Calc., 87**

11. ——————— *Citation—Defective citation—Revocation of letters of administration—Act V of 1881, ss. 16 and 50.*—*S*, a Parsi, died, leaving a will, whereby he directed that after his death his estate should be managed by his widow *J*, and after her death by his sister-in-law *H*, and after *H*'s death by the appellant, his adopted son *H N*. On *J*'s death, the testator's brother *D*

applied for letters of administration, and issued a citation to the appellant *H N*. *H* entered a caveat. No further proceedings were taken, and the matter remained pending. On *H's* death, *D* applied for a fresh citation to the appellant *H N*, but the District Judge held it to be unnecessary, and declined to issue it. Letters of administration were then granted to *D*. The appellant *H N* subsequently applied for probate of the testator's will. The respondents filed caveats alleging that the will was void, on the ground of certain bequests contained in it. They further contended that, as the appellant had been cited to appear when application was made by *D* for letters of administration, he could not now apply to have the letters of administration cancelled. *Held* that the letters of administration granted to *D* should be revoked, and that probate should be granted to the appellant. The only citation which had been issued to the appellant was in 1882, when *D* commenced his proceedings to obtain letters of administration. At that time *H*, who was the executrix named in the will (the appellant *H N* being only named as executor on her death), was still alive, and the citation did not therefore call on him to accept or renounce executorship. On *H's* death, however, which took place before the actual grant of administration was made to *D*, such a citation was necessary, under s. 16 of Act V of 1881, before the grant could be legally made. In default of such a citation, the proceedings were defective in substance—a circumstance which constituted good cause for the revocation of the letters of administration, under s. 50 of Act V of 1881. HORMUSJI NAVROJI *v.* BAI DHANBAIJI **[I. L. R., 12 Bom., 164**

12. ——— *Administration de bonis non—Will relating to self-acquired property—Suit by testator's son—Probate and Administration Act (V of 1881), ss. 45, 82.*—A Hindu by his will bequeathed certain land, his self-acquired property, to his infant son. On his death, his widow, who was the executrix named in the will, took out probate, but she died intestate before she had fully administered the estate. The son now sued by his next friend to recover arrears of rent which had accrued due on the land, which had been leased to the defendants by the testator. *Held* that letters of administration *de bonis non* should have been taken out, and that, since the plaintiff did not represent the estate of the testator, he was not competent to maintain the suit. NARASIMMULU *v.* GULAM HUSSAIN SAIT **[I. L. R., 16 Mad., 71**

13. ——— *Deceased having no property or fixed place of abode within district—Jurisdiction of the District Judge—Succession Act (X of 1865), s. 240.*—A District Judge cannot grant letters of administration to a Parsi if the deceased had not at the time of his death a fixed place of abode or any property within his district. *See* s. 240 of the Indian Succession Act (X of 1865). FARDUNJI ASPANDIARJI *v.* NAVAJBAI **[I. L. R., 17 Bom., 689**

14. ——— *Probate and Administration Act (V of 1881), ss. 23, 41—Power of Court to associate another person with applicant in grant of letters of administration.*—On an application for letters of administration to which the applicant is legally entitled under s. 23 of the Probate and Administration Act, the Court has no power to order, under s. 41 of the Act, that another person who has no present interest in the estate should be associated with the applicant in the grant. S. 41 applies to a case where, for some just cause, the person who is legally entitled to letters of administration ought to be superseded, and the grant made to another person. ANNOPURNA DASI *v.* KALLAYANI DASI . . . **I. L. R., 21 Calc., 164**

15. ——— *Grant of administration without determining title to property.*—In an application for letters of administration, *held*, on the evidence, that the deceased left property to which administration could be granted without finally determining the title to such property. MOHUN PERSHAD NARAIN SINGH *v.* KISHEN KISHORE NARAIN SINGH **I. L. R., 21 Calc., 344**

16. ——— *Probate and Administration Act (V of 1881), s. 3—Majority Act (IX of 1875), s. 3—Application by person domiciled in State of Bikanir and of age by law of that State though under 18—Disability of minority, Period of, for aliens.*—The words "any other person who has not completed his age of 18 years" in s. 3 of the Probate and Administration Act (V of 1881), read with the preamble and s. 3 of the Indian Majority Act, mean any other person not domiciled in British India. S. 3 of the Probate and Administration Act therefore fixes the limit of the period of disability for the purpose of the Act, not only for persons domiciled in British India, but for any other persons, whether they be aliens or not. Where application was made by a person domiciled in the Native State of Bikanir (and who being more than 16 years of age had by the law of that State attained his majority, though he had not attained the age of 18) for letters of administration in respect of the estate of his father who had carried on business and left all his estate and effects in Calcutta,—*Held* that, the applicant not having attained the age of 18 years, the application must be refused. IN THE GOODS OF SEWNARAIN MOHATA . **I. L. R., 21 Calc., 911**

17. ——— *Promissory note given to a firm consisting of two undivided Hindu brothers—Suit on note on decease of the brothers—Partner, Suit by surviving.*—Two brothers, members of an undivided Hindu family, who traded as "T. Iyavier and Brother," became the holders of a promissory note given to the firm. The elder brother having died, his son joined the firm in his place, and he and his uncle filed a suit against the maker of the note, but before the action was heard, the uncle died, and his son (a minor) was substituted as plaintiff for him, suing by the other plaintiff as his next friend. The plaintiffs had not taken out letters of administration to their respective fathers' estates. *Held* (1) that, assuming that the younger brother could have sued as surviving member of the firm, on his death the necessity for taking out letters of

administration could not be avoided ; (2) that, if the debt was in reality due to the plaintiffs' family and not to the obligees of the bond, they could not sue upon it in their own right of survivorship without taking out letters of administration, since the promissory note did not disclose the nature of the debt, and, moreover, the other members of the family should have been joined as plaintiffs. *Venkataramanna* v. *Venkayya, I. L. R., 14 Mad., 377,* distinguished. CHOCKALINGA PILLAI *v.* NATESA AYYAR . . . **I. L. R., 17 Mad., 147**

18. ———————— *Application for letters de bonis non—Contents of petition—Succession Act (X of 1865), s. 269—Powers of administrator.*—In an application for letters of administration *de bonis non,*—*Held* it is not necessary to ask in the petition for leave to dispose of the property in any particular way. S. 269 of the Succession Act gives the administrator full powers in this respect. IN THE GOODS OF HEMMING **[I. L. R., 23 Calc., 579**

19. ———————— *Succession Act (X of 1865), s. 190—Dispute as to ownership of property.*—Certain land in dispute belonged originally to a Parsi named *D,* who died intestate. After his death, one of his brothers, without taking out letters of administration, sold the land to the plaintiff. The defendant claimed a right of way over this land, alleging that it was public land. He obtained an injunction from the Mamlatdar's Court, restraining the plaintiff from obstructing his alleged right of way. Thereupon the plaintiff filed a suit to set aside the Mamlatdar's order, and for a declaration that he was owner of the land, and that defendant had no right of way over it. Both the lower Courts rejected the plaintiff's claim on the ground that under s. 190 of the Succession Act (X of 1865) plaintiff could not establish his right to the land in the absence of letters of administration to the estate of *D,* the original owner. *Held,* reversing the decrees, that s. 190 of Act X of 1865 did not apply. Neither the plaintiff nor the defendant relied as the basis of his right on the previous title of *D.* There was no question of administration. TULJARAM *v.* BAMANJI KHARSEDJI . . **I. L. R., 19 Bom., 828**

20. ———————— *Letters of administration with will annexed—Non-acceptance of duties of executor—Refusal to take out probate—Probate and Administration Act (V of 1881), s. 18—Succession Act (X of 1865), s. 195—Acceptance or renunciation of executorship.*—An executrix, after being cited as provided by s. 16 of Act V of 1881 to accept or renounce her executorship, stated the she was administering the estate, but, having applied for a certificate under Act VII of 1889, did not consider it necessary to take out probate. *Held* that this was not such an acceptance as is contemplated by s. 18 of Act V of 1881, the language of which is the same as that of s. 195 of the Indian Succession Act (X of 1865), and that, on the executrix declining to prove the will, the District Judge was right in granting letters of administration with the will annexed to the sole residuary legatee. MOTIBAI *v.* KARSANDAS NARAYANDAS **[I. L. R., 19 Bom., 123**

21. ———————— *Court of Wards—"Person."*—The Court of Wards is not a "person," and letters of administration cannot under the law be granted to it. GANJESSAR KOER *v.* COLLECTOR OF PATNA . . . **I. L. R., 25 Calc., 795**
[2 C. W. N., 349

22. ———————— *Revocation of letters of administration—Omission to cite necessary party—Just cause—Probate and Administration Act (V of 1881), s. 50.*—Letters of administration may be revoked on the ground that proper citation were not served, whereby a necessary party was not served with a citation—that being a "just cause" within s. 50 of the Probate and Administration Act. IN THE GOODS OF GUNGA BISSEN MUNDRA **[2 C. W. N., 607**

See REBELLS *v.* REBELLS . **2 C. W. N., 100**

23. ———————— *Probate and Administration Act (V of 1881), s. 50—Effect of revocation of grant of letters of administration on jurisdiction of District Judge to grant fresh application.*—Where a grant of letters of administration made by a District Judge had been revoked under the provisions of s. 50 of Act V of 1881, it was *held* that the cause of revocation being removed, the Judge had jurisdiction to entertain a fresh application for the same object. BRIJ LAL *v.* SECRETARY OF STATE FOR INDIA . **I. L. R., 20 All., 109**

24. ———————— *Suit by unsuccessful claimant to letters of administration—Right of suit—Suit to determine right of inheritance or to be appointed shebait of temple.*—Where letters of administration were granted to the defendant, in preference to the plaintiff, the order granting the letters of administration is not a bar to the plaintiff bringing a suit for the purpose of determining any question of inheritance or of the right to be appointed as shebait the decree in which will supersede the grant. *Arunmoyi Dasi* v. *Mohendra Nath Wadadar, I. L. R., 20 Calc., 888,* referred to. JAGANNATH PRASAD GUPTA *v.* RUNJIT SINGH **I. L. R., 25 Calc., 354**

25. ———————— **Limited grant**—*Succession Act (X of 1865), s. 190—Hindu Wills Act (XXI of 1870).*—If Hindus take out letters of administration at all, they must take out general letters. Letters of administration limited to certain property cannot be granted. IN THE GOODS OF RAM CHAND SEAL . **I. L. R., 5 Calc., 2 : 4 C. L. R., 290**

26. ———————— *Grant to Hindu—Probate Act, V of 1881, s. 4.*—Certain joint property in which five brothers were interested being the subject of a suit in which the rights of all parties were fully ascertained and decreed, one of such parties (who died after the decree) was declared entitled to a 5-30th share in the joint estate. Subsequently to this decree, several orders were made in the

suit, appointing a receiver, ordering partition and excluding certain properties from partition, and directing an account. On partition, a 5-30th share in the properties ordered to be partitioned was allotted and made over to the guardian of the infant children of the sharer who had died, the remainder of the unpartitioned property being in the hands of the receiver. On the taking of the account, it was ascertained that the deceased sharer had during his lifetime overdrawn from the joint estate, and that the sums overdrawn by him would have to be made good out of the 5-30th share decreed to him. It being alleged by the present petition that the sum allotted to him would be insufficient to cover the deficiency, and there being certain Government securities and a small sum in cash belonging to the private estate of such deceased sharer in the hands of the Bank of Bengal, the Court, on an application made for the purpose, directed letters of administration, limited to the Government securities and cash, to issue, considering that the facts of the case warranted a departure from the rule laid down in *In the goods of Ram Chand Seal, I. L. R., 5 Calc., 2.* IN THE GOODS OF SUTTYA KRISHNA GHOSAL
[I. L. R., 10 Calc., 556

27. ———— Grant in respect of immoveable and moveable property—*Estate of deceased Hindu consisting of immoveable and moveable property.*—Except under special circumstances, letters of administration to the estate of a deceased Hindu must be taken out in respect of the immoveable as well as the moveable property forming part of such estate. IN THE GOODS OF GRISH CHUNDER MITTER
[I. L. R., 6 Calc., 483 : 7 C. L. R., 593

28. ———— Lost will—*Administration with will annexed—Succession Act (X of 1865), ss. 208-209—Hindu Wills Act (XXI of 1870), s. 2.*—The fact that a will has been lost is not, if its contents be satisfactorily proved, any bar to obtaining a grant of letters of administration with will annexed. Ss. 208 and 209 of the Succession Act (X of 1865) apply to the cases of granting letters of administration with will annexed to the estates of Hindus, where the will was executed after the 1st of September 1870. ISHUR CHUNDER SURMAH *v.* DOYAMOYE DEBEA
[I. L. R., 8 Calc., 864 : 11 C. L. R., 135

29. ———— Administrator of estate of deceased Hindu—*Suits brought and attachments issued before grant of letters of administration.*—The legal status of the administrator of the estate of a deceased Hindu, as compared with the legal status of the administrator of the estate of a deceased person who in his lifetime was governed by English law, pointed out. Where a Hindu died leaving a widow and no male issue, and two of the creditors of the deceased brought suits against such widow as the legal representative of the deceased, and attached before judgment certain property of the deceased and afterwards obtained judgments against the widow, an application on behalf of the Administrator General, who, at the widow's request, but after the judgments were obtained, took out letters of administration to the estate of the deceased, to have such attachments removed, was refused, though the Judge's order, directing that the letters should be issued to the Administrator General, was prior in time to the passing of the judgments; and the judgment-creditors were held entitled to be paid out of the property attached so far as the same proved sufficient for that purpose. LALLCHAUND RAMDAYAL *v.* GUMTIBAI. GHELLA PEMA *v.* GUMTIBAI . . . **8 Bom., O. C., 140**

30. ———— Khoja Mahomedan estate—*Succession in cases of intestacy of Khoja Mahomedans—Custom.*—A Khoja, having died intestate and without leaving issue, was survived by his mother (a widow), his wife and a married sister. *Held* that, according to the custom of the Khojas, his mother was entitled to the management of his estate, and therefore to letters of administration in preference to his wife or sister. HIRBAI *v.* GORBAI **12 Bom., 294**

31. ———— ———— Mahomedan *Khoja administrator, Powers of.*—The powers of a Khoja Mahomedan executor or administrator, like those of a Cutchi Mahomedan executor or administrator, seem to be generally limited to recovering debts and securing debtors paying such debts. Where a will gave the executor full powers with regard to the payment of the testator's debts,—*Held* that an administrator with the will annexed who was a Khoja Mahomedan succeeded to those powers, and in a suit brought against him as such administrator by an alleged creditor of the testator's estate represented all the persons interested in the estate. AHMEDBHOY HURIBHOY *v.* VULLEEBHOY CASSUMBHOY
[I. L. R., 6 Bom., 703

See IN THE MATTER OF ISMAIL HAJI ABDULLA
[I. L. R., 6 Bom., 452

32. ———— Joint letters of administration—*Applicant indebted to estate.*—Where there were grounds for believing that one brother was indebted to the estate of a deceased brother, the lower Court, it was held, exercised a wise discretion in refusing to grant letters of administration to such brother jointly with the other brothers of the deceased. IN THE GOODS OF STEPHEN
[1 B. L. R., S. N., 3; 10 W. R., 90

33. ———— Grant of, to Administrator General—*Administrator General's Act II of 1874—Act XIII of 1875—Rules of High Court, 21st June 1875.*—Grants of letters of administration to the Administrator General are made to him by virtue of Act II of 1874 (the Administrator General's Act), and are not in any way affected by the provisions of Act XIII of 1875 (the Act to amend the Succession Act). The form of grant should be general and unlimited. IN THE GOODS OF HEWSON
[I. L. R., 4 Calc., 770 : 4 C. L. R., 42

34. ———— Suit by Hindu widow as administratrix of her husband leaving a minor son—*Parties—Manager.*—A Hindu widow, who has obtained letters of administration from the High Court of the estate of her husband who has left a minor son, is not entitled in such character to maintain a suit with respect to immoveable property left by him. The Court refused to allow such a suit

LETTERS OF ADMINISTRATION —*concluded.*

to proceed adding the son as a party, or to treat the plaintiff as manager of the infant, but dismissed the suit with costs. KADUMBINEE DOSSEE *v.* KOYLASH KAMINEE DOSSEE . **I. L. R., 2 Calc., 431**

35. ——— Attorney of executor in England—*Costs of entering caveat.*—*L*, a British subject possessed of property both in India and England, died in England, leaving a will, by which he appointed four persons to be his executors in England, and *W D* his executor in India, "the latter accounting to the former for his intromission, upon which he will charge a commission of three per cent." Probate was granted to the four English executors, but *W D* renounced probate. On an application for letters of administration with the will annexed, to be granted to *D G L*, the attorney in India of the English executors, the Court, after directing a special citation to issue to the Administrator General, held that the English executors were intended by the testator to have power of administering his assets in India as well as in England, and therefore *D G L* as their attorney was entitled to letters of administration. IN THE GOODS OF LECKIE

[15 B. L. R., Ap., 8

36. ——— Security from administrator of Hindu estate — *Personalty.*—The security required from the administrator of the effects of a deceased Hindu extends, as in the case of an English administrator, only so far as to cover the personalty of the deceased. IN THE GOODS OF GOUR CHUNDER THAKOOR . **1 Ind. Jur., N. S., 229**

LETTERS PATENT, HIGH COURT, 1865.

——— Creation and continuation of High Court.—The High Court as now existing was continued, not created, by the Letters Patent of 1865. BARDOT *v.* "AUGUSTA" . . . **10 Bom., 110**

It was created by the Letters Patent of 1862.

1. ——— cl. 10—*Giving instructions to counsel—Reference from Small Cause Court—Attorney.*—Giving instructions to counsel in a reference from the Small Cause Court is acting for the suitor within cl. 10 of the Letters Patent of the High Court, and can only be done by an attorney of the Court. MORAN *v.* DEWAN ALI SIRANG

[8 B. L. R., 418

2. ——— *Civil Procedure Code, 1859, s. 17—Recognized agent.*—Under this clause, a "recognized agent" described in s. 17, Act VIII of 1859, has not the option of addressing the Court, as the suitor himself may do. PRANNATH CHOWDHRY *v.* GANENDRO MOHUN TAGORE . **3 W. R., 108**

——— cl. 12.

See APPEAL—LETTERS PATENT, CL. 12.

[13 B. L. R., 91
21 W. R., 204

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL.

[I. L. R., 13 Bom., 302

LETTERS PATENT, HIGH COURT, 1865 —*continued.*

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION.

See CASES UNDER JURISDICTION—SUITS FOR LAND.

See PARSIS . **I. L. R., 13 Bom., 302**

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND . **I. L. R., 3 Calc., 370**

[I. L. R., 13 Bom., 404

See RIGHT OF APPEAL.

[I. L. R., 17 Bom., 466

See STATUTES, CONSTRUCTION OF.

[I. L. R., 12 Bom., 507

1. ——— *Jurisdiction of High Court —Cases under R100.*—The High Court, under Letters Patent, 1862, cl. 12, had jurisdiction in all cases where the amount claimed is over R100, whatever may be the amount received. SIKUR CHUND *v.* SOORINGMULL . . . . **1 Hyde, 272**

2. ——— *Jurisdiction of High Court —Stat. 15 & 16 Vict., c. 76, ss. 18 and 19; and 9 & 10 Vict., c. 95, s. 128—Decisions of English Courts.*—The decisions of the English Courts on ss. 18 and 19 of the Common Law Procedure Act (15 & 16 Vict., c. 76), relating rather to matter of procedure than of jurisdiction, are not so much in point with regard to the interpretation of cl. 12 of the Letters Patent, 1865, as the decisions on s. 128 of the English County Courts Act (9 & 10 Vict., c. 95), which are directed to the marking out and limiting of the jurisdiction of the Court. SUGANCHAND SHIVDAS *v.* MULCHAND JOHARIMAL . **12 Bom., 113**

3. ——— *Whether an order granting leave to sue under this clause may form the subject of an issue for trial in the suit.*—The legality of an order granting permission to institute a suit under cl. 12 of the Letters Patent may form the subject of an issue for trial in the suit so instituted. NAGAMONEY MUDALIAR *v.* JANAKIRAM MUDALIAR

[I. L. R., 18 Mad., 142

4. ——— *Addition of a defendant residing out of jurisdiction in a suit in which leave to sue has been already obtained—Fresh leave to sue such new defendant.*—Where a defendant is added who does not reside within the jurisdiction of the High Court, and against whom the cause of action has not arisen wholly within that jurisdiction, leave must be obtained under cl. 12 of the Letters Patent, 1865, even if leave was obtained when the suit was originally filed. RAMPARTAB SAMRATHRAI *v.* FOOLIBAI . . . **I. L. R., 20 Bom., 767**

5. ——— *Application of restrictive words of cl. 12—Defendant.*—The restrictive words of cl. 12 of the Letters Patent, 1865, apply to the case of a plaintiff; but there is no similar restraining provision applicable to a case where the person seeking the exercise of the Court's jurisdiction is the defendant. KISSORY MOHUN ROY *v.* KALI CHURN GHOSE

[I. L. R., 24 Calc., 190
1 C. W. N., 156

LETTERS PATENT, HIGH COURT, 1865
—continued.

6. ——————— *Evidence as to jurisdiction at hearing—Plaint not showing that part of cause of action arose in the jurisdiction.*—The plaintiff as receiver to the estate of *S* instituted a suit on the 11th July 1898, against the defendants to recover the sum of R2,808-13-2, a portion of the said sum being the rent of a house occupied by the defendants at Mandalay since January 1894, till the 11th July 1898, the remaining portion being the price of goods sold by the defendants as agents of *S*. The plaintiff at the institution of the suit obtained leave under cl. 12 of the Charter. The defendant contended that the Court had no jurisdiction, inasmuch as the plaint on its face did not show that the cause of action or any part of it arose in Calcutta; that the cause title alone represented the defendants as carrying on business in Calcutta, and that portion of the plaint was not verified; nor could the plaintiff give evidence to prove that this cause of action arose in Calcutta, as it would be varying the cause of action, and that fresh leave would have to be granted, which could not be done in this suit. *Held* that the Court had jurisdiction, and the plaintiff was entitled to give evidence at the hearing to show that his cause of action arose in Calcutta. To admit evidence of that fact, and, if necessary, amend the plaint by adding a statement that part of the cause of action did arise in Calcutta, does not cause a variance in the original cause of action. It is sufficient to show that the cause of action or part of it arises in Calcutta when the suit comes on for hearing. FINK *v.* BULDEO DASS

[I. L. R., 26 Calc., 715

——— cl. 13.

See CASES UNDER TRANSFER OF CIVIL CASE—LETTERS PATENT, HIGH COURT, CL. 13.

——— cl. 15.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . **7 B. L. R., 730**

1. ——————— *Right of appeal—Appeal after new Letters Patent.*—Where two Judges decided a case of original civil jurisdiction under the original Letters Patent, but the decree was sealed, and appeal preferred after the amended Letters Patent had come into operation,—*Held* that the right of appeal to the High Court, constituted so as to hear an appeal from two Judges, which existed in such a case under cl. 14 of the old Charter, was taken away by cl. 15 of the new Charter, as there was no reservation therein that parties should retain any right of appeal which existed before its publication in respect of suits then pending, of judgments given, or of decrees made, but not executed. FRAMJI BOMANJI *v.* HORMASJI BARJORJI . **3 Bom., O. C., 49**

2. ——————— *"Judgment"—"Decree."* —*Per* PEACOCK, *J.*—A judgment under this section means a judgment in the nature of a decree on which action can be taken by the parties, and not merely the opinion expressed by the Judge, whether verbal or in writing, before a decree has been formally drawn out. DOUCETT *v.* WISE . **2 Ind. Jur., N. S., 280**

LETTERS PATENT, HIGH COURT, 1865
—continued.

3. ——————— *"Appeal—"Judgment"—Appealable order—Order granting mandamus.*—*Held* (*per* COUCH, *C.J.*, and MARKBY, *J.*, on appeal), the word "judgment" in cl. 15 of the Letters Patent of 1865 means a "decision," whether final or preliminary, or interlocutory, which affects the merits of the question between the parties by determining some right or liability. The order of the Court below, that a writ of mandamus should issue, was not a "judgment," therefore no appeal lay from it. JUSTICES OF THE PEACE FOR CALCUTTA *v.* ORIENTAL GAS COMPANY . **8 B. L. R., 433: 17 W. R., 364**

See HOWARD *v.* WILSON.

[I. L. R., 4 Calc., 231 : 2 C. L. R., 488

4. ——————— *Appeal from decision of a Judge exercising Admiralty or Vice-Admiralty jurisdiction—Practice — Vice-Admiralty Regulations of 1832, rule 35, Application of—Mentioning of the apportionment of award for salvage services —Peremption of appeal.*—Under cl. 15 of the Letters Patent, 1865, an appeal lies to the High Court from the decision of one of its Judges exercising Admiralty or Vice-Admiralty jurisdiction. Such appeals are governed by the practice under the Civil Procedure Code, and not by rule 35, of the Vice-Admiralty Regulations published under the authority of 2 Will. IV, c. 51. Rule 35 applies to appeals from the High Court to the Privy Council. The *Brenhilda, I. L. R., 7 Calc., 547 : L. R., 8 I. A., 159,* relied on. The mere fact of the salvors having appeared and mentioned in Court the matter of the apportionment of an award for salvage services reserved by the decree making the award, did not perempt an appeal from that decree. IN THE MATTER OF THE SHIP "CHAMPION" . . **I. L. R., 17 Calc., 66**

5. ——————— *Interlocutory order.*—*Quære* —Whether an interlocutory order can be made the subject of an appeal. BAMASOONDERY *v.* NILMONEY CHUNDER . . . . . . **Cor., 5**

6. ——————— *Appeal from interlocutory order.*—Under cl. 15 of the Letters Patent and under the rules of the Bombay High Court, an appeal to the High Court from an interlocutory order made by one of its Judges only lies in those cases in which an appeal is allowed under the Code of Civil Procedure and its amending Acts. SONBAI *v.* AHMEDBHAI HABIBHAI . . . . . **9 Bom., 398**

7. ——————— *Appeal—Judgment—Decision on settlement of issues—Interlocutory order.* —*Held* that no appeal lay from a decision upon the settlement of issues that a certain hibbanama relied upon by the appellants was invalid. *Per* GARTH, *C.J.*—The word "judgment" in cl. 15 of the Letters Patent, 1865, means a judgment or decree which decides the case one way or the other in its entirety, and does not mean a decision or order of an interlocutory character which merely decides some isolated point not affecting the merits or result of the entire suit. *Per* MARKBY, *J.*—The matter is one more of convenience and procedure than strict law. EBRAHIM *v.* FUCKHURNNISA BEGUM

[I. L. R., 4 Calc., 531 : 3 C. L. R., 311

LETTERS PATENT, HIGH COURT, 1865
—continued.

8. ——— *Order fixing date of hearing—Civil Procedure Code, s. 156.*—An order made by a Judge of the High Court at settlement of issues fixing a distant date for the hearing of a suit is not an order under s. 156 of the Civil Procedure Code and is appealable under Letters Patent, s. 15. R *v.* R.

[I. L. R., 14 Mad., 88

9. ——— *Appeal—Remand order.*—At the hearing of an appeal before a single Judge of the High Court, the case was remanded to the lower Court for the trial of certain issues of fact, the case being in the meantime retained on the file of the Court. *Held* that the order was not appealable under cl. 15 of the Letters Patent. KALIKRISTO PAUL *v.* RAMCHUNDER NAG

[I. L. R., 8 Calc., 147 : 9 C. L. R., 461

10. ——— *Civil Procedure Code, ss. 629, 632—Appeal from one Judge of High Court.*—Cl. 15 of the Letters Patent for the High Court of Judicature at Madras, which allows an appeal to the High Court from the judgment of one Judge of that Court, is controlled by s. 629 of the Code of Civil Procedure, which provides that an order of a Civil Court rejecting an application for review of judgment shall be final. ACHAYA *v.* RATNAVELU

[I. L. R., 9 Mad., 253

11. ——— *Civil Procedure Code, ss. 588, 592—Order of Judge of High Court rejecting application for leave to appeal as a pauper.*—Cl. 15 of the Letters Patent of the High Court at Madras being controlled by s. 588 of the Code of Civil Procedure, no appeal lies from the order of a single Judge of the High Court made under s. 592 of the Code of Civil Procedure rejecting an application for leave to appeal *in formâ pauperis.* IN RE RAJAGOPAL . . . . I. L. R., 9 Mad., 447

12. ——— *Appeal from decision of Division Bench in exercise of civil appellate jurisdiction.*—*Held* (JACKSON, J., doubting) an appeal lies under cl. 15 of the Letters Patent, 1865, from the judgment (not being a sentence or order passed or made in any criminal trial) of a Division Court in the exercise of appellate jurisdiction, when the Judges of such Court are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges. SURNOMOYEE *v.* LUCHMEEPUT DOOGUR

[B. L. R., Sup. Vol., 694 : 7 W. R., 52, 512

13. ——— *Difference of opinion between Judges—Appeal.*—In cases heard by the High Court in its appellate jurisdiction, where the Judges are equally divided in opinion, a party desirous of appealing is bound to appeal under cl. 15 of the Letters Patent before he can appeal to the Privy Council. COURT OF WARDS *v.* LEELANUND SINGH

[14 W. R., 298

14. ——— *Difference of opinion between Judges—Appeal.*—The difference of opinion between Judges constituting a Division Bench of the High Court, which entitles parties to an appeal to the High Court under cl. 15 of the Letters Patent, must be a difference of opinion as to the final and complete decision of the appeal, and not a difference of opinion upon one or more of the points arising in the appeal. IN THE MATTER OF THE PETITION OF OMRAO BEGUM

[13 W. R., 310

LETTERS PATENT, HIGH COURT, 1865
—continued.

15. ——— *Appeal from an order of a single Judge of the High Court in the exercise of the Court's revisional or extraordinary jurisdiction.*—No appeal lies under cl. 15 of the Letters Patent from an order of a single Judge of the High Court dismissing an application for the exercise of the Court's extraordinary or revisional jurisdiction. The Letters Patent provide for an appeal only from a judgment passed in the original or appellate jurisdiction of the High Court. HIRALAL *v.* BAI ASI

[I. L. R., 22 Bom., 891

16. ——— *Appeal from judgment of a single Judge made under Civil Procedure Code, s. 622.*—An appeal lies against an order made by a single Judge of the High Court under Civil Procedure Code, s. 622, when such order amounts to a judgment. CHAPPAN *v.* MOIDIN KUTTI

[I. L. R., 22 Mad., 68

17. ——— *Order of single Judge dismissing petition under Civil Procedure Code (Act XIV of 1882), s. 622.*—No appeal lies under Letters Patent, s. 15, against an order made by a single Judge dismissing an application under s. 622. SRIRAMULU *v.* RAMASAM I. L. R., 22 Mad., 109

18. ——— *Orders transferring case from Agency to District Court—Jurisdiction of High Court to transfer suit pending in the Agent's Court to the District Court—Indian Councils Act (24 & 25 Vict., c. 67), s. 25.*—An order was made by a single Judge, by consent of the parties, transferring a case from the Court of an Agent to the Governor, Vizagapatam, to a District Court. A further order was made by a single Judge which, though in form an order dismissing a review petition against the first-mentioned order, was in substance an adjudication upon the question whether the High Court has jurisdiction to order the transfer of a suit from the Court of such an Agent to a District Court. *Held* that both orders were "judgments" within the meaning of s. 15 of the Letters Patent, and that an appeal lay therefrom. MAHARAJAH OF JEYPORE *v.* PAPAYYAMMA . . . . I. L. R., 23 Mad., 329

19. ——— *Judgment—Appeal—Appealable order—Order rejecting review.*—An order passed by the senior of two Judges of a Division Bench who differed in opinion, dismissing an application for the review of their judgment, is not appealable. Such an order is not a judgment within the meaning of cl. 15 of the Letters Patent. RAKU BIBI *v.* MAHOMED MUSA KHAN

[4 B. L. R., A. C., 10

S. C. RUGHOO BIBEE *v.* NOOR JEHAN BEGUM

[12 W. R., 459

20. ——— *Appeal—Difference of opinion between Judges in review.*—Where two Judges of a Division Bench have concurred in a final decree, the fact that there is a difference of opinion as to one point, amongst others, raised in review on

LETTERS PATENT, HIGH COURT, 1865 —*continued.*

the judgment on which such final decree is based, is no ground for an appeal under cl. 15 of the Letters Patent. In the matter of the petition of Hurbuns Sahay. Hurbuns Sahay *v.* Thakoor Persad

[I. L. R., 10 Calc., 108 : 13 C. L. R., 285

21. ——— *Appealable order—Judgment—Decree—Order passed in suit referred to Commissioner to take accounts.*—The question whether or not an order is appealable is one for the decision of the Court. An order passed in a suit, referring it to the Commissioner to take the accounts between the parties, is a decree. An order passed on a certificate given (under Rule 371 of the Equity Rules of the Supreme Court) by the Commissioner subsequently to the order of reference is appealable. *Sonbai* v. *Ahmedbhai, 9 Bom., 398,* explained. *Justices of the Peace of Calcutta* v. *Oriental Gas Company, 8 B. L. R., 433,* distinguished. Hirji Jina *v.* Narran Mulji . . **12 Bom., 129**

22. ——— *Order of Judge in original jurisdiction.*—Under cl. 15 of the Letters Patent, an appeal lies from an order passed by a single Judge in the original civil jurisdiction of the High Court. Kristo Kissor Neoghy *v.* Kadermoye Dossee

[2 C. L. R., 583

23. ——— *Order allowing commission to Administrator General.*—An order passed by a single Judge of the High Court under Act II of 1874, s. 27, allowing to the Administrator General commission at a certain rate, is subject to appeal to the High Court under the 15th clause of the Letters Patent. *Justices of the Peace of Calcutta* v. *Oriental Gas Company, 8 B. L. R., 433,* and *Sonbai* v. *Ahmedbhai Habibhai, 9 Bom., 398,* distinguished from *DeSouza* v. *Coles, 3 Mad., 384,* and from the present case. Though such order, being discretionary, would not under ordinary circumstances be interfered with on appeal, yet, where it is not in accordance with the rule laid down in s. 54 of the Act, the Appellate Court will interfere to rectify it. In the goods of Lee Chengalroya Naicker. Somasundaram Chetti *v.* Administrator General

[I. L. R., 1 Mad., 148

24. ——— *Order refusing to set aside award—Letters Patent, High Court, 1865, cl. 15—Code of Civil Procedure (Act XIV of 1882), ss. 2, 588.*—An order made by a Judge of the High Court in the exercise of original civil jurisdiction refusing to set aside an award is a "judgment" within the meaning of cl. 15 of the Letters Patent of the High Court; and an appeal therefore lies from such an order to the High Court in its appellate jurisdiction. Such an appeal is not restricted by s. 588 of the Code of Civil Procedure. *Hurrish Chunder Chowdhry* v. *Kali Sunderi Debi, I. L. R., 9 Calc., 482 : L. R., 10 I. A., 4,* referred to. Toolsee Money Dassee *v.* Sudevi Dassee

[I. L. R., 26 Calc., 361
3 C. W. N., 347

25. ——— *Appeal from decision of Judge in original jurisdiction refusing leave to institute suit under cl. 12 of Letters Patent.*—An appeal lies from the decision of a Judge exercising original jurisdiction refusing to give leave to institute a suit on the original side of the High Court, in a case in which the cause of action has arisen in part within the ordinary original jurisdiction of the High Court; but the Appellate Court ought not to interfere with the discretion exercised by the Judge in such a matter. DeSouza *v.* Coles . . **3 Mad., 384**

LETTERS PATENT, HIGH COURT, 1865 —*continued.*

26. ——— *Order refusing to stay proceedings—Fresh suit after withdrawal without payment of costs.*—An order refusing to stay proceedings where the plaintiff, after being allowed to withdraw a suit with leave to bring another, and the payment of the costs of the former suit has not been made a condition precedent to the bringing of the fresh suit, is an order of an interlocutory character, and is not appealable. Chitto *v.* Muzzur Hossain

[2 Hyde, 212

27. ——— *Payment—Order refusing to confirm award.*—In a suit referred to arbitration under Act VIII of 1859, the arbitrator informed the parties that he had determined to award the plaintiff R1,500 with costs; but a few days afterwards, in consequence of a communication made by the defendant, the arbitrator held another meeting, at which the defendant for the first time contended that, as before the matter was referred to arbitration he had offered the plaintiff R1,500, he ought not to be made to pay the costs of the arbitration, and in support of his contention produced a letter written by the plaintiff's attorneys to his attorneys which was stated to be "without prejudice," and thereupon the arbitrator decided not to give the plaintiff costs. An application to confirm the award was refused by the learned Judge of the Court of first instance, upon the ground that the defendant had acted improperly in using the letter. *Held,* on appeal by the defendant, that the refusal to confirm the award was a judgment upon the whole subject-matter of the suit, and that an appeal would lie from such a judgment. Howard *v.* Wilson

[I. L. R., 4 Calc., 231 : 2 C. L. R., 488

28. ——— *Order of committal for contempt of Court—Procedure.*—Contempts are in the nature of offences, and therefore, under cl. 15 of the Letters Patent, 1865, an appeal lies from an order of committal for contempt. In dealing with an appeal from such an order, the Appellate Court will not go behind the order the disobedience to which constitutes the contempt. Navitahoo *v.* Narotamdas Candas . . . **I. L. R., 7 Bom., 5**

29. ——— *Order on hearing under s. 622, Civil Procedure Code—Judgment—Suit for rent.*—In a suit in a Small Cause Court for rent due in respect of two pieces of land, the Court passed a decree in favour of the plaintiff. The defendant preferred a petition to the High Court under Civil Procedure Code, s. 622, which came on for hearing before one Judge. He held that the Small Cause Court had failed to give effect to a former decree between the parties in respect of one piece of land,

and made an order reversing the decree as to that, and calling for a report of what was due on the other piece of land. The plaintiff preferred an appeal under Letters Patent, s. 15. *Held* the abovementioned order was subject to appeal as being a judgment. VANANGAMUDI *v.* RAMASAMI

[I. L. R., 14 Mad., 406

30. ———— *Order discharging rule to show cause why minor should not be delivered to claimant—Judgment—Custody of minor—Criminal Procedure Code, 1882, s. 491.*—The petitioner as step-mother claimed to be entitled to the custody of her deceased husband's minor son, who was living with *D*, his maternal uncle. She obtained a rule calling upon *D* to show cause why the child should not be delivered to her. After argument, the rule was discharged. *Held* that the order discharging the rule was a judgment within the meaning of cl. 15 of the Letters Patent, 1865, and that therefore under that clause the petitioner had a right to appeal against the order. IN THE MATTER OF NARRONDAS DHANJI. IN THE MATTER OF THE PETITION OF JAVERVAHU

[I. L. R., 14 Bom., 555

31. ———— *Act VI of 1874—Order granting appeal to Privy Council.*—Under cl. 15 of the Letters Patent, no appeal lies to the High Court from an order of the Judge in the Privy Council Department granting a certificate that a case is a fit case for appeal to Her Majesty in Council. MOWLA BUKSH *v.* KISHEN PERTAB SAHI

[I. L. R., 1 Calc., 102

S. C. MOWLA BUKSH *v.* HODGKINSON

[24 W. R., 150

32. ———— *Appeal from order of Judge in Privy Council Department—"Judgment," Meaning of.*—No appeal will lie from an order of a Judge granting a certificate that a case is a fit and proper one for appeal to the Privy Council. LUTF ALI KHAN *v.* ASGUR REZA

[I. L. R., 17 Calc., 455

33. ———— *Appeal from order of Judge in Privy Council Department refusing certificate of appeal.*—The Judge in the Privy Council Department refused an application for a certificate, but was stopped from giving his reasons by the petitioner's counsel, who had hopes of making a compromise. The attempt at compromise having failed, the petitioner afterwards appealed under cl. 15 of the Letters Patent, when the Judge in the Privy Council Department was referred to, and was not able to deliver any judgment. *Held* that, under such circumstances, no appeal lay to the High Court. TARA CHAND BISWAS *v.* RADHA JEEBUN MUSTOFEE

[24 W. R., 148

34. ———— *Appeal from order of Judge granting certificate of appeal to Privy Council—Act VI of 1874.*—When an appeal was made from an order of a Judge of the High Court granting a certificate, under Act VI of 1874, to the effect that the subject-matter of a certain suit was of the value of R10,000, and thus allowing an appeal to the Privy Council,—*Held* by a Bench of the Court that, as Act VI of 1874 did not confer the right of such an appeal, it could only be allowed now if it could be shown that the right existed before the passing of that Act, and found that, as a matter of fact, such a right did not previously exist. Although, under cl. 15 of the Charter of 1865, an appeal is given to the High Court from any judgment of a single Judge, an order or certificate of a Judge allowing an appeal to the Privy Council cannot properly be considered a judgment of the High Court. Such an order has its origin in an Act of Parliament for the better administration of justice in the Privy Council, and belongs rather to Privy Council proceedings than to the legitimate province of the High Court. In this view it is immaterial whether an order and certificate are for admission or refusal of appeal to the Privy Council. AMIRUNNISSA *v.* BEHARY LALL. KESHUB CHUNDER ACHARJEE *v.* HURRO SOONDUREE DEBEA

[25 W. R., 529

35. ———— *Order by Judge of the High Court presiding over the Privy Council Department—Judgment—Certified copy of order of the Privy Council—Civil Procedure Code (Act X of 1877), s. 610.*—A decree obtained on appeal by certain defendants in the High Court was appealed to the Privy Council by one only of the two plaintiffs to the suit, and the decision of the High Court was reversed; the plaintiff who had appealed assigned her share in the order of the Privy Council to one of the defendants, and delivered him the certified copy of the decree made in the Privy Council. The plaintiff who had not appealed to the Privy Council applied to the High Court for leave to transmit the order to the Court of first instance for execution of the share decreed to him, but, on account of the assignment abovementioned, was unable to produce the certified copy of the decree of the Privy Council. The Judge presiding over the Privy Council Department in the High Court held that the production of a certified copy of the order of the Privy Council was excusable under the circumstances, but refused the application, on the ground that the decree of the Court of first instance, which was affirmed by the Privy Council, could only be executed as a whole and not partly by one of the plaintiffs. *Held*, on appeal, *per* GARTH, *C.J.*—That the duties of a Judge in dealing with the meaning of decrees of the Privy Council are purely ministerial, and that any order made in such ministerial capacity could not be considered a judgment, and could not therefore be made the subject of an appeal to a Bench of the High Court under cl. 15 of the Charter. *Per* WHITE and MITTER, *JJ.*—An order of a Judge presiding over the Privy Council Department in the High Court, rejecting an application for execution, is a final order, and is a judgment within the meaning of cl. 15 of the Charter, and is therefore appealable. IN THE MATTER OF THE PETITION OF KALLY SOONDERY DABIA. KALLY SOONDERY DABIA *v.* HURISH CHUNDER CHOWDHRY

[I. L. R., 6 Calc., 594 : 7 C. L. R., 543

LETTERS PATENT, HIGH COURT, 1865 —*continued.*

In the same case on appeal to the Privy Council,—*Held* a decision by the Judge appointed to dispose of matters relating to appeals to Her Majesty in Council, refusing to transmit for execution Her order restoring a decree, is a judgment within the meaning of cl. 15 of the Letters Patent of 1865, and is appealable to the High Court. *Held* also that a refusal to transmit such an order for execution was not a misapprehension on the part of the Judge of the extent of his jurisdiction, although, if it had been, this itself would have been a ground of appeal. HURRISH CHUNDER CHOWDHRY *v.* KALISUNDERI DEBI **I. L. R., 9 Calc., 482: 12 C. L. R., 511**

36. ——— *Application for leave to appeal to Privy Council—Judgment of one Judge—Ministerial and judicial acts.*—The plaintiff obtained a decree in the Court of first instance. On appeal to the High Court, the decision of the lower Court was upheld, but the decree was varied in respect of some matters relating to the mode in which the relief to which the plaintiff was declared entitled should be granted. The defendant applied for leave to appeal to the Privy Council, but the application was refused, on the ground that the judgment in the High Court and the Court of first instance were in effect concurrent judgments, and that no substantial point of law was involved in the case. The defendant appealed under cl. 15 of the Letters Patent. *Held* that no appeal would lie. *Amirunnissa* v. *Behary Lall, 25 W. R., 529,* followed. MANLY *v.* PATTERSON **[I. L. R., 7 Calc., 339: 9 C. L. R., 166**

37. ——— *Appeal from order of Judge in Privy Council Department refusing to extend time for furnishing security for costs—"Judgment," Meaning of.*—No appeal will lie from an order of a Judge in the Privy Council Department refusing to extend the time prescribed by law within which an appellant is required to furnish security for the costs of the respondent, and directing the appeal to be struck off by reason of such security not having been given within the prescribed time. Such an order is not a "judgment" within the meaning of cl. 15 of the Letters Patent of 1865. *Held,* upon a review of the authorities, that where an order decides finally any question at issue in the case or the rights of any of the parties to the suit, it is a "judgment" under cl. 15 of the Letters Patent and is appealable, but not otherwise. KISHEN PERSHAD PANDAY *v.* TILUCKDHARI LALL **I. L. R., 18 Calc., 182**

38. ——— *Order refusing to stay execution of decree for costs—Civil Procedure Code (Act XIV of 1882), s. 608—Security for costs—Costs.*—An order refusing to stay execution in the exercise of the discretion given to the Court under s. 608 of the Civil Procedure Code is not a decision which affects the merits of any question between the parties by determining a right or liability, and no appeal from such an order will lie under cl. 15 of the Letters Patent. MOHABIR PROSAD SINGH *v.* ADHIKARI KUNWAR . . **I. L. R., 21 Calc., 473**

39. ——— *Appeal—"Judgment"—Order granting review of judgment—Civil Procedure Code, 1882, s. 529.*—A second appeal was decided on the 1st June 1888 in favour of the respondents by two Judges of the High Court. On the 24th July 1888, an application for review was filed with the Registrar. Various reasons prevented the two Judges from sitting together until the month of March 1889. On the 6th March, the matter came up before them, when a rule was issued, calling upon the respondents to show cause why a review should not be granted, and made returnable on the 28th March 1889. On that day one of the Judges had left India on furlough, and the rule was taken up, heard and made absolute by the other of the two Judges sitting alone. *Held* that the order was not a judgment within the meaning of cl. 15 of the Letters Patent; and that no appeal would lie therefrom, the order being final under s. 629 of the Code of Civil Procedure. *Bombay-Persia Steam Navigation Company* v. *Zuari, I. L. R., 12 Bom., 171,* and *Achaya* v. *Ratnavelu, I. L. R., 9 Mad., 253,* approved. AUBHOY CHURN MOHUNT *v.* SHAMANT LOCHUN MOHUNT **[I. L. R., 16 Calc., 788**

40. ——— *Appeal—Provincial Small Cause Courts Act (IX of 1887), ss. 25 and 27—Order of Judge of High Court acting under rules of Court under s. 13 of the Charter Act (24 & 25 Vict., c. 104).*—A petition for revision preferred under the Provincial Small Cause Courts Act, s. 25, was heard and dismissed by one of the Judges of the High Court acting under the rules of Court framed under s. 13 of the Charter Act. The petitioner preferred an appeal under the Letters Patent, cl. 15. *Held* that the appeal was not barred under Provincial Small Cause Courts Act, s. 27, and was maintainable. VENKATA REDDI *v.* TAYLOR **[I. L. R., 17 Mad., 100**

41. ——— *Order of Criminal Court—Order by one Judge granting sanction to prosecute—Criminal Procedure Code (1882), s. 195.*—Where one Judge exercising the revisional jurisdiction of the High Court, in reversal of an order of a first class Magistrate, had granted sanction under the Criminal Procedure Code, s. 195, for a prosecution under the Penal Code, s. 182, an appeal was preferred from his judgment under the Letters Patent, cl. 15, *Held* that no appeal lay, that clause of the Letters Patent being inapplicable in cases of criminal jurisdiction. SRINIVASA AYYANGAR *v.* QUEEN-EMPRESS . . . . **I. L. R., 17 Mad., 105**

42. ——— *Order of Judge of High Court on application for re-admission of an appeal dismissed on failure to deposit costs of paper-book.—Semble*—An appeal lies under cl. 15 of the Letters Patent from a judgment of a single Judge disposing of an application for re-admission of an appeal dismissed for failure to deposit the costs of the paper-book in an appeal from an original decree. RAMHARI SAHU *v.* MADAN MOHAN MITTER **[I. L. R., 23 Calc., 339**

43. ——— *Order on application under Probate and Administration Act (V of 1881), s. 90*

—An order on an application under s. 90 of the Probate and Administration Act, at the instance of a beneficiary, where there was no restriction on the power of the executor to sell, is without jurisdiction, and appealable under cl. 15 of the Letters Patent. *Hurrish Chunder Chowdhry* v. *Kali Sundari Debi, I. L. R., 9 Calc., 482,* applied. IN THE GOODS OF INDRA CHANDRA SINGH. SARASWATI DASI *v.* ADMINISTRATOR GENERAL OF BENGAL

[I. L. R., 23 Calc., 580

See FATEMUNNISSA *v.* DEOKI PERSHAD

[I. L. R., 24 Calc., 350

IKBAL HOSSAIN *v.* DEOKI PROSHAD

[1 C. W. N., 21

44. ———— *Order of Judge of High Court on appeal against order of remand—Civil Procedure Code (1882), s. 588, cl. 28.*—There is no appeal under the Letters Patent, cl. 15, against an order of a single Judge passed under the Civil Procedure Code, s. 588, cl. 28. VENGANAYYAN *v.* RAMASAMI AYYAN . **I. L. R., 19 Mad., 422**

45. ———— *Civil Procedure Code (1882), s. 588—Powers of Judge of High Court—Order on appeal from erroneous order of remand.*—A Judge of the High Court, when hearing an appeal under the Civil Procedure Code, s. 588, against an erroneous order of remand under s. 562, may, if he thinks fit, pass a final decree in the suit instead of merely remanding the suit to the lower Appellate Court. No appeal lies against such decree under the Letters Patent, cl. 15. SANKARAN *v.* RAMAN KUTTI

[I. L. R., 20 Mad., 152

46. ———— *Order of Judge of High Court dismissing appeal from order remanding case—Appeal—Civil Procedure Code (1882), s. 588.*—A District Munsif having dismissed a suit on a preliminary point, the District Court on appeal made an order remanding it to him to be disposed of on the merits. Against this order an appeal was preferred to the High Court, which came on for disposal before a single Judge, who delivered judgment dismissing it. *Held* that no appeal lay under the Letters Patent, cl. 15, against his judgment, such right of appeal being subject to the limitations on appeals prescribed by the Code of Civil Procedure. *Achaya* v. *Ratnandu, I. L. R., 9 Mad., 253; In re Rajagopal, I. L. R., 9 Mad., 447;* and *Sankaran* v. *Raman Kutti, I. L. R., 20 Mad., 152,* followed. VASUDEVA UPADYAYA *v.* VISVARAJA THIRTHASAMI

[I. L. R., 20 Mad., 407

47. ———— *Order refusing application to commit for contempt—Appeal—Judgment.*—An appeal lies from an order refusing an application to commit for contempt of Court. MOHENDRO LALL MITTER *v.* ANUNDO COOMAR MITTER

[I. L. R., 25 Calc., 236

48. ———— *Appeal from order of refusal to send for records—Dismissal on ground that no appeal lies.*—An order refusing to send for the record on a petition filed under s. 25 of the Provincial Small Cause Courts Act, 1887, is not a judgment, and no appeal lies therefrom. VENKATARAMA AYYAR *v.* MADALAI AMMAL

[I. L. R., 23 Mad., 169

GURAPPA *v.* VENKATANARASIMHA BHUPALA BHALLEROW . **I. L. R., 23 Mad., 170 note**

49. ———— *Civil Procedure Code, 1882, s. 575—Right of appeal.*—S. 575 of Act XIV of 1882 does not take away the right of appeal which is given by cl. 15 of the Letters Patent. When the judgment of a lower Court has been confirmed under s. 575 of the Code of Civil Procedure, by reason of one of the Judges of the Appeal Court agreeing upon the facts with the Court below, an appeal will lie against such judgment, notwithstanding the terms of s. 575. GOSSAMI SRI 108 SRI GRIDHARIJI MAHARAJ TICKAIT *v.* PURUSHOTUM GOSSAMI . . **I. L. R., 10 Calc., 814**

50. ———— *Time for preferring appeal.*—An appeal under s. 15 of the Letters Patent from the judgment of a Division Bench of the High Court must be preferred within thirty days from the date of the judgment, unless good cause be shown to the contrary. IN THE MATTER OF HURRUCK SINGH . . . **11 W. R., 107**

51. ———— *Filing petition of appeal—Practice.—Per* PEACOCK, *C.J.,* and KEMP and MACPHERSON, *JJ.*—A petition of appeal under cl. 15 of the Letters Patent, from a decision of an Appellate Division Bench, may be presented within thirty days from the time when the written judgments of the Division Bench are put in. The difference of practice on the original and appellate jurisdictions of the High Court contrasted. HARRAK SING *v.* TULSI RAM SAHU **5 B. L. R., 47**

S. C. HURUCK SINGH *v.* TOOLSEE RAM SAHOO

[12 W. R., 458

52. ———— *Arguments on appeal—Practice.*—On appeal under cl. 15 of the Letters Patent, no other points may be argued than those which were argued before the Division Bench. HAJRA BEGUM *v.* KHAJA HOSSEIN ALI KHAN

[4 B. L. R., A. C., 86

HIRANATH KOER *v.* RAM NARAYAN SINGH

[9 B. L. R., 274: 17 W. R., 316

53. ———— *Civil Procedure Code, s. 257—Act XXIII of 1861, s. 23—Arguments on appeal—Practice.*—Cls. 15 and 36 of the Letters Patent of the High Court must be treated as qualifying s. 257 of Act VIII of 1859. Under the Letters Patent of 1865, in lieu of the former practice under Act XXIII of 1861, s. 23,—namely, that when the Appeal Court consisted of only two Judges, and there was a difference of opinion between them upon a point of law, the case was re-argued upon that question before one or more of the other Judges,—when the Judges of a Division Court are equally divided in opinion as to the decision to be given on any point, the opinion of the senior Judge is to prevail, subject, however, to a right of appeal from such judgment of the Division Court. The judgment passed on such appeal, and not the judgment of the

Division Court, will be "final." In appeal under cl. 15 of the Letters Patent, 1865, no point can be argued except a point on which the two Judges of the Division Bench have differed in opinion. ROY NANDIPAT MAHATA *v.* URQUHART

[4 B. L. R., A. C., 181 : 13 W. R., 209

——— **cl. 16.**

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT—CIVIL CASES.

[7 W. R., 430

——— *Power of High Court to hear appeals.—Per* MARKBY, MITTER, and AINSLIE, *JJ.* —Cl. 16 of the Letters Patent of 1865 empowers the High Court to hear appeals in all cases in which an appeal lay under Act VIII of 1859. RUNJIT SINGH *v.* MEHERBAN KOER

[I. L. R., 3 Calc., 662 : 2 C. L. R., 391

——— **cl. 17.**

See GUARDIAN—APPOINTMENT.

[I. L. R., 21 Calc., 206
I. L. R., 26 Calc., 133
3 C. W. N., 91

——— **cl. 18.**

See CASES UNDER INSOLVENT ACT, s. 5.

——— **cl. 19.**

See CONTRACT ACT, s. 27 **14 B. L. R., 76**

——— **cl. 24 (Bombay).**

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL.

[I. L. R., 9 Bom., 288

——— **cl. 25.**

See CONFESSION—CONFESSIONS TO POLICE OFFICERS . . **I. L. R., 2 Bom., 61**

——— **cl. 26.**

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.

[2 Bom., 112 : 2nd Ed., 106

See CHARGE TO JURY—MISDIRECTION.

[I. L. R., 10 Calc., 1079
I. L. R., 17 Calc., 642

See MERCHANT SHIPPING ACT, s. 267.

[I. L. R., 16 Calc., 238

——— **Case certified by Advocate General under—**

See CONFESSION—CONFESSIONS TO POLICE OFFICERS . **I. L. R., 1 Calc., 207**
[I. L. R., 2 Bom., 61

1. ——— *Prisoner sentenced by Sessions Judge to rigorous, for an offence punishable only with simple, imprisonment.*—Where the Judge at Sessions sentenced a prisoner to rigorous imprisonment for a crime punishable only with simple imprisonment,—*Held* that this was an error which might be reviewed on the Advocate General's certificate under the Charter of 1865, s. 26. REG. *v.* YED ALI KHAN . **1 Ind. Jur., N. S., 424**

2. ——— *Charge under s. 467, Penal Code—Felony or misdemeanour—Separation of jury.*—Where the Judge, on a charge under s. 467 of the Penal Code, permitted the jury to separate on the first day of the trial and before verdict,—*Held* that the exercise of his discretion was not a matter to be reviewed by the High Court under s. 26 of the Letters Patent, 1865, there being no error in any point of law, as the offence charged was only a misdemeanour under the law in force before the Penal Code took effect. REG. *v.* DAYAL JAIRAJ

[3 Bom., Cr., 20

3. ——— *Power of High Court where point of law is reserved—Alteration of sentence.*—*Held* (BAYLEY, *J., dissentiente*) that the High Court, in considering a point of law reserved under cl. 26 of the Letters Patent, where it is of opinion that evidence has been improperly admitted as to one of two heads of charge of which a prisoner stands convicted (the two heads of charge relating to distinct and separate offences), and that the conviction on such head of charge is bad, has power to review the whole case, and, if it appears that the evidence improperly admitted could not reasonably be supposed to have influenced the jury as to the latter head of charge, ought not to set aside the conviction on that head of charge, but should proceed to pass judgment and sentence on it. *Semble*—S. 167 of the Evidence Act applies to criminal trials by jury in the High Court. REG. *v.* NAVROJI DADABHAI . . **9 Bom., 358**

4. ——— *Evidence Act (I of 1872), s. 167.*—S. 167 of the Evidence Act applies to cases heard by the High Court when exercising its powers under cl. 26 of the Letters Patent. QUEEN-EMPRESS *v.* MCGUIRE . . . . **4 C. W. N., 433**

5. ——— *Reserving point of law for High Court—Refusal to reserve—Discretion of Judge—Review—Non-direction—Certificate of Advocate General.*—The statement of a Judge who presides at a criminal trial is, upon a case reserved under the 25th clause of the Charter of the High Court, or upon a case certified by the Advocate General under its 26th clause, conclusive as to what has passed at the trial. Neither the affidavits of bystanders or of jurors, nor the notes of counsel or of short-handwriters, are admissible to controvert the statement of the Judge. It is in the discretion of the Judge, who presides at a criminal trial, whether or not he will reserve a point of law for the opinion of the High Court, and such discretion will not be reviewed by the High Court, sitting as a Court of review, under cl. 26 of the Letters Patent. *Semble*—Non-direction by a Judge is not a matter upon which the Advocate General should grant a certificate under cl. 26 of the Letters Patent. REG. *v.* PESTANJI DINSHA . . . . **10 Bom., 75**

——— **cl. 28.**

See HIGH COURT, JURISDICTION OF—CALCUTTA—CRIMINAL.

[I. L. R., 26 Calc., 746
3 C. W. N., 598

LETTERS PATENT, HIGH COURT, 1865 —*continued.*

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL.
[I. L. R., 14 Mad., 121

——— cl. 29.

See CASES UNDER TRANSFER OF CRIMINAL CASE—LETTERS PATENT, HIGH COURT, CL. 29.

——— cl. 36.

See APPEAL IN CRIMINAL CASES—PROCEDURE.
[2 B. L. R., F. B., 25 : 10 W. R., Cr., 45

1. ——— *Division Bench of two Judges differing in opinion—Practice of Privy Council.*—A cause was heard before a single Judge of the High Court, and a decree made by him dismissing the suit. An appeal was made to the same Court in its appellate jurisdiction before two Judges. The Court was divided in opinion; the Chief Justice holding that the judgment should be reversed, and the Puisne Judge that it should be affirmed; and under the 36th section of the Letters Patent of 1865 creating the High Court a decree of reversal was ordered. On appeal, the Judicial Committee, without expressing any opinion whether the 36th section was applicable, having regard to the 26th Rule of the High Court, directed the appeal to be heard on the merits. MILLER *v.* BARLOW
[14 Moore's I. A., 209

2. ——— *Civil Procedure Code, 1877, ss. 575 and 647.*—The provision of the Letters Patent of 1865, s. 36, that when the Judges of a Division Bench are equally divided in opinion, the opinion of the senior Judge shall prevail, has been superseded by s. 575 of the Civil Procedure Code (Act X of 1877, which is extended to miscellaneous proceedings of the nature of appeals by s. 647 of that Code) so far as regards cases to which s. 575 is applicable. APPAJI BHIVRAB *v.* SHIVLAL KHUBCHAND
[I. L. R., 3 Bom., 204

3. ——— *Criminal Procedure Code, 1882, s. 429—Difference of opinion between Judges of Division Bench of High Court—Practice—Procedure.*—Where the Judges of the High Court differed in opinion in a case referred by a Sessions Judge to the High Court under s. 307 of the Criminal Procedure Code (Act X of 1882), the Court (JARDINE and CANDY, *JJ.*) directed that the case should be laid before a third Judge of the High Court, being of opinion that the Criminal Procedure Code overrules the provisions of cl. 36 of the Letters Patent, 1865. QUEEN-EMPRESS *v.* DADA ANA
[I. L. R., 15 Bom., 452

——— cl. 37—*Discretion as to costs in civil suits.*—The 37th clause of the Letters Patent constituting the High Court does not give the Court an uncontrolled discretion as to costs in civil suits. SUBAPATI MUDALIYAR *v.* NARAYANSVAMI MUDALIYAR . . . . . . 1 Mad., 115

LETTERS PATENT, HIGH COURT, 1865 —*concluded.*

——— cl. 39.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . 1 B. L. R., F. B., 1
[7 B. L. R., 730
13 B. L. R., 103
I. L. R., 1 Calc., 431
1 W. R., Mis., 13
5 W. R., Mis., 17
I. L. R., 22 Calc., 928

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL . . 19 W. R., 191

——— cl. 40.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . . 9 Bom., 398
[I. L. R., 22 Calc., 928

——— cl. 41.

See APPEAL TO PRIVY COUNCIL—CRIMINAL CASES . . . 7 Bom., Cr., 77

——— cl. 42.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . 1 B. L. R., F. B., 1

LETTERS PATENT, HIGH COURT, N.-W. P.

——— cl. 2.

See HIGH COURT, CONSTITUTION OF.
[I. L. R., 9 All., 675

——— cls. 7 and 8.

See ADVOCATE . I. L R., 9 All., 617

——— cl. 8.

See PLEADER—REMOVAL, SUSPENSION, AND DISMISSAL . I. L. R., 17 All., 498
[L. R., 22 I. A., 193

——— *Appeal—Presentation of appeal by a person other than an advocate, vakil, or attorney of the Court, or a suitor.*—*Held* that the presentation of an appeal by a person who was not an advocate, vakil, or attorney of the Court, nor a suitor, is not a valid presentation in law, having regard to s. 8 of the Letters Patent of the High Court. SHIAM KARAN *v.* RAGHUNANDAN PRASAD
[I. L. R., 22 All., 331

——— cl. 10.

See COURT FEES ACT, 1870, SCH. I, ART. 5.
[I. L. R., 11 All., 176

See LIMITATION ACT, 1877, s. 12.
[I. L. R., 2 All., 192

See REMAND—PROCEDURE ON REMAND.
[I. L. R., 16 All., 306

LETTERS PATENT, HIGH COURT, N.-W. P.—*continued.*

See REVIEW—GROUND FOR REVIEW.
[I. L. R., 11 All., 176

See RULES OF HIGH COURT, N.-W. P.
[I. L. R., 9 All., 115

1. ——— *Appeal from judgment of Division Court.*—To allow of an appeal to the High Court against the judgment of a Division Court, under the provisions of cl. 10 of its Letters Patent, there must be such a judgment on the part of all the Judges who may compose the Division Court as disposes of the suit on appeal before it. GHASI RAM *v.* NURAJ BEGAM . **I. L. R., 1 All., 31**

2. ——— *Appeal from single Judge—"Judgment"—Interlocutory order—Order refusing leave to appeal in formâ pauperis—Civil Procedure Code, ss. 588, 591, 632.*—Under ss. 588 and 591 read with s. 632 of the Civil Procedure Code, no appeal lies, under s. 10 of the Letters Patent, for the High Court for the N.-W. P., from an order of a single Judge refusing an application for leave to appeal *in formâ pauperis. Achaya* v. *Ratnavelu, I. L. R., 9 Mad., 253,* and *In re Rajagopal, I. L. R., 9 Mad., 447,* followed. *Hurrish Chunder Chowdhry* v. *Kali Sunderi Debi, I. L. R., 9 Calc., 482,* distinguished. BANNO BIBI *v.* MEHDI HUSSAIN
[I. L. R., 11 All., 375

3. ——— *Order of a single Judge of the High Court amending an appellate decree—Appeal from such order—Civil Procedure Code, ss. 206, 582, 632.*—Whether an order made by a single Judge of the High Court, directing the amendment of a decree passed in appeal by a Division Bench of which he had been a member, is an order made under s. 206 read with ss. 582 and 632 of the Code of Civil Procedure, or, by virtue of the inherent power which the High Court had in the exercise of its Appellate Civil jurisdiction to amend its own decrees, it is one to which the provisions of Ch. XLIII of the Code of Civil Procedure are applicable, and from such order no appeal under s. 10 of the Letters Patent will lie. *Hurrish Chunder Chowdhry* v. *Kali Sunderi Debia, I. L. R., 9 Calc., 482: L. R., 10 I. A., 4,* discussed. MUHAMMAD NAIM-ULLAH KHAN *v.* IHSAN-ULLAH KHAN
[I. L. R., 14 All., 226

4. ——— *Civil Procedure Code, ss. 556, 558, and 588, cl. 27—Dismissal of appeal for default.*—No appeal under s. 10 of the Letters Patent will lie from on order under s. 556 of the Code of Civil Procedure dismissing an appeal for default, the appellant not having had recourse to the procedure provided by s. 558 of the said Code. POHKAR SINGH *v.* GOPAL SINGH
[I. L. R., 14 All., 361

5. ——— *Civil Procedure Code, ss. 2, 556, 558, 587, 588, 632—Appeal—Dismissal of appeal for default—"Order"—"Decree."*—No appeal will lie under s. 10 of the Letters Patent from the order of a single Judge of the High Court dismissing an appeal for default. The decision of a Court dismissing a suit or an appeal for default is an "order" and not a "decree." *Nand Ram* v. *Muhammad Bakhsh, I. L. R., 2 All., 616 ; Mukhi* v. *Fakir, I. L. R., 3 All., 382 ; Dhan Singh* v. *Basant Singh, I. L. R., 8 All., 519 ; Chand Kour* v. *Partab Singh, I. L. R., 16 Calc., 98 ; Muhammad Naim-ullah Khan* v. *Ihsan-ullah Khan, I. L. R., 14 All., 226,* cited. *Ram Chandra Pandurang Naik* v. *Madhav Purushottam Naik, I. L. R., 16 Bom., 23,* not followed. MANSAB ALI *v.* NIHAL CHAND
[I. L. R., 15 All., 359

6. ——— *Order of Judge on revision—Provisional Small Cause Court Act (IX of 1887), s. 25.*—No appeal will lie under s. 10 of the Letters Patent from an order of a single Judge of the High Court in revision under s. 25 of Act IX of 1887. *Muhammad Naim-ullah Khan* v. *Ihsan-ullah Khan, I. L. R., 14 All., 226,* referred to. GAURI DATT *v.* PARSOTAM DAS . . **I. L. R., 15 All., 373**

7. ——— *Difference of opinion between Judges of Division Bench.*—*Held* (SPANKIE, J., dissenting) that the appeal given to the Full Court under cl. 10, Letters Patent, is not confined to the point on which the Judges of the Division Court differ. RAM DIAL *v.* RAM DAS
[I. L. R., 1 All., 181

8. ——— *Difference of opinion in Division Bench—"Judgment."*—Where the Judges of a Division Bench hearing an appeal differed in opinion, one of them holding that the appeal should be dismissed as barred by limitation, and the other that sufficient cause for an extension of time had been shown, and that the appeal should be determined on the merits,—*Held* that the "judgment" of the latter Judge came within the meaning of that term, as used in s. 10 of the Letters Patent, and that, as the result of the difference of opinion was that the appeal to the Division Bench stood dismissed, an appeal under s. 10 was not premature. HUSAINI BEGAM *v.* COLLECTOR OF MOZAFFARNAGAR
[I. L. R., 9 All., 655

9. ——— *Order under Civil Procedure Code (1882), s. 312—Civil Procedure Code (1882), ss. 266 and 588—Assignment of villages to Hindu widow in lieu of maintenance—Attachment and sale of such villages in execution of money decree—Objection by widow after sale allowed—Appeal from order allowing objection.*—Certain villages were assigned for her maintenance to a Hindu widow by members of her husband's family. These villages were subsequently attached and sold in execution of a simple money decree against the widow. After the sale had become final, the widow came forward with an objection to the attachment and sale of the assigned villages on the ground that such attachment and sale were in contravention of s. 266 (*l*) of the Code of Civil Procedure. The first Court disallowed this objection; but, on appeal to the High Court, the widow got a decree allowing her objection. On appeal by the decree-holder under s. 10 of the Letters Patent, it was held that, whether or not the widow's interest in the particular villages was capable of being attached, yet, inasmuch as the order asked for by the widow's application was practically an order under s. 312 of the Code of Civil Procedure, an appeal under cl. 10 of the Letters Patent would not lie. BANSIDHAR *v.* GULAB KUAR

[I. L. R., 16 All., 443

10. ———— *Order refusing extension of time for serving notice of appeal—Application under Companies Act (VI of 1882), s. 169—Discretion of Court—Judgment.*—No appeal will lie under s. 10 of the Letters Patent of the High Court of Judicature for the N.-W. P. from an order of a single Judge of the Court refusing an application under s. 169 of Act VI of 1882 (Indian Companies Act) for extension of time for serving notice of an appeal under that Act; such order not being a judgment within the meaning of cl. 10 of the Letters Patent. *Banno Bibi* v. *Mehdi Husain, I. L. R., 11 All., 375; Muhammad Naimullah Khan* v. *Ihsanullah Khan, I. L. R., 14 All., 226; Kishen Pershad Panday* v. *Tiluckdhari Lal, I. L. R., 18 Calc., 183; Lutf Ali Khan* v. *Asgur Reza, I. L. R., 17 Calc., 455; Hurrish Chunder Chowdry* v. *Kali Sunderi Debia, I. L. R., 9 Calc., 482 : L. R., 10 I. A., 4; Mohabir Prosad Singh* v. *Adhikari Kunwar, I. L. R., 21 Calc., 473; Lane* v. *Esdaile, L. R. (1891), Ap. Cas. 10; Kay* v. *Briggs, L. R., 22 Q. B. D., 343; The Amestil, L. R., 2 P. D. N. S., 186;* and *Ex-parte Stevenson, L. R. (1892), Q. B. D., Vol. I., 294,* referred to. WALL *v.* HOWARD . . . I. L. R., 17 All., 438

11. ———— *Order granting probate—Probate and Administration Act (V of 1881), ss. 51-87—"Decree"—Civil Procedure Code (1882), ss. 2 and 591—Appeal—Finding of fact, Power of Appellate Court as to.*—An appeal will lie under cl. 10 of the Letters Patent of the High Court of Judicature for the N.-W. P. from the judgment of a single Judge of the Court in appeal from an order of a District Judge granting probate of a will under Ch. V of Act V of 1881; and the Bench hearing such an appeal under cl. 10 of the Letters Patent is not debarred from reconsidering the findings of fact arrived at in the judgment under appeal. UMBAO CHAND *v.* BINDRABAN CHAND

[I. L. R., 17 All., 475

12. ———— *Arguments in appeal—Points on which appellant may be heard—Practice.*—In appeals under the Letters Patent, s. 10, an appellant is not entitled to be heard on points which he has not raised before the Judge against whose decree he is appealing. BRIJ BHUKHAN *v.* DURGA DAT . . I. L. R., 20 All., 258

13. ———— *Plaint disclosing no cause of action—Discovery at the stage of an appeal under the Letters Patent of defect in the plaint—Dismissal of suit.*—Where in an appeal under s. 10 of the Letters Patent it was brought to the notice of the Court that the plaint in the suit disclosed no cause of action against the defendant named therein, the Court entertained the plea and dismissed the suit. SECRETARY OF STATE FOR INDIA *v.* SUKHDEO

[I. L. R., 21 All., 341

———— cl. 12—*Lunatic—Native of India—Act XXXV of 1858, s. 23—Original jurisdiction of High Court in respect of the persons and estates of lunatics who are natives of India.*—The High Court has not, under cl. 12 of its Charter, any original jurisdiction in respect of the persons and estates of lunatics who are natives of India. IN THE MATTER OF THE PETITION OF JAUNDHA KUAR

[I. L. R., 4 All., 159

———— **cls. 18 and 19.**

See REVIEW—CRIMINAL CASES.

[I. L. R., 7 All., 672

———— **cl. 27.**

See REFERENCE FROM SUDDER COURT, AGRA . . . 6 B. L. R., 283

[13 Moore's I. A., 585

1. ———— *24 & 25 Vict., c. 104, s. 13—Difference of opinion between Judges of Division Bench.*—S. 13 of Act 24 & 25 Vict., c. 104, and s. 27 of the Letters Patent of the High Court, applied to the Court in its revisional as well as in its appellate jurisdiction. *Held* by MORGAN, *C.J.*, and TURNER, *J.* (ROSS and SPANKIE, *JJ.*, dissenting), that when a case is heard by a Division Bench, and a difference of opinion arises, the opinion of the senior Judge must prevail, and the order must issue in accordance with his judgment, a reference to a third Judge being beyond the competency of such Division Bench, and an order in accordance with the views of such third Judge and the junior Judge was not valid. QUEEN *v.* NYN SINGH . . 2 N. W., 117

[S. C. Agra, F. B., Ed. 1874, 196

2. ———— *Practice — Difference of opinion on Division Bench regarding preliminary objection as to limitation—Civil Procedure Code, s. 575.*—S. 27 of the Letters Patent for the High Court of the N.-W. P. has been superseded in those cases only to which s. 575 of the Civil Procedure Code properly and without straining language applies. There are many cases to which s. 575, even with the aid of s. 647, does not apply; and to these s. 27 of the Letters Patent is still applicable. One of the cases to which s. 575 of the Code does not apply is where a preliminary objection being taken to the hearing of a first appeal before the High Court on the ground that the appeal is time-barred, the Judges of the Division Bench differ in opinion as to whether the appellant has shown sufficient cause, within the meaning of s. 5 of the Limitation Act (XV of 1877), for not presenting the appeal within the prescribed period. The decision of such a preliminary objection is not a "hearing" of the appeal, but precedes the hearing, or determines that there is no appeal which the Court can hear or decide. Where such a preliminary objection is allowed, it cannot be said that the Court which, by reason of the Limitation Act, has no jurisdiction to hear the appeal, should nevertheless "affirm" the decree of the Court below. In the case of such a preliminary objection and such a difference of opinion (the Bench being equally divided), the opinion of the senior Judge should, under s. 27 of the Letters Patent, prevail. *Appaji*

LETTERS PATENT, HIGH COURT, N.-W. P.—*concluded.*

Bhivrav v. *Shivlal Khubchand, I. L. R., 3 Bom., 204,* and *Gridhariji Maharaja Takait* v. *Purushotum Gossami, I. L. R., 10 Calc., 814,* distinguished. HUSAINI BEGAM v. COLLECTOR OF MOZAFFARNAGAR [I. L. R., 11 All., 176

——— **cl. 31.**

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . **I. L. R., 1 All., 726**

LEX FORI.

See LIMITATION—LAW OF LIMITATION. **[5 Moore's I. A., 234**

See RIGHT OF SUIT — CONTRACTS AND AGREEMENTS . **I. L. R., 17 Mad., 262**

LIBEL.

See CASES UNDER DEFAMATION.

See PRIVILEGED COMMUNICATION. **[I. L. R., 12 Mad., 374**

——— **Restraining publication of—**

See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS. **[I. L. R., 1 Bom., 132**

1. ——— **Comments on acts of public men**—*Newspapers—Privilege.*—Every subject has a right to comment on those acts of public men which concern him as a subject of the realm if he does not make his comments a cloak for malice and slander. A writer in a public paper has the same right, and it is his privilege to comment on the acts of public men which concern not himself only, but which concern the public. Where a writer makes the public conduct of a public man the subject of comment, and it is for the public good, the writer is not liable to an action if the comments are made honestly, and he honestly believes the facts to be as he states them. HOWARD v. NICOLL . . . **1 Bom., Ap., 85**

2. ——— **Defamatory communications by Consul to his Government**—*Privileged communications—Limitation.*—Where the Consul of a foreign State wrote some defamatory letters to his Government, reflecting on the character of a commercial house in Calcutta, the Court held that, although the libellous matter was not known to the plaintiffs for a long time subsequently, the suit for damages must be dismissed under the Statute of Limitations, which confined the bringing of such suit within the year. *Held* that such communications were not privileged, and the Court assessed damages subject to the opinion of the Appellate Court on the point of limitation. ROBERT v. LAMBARD **[1 Ind. Jur., N. S., 192**

3. ——— **Privileged communication**—*Malicious prosecution—Reasonable and probable cause.*—*L M*, an inspector of the *O G Co.*, on visiting the company's works at N, was informed that the superintendent, *W M*, had misappropriated the company's money, and obtained money wrongfully from their workmen, and otherwise mismanaged the factory. On further enquiry and inspection of *WM's* books, his suspicions being confirmed, he communicated them by letter to the resident director. The company having declined to prosecute, *L M* presented a charge of breach of trust against *W M* on which he was arrested, and after a magisterial enquiry the charge was dismissed. It appeared from the evidence that the defendant had reasonable and probable cause for supposing that the plaintiff was guilty of the misconduct he was charged with, and there was no proof that the defendant was actuated by malice. *Held*, dismissing the suit with costs, that a communication such as the above is a "privileged communication:" that when an overseer has reasonable and probable cause for supposing that a workman has committed a breach of trust, and prosecutes him for it, the employers having declined to, no enquiry is to be made into the motives that prompted him to do so. MILLS v. MITCHELL . . **Bourke, O. C., 18**

4. ——— *Statements made by defendants to protect their own interest.*—Plaintiffs and defendants were the members of two firms, each creditors of an absconded debtor, one *B*. The plaintiffs' firm brought a suit to recover the sum alleged to be due to them by the said *B*, and pending that suit the defendants' firm presented a petition to the Court which contained the statements complained of, which were principally to the effect that the plaintiffs had prejudiced the petitioners by suing the said *B* for sums greatly in excess of their just claims against him. The Judge found that there was no malice in fact, but that the statements were untrue and calculated to damage, and he accordingly gave a decree to the plaintiffs with damages. *Held*, on appeal, reversing the decision of the lower Court, that as the defendants were creditors of an absconded debtor and deeply interested in seeing that his estate was not swept off in satisfaction of an excessive claim made by the earliest suitor, they, in presenting a petition pointing out what they considered suspicious elements in the plaintiffs' claim against such debtor, were at all events entitled to the qualified privilege of persons acting in good faith and making communications with a fair and reasonable purpose of protecting their own interest. HINDE v. BAUDRY . **I. L. R., 3 All., 13**

5. ——— **Publication**—*Privilege—Bom. Act I of 1873—Practice—Costs.*—The Trustees of the Port of Bombay, who are, under the provisions of their Act of Incorporation (Bombay Act I of 1873), bound to keep minutes of their proceedings and resolutions, and to forward copies of such minutes to the Secretary to the Local Government, passed, in relation to the hiring by them to the plaintiff of one of their steamers, the following resolution: "Mr. Shepherd's (the plaintiff's) offer of R520 in full of all claims should be accepted, but any further transactions with him should be avoided if possible." Copies of this resolution, made by clerks in the employ of the Trustees, were recorded in two books kept in the office of the Trustees, and other copies, also made by such clerks, were forwarded to the Secretary to the Local Government and to the plaintiff himself. *Held*, first, that the words of the resolution amounted in law

LIBEL—*continued.*

to a libel; second, that the act of the Trustees, in transmitting a copy to the Secretary to the Local Government, was a publication of the libel; third, that such publication was privileged. *Quære*—Whether the giving of the resolution to be copied by clerks of the defendants was a publication; but if it were,—*Held* that such a publication was also privileged. *Semble*—That had the defendants succeeded on the plea of privilege only, each party should have borne their own costs, but held that, as the plaint contained allegations of express malice and want of *bonâ fides* on the part of the Trustees in passing and publishing the libellous resolution complained of, which allegations obliged the Trustees to plead justification, on which plea also they were successful, the plaintiff must pay the costs of the suit. SHEPHERD *v.* TRUSTEES OF THE PORT OF BOMBAY

[I. L. R., 1 Bom., 477

6. ———— *Letter given by manager of firm to clerk to copy—Reflections on professional man.*—Defamatory matter is privileged only when written *bonâ fide* and shown to a third party to give information which the third party ought to have. A letter was written by order of the manager of a firm reflecting upon the character of a professional man, and signed by the manager and handed over in the ordinary way to a clerk in the office to copy in the office copy letter book, which was open to all the members of the firm. *Held* that such instructions to copy amounted to publication. HECKFORD *v.* GALSTIN . **Cor., 134: 2 Hyde, 274**

7. ———— *A* brought an action against *B* for damages for defamation of character. The alleged libel was contained in a letter written and sent as an ordinary private letter by post by *B* to *A*. No publication was alleged or proved, and the only damage alleged was injury to *A*'s feelings. *Held* that the suit was rightly dismissed. KAMAL CHANDRA BOSE *v.* NABIN CHANDRA GHOSE . **1 B. L. R., S. N., 12: 10 W. R., 184**

MAHOMED ISMIL KHAN *v.* MAHOMED JAHIR *alias* MOTEE MEAN . . . . . **6 N. W., 38**

8. ———— **Libel in judicial proceedings**—*Privilege of parties and witnesses in suit—Right of suit—Liability to damages by civil action for such defamation.*—No action for slander lies for any statement in the pleadings or during the conduct of a suit against a party or witness in it. The plaintiff claimed to recover damages from the defendants for publishing defamatory matter in an application they had filed in a suit brought against them by one *M*, in which the plaintiff was described by the defendants as a person "whose occupation it was to obtain his living by getting up such fraudulent actions," and that he was induced to make a false claim by the plaintiff. The application appeared to have been made with the object of having other persons made parties to that suit. *Held* that the defendants were privileged against a civil action for damages for what they may have said of the plaintiff in the application they had presented in that suit. *Seaman* v. *Netherclift, L. R., 1 C. P. D., 45,* and *Gunnesh Dutt Singh* v. *Mugneeram Chowdhry, 11 B. L. R., 321,* followed. NATHJI MULESHVAR *v.* LALBHAI RAVIDAT. LALBHAI RAVIDAT *v.* NATHJI MULESHVAR . **I. L. R., 14 Bom., 97**

9. ———— **Defamatory statement in judicial proceeding**—*Privilege—Liability for damages in a civil action.*—A defamatory statement made in the pleadings in an action is not absolutely privileged. *Nathji Muleshvar* v. *Lalbhai Ravidat, I. L. R., 14 Bom., 97,* dissented from. AUGADA RAM SHAHA *v.* NEMAI CHAND SHAHA

[I. L. R., 23 Calc., 867

10. ———— **Defamatory statement made by one newspaper copied into another and commented upon as untrue**—*Retention of libel—Malice.*—A certain newspaper called the *Rajya Bhakta* published a false and defamatory statement of the plaintiff. More than a month afterwards the defendants published an article in their newspaper, the *Jam-e-Jamshed*, calling attention to the statement made in the *Rajya Bhakta* and repeating it. The article, however, declared that the said statement was "evidently false." It pointed out that the defendants were the first to raise an outcry against it; that they had expected the plaintiff to take notice of it, but that, as he had not done so, they published that intimation to the public. The plaintiff sued the defendants for libel. He alleged that he had not taken any notice of the original statement in the *Rajya Bhakta*, as that paper was an obscure print not generally read in the Parsi community to which both he and the defendants belonged. He complained that, the defendants had maliciously repeated and called attention to libel in their paper for the purpose of giving it a wide circulation, and that their assertion of its untruth was made merely in order to protect themselves. The defendants pleaded that the article in their paper was not defamatory and denied malice. *Held* that, reading the article as a whole and in its natural sense, and taking it in connection with previous articles appearing in the defendants' paper with reference to the plaintiff, it was in itself defamatory of the plaintiff. KAIKHUSRU NAOROJI KABRAJI *v.* JEHANGIR BYRAMJI MURZBAN . . . **I. L. R., 14 Bom., 532**

11. ———— **Proof of injury to plaintiff**—*Loss of caste—Malice.*—Suit for libel in describing the plaintiff, who was a Jounpore bunniah, as a Telee whereby the plaintiff lost his caste, etc. The alleged libel was contained in an answer to a suit. *Held* that the action was not maintainable, as it did not appear that the plaintiff had lost his caste or otherwise been damnified, or that the defendant had knowingly misdescribed the plaintiff. FUTTICK CHUND SAHOO *v.* MAKUND JHA **Marsh., 224: 1 Hay, 539**

12. ———— **Rejection of plaint**—*Ironical publication.*—On the presentation of a plaint for libel, the Court must see whether the alleged libellous matter set out in the plaint is really libellous: if it is not, there is no ground of action, and the plaint ought not to be admitted. If the words which are set out in the plaint are not a libel, the plaintiff cannot, by alleging that they were printed and published by the defendant with the intent to

LIBEL—*concluded.*

injure the plaintiff, and bring him into public scandal and disgrace, and to expose him to public scorn and ridicule, and to cause it to be suspected that the plaintiff was a dishonest person, and had been actuated by sinister and fraudulent motives, make them a libel; nor can the plaintiff, by alleging that words are spoken ironically, make them libellous, if they do not appear to the Court to be so. WYMAN *v.* BANKS
[10 B. L. R., 71 : 18 W. R., 516

LIBERTY TO APPLY.

See DECREE—ALTERATION OR AMENDMENT OF DECREE.
[I. L. R., 15 Calc., 211

LICENSE.

——— **Breach of conditions of—**

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.
[I. L. R., 10 All., 577
I. L. R., 12 Bom., 422

——— **Date of taking out—**

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 335.
[I. L. R., 24 Calc., 360

——— **False statement in application for—**

See BENGAL MUNICIPAL ACT, 1884, s. 133.
[I. L. R., 22 Calc., 131

——— **for building.**

See MADRAS DISTRICT MUNICIPALITIES ACT, 1884, s. 180.
[I. L. R., 16 Mad., 230

——— **Necessity for—**

See POLICE ACT (XLVIII OF 1860), s. 11.
[I. L. R., 15 Bom., 530

——— **Obligation to grant—**

See BENGAL MUNICIPAL ACT, 1884, s. 339.
[I. L. R., 17 Calc., 329

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.
[I. L. R., 17 Calc., 329
I. L. R., 21 All., 348

——— **Power to grant or refuse—**

See BENGAL MUNICIPAL ACT, 1884, s. 337.
[I. L. R., 20 Calc., 654

——— **to accommodate pilgrims.**

See N.-W. P. AND OUDH LODGING HOUSE ACT . . I. L. R., 20 All., 534

——— **to keep animals.**

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 307 . I. L. R., 25 Calc., 625

LICENSE—*continued.*

——— **to practise as a pleader, Withdrawal of—**

See RECORDER'S ACT, s. 17.
[6 B. L. R., 180

——— **to quarry.**

See CONTRACT—CONSTRUCTION OF CONTRACTS . I. L. R., 13 Bom., 630

——— **to sell liquor.**

See BENGAL EXCISE ACT XXI OF 1856.
[8 W. R., Cr., 4
16 W. R., Cr., 69
19 W. R., Cr., 34
25 W. R., Cr., 42

See EXCISE ACT.
[I. L. R., 1 All., 630, 635, 638

See MANDAMUS . 11 B. L. R., 250

——— **to sell opium.**

See OPIUM ACT . 13 C. L. R., 336
[I. L. R., 13 Mad., 191
I. L. R., 26 Calc., 571

——— **to use land of another.**

See USER, RIGHT OF.
[I. L. R., 16 Calc., 640

1. ——— **Document giving permission to capture elephants**—*Easements Act (V of 1882), ss. 52, 56—Easement.*—The owner of a forest, in 1883, executed an instrument whereby he gave to the other party thereto permission to trap fifty elephants in the forest, and stipulated for a certain payment in respect of each elephant which was captured. In 1884, without the knowledge of the owner of the forest, the other party, by a similar instrument, gave permission to the defendant to trap ten elephants. The instrument of 1883 was expressed to be in force for six years, that of 1884 for four years. The latter instrument was not ratified by the owner of the forest, who, in 1885, granted the exclusive right of trapping elephants to the plaintiff. The plaintiff now sued the defendant for possession of two elephants which had been captured by him. *Held* that the instrument of 1883 was a license merely, and that since the owner of the forest had never consented to or ratified the instrument of 1884, the plaintiff was entitled to a decree. RAMAKRISHNA *v.* UNNI CHECK
[I. L. R., 16 Mad., 280

2. ——— **Right of growing rice plants in another's land to be afterwards transplanted to his own**—*Easements Act (V of 1882), ss. 4 and 52.*—A "license" as defined by s. 52 of the Indian Easements Act (V of 1882) is not, as in the case of an "easement," connected with the ownership of any land, but creates only a personal right or obligation. *License rights are not generally transferable, and the transferee is not bound to continue the license granted by the former owner, while easements once established follow the property.* The plaintiff claimed and proved a prescriptive right of using a certain land

LICENSE—*concluded.*

belonging to the defendant's mortgagor for a certain part of the year for raising rice plants to be afterwards transplanted to his own land. *Held* that the right was clearly enjoyed by the plaintiff as owner of some land to which the young rice plants were transplanted, and that such a right, so attached to plaintiff's land, was not a license, but an easement of the nature of profits *a prendre.* SUNDRABAI *v.* JAYAWANT . . . **I. L. R., 23 Bom., 397**

LICENSEE.

See PATENT . **I. L. R., 15 Calc., 244**

LIEN.

See BAILMENT . **I. L. R., 6 All., 139**

See C-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY . **14 B. L. R., 155**
[I. L. R., 9 Calc., 377
I. L. R., 14 Calc., 809
I. L. R., 11 Bom., 313
I. L. R., 16 Calc., 326
I. L. R., 22 Calc., 800
I. L. R., 14 All., 273

See CASES UNDER DEPOSIT OF TITLE-DEEDS.

See CASES UNDER MORTGAGE—MONEY-DECREES ON MORTGAGES.

See CASES UNDER VENDOR AND PURCHASER—LIEN.

——— **by custom for price of seed.**

See INDIGO FACTORY.
[I. L. R., 3 Calc., 231

——— **Enforcing or removing—**

See CASES UNDER DECLARATORY DECREE, SUIT FOR—ENFORCING OR REMOVING LIEN OR ATTACHMENT.

——— **for disbursements.**

See BOTTOMRY BOND . **6 B. L. R., 323**

——— **for master's wages.**

See BOTTOMRY BOND . **5 B. L. R., 258**

——— **for unpaid purchase-money.**

See CASES UNDER VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

——— **of Attorney for costs.**

See ATTORNEY AND CLIENT.
[10 B. L. R., 444
15 B. L. R., Ap., 15
I. L. R., 6 Calc., 1
I. L. R., 4 Bom., 353
I. L. R., 16 Calc., 374

See CASES UNDER COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.

LIEN—*continued.*

——— **of banker.**

See BANKERS . **I. L. R., 19 Mad., 234**

1. ——— **Creation of lien**—*Agreement for specific appropriation—Possession.*—To constitute a lien on any property, there must be a clear agreement for the specific appropriation of the property; and, further, the property must be in the possession of the party who claims the lien. IN RE THE CLAIM OF DADIA BIBEE. DEBNARAIN BOSE *v.* LEISK **[2 Hyde, 267**

2. ——— *Contract between Hindus—Deposit of title-deeds.*—A lien created by verbal contract and deposit of title-deeds of immoveable property in the Island of Bombay by a Hindu in favour of a Hindu upheld. JIVANDAS KESHAVJI *v.* FRAMJI NANABHAI . . **7 Bom., O. C., 45**

3. ——— *Deposit of shares for special purpose.*—Where certain shares were deposited with a bank as security for the depositor overdrawing his account for a time, which, in fact, he never did, and other documents were deposited as security for drafts drawn on Eccles, Cartwright & Co., against cotton, to which these latter documents referred, and Eccles, Cartwright & Co. failed,—*Held* that the bank had no lien on the shares in respect of the cotton transactions. GENTLE *v.* BANK OF HINDOSTAN, CHINA, AND JAPAN **[1 Ind. Jur., N. S., 245**

4. ——— **Existence of lien**—*Deposit of shares with power of sale—Unjustifiable revocation of power—Effect of, on right of lien.*—The defendant, being largely indebted to the plaintiff company, had, from time to time prior to the 22nd November 1865, deposited with them certain shares and share certificates in various joint-stock companies as security for the repayment (as alleged by the plaintiffs) of all moneys due or which might hereafter become due from time to time to them for principal and interest, and had executed several powers of sale and transfers and letters of pledge in favour of the plaintiffs. On the 22nd November 1865, the defendant executed a power of attorney authorizing the plaintiffs to sell or dispose of the said shares and gave them a promissory note for R1,90,000 with interest at 11 per cent. per annum. Between the 22nd November and 2nd January 1866, the plaintiffs caused their right of lien over the said shares to be registered by the various joint-stock companies concerned. On the 1st February 1866, the defendant, being found on adjustment of accounts to be indebted to the plaintiffs for R1,82,173, and being pressed for payment, gave them a second promissory note for that amount with interest at 12 per cent. per annum. On taking the second note, the plaintiffs gave up the first one and put a receipt on the back of it. In April 1870, the defendant wrote to the plaintiffs revoking the power-of-attorney given by him to the plaintiffs, publicly notified such revocation, and refused to pay the debt on the ground that it was barred by limitation. In a suit by the plaintiffs for the amount of the debt, and for a declaration of their right of lien and power of sale over the shares pledged with them by the defendant, and for an order for a sale of

LIEN—*continued.*

the shares sufficient to pay off the debt,—*Held* that the original debt continued to exist; that the first promissory note and the shares were given as a security for that loan; that the second promissory note was also given as a security for the loan, no new debt being created; that the plaintiffs had a right to exercise the power given to them of selling the securities, notwithstanding the revocation of the power-of-attorney, the act of the defendant in trying to prevent such exercise of power by revoking the power-of-attorney, being unjustifiable, and that therefore the plaintiffs were entitled to have the power declared valid and subsisting and generally to have the relief they asked for. STEWART *v.* DELHI AND LONDON BANK . . . **17 W. R., 201**

5. ——— *Lien of letter of boats on goods placed in the boat.*—The mere letter of boats for hire has not a lien for his hire upon goods which may be placed in the boats, and should he cause loss to the owner of the goods by wrongfully opposing their removal, he will be liable for the same. GOBIND PERSHAD *v.* RUDDELL **[5 N. W., 160**

6. ——— *Entire contract—Wharfinger's lien—Contract Act (IX of 1872), ss. 170, 171.*—Where a person does work under an entire contract with reference to goods delivered at different times such as to establish a lien, he is entitled to that lien on all goods dealt with under that contract. *Chase* v. *Westmore, 5 M. & S., 180,* followed. The fact that a manufacturer has a wharf upon which he receives goods brought to him by customers, does not entitle him to claim a lien as a wharfinger upon such goods. MILLER *v.* NASMYTH'S PATENT PRESS COMPANY . **I. L. R., 8 Calc., 312**

7. ——— *Charge created by tenant, Duration of.*—A charge on premises created by a tenant can only be a valid charge so long as his right and interest in the property continues. It must cease with the cessation of such right and interest. ZALIM SINGH *v.* BISHESUR KANDU **[7 N. W., 181**

8. ——— *Tainzas or revenue certificates, Endorsement of—Sale of timber—Vendor and purchaser.*—Where tainzas or revenue certificates have been granted by the Conservator of Forests to the owners of timber, such timber cannot be parted with to third parties, except on the understanding that it is burthened with that lien, even although the tainzas are unendorsed. KO KYWETNEE *v.* KO KOUNG BANE . . **5 W. R., 189**

9. ——— *Lien on exchanged property.*—Where *A* mortgaged to *B* certain property by deed of conditional sale, and afterwards at a partition received other land in lieu of what was conditionally sold,—*Held,* in a suit by *B* against *C,* the purchaser of the property in execution of a decree against *A,* that *B* had no lien on such property. PURSOO RAM *v.* BYJNATH LALL . **10 W. R., 475**

10. ——— *Agreement not to alienate—Suit to set aside patni lease.*—*R,* as mortgagee, sued the *Ds* for possession after foreclosure. A razinamah and safinamah were put in and a decree passed thereon under which the *Ds* and others as principals, and their co-sharers as sureties, bound themselves not to alienate any portion of their property in the estate till the debt was satisfied, and that on failure the decree should be executed, the shares of the principals being sold first. After this, the co-sharers granted a patni of a portion of the estate to the defendants in this suit. Subsequently the rights of the *Ds* were sold in execution to *B,* who again sold them to plaintiffs, who had previously acquired twelve annas of the right and interest of *R,* under the razinamah and safinamah and decree, the remaining four annas having passed to *G,* now represented by defendant *K.* The present suit was brought to set aside the patni lease as being in derogation of plaintiff's right. *Held* that the plaintiffs, to the extent of their share, had a valid lien upon the estate, and were entitled to priority over any right under the patni lease and to hold possession until their claim was satisfied. DHUNKRISHTO SEIN *v.* ERSKINE & CO. . . . . **16 W. R., 54**

11. ——— *Lien on land—Payment by mortgagee on account of revenue assessed on land mortgaged as lakhiraj.*—An usufructuary mortgagee, to whom was pledged as lakhiraj land which was not valid lakhiraj, and which was subsequently assessed with revenue, is entitled to a lien against the mortgagor for sums of money paid by the former in discharge of the revenue. NURJOON SAHOO *v.* MOOJEEROODDEEN . . **3 W. R., 6**

12. ——— *Money-decree—Lien on property of judgment-debtor.*—The holder of a simple money-decree does not acquire a lien on the property of his judgment-debtor. MONOHUR DASS *v.* KALLY DHUN DOBEY . **8 W. R., 116**

Upholding on review MOONA *v.* CHAND MONEE GOSSAIN . . . . . . **7 W. R., 20**

See LUCHMUN SUHAE CHOWDRY *v.* GUJRAJ JHA **[4 W. R., 45**

13. ——— *Mortgage—Covenant that mortgagee be entitled to enter—Entry, Right of—Mortgage-deed in English form.*—*B* executed a mortgage-deed in the English form in favour of the *L* Bank, containing amongst other covenants one providing that, upon default, the mortgagee would be entitled to enter into possession of the mortgaged properties. *B* died, leaving a widow, a daughter, and a sister *S,* his heirs. According to Mahomedan law, *S* was entitled to a six-annas share of the mortgaged properties. On the 9th of May 1872, after the mortgage-money became due, the *L* Bank brought a suit, and on the 13th of July 1872 obtained a decree by consent. The existence or right of *S* to a share in the properties was not known to the Bank, and she was not made a party to that suit. The Bank, in execution of their decree, caused the mortgaged properties to be sold, and themselves purchased some of them. The sale-proceeds did not satisfy the entire claim. On the 1st of December 1875, *S* sold her share of six annas in the properties to *R.* In a suit by *R* against the purchaser of two of the mortgaged properties at the aforesaid sale it was held that the share of *S* in the estate of *B* did

LIEN—*continued.*

not pass to the purchasers, though the Bank purported to have brought the whole sixteen annas in the properties to sale. *R* then brought this suit for the recovery of possession of the six-annas share of the properties purchased at the sale by the Bank themselves, and which were now in their possession. *Held* that, the share of *S* not having been sold, the lien imposed upon it by the mortgage-deed remained intact and continued in the hands of the Bank. *Held* also that, under the covenant in the mortgage-deed above referred to, the Bank were entitled to remain in possession as mortgagees until the proportion of the debt, which might legitimately be imposed upon the six-annas share of the properties in their hands, was paid. LUTCHMIPUT SINGH BAHADUR *v.* LAND MORTGAGE BANK OF INDIA

[I. L. R., 14 Calc., 464

14. ———— *Joint Stock Company*—"*Secretaries and treasurers*"—*Advances and disbursements to, and on behalf of, the company*—*Lien on company's property*—*Contract Act (IX of 1872), ss. 171, 217, 221*—*Principal and agent.*—*E L & Co.* were the secretaries and treasurers of the *B S M Company,* which went into liquidation. *E L & Co.* claimed to be creditors of the company for R1,12,000 in respect of advances made to, and expenses incurred and disbursements made on behalf of, the company from time to time and in the conduct of its business. Rupees one lakh of this amount was in respect of sums lent to the company and guaranteed by the claimants. The remainder consisted of money expended in the working of the company's business. *E L & Co.* claimed to be in possession generally of all the property of the company, and to be entitled to a lien on such property in respect of the above claim of R1,12,000. Other creditors disputed the possession and the right to the lien claimed. *Held* that, even assuming *E L & Co.* to be in possession of the property of the company as alleged, they had not the lien that they claimed. A lien is either general or particular. The claimants had not a general lien, because they were neither "bankers, factors, wharfingers, attorneys, or policy-brokers," to whom a general lien is limited by s. 171 of the Contract Act. Nor had they any particular lien: nor under s. 217 of the Contract Act, because that section was inapplicable, having to do only with a lien on a sum of money of the principal in the hands of the agent: nor under s. 221 of the Contract Act, because the sums advanced and expended were not, as required by that section, "disbursements and services in respect of" the property on which the lien was claimed, but were loans made on behalf of the company generally and for the purposes of the whole concern. IN RE BOMBAY SAW MILLS COMPANY. EWART LATHAM & CO.'S CLAIM

[I. L. R., 13 Bom., 314

15. ———— *Receipt of money in execution of decree*—*Repayment to judgment-debtor on reversal of decree by High Court*—*Subsequent reversal by Privy Council.*—A decision of the Principal Sudder Ameen, which declared the decree-holders entitled to satisfy their decree by the sale of certain hypothecated properties, having been reversed by the High Court, an appeal was preferred to the Privy Council, which reversed the decree of the High Court and affirmed the original decision, and provided for the payment of costs. *Held* that the lien established by the Privy Council decree was not lost to the decree-holders by their previous conduct in receiving a portion of the decretal money by the sale of part of the mortgaged premises, which money was subsequently returned by them to the judgment-debtor, on the decision of the Principal Sudder Ameen having been reversed by the High Court. LALLA ROODER PERSHAD *v.* HUR PERSHAD DOSS . **23 W. R., 194**

16. ———— **Lien on indigo factory**—*Act X of 1859, ss. 110, 111*—*Sale in execution of decree.*—A 10-annas shareholder (*C*) in a factory, who was also manager of the whole, executed a kabuliat stipulating that as long as he was the mukhtear the lessor (plaintiff) was at liberty, in the event of the rent not being paid punctually, to take khas possession, or to lease the property to other parties; and that in case of another mukhtear being appointed, or the property being sold, the factory as well as the mukhtear or purchaser would be responsible for any arrears accruing before or after. *C* then mortgaged the factory to *L,* who subsequently obtained a decree entitling him to satisfy his mortgage by the sale of the factory. Plaintiff sued *C* and *L* to obtain a declaratory decree to the effect that the factory could be sold in satisfaction of his decree for rent under Act X of 1859, free of incumbrances created by the bonds. *Held* that, as no money was advanced for the lease, and no debt was due from the lessee to lessor, plaintiff had no lien on the factory in satisfaction of a debt. *Held* that plaintiff could have proceeded under s. 110, Act X, and then under s. 111, if *L* objected to the sale of the factory; but having no prior lien upon the factory, he had no cause of action as against *L.* CHUMUN LALL CHOWDHRY *v.* RUGHOO NUNDUN SINGH . . . . **11 W. R., 194**

17. ———— **Lien on attached property.**—The fact of *A* obtaining a declaration of his lien upon certain property for an amount of debt is no bar to *B's* attaching and selling that property, but the purchaser will be bound by that lien. MONOHUR PAL *v.* WISE . . . . . **15 W. R., 246**

18. ———— **Right of lien**—*Pleading*—*Setting up adverse title.*—In order that a defendant may set up his right of lien as a defence, he must be prepared to show that when the suit was brought he was ready to give up the property over which he claimed the lien, on being paid the amount due to him, and therefore he cannot plead his right of lien when he denies and contests the plaintiff's title to the property. JUGGERNAUTH DOSS *v.* BRIJNAUTH DOSS

[I. L. R., 4 Calc., 322 : 3 C. L. R., 375

19. ———— **Lien for advances made to manager of indigo estate**—*Consignee of West India Estate*—*Salvage lien*—*Estoppel*—*Knowledge*—*Acquiescence.*—*M,* the manager of an indigo concern, under s. 243, Act VIII of 1859, by a deed dated the 1st February 1873, in which the owners of the concern joined, which was duly registered, and which was made with the Court's sanction, mortgaged the concern, and pledged and assigned the season's crop to *A* and *B,* who were pardanashins, to secure repayment of a large sum of money, consisting partly of the balance of previous loans from the husband of *A* and *B* and partly of a new loan to the extent of what was described in the deed as the estimated outlay of the season. The deed provided that *A* and *B* should have a first charge upon the indigo to be manufactured in the season in respect of the moneys secured thereby; that the indigo should be sold subject to *A*'s and *B*'s direction; that until the debt was paid, *M* should have no power to transfer, sell, or mortgage the properties thereby mortgaged, pledged, and assigned, or in any way to deal with the sale proceeds of the manufactured indigo; and that *A* and *B* should have full power to arrange for the appointment and dismissal of the servants of the concern, and for its better management. Previously to this—namely, in October 1872,—*M* had, in pursuance of his letter of appointment, filed an estimate for the season's outlay largely exceeding the sum mentioned in the deed as the estimated outlay, and had alleged that, at the time of executing the mortgage-deed, he had informed one *C,* who was the general manager of *A* and *B,* and as such was the only medium of communication between *M* and *A* and *B,* that further advances would be necessary. According to *M*'s account, *C* told him that *A* and *B* were unable to make further advances, and that he could, if they were needed, obtain them on the usual terms from the plaintiffs, who were indigo brokers. In previous years during the lifetime of the husband of *A* and *B,* who had held similar mortgages of the concern and of the crop in those years to secure advances made by him, such advances had, with the mortgagee's knowledge, been supplemented by loans obtained from the plaintiffs on the security of a first charge upon the crop to the extent of such loans; and it was alleged by *M* that it was upon the understanding that the same course was to be followed in the present instance that the mortgage-deed to *A* and *B* was executed. The moneys advanced by the latter were wholly expended by April, when *M,* without communicating with *A* and *B,* and with only the verbal sanction of the Court, applied to the plaintiffs for money, and on the 26th April the plaintiffs wrote to *M* that they would make advances to the extent of R50,000, upon his assigning to them and giving them a first charge on the first 250 maunds of indigo to be manufactured in the season, and they enclosed a form of assignment for *M*'s signature which he duly signed, and returned to the plaintiffs on the 3rd May. This document bore a R2 stamp. In September and October, *M* obtained further advances from the plaintiffs in respect of other indigo, giving them similar letters of assignment, which also bore R2 stamps. Of the moneys thus advanced by the plaintiffs, R5,000 was paid to *C* for *A* and *B,* by a bill drawn upon the plaintiffs. About R17,000 was applied towards the expenditure of the following season, and the remainder was applied in the production of the then season's indigo, and *M* stated that without it he could not have manufactured any indigo whatever that season. The indigo, when manufactured, was claimed by *A* and *B* under their mortgage, and their claim being resisted by *M,* who set up against them the plaintiffs' rights under the letters of assignment, *A* and *B* brought a suit to enforce the provision of their mortgage-deed. In this suit the indigo was attached before judgment and sent to Calcutta for sale. The plaintiffs now sued *A, B, M,* and the holders for sale to establish their first charge in respect of their advances to *M,* upon 360 maunds of the indigo on the strength of their letters of assignment. *Held per* GARTH, *C.J.,* and PHEAR, *J.,* that the plaintiffs were neither in the position of managers of the concern nor of consignees of the indigo, and were therefore not entitled to any lien upon the indigo, similar to the lien possessed by the manager or the consignee of a West India estate. *Held per* PHEAR, *J.,* that the plaintiffs could not claim a lien on the indigo on grounds of a salvage character; it being essential to such a lien that the person spending the money of which he claims reimbursement should have some interest in the property, or some right or duty towards the owners who are to be affected by the claim, impelling him to make the expenditure. A mere volunteer can in general claim no such lien. *Held* on the facts *per* GARTH, *C.J.,* PHEAR and MACPHERSON, *JJ.,* that there was not evidence of such knowledge and acquiescence on the part of *A* and *B,* with respect to the advances by and the assignments to the plaintiffs as would estop them from disputing the plaintiffs' claim. MORAN *v.* MITTU BIBEE . . . **I. L. R., 2 Calc., 58**

20. ———— **Lien on tea garden**—*Priority of lien—Agreement by purchaser of moiety to pay working expenses to be charge on estate—Valuation to purchaser of moiety for whole estate.*—Where a firm had purchased a moiety in a tea estate and engaged to pay all its working expenses, on the condition that the purchase-money should be a charge on the estate and be repaid from its produce before any profits were declared, and that the working expenses should be repayable in the same manner as the purchase-money of the moiety,—*Held* that the firm had a charge upon the original owner's moiety in priority to a bank mortgage which had been effected on it after the conveyance of the first moiety to the purchasing firm. On a question arising as to the price at which the firm should secure the whole property,—*Held* that the original owner's moiety should be purchased at the price which the bank's surveyor had valued it, and not at the market value at the time of the purchase, because the original owner having died in the interval, and the firm having been allowed to recover no portion of the advances which it had made for the working of the estate after his decease, it could not be required to pay again for the improvement in value of the estate which had resulted from its own advances. BROUGHTON *v.* SPINK **[25 W. R., 243**

21. ———— **Banian of firm, Lien of**—*Consignment and sale of goods—Right of consignor as against banian to goods consigned to Calcutta firm—Consignor and consignee—Banian's claim to lien on account with the firm—Custom of trade—Contract Act (IX of 1872), s. 178—Principal and agent.*—There is no rule of law giving a lien to the banian of Calcutta firm as against his employer, nor is there

LIEN—*concluded.*

any custom to that effect. If the banian claims a lien, he must prove its existence either by showing some express agreement giving him the lien or by showing some course of dealing from which it is to be implied. On the other hand, where merchandise consigned has been sold in good faith, and in accordance with the purpose for which the consignment was made, and the proceeds have been brought into account between the consignee and the banian, the latter is not liable to account to the consignor. The principal of the agent cannot disturb the account with the sub-agent except on the ground of bad faith. A banian not setting up a written agreement, nor asserting that he had advanced to the firm on the security of specific quantities, claimed a lien as against the consignor on merchandize consigned to the firm, whether arrived or in transit. The lien alleged was for the general balance of account, in virtue of an agreement extending to the whole of the merchandize consiged, whatever might have been the terms of the consignment between the consignor and consignee. The banian had made advances, but for them the consideration was the profit to be made by sales. There was no pledge nor any agreement, express or implied, giving the banian a lien on the goods consigned. It was therefore unnecessary to determine whether the banian had notice of the terms of the consignments, nor was it necessary to consider the effect of s. 178 of the Contract Act (IX of 1872), there having been no pawn. The banian having no lien against the consignee had none against the consignor, and could not question the right of the latter to stop *in transitu.* Peacock *v.* Baijnath. Graham *v.* Baijnath . **I. L. R., 18 Calc., 573**
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See Limitation Act, art. 141.
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[I. L. R., 21 Calc., 488
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1. LAW OF LIMITATION.

1. ———— **Nature of law**—*Prescription—Lex fori.*—The law of prescription or limitation is a law relating to procedure, having reference only to the *lex fori.* Where a Court entertains a cause of action which originated in a foreign country, the rule is to adjudicate according to the law of that country, yet the Court proceeds according to the prescription of the country in which it exercises jurisdiction. RUCKMABOYE *v.* LALLOBHOY MOTTICHUND
[5 Moore's I. A., 234

2. ———— **Operation of law**—*Cause of action.*—The Statute of Limitations never begins to run until there has been a cause of action. KHURUCKDHAREE SINGH *v.* REWUT LALL SINGH
[12 W. R., 168

3. ———— *Application to enter up judgment on warrant of attorney.*—The Statute of Limitations is no answer to a rule *nisi* to enter up judgment on a warrant of attorney. SOOJAN MULL *v.* HYDER SINGH . 1 Ind. Jur., O. S., 58

4. ———— *Agreement of parties.*—*Held* that the operation of the Law of Limitation cannot be prevented by any act of the parties or arbitrators unless as provided by law, and a suit beyond time cannot be entertained by the Courts merely because the person entitled to assert the right was by some arrangement or negotiation prevented from asserting it within the statutable period. JEHANDAR KHAN *v.* MUNNOO
[1 Agra, 248

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5. ———— *Rule of Court.*—Nor can its operation be prevented by a rule of Court. KAMBINAYANI JAVAJI SUBBA RAJALU NAYANI VARU *v.* UDDIGHIRI VENKATARAYA CHETTY
[2 Mad., 268

6. ———— **Right of Government to defence of**—*Suits against Government by creditors of ex-King of Delhi.*—The Government of India, taking upon themselves to pay debts due against the estate of the ex-King of Delhi out of the assets of the estate of the ex-King, are entitled to avail themselves of the Statute of Limitations in a suit brought against the estate; but if a suit could justly, and in equity and conscience, be substantiated against the ex-King, it ought to be allowed before the Government officers, irrespective of technical difficulties which might have attended legal proceedings against the King during his sovereignty. NARAIN DOSS *v.* ESTATE OF THE EX-KING OF DELHI
[10 W. R., P. C., 55

S. C. LALLA NARAIN DOSS *v.* ESTATE OF EX-KING OF DELHI . . . . 11 Moore's I. A., 277

2. QUESTION OF LIMITATION.

7. ———— **Adding defendant**—*Civil Procedure Code (Act XIV of 1882), ss. 32, 363, 364.*—No question of limitation can arise with respect to the Court's power to make an order adding a party defendant to a suit. ORIENTAL BANK CORPORATION *v.* CHARRIOL . . I. L. R., 12 Calc., 642

8. ———— **Right of Appellate Court to go into facts on question of limitation.**—There is no law which prevents a lower Appellate Court from looking into all the facts of a case before coming to a conclusion on the point of limitation. KEDARNATH GHOSE *v.* KASIM MUNDUL
[8 W. R., 364

9. ————**Extension of period of limitation**—*Beng. Reg. II of 1805, s. 3, cl. 2—Question of limitation—Plaint.*—Cl. 2, s. 3, Bengal Regulation II of 1805, required the plaintiff in his plaint or replication to set forth distinctly the ground on which he claimed an extension of the period of limitation, and the Zillah Judge had no authority to raise the question of limitation where it was not mooted in the Court below. KISHEN CHUNDER ROY *v.* RAMKANAYE DOSS . . 1 Ind. Jur., O. S., 23

RAMKANAYE DOSS *v.* KISHEN CHUNDER ROY
[Marsh., 22: 1 Hay, 55

10. ———— **Question not raised by parties**—*Pleading—Small Cause Court Rule 19.*—*Per* PEACOCK, *C.J.*, and NORMAN, *J.*—It is competent for a Judge of the Court of Small Causes, of his own motion, to notice the point of limitation, and to decide a case upon that issue, such issue not having been raised by the defendant. *Per* MARKBY, *J.*—It is not competent for such Judge to raise the point, and decide the case thereon, after the case of both parties is closed. Lapse of time does not oust the jurisdiction of the Court. PAYNE *v.* CONSTABLE
[1 B. L. R., O. C., 49

11. ———— **Plea struck out irregularly by first Court for prolixity of written statement.**—Where a plea of limitation was set up in the defendant's written statement, and the first Court, considering the written statement to be prolix, directed the pen to be run through a large part of it, the defendant, dissatisfied with this proceeding on the part of the first Court, appealed to the Judge

LIMITATION—*continued.*

2. QUESTION OF LIMITATION—*continued.*

complaining that no adjudication had been given on the plea of limitation. *Held* that the power of a Court to deal with written statements which appear to contain irrelevant matter, or to be argumentative or unnecessarily prolix, is regulated by s. 124, Act VIII of 1859; and that, as the plea of limitation must be assumed to have been properly before the Judge, he was bound to adjudicate upon it. BOOLEE SINGH *v.* HUROBUNS NARAIN SINGH **[7 W. R., 212**

12. ———— **Question raised on appeal** —*Remand—Power of Appellate Court.*—Where in the lower Court an issue was raised whether the plaintiff's claim was barred by limitation, and the Judge decided it was not, and decreed the case on the merits; and the decree was appealed against by the plaintiff; and the Appellate Court did not deal with the question of limitation, but remanded the case for a new trial on the merits,—*Held* that, on appeal from the new decree, the Appellate Court could entertain the question of limitation; and that the lower Court might have re-tried that issue on the facts found on the new trial. PHOOL COOMAREE BEBEE *v.* OONKUR PERSHAD BOISTOBEE **[2 Ind. Jur., N. S., 50**

S. C. PHOOL KOOMAREE BEBEE *v.* WOONKAR PERSHAD RUSTOBY . . . . **7 W. R., 67**

NILJAREE *v.* MUJEEBOOLLAH . **19 W. R., 209**

13. ———————— *Question not raised in lower Appellate Court.*—A plea of limitation overruled in the Court of first instance, and not brought before the lower Appellate Court, cannot be entertained by the High Court in special appeal. KASHEE CHUNDER TURKOBHOOSUN *v.* KALLY PROSUNNO CHOWDHRY . . . **9 W. R., 452**

14. ———————— *Limitation depending on facts.*—Where a plea of limitation can only be properly decided with reference to facts found in connection with the question of possession and dispossession, and where appellants have omitted to press evidence on the point, though they had every opportunity before the lower Appellate Court, it cannot be admitted to be taken in special appeal. RAMDHONE DASS *v.* RAM RUTTUN DUTT **[10 W. R., 425**

15. ———————— *Point for which evidence is necessary.*—Where the Statute of Limitations was not pleaded in the original Court,—*Held* that it might be set up in the Appellate Court if evidence could be taken there in reply to such plea. On special appeal the Statute of Limitations cannot for the first time be pleaded, unless where the facts which raise the plea are admitted. NARASU REDDI *v.* KRISHNA PADAYACHE . . **1 Mad., 358**

Nor in review. SARASVATI *v.* PACHANNA SETTI **[3 Mad., 258**

See, however, RAMANATHA MUDALI *v.* VAITHALINGA MUDALI . . . . **2 Mad., 238**

where it was held that the principle of the decision in *Narasu Reddi* v. *Krishna Padayache, 1 Mad., 358,* should not be extended.

It is now expressly laid down by s. 4 of the Limitation Act, 1877, that the question of limitation must be taken into consideration whether raised as a defence or not.

16. ———————— *Question not taken in pleadings or grounds of appeal—Consideration of question on appeal.*—A question of limitation, when it arises upon the facts before a Court, must be heard and determined, whether or not it is directly raised in the pleadings or in the grounds of appeal. The fact that a subordinate Court has decided that the suit or appeal before it was brought within time, or that there was sufficient cause, within the meaning of s. 5 of the Limitation Act, for the appellant in that Court not presenting the appeal within the period of limitation prescribed, does not preclude the High Court from considering that decision in appeal. BECHI *v.* AHSANULLAH KHAN **[I. L. R., 12 All., 461**

17. ———————— *Waiver of plea of limitation—Raising plea again on appeal to High Court after abandonment throughout case—Madras Boundary Marks Act (XXVIII of 1860), s. 25—Madras Boundary Marks Act Amendment Act (Mad. Act II of 1884), s. 9—Suit to set aside decision of the Survey officer.*—A suit filed on the 21st April 1891 to set aside the decision of the Settlement officer under the Madras Boundary Acts, passed on the 15th September 1890, was dismissed by the Munsif as being time-barred, not having been brought within six months as provided by s. 25 of Act XXVIII of 1860. This decision was reversed by the District Judge, who remanded the suit for disposal on the merits, holding that the production by the plaintiff of a copy of the judgment, dated the 25th October 1890, raised a presumption that the suit was in time, and shifted the burden of proof to the defendant to show that an earlier copy was granted to plaintiff, or that the decision was pronounced in the plaintiff's presence. Against this remand order there was no appeal. At the rehearing, the question of limitation was not again raised, and the Munsif gave a decree on the merits. An appeal was preferred to the District Court, but no mention was made of the question of limitation. On appeal to the High Court,—*Held* that the question of limitation had been put aside by the consent of the parties who desired to have the case decided on the merits, and that the appellant could not be allowed to fall back on this plea of limitation which he had abandoned in the lower Courts. RANGAYYA APPA RAU *v.* NARASIMHA APPA RAU . **I. L. R., 19 Mad., 416**

18. ———————— *Power of Appellate Court—Appeal on portion of case—Limitation Act, 1877, s. 4.*—Where a suit, which ought to have been dismissed under s. 4 of the Limitation Act, although limitation was not set up as a defence, is not dismissed, the defendant, in order that the

question of limitation may be dealt with by the Appellate Court, must appeal on the whole case. ALIMUNNISSA KHATOON *v.* HOSSEINALI [6 C. L. R., 267

19. ———— *Cross-appeal—Jurisdiction of Appellate Court—Question of limitation not raised in cross-appeal—Limitation Act, 1877, s. 4.*—On an application for execution of decree, the application was granted, but the interest claimed by the decree-holder on the amount of the decree, was disallowed. The decree-holder appealed from the order, but the judgment-debtor filed no cross-appeal. On the hearing of the appeal, the application for execution was dismissed, on the ground that the execution of the decree was barred by limitation. *Held* that, under the circumstances of the case, the Appellate Court was not competent to take the question of limitation into consideration. *Alimunnissa Khatoon* v. *Hossein Ali, 6 C. L. R., 267,* followed. RUGHU NATH SINGH MANKU *v.* PARESHRAM MAHATA . **I. L. R., 9 Calc., 635 : 13 C. L. R., 89**

20. ———— *Omission to decide question.*—The Judge in appeal is bound to decree according to the Law of Limitation applicable to the case as stated by the plaintiff himself, although the objection may not be raised in the grounds of appeal; and his omitting to do so is an error or defect in the decision of the case on the merits and a ground of special appeal. SAHIJI KESRAJI *v.* RAJSANGJI JALMSANGJI . **2 Bom., 169 : 2nd Ed., 162**

21. ———— **Question in reference for accounts to be taken**—*Waiver.*—In a suit for an account, where the defendant, while alleging the balance to be in her favour, contended that the plaintiff's claim was barred by the Limitation Act, and the accounts were afterwards referred by consent to the commissioner, who refused without special direction to notice the defence of limitation, and the Judge of the Division Court amended the order of reference, by directing the commissioner to investigate the accounts with reference to the operation of the Act,—*Held,* on appeal (by COUCH, *C.J.,* and WESTROPP, *J*), that the order of amendment was justified by the circumstances of the case, and that the defendant having raised the defence of limitation, and not having subsequently abandoned it, that question should be first decided. PIRBHAI RAVJI *v.* NENBAI **[3 Bom., O. C., 164**

22. ———— **Question raised after remand on special appeal**—*Law under the Limitation Act, 1859.*—A defence of limitation under Act XIV of 1859 could not be raised for the first time after there had been a remand on special appeal from the decree of the Court which has heard the cause on remand. *Buzl Ruheem* v. *Sreenath Bose, 6 W. R., 178,* followed. *Kuria* v. *Gururav, 9 Bom., 282,* distinguished. *Parker* v. *Elding, 1 East, 352,* and *Lila* v. *Vasudev, 11 Bom., 283,* distinguished. *Semble per* WESTROPP, *C.J.,* doubting *Saluji* v. *Rajsanji, 2 Bom., 162, A. C.,* and *Davlata* v. *Beru, 4 Bom., 197, A. C.,* the Court ought not, even upon a special appeal in a case in which there has not been any remand, so to raise such question. MORU BIN PATLAJI *v.* GOPAL BIN SATU **[I. L. R., 2 Bom., 120**

23. ———— **Point of limitation taken for the first time in second appeal**—*Omission of Court of first instance to reject a plaint for limitation, Effect of.*—The plaintiff's suit to recover certain lands was dismissed by the Court of first instance and by the lower Appellate Court, but on second appeal was remanded for determination of plaintiff's alleged right of perpetual cultivation of the land. On remand the District Judge gave a decision in favour of the plaintiff. The defendant appealed to the High Court, and then for the first time raised the point of limitation. *Held* that the objection was taken too late. The defendant had the opportunity of raising the objection under the Limitation Act, and, if necessary, of getting any question, on which it depended, tried by the Courts below; and as he took no steps to this end, he should be taken to have waived his right to raise the objection. The omission of the Court of first instance to reject the claim if erroneous gave the defendant a right of appeal which he might renounce, and virtually did renounce. The obligation resting on the Court of first instance to reject a plaint, which on the face of it is barred by limitation, is not expressly laid on each successive Court whenever the objection comes to view, and ought not to be assumed by inference. DATTU *v.* KASAI . **I. L. R., 8 Bom., 535**

24. ———— **Question in execution of decree**—*Jurisdiction of Court where decree was passed—Transfer of decree for execution—Code of Civil Procedure, ss. 223, 239, 248.*—On the 4th of March 1884 a decree-holder applied to the Court of the Subordinate Judge of Moorshedabad (where the decree was passed) for transfer of the decree to the District Court of Beerbhoom for execution. The transfer was made, and, on application by the decree-holder, the judgment-debtor's properties in Beerbhoom were attached. Thereupon the judgment-debtor, objected to the attachment, and obtained an order under s. 239 of the Code of Civil Procedure, staying the execution proceedings. The judgment-debtor then applied to the Court of the Subordinate Judge at Moorshedabad objecting to the execution of the decree on the ground that it was barred by limitation. The objection was overruled by the Subordinate Judge, and his decision was upheld on appeal to the District Judge. On second appeal to the High Court,—*Held* that the Moorshedabad Court was competent to hear and determine the plea of limitation. *Held* also that the fact of the judgment-debtor's not raising the plea of limitation in the Beerbhoom Court did not, under the circumstances, preclude him from relying on it in his subsequent application to the Court at Moorshedabad. SRIHARY MUNDUL *v.* MURARI CHOWDHRY **[I. L. R., 13 Calc., 257**

25. ———— **Special and general question of limitation**—*Minority.*—Where the issue of limitation raised in the first Court was a special

LIMITATION—*continued.*

2. QUESTION OF LIMITATION—*continued.*

issue as to the particular provision on the subject of minority found in s. 11, Act XIV of 1859, plaintiffs were entitled to be heard on the issue of general limitation under cl. 12, s. 1, and to give evidence to show that the suit was not barred. BAHUR ALI *v.* SOOKEA BIBEE . . . . **13 W. R., 63**

26. ———— **Appeal from order overruling plea of limitation**—*Interlocutory order.*—The order of a Judge overruling the defence of limitation, and remanding the suit for trial on the merits, if not immediately appealed against as a decree, may, as an interlocutory order, be objected to when the ultimate decision is appealed against. WUZEERUN BEEBEE *v.* WARRIS ALI . . . **1 W. R., 51**

VITHAL VISHVANATH PRABHU *v.* RAMCHANDRA SADASHIV KIRKIRE . . **7 Bom., A. C., 149**

But *see* BEEKUN KOER *v.* MAHARAJAH BAHADOOR [**Marsh., 66 : 1 Hay, 134**

27. ———— **Decision on plea by implication.**—It is not necessary that the Court below should expressly overrule a plea of limitation; it is sufficient if the Court disposes of the question of limitation by implication. WISE *v.* ROMANATH SEN LUSKHUR . . . **2 Ind. Jur., O. S., 5**

28. ———— **Right to raise plea**—*Landlord and tenant—Suit for possession—Trespasser.*—In a suit to recover possession, the defendant, by admitting the right of the plaintiff as the owner of the land in dispute, and acknowledging himself to be the plaintiff's tenant, precludes himself from pleading adverse possession or limitation, in whatever form it may be that the plaintiff asserts his right to the land,—*i.e.*, whether he sues the defendant as a tenant or trespasser. WATSON & CO. *v.* SHURUT SOONDEREE DEBIA . . . . **7 W. R., 395**

29. ———— *Landlord and tenant—False plea of tenancy—Trespasser.*—The plea of limitation can be raised and determined in a suit brought by a landlord against a person who is really a trespasser, but who has set up a false case of tenancy. DINOMONEY DABEA *v.* DOORGAPERSAD MOZOOMDAR [**12 B. L. R., F. B., 274 : 21 W. R., 70**

30. ———— *Landlord and tenant—Adverse possession.*—Where the plaintiff sued for khas possession of land, it was held the defendants, tenants of the plaintiff, could raise the plea of limitation, on the ground that they had held possession of the land as bi-howladars for more than twelve years previous to the suit. RUTTONMONEE DABEE *v.* KOMOLAKANTH MOOKERJEE [**12 B. L. R., 283 note : 12 W. R., 364**

31. ———— *Landlord and tenant—Knowledge of adverse title.*—Limitation can be pleaded in a suit by a landlord against a tenant, but where the defendant claimed to hold on a mokurari tenure, to make the possession adverse, it must be shown that the plaintiff knew of the title set up by the defendant. TEKAITNE GOWRA KUMARI *v.* BENGAL COAL COMPANY [**12 B. L. R., 282 note : 13 W. R., 129**

LIMITATION—*continued.*

2. QUESTION OF LIMITATION—*concluded.*

Affirmed by Privy Council . . **19 W. R., 252**

32. ———— *Landlord and tenant—Failure to prove talukhdari right.*—Raiyats failing to establish a talukhdari right set up by them are not in a position to plead adverse possession as against their landlord's right to recover rent. LAKOO KHAN *v.* WISE . . . . **18 W. R., 443**

33. ———— *Landlord and tenant—Defendant pleading tenancy and adverse possession.*—A defendant has a right to set up the plea of tenancy and at the same time to rely on the Statute of Limitations. *Dinomoney Dabea* v. *Doorgapersad Mozoomdar, 12 B. L. R., 274,* followed. *Tekaitne Gowra Kumari* v. *Bengal Coal Company, 12 B. L. R., 282 note,* distinguished. MAIDIN SAIBA *v.* NAGAPA . . **I. L. R., 7 Bom., 96**

34. ———— *Landlord and tenant.*—*Semble*—A sub-lessee without title cannot plead limitation against his landlord either by himself or through his lessor. MAHARAM SHEIKH *v.* NAKOWRI DAS MAHALDAR . **7 B. L. R., Ap., 17**

S. C. MOHURUM SHAIKH *v.* NOWKURREE DASS MOHULDAR . . . . . **14 W. R., 357**

But *see* NAZIMUDDIN HOSSEIN *v.* LLOYD [**6 B. L. R., Ap., 130 : 15 W. R., 232**

3. STATUTES OF LIMITATION.

(*a*) GENERALLY.

35. ———— **Construction of Limitation Act.**—Statutes of Limitation are, in their nature, strict and inflexible enactments, and ought to receive such a construction as the language in its plain meaning imports. LUCHMEE BUKSH ROY *v.* RUNJEET RAM PANDAY [**13 B. L. R., P. C., 177 : 20 W. R., 375**

S. C. in lower Court . . **12 W. R., 443**

36. ———— An Act of Limitation being restrictive of the ordinary right to take legal proceedings must, where its language is ambiguous, be construed strictly,—*i.e.*, in favour of the right to proceed. UMIASHANKAR LAKHMIRAM *v.* CHHOTALAL VAJERAM . . . **I. L. R., 1 Bom., 19**

37. ———— The applicability of the particular sections of Act XIV of 1859 must be determined by the nature of the thing sued for, and not by the status, race, character, or religion of the parties to the suit. FUTTEHSANGJI JASWANTSANGJI *v.* DESAI KULLIANRAIJI HAKOOMUTRAIJI [**13 B. L. R., 254 : 21 W. R., 178**
L. R., 1 I. A., 34

38. ———— *Limits to enforcing rights.*—A Limitation Act is not intended to define or create causes of action, but simply to prescribe the periods within which existing rights may be enforced. JIVI *v.* RAMJI . **I. L. R., 3 Bom., 207**

39. ———— *Retrospective effect.*—The general rule as laid down in *Reg.* v. *Dorabji, 11 Bom., 117,*—that "an Act of limitation, being a law of procedure, governs all proceedings, to which its terms are applicable, from the moment of its enactment, except so far as its operation is expressly excluded or postponed,"—admits of the qualification that, when the retrospective application of a Statute of Limitation would destroy vested rights or inflict such hardship or injustice as could not have been within the contemplation of the Legislature, then the statute is not, any more than any other law, to be construed retrospectively. KHUSALBHAI *v.* KABHAI . . . . **I. L. R., 6 Bom., 26**

(*b*) STATUTE 21 JAC. I, C. 16.

40. ———— **Action of contract**—*Cause of action—Breach of contract and refusal to perform it.*—In actions of contract the breach of a contract is the cause of action, and the Statute of Limitations runs from the time of the breach, and not from the time of the refusal to perform the contract. In 1822 *A* purchased at a Government sale at Calcutta a quantity of salt, part of a larger portion then lying in the warehouse of the vendors (the Government) where the salt was to be delivered. By the condition of sale it was declared that, on payment of the purchase-money, the purchaser should be furnished with permits to enable him to take possession of the salt: there was also a stipulation that the salt purchased should be cleared from the place of delivery within twelve months from the day of sale, otherwise the purchaser was to pay warehouse rent for the quantity then afterwards to be delivered. The purchaser paid the purchase-money, and received permits for the delivery of the salt, which was delivered to him in various quantities down to the year 1831, in which year an inundation took place which destroyed the salt in the warehouse, and there remained no salt to satisfy the contract. The purchaser petitioned the vendors for a return of the purchase-money, which was refused, on the ground that the loss happened through his negligence in not sooner clearing the salt from the warehouse. An enquiry, however, took place at the instance of the Government, who referred the matter to the Salt Collector. The Collector did not make his report till the year 1838, and upon that report the Government refused to return the purchase-money claimed in respect of the deficient salt. The purchaser then brought an action of assumpsit for recovery of the purchase-money of such part of the salt as had not been delivered, alleging, as a breach, the non-delivery thereof. To this the defendants pleaded the Statute of Limitations, that the cause of action had not accrued within the commencement of the suit. The Supreme Court at Calcutta found a verdict for the plaintiff. *Held* on appeal, reversing that decision, that when the purchaser applied for the residue of the salt and was told there was none to deliver, the contract was broken, and the cause of action accrued from the time of such breach, and that the subsequent enquiries by the Government did not suspend the operation of the Statute of Limitations till 1838, the time of the final refusal, and that the remedy was barred by the statute. *Semble*—There may be an agreement that, in consideration of an enquiry into the merits of a disputed claim, no advantage should be taken of the statute in respect of the time employed in the enquiry, and an action might be brought for a breach of such agreement. EAST INDIA COMPANY *v.* ODITCHURN PAUL . . **5 Moore's I. A., 43**

(*c*) OUDH, RULES FOR.

41. ———— **ss. 9 and 14**—*Suits on money bonds—Bond executed before annexation of Oudh.*—By s. 9 of the Limitation Rules for the guidance of Civil Courts in Oudh, as explained by the Circular Order of the Judicial Commissioner, 104 of 1860, the limitation of suits was fixed for three years in "suits for money lent for a fixed period, or for interest payable on a specified date or dates, or for breach of contract, unless there is a written engagement or contract; and where registry offices existed at the time, such engagement was registered within six months of its date." That section held not to apply in the case of a bond executed in 1855 before the annexation of Oudh, when there was no registry at the place where it was made and sued for in 1860, such transaction falling within s. 14 of that Circular Order where the period of limitation is six years for "all suits on bonds registered within six months of their date, or on bonds formally attested when there was no means of registry, and all other suits for which no other limitation is expressly provided by these rules:" and a decree of the Judicial Commissioner of Oudh, holding that a suit on the bond was barred by the three years' limitation provided by s. 9 of the rules, reversed on appeal. SALIGRAM *v.* AZIM ALI BEG . . . **10 Moore's I. A., 114**

(*d*) BENGAL REGULATION III OF 1793, S. 14.

42. ———— **s. 14**—*Exemption from limitation—Good and sufficient cause.*—The Government having neglected for thirteen years to commence a regular suit, no "good and sufficient cause" precluding them from obtaining redress, according to the exception provided by Regulation III of 1793, s. 14, could be presumed to justify the exemption of their suit from limitation. GOVERNMENT OF BENGAL *v.* SHURRUFFUTOONISSA

[3 W. R., P. C., 31: 3 Moore's I. A., 225

43. ———— *Exemption from limitation—Distant residence—Good cause for delay—Beng. Reg. II of 1805, s. 3.*—Where a party in possession of an estate is a *bonâ fide* purchaser for valuable consideration without notice, and the real owner had neglected for twenty-five years to assert her right to the estate, mere distant residence was held not to be a sufficient cause to preclude the owner from making an earlier assertion of her right so as to save her from limitation by bringing her within the exceptions of s. 14, Regulation III, 1793, and s. 3, Regulation II of 1805. IMAD ALI *v.* KOOTHY BEGUM

[6 W. R., P. C., 24: 3 Moore's I. A., 1

LIMITATION—*continued.*

3. STATUTES OF LIMITATION—*continued.*

44. ———— *Deduction of time—Non-suit—Computation of limitation.*—According to the former procedure, when a suit before a competent tribunal ended in a non-suit, the period of limitation was computed from the accruing of the original cause of action, the time while the first suit was pending being deducted. PURBHOO NARAIN SINGH *v.* LELANUND SINGH . . . **2 W. R., 256**

45. ———— *Deduction of time—Suit by minor after attaining majority—Non-allowance of pendency of suit by guardian.*—In a suit by a minor after attaining majority, no allowance can be made, under Regulation III of 1793, for the period of pendency of a suit brought by his guardian and eventually non-suited. LUCHMUN PERSHAD *v.* JUGGERNATH DOSS . . . . **W. R., 1864, 2**

46. ———— *Deduction of time—Suit in Collector's Court—Reference to civil suit.*—A suit for proprietary right in certain rent-free land in respect of which the plaintiff had instituted a suit for rent before the Collector, which was dismissed, and the plaintiff referred to a civil suit,—*Held* that the plaintiff was not entitled to any deduction of the time during which the rent suit was proceeding, and that the date of accrual of plaintiff's right, and not that of the Collector's order of reference, was the cause of action in this case, and that the plaintiff's suit was barred by limitation, under s. 14, Regulation III of 1793. HOSSAIN KHAN *v.* DINNOBUNDHOO PUNDAH . . . . . . **1 W. R., 35**

OKHETOONISSA *v.* KOOCHIL SIRDAR **[2 W. R., 45**

47. ———— *Deduction of time—Suit for excess of jama—Suit first brought in summary department.*—The time occupied in the summary department in recovering excess of jama according to a decree should be deducted from the period of limitation for the regular suit which is afterwards brought for the same purpose, and to which the plaintiff was referred by the Court. HUROMONEE GOOPTIA *v.* GOBIND COOMAR CHOWDHRY **[5 W. R., 51**

48. ———— *Deduction of time—Disputed title—Sufficient cause—Substitution of parties.*—The plaintiffs as heirs of *R*, the husband of one *B*, more than twelve years after her death sued to recover lands alienated by her. As an answer to the plea of limitation, they alleged that, in a suit for other property brought against *B* in her lifetime, they presented a petition after her death praying to be allowed to appear as her representatives, and were opposed by one *L* claiming to be an adopted son of *R*; that in March 1847, and within twelve years before suit, the Principal Sudder Ameen ordered the plaintiff's names to be substituted for that of *B* as defendants in that suit. *Held* by the majority of the Court (*dissentiente* GLOVER, *J.*) that these proceedings did not bar the operation of the old Law of Limitation (s. 14, Regulation III of 1793). RAMGOPAL ROY *v.* CHUNDER COOMAR MUNDUL . **2 W. R., 65**

LIMITATION—*continued.*

3. STATUTES OF LIMITATION—*continued.*

49. ———— *Deduction of time.*—A party who had been endeavouring by resort to competent Courts to recover his rights was held to be entitled to avail himself of the exception in Regulation III of 1793, s. 14, though part of the proceedings was erroneous in enforcing an order made by a single Judge of the Sudder Court, which was ineffectual by reason of its not being confirmed by a second Judge. DOORGAPERSAUD ROY CHOWDHRY *v.* TARAPERSAUD ROY CHOWDHRY

[4 W. R., P. C., 63: 8 Moore's I. A., 308

50. ———— *Deduction of time—Beng. Reg. II of 1805, s. 3—Adverse possession—Suit by heir for share of inheritance.*—*A* died in 1813. At *A*'s death one of his heirs entitled to a share in the succession of his estate obtained possession, claiming the entirety under a deed of gift. Another heir also claimed the entirety, first under a will, and in the alternative as customary heir. Suits were brought by the two claimants, in the course of which questions were raised as to who would be entitled in case both claimants should fail, but from the frame of the suits it was impracticable to deal with these questions till the adverse claims to the entirety were disposed of. Ultimately, in 1842, those claims were disposed of by the Judicial Committee of the Privy Council in one of the suits by a decision which in substance negatived the claims of both parties to the entirety, and decreed that the heirs of *A*, according to the Shiah law of inheritance, were entitled, and directed the mesne profits to be brought into Court and divided among such heirs. A suit was in consequence instituted in 1852 by one of the heirs of *A* to carry into execution the decree of the Privy Council made in 1842. *Held* that, although the claim which accrued so long ago as the death of *A* would have been in ordinary circumstances barred by the Bengal Regulations III of 1793, s. 14, and II of 1805, s. 3, yet that, as the pendency of the appeal rendered it impracticable to bring the suit until the question was disposed of by the decree of the Privy Council in 1842, the suit must be considered as supplemental to that decree, and as it was brought within twelve years from that date, it was not barred by these Regulations. *Held* also that, although one of the original claimants had obtained possession under an order of the Court, and retained the same until the final decree in 1842, it was not such a quiet and undisturbed possession, under the circumstances, as to operate by Regulation II of 1805, s. 3, as a bar to the suit. ENAYET HOSSEIN *v.* AHMED REZA

[7 Moore's I. A., 238

(*e*) BENGAL REGULATION VII OF 1799, s. 18.

51. ———— **Ineffecutual execution proceedings in summary suit**—*Beng. Reg. VIII of 1819, s. 18—Cause of action.*—In a summary suit under Regulation VII of 1799, the plaintiff obtained a decree against his gomastah for certain moneys due from the latter, but failed in execution to recover the amount. He accordingly brought a regular suit under cl. 4, s. 18, Regulation VIII of 1819, in order to make the immoveable property of his gomastah available in satisfaction of the debt. *Held* his cause of action in the regular suit was the same as his cause of action in the summary suit, and that the period of limitation must be reckoned from the time when that cause of action accrued, and not from the date of the summary decree, or from the time when the plaintiff discovered that he could not obtain satisfaction of such decree. SREENATH GHOSAL *v.* BISSONATH GHOSE

[B. L. R., Sup. Vol., Ap., 10 : 5 W. R., 100

(*f*) BOMBAY REGULATION I OF 1800, s. 13.

52. ———— **s. 13**—*Offer to compromise suit —Admission —Residence of defendant out of jurisdiction.*—The offer of a specific sum of money by way of compromise in no way involving an admission of the justice of the plaintiff's demand further than what may be inferred from the offer of any compromise (an inference which is never permitted), could not bring the plaintiffs within the exception, in s. 13, Regulation I of 1800, of the Bombay Code, under which a suit was barred by limitation if not brought within twelve years from accrual of the cause of action. The defendant's residence beyond the limits of the E. I. Co.'s Court was not a good and sufficient cause, within the meaning of the same exception, to excuse the plaintiff's delay in suing beyond the twelve years. BHAEE CHUND *v.* PURTAB CHUND

[5 W. R., P. C., 31 : 1 Moore's I. A., 154

53. ———— *Suit for land—Land attached to hereditary office.*—The Bombay Regulation I of 1800, s. 13, limiting the right of action to twelve years, included suits on account of land as well as personal actions. Where, therefore, a suit was instituted for the share of certain lands some of which were attached to the hereditary office of desai, and no satisfactory proof was given that any demand had been made in respect thereof within that period, the right of action was held to be absolutely barred. NUNDRAM DYARAM *v.* DULA BHAEE KURPARAM

[1 Moore's I. A., 414

(*g*) MADRAS REGULATION II OF 1802.

54. ———— **s. 18, cl. 4**—*Irregular proceedings of Court.*—A suit was not barred by limitation under cl. 4, s. 18, Regulation II, 1802, of the Madras Code, if the plaintiff preferred his claim within the prescribed period to a Court of competent jurisdiction, and was prevented from commencing his suit in proper time by no neglect on his part, but by the irregular proceedings of the Court to which his claim was preferred. NARAGUNTY LUCHMEDAVAMAH *v.* VENGAMA NAIDOO

[1 W. R., P. C., 309 : 9 Moore's I. A., 66

55. ———— *Deduction of time bond was under attachment—Good and sufficient cause.*—Where a bond was seized under legal process of attachment after it had become due, but before the lapse of twelve years from its date, and remained under attachment for several years,—*Held* that there was "good and sufficient cause" for the lapse of time within the meaning of Regulation II of 1802, s. 18, cl. 4, and that a suit on the bond was therefore not barred. KADARBACHA SAHIB *v.* RANGASVAMI NAYAK . . . . . **1 Mad., 150**

(*h*) BENGAL REGULATION II OF 1805.

56. ———— **Suit for rent**—*Adverse possession—Suit for ejectment.*—A suit instituted by a zamindar in 1857, for the recovery of rent, for six years and nine months preceding its commencement, of land held rent free since 1796, under a grant alleged to be null and void under s. 10 of Regulation XIX of 1793, was held barred by sixty years' peaceable and uninterrupted possession of the grantee and his representatives according to the provisions of Regulation II of 1805. *Held* also that a suit to eject would be similarly barred. CHUNDRA BULLEE DEBIA *v.* LUCKHEE DEBIA CHOWDHRAIN

[1 Ind. Jur., N. S., 25, 141 : 5 W. R., P. C., 1
10 Moore's I. A., 214

57. ———— **Suit for possession.**—Under Regulation II, 1805, sixty years is fixed as the absolute limit beyond which neither fraud nor any other special allegation will give a cause of action. In a suit by Government against ghatwals, the defendants were found to have been in possession "for a very long time," and although they had failed to prove possession in excess of sixty years, the onus was held to lie on the Government to prove possession within sixty years. BROMANUND GOSSAIN *v.* GOVERNMENT

[5 W. R., 136

58. ———— **s. 2, cl. 2**—*Suit for resumption and assessment by Government.*—The right of Government to institute proceedings by or before the Revenue Collector under Regulation II of 1819 for the resumption of lands for the purpose of assessment to the public revenue was barred by Regulation II of 1805, s. 2, cl. 2, after the lapse of sixty years from the cause of action. So held by the Judicial Committee of the Privy Council on appeal from a decree made by the Special Commissioner, on a claim by Government where mahatern lands were held as lakhiraj by the Raja of Burdwan before the Company's accession to the Dewany in 1765, and no claim had been made by Government to resume the lands for assessment till the year 1836. DHEERAJ RAJA MAHATAB CHUND BAHADOOR *v.* GOVERNMENT OF BENGAL . . **4 Moore's I. A., 466**

59. ———— **s. 3**—*Beng. Reg. XIX of 1793 —Lakhiraj—Adverse possession.*—*Held* that under s. 3, Regulation II of 1805, possession of land for a period upwards of sixty years since the passing of Regulation XIX of 1793, without payment of rent, barred the remedy of the zamindar to dispossess the holder, or to resume the land as mal. KASINATH KOOWAR *v.* BANKUBEHARI CHOWDHRY

[3 B. L. R., A. C., 446

S. C. KASHEENATH KOONWAR *v.* BUNKO BEHAREE CHOWDHRY . . . **12 W. R., 440**

LIMITATION—*continued.*

3. STATUTES OF LIMITATION—*continued.*

60. —————— *Beng. Reg. II of 1803, s. 18—Violent and forcible possession.*—This case, which was originally instituted in the Zillah Court at the time when no regulation for the limitation of suits applicable to the suit existed but s. 18, Regulation II, 1803, but which, having been appealed from the Zillah Court, was pending at the time that Regulation II of 1805, which corrected the Regulation of 1803, was passed, was held to be subject to the Regulation of 1805, as regards the forcible and violent possession taken by the defendants, who could not be allowed to plead their wrong in support of the plea of limitation. LALL DOKUL SINGH *v.* LALL ROODER PURTAB SINGH . . . **5 W. R., P. C., 95**

61. —————— *Fraudulent or forcible acquisition.*—Regulation II of 1805, s. 3, which provides that the limitation of twelve years shall not be considered applicable to any private claims of right to immoveable property, if the party in possession shall have acquired possession by violence, fraud, or other unjust, dishonest means, must be considered with some strictness (otherwise the door would be opened widely to a large class of claims which ought properly to be barred), and the alleged fraudulent or forcible dispossession must be clearly established. RAJENDER KISHORE SINGH *v.* PERLHAD SEIN . . . **22 W. R., 165**

62. —————— *Maintenance, Liability to pay.*—The *nullum tempus* clause of s. 3, Regulation II, 1805, does not apply to a case where the occupant was not a mortgagor or depositary, otherwise than as he was subject to pay a portion of the proceeds of the property to another during his lifetime. GORDON *v.* ABOO MAHOMED KHAN

[5 W. R., P. C., 68

(*i*) BOMBAY REGULATION V OF 1827.

63. ———— **s. 1**—*Miras land.*—The law of limitation contained in s. 1, Regulation V of 1827, applies to miras land as well as to all other descriptions of immoveable property. Special Appeals, No. 2520 of 1850, *Morris, Sel. Dec., 51;* and No. 3064, *Morris, S. D. A. Rep., Vol. II,* overruled. SALU KOM RAGHUJI *v.* RAVAJI BIN RAMJEE

[1 Bom., 41

64. ———— **ss. 3 and 4**—*Claim for account by representative of deceased partner against surviving partners.*—A right to an account claimed by the representatives of a deceased partner in a firm against his surviving partners fell under s. 4 of Regulation V of 1827, and was not a debt within the meaning of s. 3 of that Regulation. BHAICHAND BIN KHEMCHAND *v.* FULCHAND HARICHAND

[8 Bom., A. C., 150

65. ———— **s. 7, cl. 2**—*Claim without binding decree having been made.*—A case was within the exception contained in cl. 2, s. 7, Regulation V of 1827, of the Bombay Code (Limitation of Suits), by reason of a claim having been preferred to the authority that was then the supreme power in the State, although a satisfactory and binding decree was not obtained. JEWAJEE *v.* TRIMBUKJEE

[6 W. R., P. C., 38 : 3 Moore's I. A., 138

66. —————— **s. 7, cl. 3**—*Age of majority.*—*Held* that Regulation V of 1827, s. 7, cl. 3, did not alter the Hindu law of minority, but only defined the period of limitation in cases of minority generally. HARI MOHADAJI JOSHI *v.* VASUDEV MORESHVAR JOSHI **2 Bom., 344 : 2nd Ed., 325**

(*j*) ACT XXV OF 1857, s. 9.

67. ———— **s. 9**—*Act IX of 1871, s. 1—Minority, Disability arising from—Forfeiture of property of rebel—Repeal, Effect of.*—*B S*, the father of the plaintiff, who was in possession of an estate in Lohardugga, which had been granted to his ancestor by the Rajah of Chota Nagpore, was, on the 10th December 1857, after proceedings taken under Act XXV of 1857, declared to be a rebel, and it was ordered that all his property should be forfeited to Government. On the 16th April 1858, *B S* having been arrested was tried and convicted on a charge of rebellion, and sentenced to death. The sentence was carried out on the 21st April 1858, and an order was made on the same day by the Deputy Commissioner for the confiscation of his property. On the 1st April 1872, a suit was instituted by the plaintiff, then a minor, to recover possession of the estate of his father *B S*. *Held* that the suit not having been instituted within one year from the seizure of the property, was barred by s. 9, Act XXV of 1857, notwithstanding its repeal by Act IX of 1871. There being no exception in Act XXV of 1857 in favour of infants, the plaintiff was not entitled to deduct the time during which he was under the disability of minority. KAPILNAUTH SAHAI DEO *v.* GOVERNMENT

[13 B. L. R., 445 : 22 W. R., 17

68. —————— *Omission to adjudicate forfeiture of property—Seizure of property of suspected person.*—The property in suit was attached by the Magistrate in 1858, and seized in 1862, without adjudication of forfeiture, as provided by Act XXV of 1857, and the owner did not surrender himself to undergo trial, and did not establish his innocence, or prove that he did not escape or evade justice, within one year from the date of seizure, as provided by s. 8 of that enactment. *Held* that the suit was not barred by one year's limitation provided in s. 9 of the said Act, it being applicable to suits and proceedings in respect of property seized after conviction of the offender if he is tried, or after an adjudication of forfeiture if he is not in person present to take his trial, and not where there is a mere seizure by a Magistrate of a suspected person's property without further proceedings. MAHOMED YUSUF ALI KHAN *v.* GOVERNMENT . . . . **1 Agra, 191**

(*k*) ACT IX OF 1859.

69. ———— **ss. 18 and 20**—*Involuntary absence—Refusal to surrender.*—Although s. 18, Act IX of 1859, deals with the property of an offender on conviction, and provides that the offender's failure to surrender himself within one year from the date of seizure would preclude the Courts from questioning the validity of seizure, yet the general terms of that section cannot, in the absence of express provision to that effect, be construed to mean that any involuntary absence would be treated as a default or refusal to surrender. *Held* therefore that plaintiff's suit, if he succeed in establishing that his absence within the limited period was involuntary, would be removed from the operation of that section. The plaintiff's suit was not barred by s. 20, Act IX of 1859, which deals with the rights of persons who are not accused and suspected of the act of rebellion, and its operation according to ordinary rules of construction cannot be extended to cases not within the preceding portion of the section. MAHOMED YUSUF ALI KHAN *v.* GOVERNMENT . . . . . **1 Agra, 191**

70. ———— **s. 20**—*Forfeiture of rebel's property.*—Where the property of a rebel has been sold, any party claiming an interest in the thing sold is bound, under s. 20, Act IX of 1859, to bring his suit within one year from the date of the order of confiscation. PROSONNO PANDEY *v.* GUNGA RAM **[W. R., 1864, 2**

NEPAL SINGH *v.* RAM SARUN SINGH **[W. R., 1864, 5**

NUNDUN SINGH *v.* KOOLSOOM **W. R., 1864, 377**

AMEEROONNISSA *v.* SHIB SUHAI . **1 Agra, 271**

71. ———— *Attachment of rebel's property.*—The property of certain rebels was confiscated, and a list made of such property, which list did not specify the land in suit. *Held*, nevertheless, that, if the land in suit was actually attached as the property of the rebels, the plaintiff's suit could be barred by the special Limitation Law of Act IX of 1859. HAFIZ AMEER AHMED *v.* HAFIZ NUZAL ALI **[1 Agra, 46**

72. ———— *Disability of minority—Forfeiture of rebel's property.*—Certain property, in the actual possession of a rebel, was confiscated by the Government in 1858. In a suit brought on 1st May 1865 to recover the property, it appeared that the plaintiffs were the sons and heirs of one *M*, who died in 1854, legally entitled to, though not in possession of, the property in question; that at the date of his death, and at the date of the confiscation, the plaintiffs were minors, and that they came of age in 1861 and February 1864, respectively. *Held* that the suit, not having been brought within one year from the date of the confiscation, was barred by s. 20, Act IX of 1859. There is no saving clause in Act IX of 1859 with respect to minors or parties under disability to sue, and such saving cannot be held to be implied upon any principle of equitable construction; nor can the saving clauses contained in the general Limitation Act, XIV of 1859, be imported into a special enactment. Act IX of 1859 is plainly retrospective in its operation, and applies to claims to forfeited property which had been confiscated before its passing. MAHOMED BAHADUR KHAN *v.* COLLECTOR OF BAREILLY **[13 B. L. R., 292 : 21 W. R., 318 L. R., 1 I. A., 167**

73. ———— *Forfeiture of property—Cause of action.*—In cases of confiscation, limitation runs not from the date on which confiscation is sanctioned by the Government, but rather from the date on which the property is actually attached on the part of the Government. DEO KARUN *v.* MOHAMED ALI SHAH . . **3 N. W., 328**

74. ———— *Foreclosure proceedings.*—Proceedings to foreclose are not the "suit" contemplated by s. 20, Act IX of 859. NUND UN SINGH *v.* KOOLSOOM . . . . **W. R., 1864, 377**

75. ———— *Suit to redeem after confiscation of mortgagee's interest.*—Where the rights and interests of mortgagees only are confiscated and granted, the suit to redeem by a mortgagor is not barred by s. 20, Act IX of 1859. RAMDHUN *v.* BHOWANEE SINGH . . **3 Agra, 139**

76. ———— *Forfeiture of rebel's porperty.*—A Hindu widow in possession of a six-annas zamindari share of her husband's sold the share in 1855 to persons who in 1858 were convicted of rebellion, and their estates, including the share, were confiscated by Government. The share was granted to other persons as a reward for loyalty, and remained in their possession until 1886, when a suit for possession and mesne profits was brought, just before the expiry of twelve years from the widow's death, by a reversioner to her husband's estate on the ground that the sale of 1855 could not affect more than the widow's life-interest, and that nothing more had been confiscated by the Government in 1858 and granted to the defendants. The plaintiff had taken no steps in 1855 to question the sale, or in 1858 to assert his claims as reversioner. *Held* that the suit was barred by s. 20 of Act IX of 1859. *Ramdhun* v. *Bhawanee Singh, 3 Agra, 139; Bhugwan Das* v. *Banee Dalal, 2 S. D. A., N.-W. P., 1864, 220;* and *Mahomed Bahadur Khan* v. *Collector of Bareilly, 13 B. L. R., 392 : L. R., 1 I. A., 167,* referred to. RAMPHUL TIWARI *v.* BADRI NATH **[I. L. R., 13 All., 108**

77. ———— *Suit by mortgagee for possession after foreclosure.*—A suit by a mortgagee for possession, on the ground of foreclosure, of rebel's property sold under Act IX of 1859 is barred by limitation if not brought within one year from the date of seizure or sale. Nothing in s. 20 of the Act allows a concurrent period of twelve years to sue in the ordinary Civil Courts for confirmation of civil rights. GOBIND PANDEY *v.* HEEMUT BAHADOOR **[6 W. R., 42**

78. ———— *Suit by mortgagee of confiscated property to enforce his lien against grantees.*—The plaintiff was the mortgagee of property confiscated in the Mutiny. He asserted his lien in May 1859, and when the property was afterwards granted to the defendants, it was granted subject to any claims that might be made in respect of it, and they in June 1859 executed an agreement, which had reference to the plaintiff's claim, binding themselves to take the risk of any liens subsisting on the property. In July 1861 they were informed by the Collector that they were answerable for the plaintiff's lien. The plaintiff sued the defendants to enforce his lien against the property. *Held* that the suit was not barred by limitation under Act IX of 1859. SIRDAR KHAN *v.* BULDEO SINGH **[6 N. W., 99**

(*l*) ACT XIV OF 1859.

See CASES UNDER LIMITATION ACT (XV OF 1877).

79. ———— **Application of Act.**—The provisions of the Limitation Act (XIV of 1859), did not apply to suits for arrears of rent under Act X of 1859, nor were the provisions of Act X of 1859 in any way affected by the provisions of Act XIV of 1859. POULSON *v.* MADHUSUDAN PAL CHOWDHRY . . . **B. L. R., Sup. Vol., 101 [2 W. R., Act X, 21**

See UNNODA PERSAUD MOOKERJEE *v.* KRISTO COOMAR MOITRO **[15 B. L. R., P. C., 60 note : 19 W. R., 5**

ASMEDH KOONWUR *v.* JOYKURM LALL **[1 W. R., 349**

STEPHEN *v.* GASPER . . **1 W. R., 265**

DABEE *v.* NUKEEMUNISSA **[W. R., 1864, Act X, 116**

SURNOMOYEE *v.* SINGHROOP BEBEE **[W. R., 1864, Act X, 134**

RAM SUNKUR SANAPATTY *v.* GOPAL KISHEN DEO **[1 W. R., 68**

MAYER *v.* SOWLATOONISSA **2 W. R., Act X, 96**

MAHOMED KALEE SHIKDAR *v.* ALI HOSSEIN CHOWDHRY . . . **3 W. R., Act X, 5**

IN THE MATTER OF HOSSEIN ALI **[13 W. R., 295**

80. ———— **Operation of Act.**—The Act for Limitation of Suits (Act XIV of 1859) came into operation on the 1st January 1862. KAMBINAYANI JAVAJI SUBBA RAJALU NAYANI VARU *v.* UDDIGHIRI VENKATARAYA CHETTY . **3 Mad., 268**

81. ———————— *Act XI of 1861.*—The periods of limitation specified in ss. 19 to 23 of Act XIV of 1859 ran (under s. 2, Act XI of 1861) from the 1st of January 1862. HUKUM CHAND TEKARAM *v.* BHUGVANTRA . **1 Bom., 94**

Contra, EX-PARTE KALIDAS DAMODHAR. EX-PARTE BAPUJI PITAMBHAR . **3 Bom., A. C., 175**

BAI UDEKUVAR *v.* MULJI NARAN **[3 Bom., A. C., 177**

82. ———————— *Act XI of 1861—Cases since January 1862.*—Notwithstanding Act XI of 1861, suits instituted after January 1st, 1862, were held to be governed by the provisions of Act XIV of 1859. MOHIDIN SAHIB *v.* KHADER SAHIB **[2 Mad., 42**

83. ———————— *Act XI of 1861—Decree not in force at time of passing of Act XIV of 1859.*—Act XI of 1861 did not apply to decrees which were not in force at the time of the passing of Act XIV of 1859. SHAMEE MAHOMED SIRCAR *v.* BRINDA MUNDLE . . . **11 W. R., 100**

84. ———————— *Former character of lands entirely altered.*—Act XIV of 1859 was not applicable to a case where the former condition of the lands sued for became entirely altered and the former landmarks destroyed by diluvion. SHURUTSOONDERY DEBEE *v.* GOVERNMENT . **7 W. R., 42**

85. ———————— *Act IX of 1871—Applications in suits.*—Act XIV of 1859, and not Act IX of 1871, applied to application in suits instituted before 1st April 1873. BHIKAMBHAT *v.* FERNANDEZ . . . **I. L. R., 5 Bom., 673**

MONGOL PERSHAD DICHIT *v.* GRIJA KANT LAHURI . . . **I. L. R., 8 Calc., 51 [L. R., 8 I. A., 123**

BEHARY LALL *v.* GOBERDHUN LALL **[I. L. R., 9 Calc., 446**

GURUPADAPA BASAPA *v.* VIRBHADRAPA IRSANGAPA . . . . **I. L. R., 7 Bom., 459**

LUCHMEE PERSHAD NARAIN SINGH *v.* TILUCKDHAREE SINGH . . . . **24 W. R., 295**

JOYRAM LOOT *v.* PANI RAM DHOBA **[8 C. L. R., 54**

86. ———— **ss. 20 and 21**—*Execution of decree, Application for.*—It was not necessary, under ss. 20 and 21, that process of attachment should have been taken out within three years; but in order to determine whether execution was barred or not, it was necessary to see whether, at the time of application to execute next after the passing of the Act, any portion of the time theretofore limited by law for issuing process of execution still remained, unless these three years from the passing of the Act had already expired. NOWARAJA CHOWDHRY *v.* RAM KANAYE DASS **[7 W. R., 330**

87. ———————— *Decree payable by instalments.*—Where a decree passed before 1859 authorized the judgment-debtor to pay by instalments extending over a period of thirteen years, and no proceedings in execution were taken within the time prescribed by ss. 20 and 21, the execution of the decree was held barred by limitation even as to those instalments which were within time. TILUCK CHUNDER GOOHO *v.* GOURMONEE DEBEE . . **6 W. R., Mis., 92**

88. ———————— *Execution of decree.*—In the case of a decree which was passed in 1831, and part payment made on the 2nd of February 1859, so that it was in force at the time of the passing of Act XIV of 1859 (4th of May 1859), the Sudder Ameen rejected an application for execution made on the 19th

April 1865; but the District Judge reversed his order, being of opinion that decrees referred to in s. 21 of the Act might be saved from the operation of s. 20, even though no process of execution had issued within the time provided for by s. 21. *Held* that the right construction of the Act was to keep these sections distinct by applying s. 20 to decrees or orders made after the passing of the Act, and s. 21 to decrees or orders in force at the time of its passing; so that it was not necessary to resort to s. 20 in construing s. 21 if the word "may" in the latter section were read as equivalent to "must" or "shall," on the principle that affirmative words sometimes imply the negative of what was not affirmed, as strongly as if expressed. *Semble*—Where the issuing of the execution within the time limited by s. 21 was prevented by the delay of the Court which was to execute the decree, such Court would have power to prevent an unjust prejudice to the suitor by the delay unavoidably arising from its own act, by ordering the execution to issue as of the date when it would have been issued if there had been no such delay. Bai Ude Kuvar *v.* Mulji Naran . **3 Bom., A. C., 177**

Ex-parte Kalidas Damodhar. Ex-parte Bapuji Pitambhar . . . . **3 Bom., A. C., 175**

Makunda valad Balacharya *v.* Sitaram **[5 Bom., A. C., 102**

89. ———— *Execution of decree, Application for.*—A decree was obtained in the Court of the Deputy Commissioner of Delhi on the 5th October 1866, prior to the date when Act XIV of 1859 was extended to the Punjab,—*viz.*, the 1st of January 1867. On the 22nd of October 1869, an application, admittedly *bonâ fide*, was made for execution, but the application was refused on the ground that it was barred by lapse of time, and no appeal was brought against that order. A subsequent application for execution was made on the 4th of May 1871, which was also refused on a similar ground. On appeal the Commissioner and Chief Court confirmed this order. *Held*, reversing the decision of the Court below, that execution of the decree was not barred by s. 21, Act XIV of 1859. In construing s. 21, Act XIV of 1859, the words "nothing in the preceding section shall apply to a judgment in force at the time of the passing of the Act" mean that nothing in the preceding section should prejudicially affect the right of a creditor under a judgment in force at the time of the passing of the Act; and the words "but process of execution may be issued," etc., mean that notwithstanding anything in the preceding section, execution might issue either within the time limited by the law in force when the Act was passed or within three years next after the passing of the Act, whichever should first expire. Delhi and London Bank *v.* Orchard . . . **I. L. R., 3 Calc., 47** **[L. R., 4 I. A., 127**

90. ———— **s. 21**—*From what period it counts.*—Limitation under s. 21, Act XIV of 1859, counted from May 5th, 1859 (the date of the passing of the Act), and not from the date of its coming into operation. Collector of Beerbhoom *v.* Raj Coomaree Dassia . . **2 W. R., Mis., 17**

Mahomed Buseeroodeen *v.* Mahomed Khan Kuzulbash . . . **4 W. R., Mis., 13**

91. ———— *Application for execution of decree.*—According to s. 21, process of execution could not be issued in respect of a decree in force at the passing of that Act, except where an effectual application had been made, either within the time previously limited by law or within three years next after the passing of the Act, whichever should first expire. Abortive, because unauthorized proceedings, cannot give the decree-holder any fresh start for computing limitations. Baroda Debia *v.* Sreeram Chowdhry . . . **5 W. R., Mis., 21**

92. ———— *Application of section.*—S. 21 applied to the first application after the passing of that Act to execute a decree in force at the time of the passing of the Act; but on the next and subsequent applications, the rule contained in s. 20 was to be followed. Gregory *v.* Juggat Chunder Bannerjee . . . **5 W. R., Mis., 17**

Doorga Churn Roy *v.* Dino Moyee Debia **[6 W. R., Mis., 14**

93. ———— *Issue of process of execution.*—The attachment of property in execution of a decree, although attachment was afterwards set aside, was a sufficient issuing of process of execution within the meaning of s. 21, Act XIV of 1859. Kalee Pershad Singh *v.* Jankee Deo Narain **[7 W. R., 9**

94. ———— *Application for execution of decree.*—Where the holder of a decree which was in force when Act XIV of 1859 came into operation applied for execution on the 5th of December 1864, but allowed the application to drop, and again applied for execution on the 28th of March 1866, it was held that he was barred by the law of limitation. Makunda valad Balacharya *v.* Sitaram **[5 Bom., A. C., 102**

(*m*) Act IX of 1871.

See Cases under Limitation Act (XV of 1877).

95. ———— **s. 1**—*Operation of Act.*—Cl. (*a*), s. 1 of Act IX of 1871, has reference only to suits actually instituted before that date. Joyram Loot *v.* Pani Ram Dhoba . . **8 C. L. R., 54**

Mongol Pershad Dichit *v.* Grija Kant Lahuri . . . . **I. L. R., 8 Calc., 51** **[L. R., 8 I. A., 123**

Behary Lall *v.* Gobeedhun Lall **[I. L. R., 9 Calc., 446**

Gurupadapa Basapa *v.* Virbhadrapa Irsangapa . . . . **I. L. R., 7 Bom., 459**

96. ———— *Operation of Act.*—The law of limitation applicable to suits brought after 1st April 1873 upon causes of action which had accrued previously to that day, and which had not been barred under previous enactments, as well as to suits upon causes of action which accrue afterwards, was Act IX of 1871. Ramchandra *v.* Soma

[I. L. R., 1 Bom., 305 note

And *see* Nocoor Chunder Bose *v.* Kally Coomar Ghose . . **I. L. R., 1 Calc., 323**

97. ——————— *Operation of Act—Appeals and applications—General Clauses Act, 1868.*—The Limitation Act, 1871, came into operation from 1st July 1871 with respect to appeals and applications, and was not controlled by the General Clauses Consolidation Act, 1868, s. 6. Govind Lakshman *v.* Narayan Moreshvar

[11 Bom., 111

Balkrishna *v.* Ganesh . **11 Bom., 116 note**

Rughoo Nath Doss *v.* Shiromonee Pat Mohadebea . . . . . **24 W. R., 2**

98. ——————— *Operation of Act—Suit barred when Act came into force.—Quære*—Whether suits barred under Act XIV of 1859 before Act IX of 1871 came into force could, by reason of the alteration of the periods of limitation in the latter enactment, be sustained. Abdul Karim *v.* Manji Hansraj . . . **I. L. R., 1 Bom., 295**

99. ——————— *Operation of Act—Revival of claim—Repeal of Act.*—A claim barred by limitation when Act IX of 1871 came into force was not revived by the passing of that Act. Vinayak Govind *v.* Babaji . **I. L. R., 4 Bom., 230**

100. ——————— *Operation of Act—Suit for maintenance.*—A claim once barred cannot be revived by a change in the law of limitation. This principle applies as well to a claim for arrears of maintenance, or any other claims, as to one for possession of land. Krishna Mohun Bose *v.* Okhilmoni Dossee . . . . **I. L. R., 3 Calc., 331**

101. ——————— *Operation of Act—Suit on bond barred by Act XIV of 1859.*—The Limitation Act, 1871, did not give a new period of limitation to a suit on a bond which was barred by the Limitation Act of 1859 before the Act of 1871 came into force. Venkattachella Mudali *v.* Sashagherry Rau . . . . **7 Mad., 283**

Molakatalla Naganna *v.* Pedda Narappa

[7 Mad., 288

102. ——————— *Suit on bond payable on demand—Cause of action.*—In a suit brought in August 1873 on a bond, payable on demand, dated July 1868, on which payment had been demanded on three occasions—May 1871, September 1872, and May 1873,—*Held* that, by the law in force at the time of execution of the document, the action was born in July 1868, and by the new as well as by the old law became barred in July 1871. The rule of the old as of the new law was that the time having once begun to run could not be stopped. The demand in 1871 could have no effect, for it was neither by the old nor the new law a mode of giving a new point of departure. Vencataramanier *v.* Manche Reddy

[7 Mad., 298

103. ——————— **s. 2**—*Bom. Reg. V of 1827, s. 1, cl. 1—Prescriptive right—Repeal of statute, Effect of.*—In 1873 the plaintiff sued for his share in certain ancestral property in the possession of the defendant, and alleged that the latter had been united with him in estate. He, however, admitted that he had lived separate from the defendant for forty years previously to the institution of the suit, and that he had not during that period received any portion of the profits of the ancestral property. The defendant pleaded limitation. Both the lower Courts held that the case was governed by Act IX of 1871, sch. II, art. 127, and decreed in favour of the plaintiff on the ground that no demand by the plaintiff of his share and refusal to comply therewith had been proved. *Held* by the High Court, in special appeal, that the defendant had acquired, under Regulation V of 1827, s. 1, cl. 1, a prescriptive title in the immoveable estate sued for by his uninterrupted possession as proprietor for more than thirty years before Act IX of 1871 came into force, and that therefore the plaintiff's claim was barred, the effect of that Regulation being not only to bar the plaintiff's remedy, but to take away his right. The repeal of a statute or other legislative enactment cannot, without express words, or clear implication to that effect in the repealing Act, take away a right acquired under the repealed statute or other enactment while it was in force, and accordingly, although Act IX of 1871, s. 2, sch. 1, expressly repealed Regulation V of 1827, it did not affect any prescriptive right or title which had, under s. 1 of that Regulation, been acquired before Act IX of 1871 was passed. Sitaram Vasudeb *v.* Khanderav Balkrishna . . . **I. L. R., 1 Bom., 287**

104. ——————— **sch. II**—*Suits before Act came into force.*—Act IX of 1871 did not apply to suits instituted before the 1st April 1873. Luchmee Pershad Narain Singh *v.* Tiluck dharee Singh . . **24 W. R., 295**

105. ——————— **art. 168**—*Registration Act, 1871—Registration of memorandum of decree under Act XX of 1866.*—The "Indian Registration Act" mentioned in the new Limitation Act (IX of 1871), sch. II, art. 168, is the Registration Act of 1871, and that article cannot apply to a decree of which only a memorandum was registered under Act XX of 1866. Rughoo Nundun Singh *v.* Cochrane . . . . **24 W. R., 372**

LIMITATION ACT, 1877.

1. ——————— **Operation of Act**—*Matters barred by Act IX of 1871.*—Unless it can be shown that such was the express intention of the Legislature, none of the provisions of the present Limitation Act (XV of 1877) can be made applicable to any matter which, at the time when such Limitation Act came into force, had already become barred by the operation of the prior Limitation Act. SHUMBHONATH SHAHA *v.* GURUCHURN LAHIRI

[I. L. R., 5 Calc., 894: 6 C. L. R., 437

MOHIMA CHUNDER ROY CHOWDHURI *v.* GOURINATH DEY CHOWDHURI . . **2 C. W. N., 162**

2. ———— *Limitation Act, 1871, s. 1—Suits before 1st April 1873.— Quære—* Whether, inasmuch as Act IX of 1871 is repealed by Act XV of 1877, and the latter Act contains no provision similar to that contained in s. 1 of Act IX of 1871, Act XIV of 1859 can be said to have been repealed in respect of suits instituted before the 1st of April 1873. RADHA PROSAD SINGH *v.* SUNDUR LALL

[I. L. R., 9 Calc., 644

3. ———— *Limitation Act, 1871, s. 1—Application for execution of decree—General Clauses Consolidation Act, 1828, s. 6.—* *Held,* following *Mungul Pershad Dichit* v. *Grija Kant Lahiri, I. L. R., 8 Calc., 51,* that, although there is no corresponding provision in Act XV of 1877 to that contained in s. 1 of Act IX of 1871, all applications for execution of a decree are applications in the suit which resulted in that decree. *Held* further that under s. 6 of Act I of 1868 the repeal of Act IX of 1871 by Act XV of 1877 does not affect any proceedings commenced before the repealing Act came into before. *Re Ratonsi Kalianji, I. L. R., 2 Bom., 148,* followed. BEHARY LALL *v.* GOBERDHUN LALL **I. L. R., 9 Calc., 446: 12 C. L. R., 431**

4. ———— *Application for execution by what limitation governed—Act XIV of 1859, s. 20.*—Act XV of 1877 operates from the date on which it came into force as regards all applications made under it. *Behary Lall* v. *Goberdhun Lall, I. L. R., 9 Calc., 446,* dissented from. BECHARAM DUTTA *v.* ABDUL WAHED

[I. L. R., 11 Calc., 55

5. ———— *Limitation applicable to execution of decree passed when Act XIV of 1859 was in force—Execution of decree—Disability of decree-holder—Minority—Limitation Act (XIV of 1859, ss. 11, 14, and 20, and XV of 1877, s. 7).*—In execution of a decree, dated the 29th April 1862, certain proceedings were taken which terminated on the 5th September 1866, when the execution case was struck off the file. Between that date and the 25th September 1882, no further proceedings were taken. On the latter date an application was made for execution. The decree-holder was a minor when the decree was passed, and did not attain his majority till the 25th September 1879. *Held* that the words "to bring an action," as used in s. 11, Act XIV of 1859, must be taken to be synonymous with the words "to bring a suit," and that the word "suit" must be construed in the same way as the word "suit" used in s. 14, and, following the decision of the majority of the Full Bench in *Huro Chunder Roy Chowdhry* v. *Shoorodhonee Debia, B. L. R., Sup. Vol., 985: 9 W. R., 402,* must be taken to include execution proceedings. *Mothoora Dass* v. *Shumbhoo Dutt, 20 W. R., 53,* dissented from. *Held* therefore that, as Act XIV of 1859 was applicable to the case previous to the date on which Act XV of 1877 came into operation, and as under s. 11 the decree-holder was entitled to have the time during which he was a minor deducted from the period during which limitation was running against him, his right to execution was not barred when Act XV of 1877 came into force; and that being so, and the present application being made within three years of the date on which he attained his majority, execution of the decree was not barred. *Gurupadapa Basapa* v. *Virbhadrapa Irsangapa, I. L. R., 7 Bom., 459,* discussed. *Behary Lall* v. *Goberdhun Lall, I. L. R., 9 Calc., 446: 12 C. L. R., 431,* dissented from. *Nursing Doyal* v. *Hurryhur Saha, I. L. R., 5 Calc., 897: 6 C. L. R., 489; Shambhu Nath Shaha Chowdhry* v. *Guru Churn Lahiri, I. L. R., 5 Calc., 894: 6 C. L. R., 437,* approved. JUG MOHUN MAHTO *v.* LUCHMESHUR SINGH . **I. L. R., 10 Calc., 748**

6. ———— *Debt, Suit for.*—The law of limitation governing a suit for a debt is that law which is in force at the date of its institution. MOHESH LAL *v.* BUSUNT KUMAREE

[I. L. R., 6 Calc., 340: 7 C. L. R., 121

BANSIDHAR *v.* HARSAHAI **I. L. R., 3 All., 340**

———— **s. 2.**

1. ———— *Suit on promissory note payable on demand—Limitation Act, 1871, sch. II, art. 72.*—Under Act IX of 1871, the limitation on a promissory note payable on demand was three years from the date of making the demand. Under Act XV of 1877, the limitation is three years from the date of making the note. *Held* that the period of limitation so prescribed by Act XV of 1871 is shorter than that prescribed by Act IX of 1871 within the meaning of s. 2 of Act XV of 1877. OMIRTO LALL DEY *v.* HOWELL . . . **2 C. L. R., 426**

2. ———— *Suit on promissory note payable on demand.*—S. 2 of Act XV of 1877 allows a plaintiff two years from the 1st October 1877 to bring his suit in cases where the period of limitation prescribed by that Act is shorter than the period prescribed by Act IX of 1871, but that allowance is not to be made where the period prescribed by the latter Act would expire before the completion of two years from the 1st October 1877. *Omirto Lall Dey* v. *Howell, 2 C. L. R., 426,* cited and distinguished. ADMINISTRATOR GENERAL OF BENGAL *v.* KEDAR NATH MOITRY . . . **4 C. L. R., 102**

3. ———— *Suit on promissory note on demand executed prior to October 1877—Shortening period of limitation.*—As the Limitation Act (XV of 1877) shortens the period of limitation in the case of promissory notes payable on demand, the period of limitation in respect of such notes executed prior to 1st October 1877 is governed by the provisions of s. 2 of the Act. BANDI SUBBAYYA *v.* MADALA PALLI SUBANNA . . . **I. L. R., 3 Mad., 96**

4. ———— **and art. 73**—*Shorter period of limitation.*—The period of limitation prescribed by art. 73 of the second schedule to Act XV of 1877 is a "shorter period of limitation" within the meaning of the last clause of s. 2 of that Act than the

period prescribed by art. 72 of the second schedule to Act IX of 1871. The language of Acts IX of 1871 and XV of 1877 leads to the conclusion that by each of these enactments the starting point and period given in its schedule were to take the place of those given by the Act which preceded it in the case of all suits instituted after the date of the Act coming into force, and that the expiration of the period, calculated with reference to the Act in force at the date at which the note was executed, does not necessarily affect the remedy. APPASAMI *v.* AGHILANDA

[I. L. R., 2 Mad., 113

5. ———— *Bond of 1869 payable on demand—Curtailment of period of limitation.*—Where a suit was brought upon a registered bond, dated 1869, payable on demand, and demand was made in September 1876,—*Held* that the period of limitation was in effect curtailed by Act XV of 1877, and that the plaintiff was entitled to two years from 1st October 1877 under the provisions of s. 2, although under Act XIV of 1859 (in force when the bond was executed) the limitation period was six years from the date of the bond. SABAPATI CHETTI *v.* CHEDUMBARA CHETTI . . . . I. L. R., 2 Mad., 397

6. ———— *Registered bond payable on demand—Act XIV of 1859 (Limitation Act)—Act IX of 1871 (Limitation Act).*—The cause of action in a suit on a registered bond bearing date the 2nd March 1870 was alleged to have arisen on the 5th January 1879, the date of demand. Under Act XIV of 1859, the limitation for such a suit was six years computed from the date of the bond. Before that period expired, Act IX of 1871 came into force, which provided a limitation for such a suit of three years computed from the date of demand. *Held* that, as the cause of action and the institution of such suit occurred after the repeal of Act IX of 1871, the provisions of that Act were not applicable, and accordingly, whether Act XIV of 1859 or Act XV of 1877 governed such suit, it was barred, as in either case limitation began to run from the date of such bond. BANSI DHAR *v.* HAR SAHAI

[I. L. R., 3 All., 340

7. ———— *Bond payable on demand—Act IX of 1871 (Limitation Act).*—Act XV of 1877, by making the period of limitation for a suit on a bond payable on demand computable from the date of its execution, has shortened the period of limitation prescribed for such a suit by Act IX of 1871, under which the period was computable from the date of demand. *Held* therefore that under the provisions of s. 2 of Act XV of 1877 a suit on such a bond executed on the 14th December 1869, having been brought within two years from the date that Act came into force, was within time. RUP KISHORE *v.* MOHNI . . I. L. R., 3 All., 415

8. ———— *Bond—Change in Limitation Acts.*—The defendant executed, on the 20th April 1875, a bond to the plaintiff, who, without making a demand for his money, filed a suit upon it on the 21st of June 1878. *Held* that under s. 2 of the Limitation Act, XV of 1877, the suit was not barred, although more than three years had elapse since the date of the bond. ICHHASHANKAR *v.* KILLA . . . . I. L. R., 4 Bom., 87

9. ———— and art. 64—*Suit on account stated—Act IX of 1871 (Limitation Act), sch. II, art. 62.*—The accounts in a suit on an account stated were stated when Act IX of 1871 was in force, and were not signed by the defendant or an authorized agent on his behalf. Had that Act been in force when the suit was instituted, the suit would have been within time under art. 62 of sch. II of that Act. The suit was brought, however, after the passing of Act XV of 1877, and by reason of the accounts not being signed did not come within the scope of art. 64 of sch. II of that Act. *Held* that the words in s. 2 of Act XV of 1877, "nothing herein contained shall be deemed to affect any title acquired under the Act IX of 1871," did not save the plaintiff's right to sue on the account stated, a right to sue not being meant by or included in the term "title acquired," that term denoting a title to property and being used in contradistinction to a right to sue; that the last clause of that section was not applicable, because Act XV of 1877 did not prescribe a shorter period of limitation than that prescribed by Act IX of 1871, but attached a new condition to the suit, *viz.*, that the accounts must be signed by the defendant or his agent duly authorized in that behalf; and that the suit was in consequence barred by limitation. JULFIKAR HUSAIN *v.* MUNNA LAL

[I. L. R., 3 All., 148

10. ———— *Suit by person excluded from joint family property—Limitation Acts, 1871, art. 127; and 1877, art. 127.*—Under Act IX of 1871, sch. II, cl. 127, the limitation for a suit by a person excluded from joint family property, to enforce a right to share therein, was twelve years from the time when the plaintiff claimed and was refused his share. Under Act XV of 1877, sch. II, cl. 127, the limitation for such a suit is twelve years from the time the exclusion becomes known to the plaintiff. *Held* that the period of limitation prescribed by the latter Act is shorter than the period prescribed by the former Act within the meaning of s. 2, Act XV of 1877. NARAIN KHOOTIA *v.* LOKENATH KHOOTIA

[I. L. R., 7 Calc., 461: 9 C. L. R., 243

11. ———— and art. 134—*Mortgage—Redemption—Suit against purchaser from mortgagee—Purchase in good faith—Limitation Act (IX of 1871), sch. II, arts. 134 and 148.*—Under the Limitation Act, IX of 1871, the period of limitation for suits to recover possession of property purchased from a mortgagee depended upon the good faith of the purchaser. A suit against a purchaser in good faith was barred after twelve years from the date of the purchase, under art. 134 of sch. II. In other cases a suit might be brought against the purchaser within sixty years from the date of the mortgage, under art. 148 of sch. II. Art. 134 of the later Limitation Act (XV of 1877), by the omission of the words "in good faith" makes twelve years from the date of the purchase the period of limitation for all such suits, without reference to the question of good faith on the part of the purchaser.

LIMITATION ACT, 1877—*continued.*

The result is that, in cases of a purchase not in good faith from a mortgagee, the period of limitation allowed by Act XV of 1877 for a suit to recover the property is shorter than the period allowed by Act IX of 1871; and consequently, under the provisions of art. 2 of the Limitation Act (XV of 1877), the plaintiff in such a suit has two years from the 1st October 1877. BAIVA KHAN DAUD KHAN *v.* BHIKU SAZBA . . . **I. L. R., 9 Bom., 475**

12. ——— *Suit filed after repeal of Act IX of 1871.*—A claim to attached property having been disallowed under s. 246 of Act VIII of 1859, a suit was filed on the 17th February 1879. *Held* that by s. 2 of the Limitation Act, XV of 1877, the suit was governed by the former Limitation Act, IX of 1871, by which the plaintiff was entitled to bring his suit within twelve years from the claim being disallowed. AMIR HOSSEIN *v.* IMAMBANDI BEGUM . . . **11 C. L. R., 443**

13. ——— **and art. 11**—*Claim to mortgaged property—Execution of decree.*—In execution of a decree upon a mortgage, a claim to the mortgaged property was put in under s. 246 of Act VIII of 1859 by certain persons, on the ground that they had purchased the right, title, and interest of the judgment-debtor in execution of a previous decree. The claim was allowed on the 26th July 1877. On the 29th March 1879, the mortgagee instituted a suit to establish his right to the property. The period of limitation for such a suit under Act XV of 1877 is one year from the date of the order, but under Act IX of 1871 a longer period was prescribed. Act XV of 1877 did not come into force until the 1st of October 1877. *Held* that the provisions of the last paragraph of s. 2 of Act XV of 1877 applied, and that the suit was not barred. RAJ CHUNDER CHATTERJEE *v.* MODHOOSOODUN MOOKERJEE

[I. L. R., 8 Calc., 395 : 10 C. L. R., 435

14. ——— *Application to execute decree barred by Act IX of 1871.*—The words in s. 2 of Act XV of 1877—"nothing herein shall be deemed to revive any right to sue"—should be used in their widest signification, and will include any application invoking the aid of the Court for the purpose of satisfying a demand. Where therefore a judgment-creditor sought, on the 25th September 1877, to execute a decree passed on the 27th May 1874 (which decree, at the time of the application for execution, was barred by art. 167 of sch. II of Act IX of 1871), on the ground that he was entitled to take advantage of art. 179 of sch. II of Act XV of 1877, which was more favourable to him,—*Held* that, under the wording of s. 2 of the latter Act, he was not entitled to do so. NURSING DOYAL *v.* HURRYHUR SAHA

[I. L. R., 5 Calc., 897 : 6 C. L. R., 489

SHUMBHOONATH SHAHA *v.* GURUCHURN LAHIRI

[I. L. R., 5 Calc., 894 : 6 C. L. R., 437

——— **s. 3.**

See EASEMENT . **I. L. R., 23 Calc., 55**

——— *Defendant—Person through whom a defendant derives his liability to be sued—Purchaser at auction-sale—Suit by a true owner to recover possession—Adverse possession.*—The purchaser at an auction-sale acquires the right, title, and interest of the judgment-debtor, and in virtue of that is put in possession, by reason of which he becomes liable to be sued by the true owner. He therefore derives such liability within the contemplation of s. 3 of the Limitation Act (XV of 1877) from or through the judgment-debtor. *R*, the owner of sixty-two thikans, had mortgaged fourteen of them to *M*. On the 7th December 1877, that is, subsequent to the mortgage to *M*, *R* sold the sixty-two thikans to the plaintiff, but did not give up possession. On the 18th June 1872, the sixty-two thikans were sold in execution of a decree against *R*, and were purchased at the auction-sale by *A*, who redeemed the fourteen thikans from the mortgagee. On the 7th December 1883, the present suit was filed by the plaintiff to recover possession against the heirs of *R* and *M*. On the 17th January 1884, *A* was joined as a co-defendant to the suit. *Held* that the plaintiff's claim against *A* was time-barred with respect to the forty-eight thikans which were not mortgaged, *A* being entitled to add to the period of his possession that of *R*, who remained in possession after the sale to the plaintiff. ALI SAHEB *v.* KAJI AHMAD

[I. L. R., 16 Bom., 197

——— **s. 4 (1871, s. 4).**

1. ——— *"Applications"—"Appeal"—Pauper appeal—Pauper application for review.*—In the Limitation Act it was intended to draw a clear distinction between what are styled "applications" and what are styled "appeals." LAKSHMI *v.* ANANTA SHANBAGA . **I. L. R., 2 Mad., 230**

2. ——— *Distinction between suits, appeals, and applications—Jurisdiction.*—The distinction made for the purposes of limitation between suits, appeals, and applications by the Limitation Acts has no bearing upon a question of jurisdiction. IN RE BALAJI RANCHHODDAS

[I. L. R., 5 Bom., 680

3. ——— *Presentation of plaint—Transfer of case.*—A suit was instituted in Pubna, and on application to the High Court for authority to proceed with it in Pubna, the High Court ordered its transfer to Dacca. Instead of merely transferring the suit to Dacca, the Pubna Court returned the plaint, in order to its being presented anew in the Dacca Court. For the purpose of computing limitation, the suit was held to have been instituted on the day when it was admitted by the Pubna Court. TAKHUROODEEN MAHOMED ESHAN CHOWDHRY *v.* KURIMBUX CHOWDHRY . . . **3 W. R., 20**

KHELLAT CHUNDER GHOSE *v.* NUSSEEBUNISSA BIBEE . . . . . . **16 W. R., 47**

4. ——— *Presentation of plaint—Placing petition on table.*—It must be presented to the proper Court. The placing a petition on the table when the officer is not present is not a presentation to him. TAJ ULDEEN KHAN *v.* GHAFOOR-UL-NISSA . . . . . **3 N. W., 341**

The presentation of a plaint at the private residence of the Munsif was held not a sufficient institution of the suit. JAI KUAR *v.* HEERALAL [7 N. W., 5

5. ———— *Presentation of plaint when proper Court was closed.*—Where a plaintiff presented a plaint to the District Court, the Munsif's Court, in which he ought to have presented it, being then temporarily closed, it was held that the date on which the plaint was presented to the District Judge should be considered as the date of presentation to the proper Court. IN THE MATTER OF THE PETITION OF GANESH SADASHIV **5 Bom., A. C., 117**

6. ———— *Plaint presented during vacation to wrong officer.*—Where a plaint was presented to a karkun left in charge of a Court during vacation, and the cause of action on which the suit was brought became barred before the vacation ended, it was held that, as the Judge was the proper person to receive plaints, the presentation to the karkun was invalid, and did not prevent the period of limitation from running. NANDVALLABH *v.* ALLIBHAI ISYAGANI . . **6 Bom., A. C., 254**

7. ———— *Presentation of plaint when Court was closed.*—Where a plaintiff presented a plaint to the District Court, the Subordinate Judge's Court in which he ought to have presented it being then temporarily closed, it was held that the District Court could not be considered a Court of first instance competent to receive the plaint. *In re Sadashiv, 5 Bom., A. C., 117,* overruled. *Motilal Ramdas* v. *Jamnadas, 2 Bom., 42,* followed. RAMAYA ELAPA *v.* MUHAMADBHAI . **10 Bom., 495**

8. ———— *Gazetted holiday—Computation of time for presentation of appeal.*—In calculating the time allowed by law for the presentation of an appeal to a District Court, an appellant is entitled to deduct the last day, being a gazetted holiday, although the District Judge held his Court on that day. BOYAMMA *v.* BALAJEE RAU [**I. L. R., 20 Mad., 469**

9. ———— *Presentation of plaint—Computation of time.*—The plaintiff's suit was barred by the Limitation Act on the 11th of May 1870. His plaint was presented in the Court of the District Munsif's Court of Cudderpah on the 21st of May. He had presented his plaint on the 5th May in the Court of another District Munsif who had no jurisdiction, and it was returned by the latter District Munsif on the 7th May, in order that it might be presented to the Court having jurisdiction to determine the suit within one month from the date on which it was returned. *Held* that the plaintiff's suit was barred by the provisions of the Limitation Act (XIV of 1859). CHEIGU NANGIAH GAURI NANGIAH *v.* PIDATALA VENCATUPPAH **5 Mad., 407**

10. ———— *Presentation of plaint—Suit against minor—Appointment of guardian ad litem—Suit when instituted.*—A suit to enforce a right of pre-emption in respect of a share of an undivided village was instituted against the vendor and the purchaser, the latter being a minor, on the 1st June 1880. The instrument of sale was registered on the 9th June 1879. On the 14th June 1880, the Court in which such suit was instituted made an order appointing a guardian for such suit for the minor purchaser. *Held,* having regard to the provisions of s. 4 of Act XV of 1877 and *Ram Lal* v. *Harrison, I. L. R., 2 All., 832,* and *Skinner* v. *Orde, I. L. R., 2 All., 241: L. R., 6 I. A., 126,* that, for the purposes of limitation, such suit was instituted, as regards the minor purchaser, on the 1st June 1880, when the plaint was first presented, and not on the 14th June 1880, when the order appointing a guardian for such suit for him was made, and such suit was therefore within time. KHEM KARAN *v.* HAR DAYAL . . . **I. L. R., 4 All., 37**

11. ———— *Presentation of plaint—Plaint not accepted on day it is presented.*—A plaintiff was held to be technically right in stating that the fact of his plaint not having been accepted on the day on which it was actually presented, ought not to deprive him of his right of suit. YOUNG *v.* MACCORKINDALE . . **19 W. R., 159**

12. ———— *Civil Procedure Code (1882), s. 54—Court Fees Act (VII of 1870), ss. 6 and 28—Presentation of plaint improperly stamped.*—A suit is not instituted, within the meaning of the explanation to s. 4 of the Limitation Act, by the pesentation of a document purporting to be a plaint, if that document, while not undervaluing the claim, is written on paper that does not bear the proper Court-fee. VENKATRAMAYYA *v.* KRISHNAYYA [**I. L. R., 20 Mad., 319**

13. ———— *Presentation of plaint insufficiently stamped—Order for registration of plaint made after expiration of time.*—Where a plaint, insufficiently stamped, was duly presented to a Court before the expiration of the time allowed by the Limitation Act, and was retained by the Court, the plaintiff being ordered within a limited time to supply the requisite additional stamped paper, which was done,—*Held* to be in time, although the formal order for registration of the plaint was not made until the period of limitation applicable to the case had expired. HIDAYUT ALI *v.* MAERAJ BEGUM [**3 N. W., 202**

IRTAZA HOSSEIN *v.* HURRY PERSHAD SINGH [**7 W. R., 241**

14. ———— *Plaint insufficiently stamped—Date of institution of suit—Court-fees, Payment of requisite, on a date subsequent to that on which plaint was presented, Effect of, on period of limitation.*—The date of the institution of a suit should be reckoned from the date of the presentation of the plaint, and not from that on which the requisite Court-fees are subsequently put in, so as to make it admissible as a plaint. *Skinner* v. *Orde, I. L. R., 2 All., 241: L. R., 6 I. A., 126,* and *Chennappa* v. *Raghunatha, I. L. R., 15 Mad., 29,* referred to. *Balkaran Rai* v. *Govind Nath Tiwari, I. L. R., 12 All., 129,* not followed. MOTI SAHU *v.* CHHATRI DASS . . . . **I. L. R., 19 Calc., 780**

15. ———— *Civil Procedure Code, s. 54—Court Fees Act (VII of 1870), s. 28—Plaint insufficiently stamped—Power of Court to grant*

LIMITATION ACT, 1877—*continued.*

time for making good the deficiency.—When a Court fixes a time under cl. (*a*) or cl. (*b*) of s. 54 of the Code of Civil Procedure, it must be a time within limitation. S. 54 does not give a Court any power to extend the ordinarily prescribed period of limitation for suits. Where therefore a plaint was presented on the last day to save its being barred by limitation insufficiently stamped, and at an hour when the office being closed it was impossible to obtain the necessary stamps, and the Munsif made an order to present it on the next open Court day,—*Held* that under s. 4 of the Limitation Act the plaint had not been presented in time and the suit was barred. *Moti Sahu* v. *Chhatri Das, I. L. R., 19 Calc., 780,* and *Yakutunnissa Bibee* v. *Kishoree Mohun Roy, I. L. R., 19 Calc., 747,* discussed. JAINTI PRASAD *v.* BACHU SINGH . . **I. L. R., 15 All., 65**

16. ——— *Plaint insufficiently stamped, when deemed to have been presented—Suit, Institution of—Civil Procedure Code (Act XIV of 1882), s. 54 (b).*—A plaint having been filed upon the last day allowed by the law of limitation written upon paper insufficiently stamped, the plaintiff was ordered to supply the requisite stamp paper within seven days. This order was complied with within the time appointed, and the plaint was duly registered. *Held* that the suit should be taken as instituted on the day when the plaint was first presented to the proper officer, and that the suit was not barred. *Balkaran Rai* v. *Gobind Nath Tiwari, I. L. R., 12 All., 129,* distinguished and doubted. HURI MOHUN CHUCKERBUTTI *v.* NAIMUDDIN MAHOMED . . . **I. L. R., 20 Calc., 41**

17. ——— *Suit instituted within time—Plaint insufficiently stamped—Order to supply the deficiency not complied with within the time allowed—Registration of plaint—Civil Procedure Code (Act XIV of 1882), s. 54—Limitation Act (XV of 1877), s. 4.*—A plaint was filed one day before the expiry of the period of limitation, but the Court-fees were deficient, and the plaintiff was ordered to pay the deficient Court-fees within a week. This order was complied with one day after the expiry of the time allowed, and the plaint was registered. *Held* that the suit was barred by limitation, as the deficient Court-fees were not supplied within the appointed time, and that the fact of the plaint being registered does not prevent its rejection under s. 54 of the Civil Procedure Code, the terms of which are imperative and mandatory. *Moti Sahu* v. *Chatri Das, I. L. R., 19 Calc., 780,* and *Huri Mohun Chuckerbutti* v. *Naimuddin Mahomed, I. L. R., 20 Calc., 41,* distinguished. *Hubibul Hossein* v. *Mahomed Reza, I. L. R., 8 Calc., 192,* dissented from. *Kishore Singh* v. *Sabdal Singh, I. L. R., 12 All., 583,* and *Karman Singh* v. *Cockell, 1 C. W. N., 670,* approved. BRAHMOMOYI DASI *v.* ANDI SI **I. L. R., 27 Calc., 376**

18. ——— *Presentation of a plaint insufficiently stamped—Plaint not rejected, but the Court ordered to put in the deficit Court-fee within a certain time—Effect of such an order—Court Fees Act (VII of 1870), s. 28—Civil Procedure Code (Act XIV of 1882), s. 54.*—*Held* that where a plaint was presented in the proper Court with insufficient stamp, and the Court, without rejecting it (the plaint), allowed a certain time to put in the deficit Court-fee, which was done within the time allowed, for the purposes of limitation the suit should be considered to have been instituted on the date when the plaint was first presented. *Hury Mohun Chuckerbutty* v. *Naimuddin Mahomed, I. L. R., 20 Calc., 41,* and *Moti Sahu* v. *Chhatri Das, I. L. R., 19 Calc., 780,* followed. *Yakutunnissa Bibee* v. *Kishoree Mohun Roy, I. L. R., 19 Calc., 747,* and *Venkatramayya* v. *Krishnayya, I. L. R., 20 Mad., 319,* distinguished. *Held* also that on a suit for money lent without any written instrument, where it was found that there was no express contract to pay interest, but it was not found that any demand of payment was made in writing, and that there was any demand giving notice to the debtor that interest would be claimed from the date of the demand, in such a case the creditor was not entitled to any interest before suit. SURENDRA KUMAR BASU *v.* KUNJA BEHARY SINGH
I. L. R., 27 Calc., 814
4 C. W. N., 818

19. ——— *"Plaint"—Suit filed before period of limitation expired, but stamp duty not paid till afterwards—Court Fees Act, 1870, s. 28—Exclusion of time of proceeding bonâ fide in Court without jurisdiction.*—Two suits were brought for partition of the property of a deceased by his heirs under the Mahomedan Law—the first, by his widow and six children, in the Court of the Subordinate Judge; the second, by two other children by his first wife, in the Court of the District Munsif, from which Court it was transferred to the Court of the said Subordinate Judge. The Subordinate Judge having ruled that the plaintiffs in each suit were not entitled to sue jointly, the plaints were permitted to be amended. The first plaint was accordingly re-presented in the subordinate Court as that of the widow; the second, also, in the subordinate Court as that of the first child of the first wife; and seven further plaints were filed in the subordinate Court on behalf of the remaining children, respectively. These seven further plaints were unstamped. Six of them, presented by the widow's children, stated explicitly that the duty payable thereon was included in that already paid on the widow's plaint, which sum correctly represented the duty payable on the footing that the share of each formed a distinct subject-matter. All the plaints were by order placed on the file of the District Munsif's Court. The plaints were at first treated at the Munsif's Court as being duly stamped, though payment of fresh Court-fees was subsequently ordered after the expiration of the period of limitation. The deceased had died in 1882; the two original suits had been filed in 1893 and 1894, respectively—within twelve years of his death; and the two amended suits and the seven fresh plaints had been filed in December 1894, more than twelve years from his death. *Held* (on the question of limitation) that the suits by the two children of the first wife were not barred, as they should be treated as a continuation of their original joint claim, which had been instituted in the same Court before the period of limitation had expired. That where there has been a misjoinder which has precluded a Court from entertaining a suit, the period during which such suit has been prosecuted diligently and in good faith may be deducted in computing the period of limitation; the inability of the Court to entertain a suit combining causes of action which could not be combined, being covered by the words "from other cause of a like nature,"—in s. 14 of the Limitation Act. That with reference to the widow's amended suit, inasmuch as her original suit (on behalf of herself and her six children) had been filed before the period of limitation had expired and had been prosecuted diligently and in good faith, the time during which that original suit had been pending must be deducted, and her amended suit held to be not barred. That for similar reasons a like deduction should be made in favour of the six fresh suits of her children (unless a contrary decision were necessitated by the fact that their plaints had remained unstamped until after the expiration of the extended period of limitation). *Per* SUBRAMANIA AYYAR, *J.*, that although an amount equal to the fees properly payable in respect of the widow's amended suit, and of the six fresh suits filed by her children had in fact been paid on the joint suit originally filed, credit could not be claimed out of that original payment for the Court-fees due on the six fresh suits subsequently instituted. These plaints must therefore be considered to have been not duly stamped, if not entirely unstamped, at the time when the period of limitation expired. That the said plaints having been filed in time, the fact that they were not duly stamped, or were entirely unstamped when the period of limitation had expired, did not render them time-barred, since the plaints must be regarded as having been presented on the day upon which they were filed. It cannot be inferred from the Limitation Act, 1877, that the word "plaint" as used in s. 4, explanation, means "plaint duly stamped." A "plaint" in law means merely "a private memorial tendered to a Court, in which the person sets forth his cause of action: the exhibition of an action in writing." Whether any Court-fee is payable in an action commenced by the plaint, and if so when and how it should be paid, are matters that are foreign to the question whether the document is a plaint or not. The Court Fees Act and the Limitation Act are entirely different in their purpose and scope, and neither can be taken to control or qualify the other. *Per* DAVIES, *J.*, that, inasmuch as the order of the Subordinate Judge requiring separate plaints was erroneous, it could not operate to enhance the Court-fees truly payable. The true plaints in the case, in so far as stamp duty was concerned, were the two joint plaints originally presented. These were filed in time, and were sufficiently stamped. The fees having been paid at the beginning, no question arose as to the insufficiency of stamp duty, and the objection on the ground of limitation was thereby disposed of. *Venkatramayya* v. *Krishnayya, I. L. R., 20 Mad., 319,* referred to. ASSAN *v.* PATHUMMA

[I. L. R., 22 Mad., 494

20. ———— *Date of commencement of suit—Presentation of plaint—Amendment of plaint.*—For the purposes of limitation a suit must be considered to have commenced from the date on which the plaint was originally presented, and not from the date of its amendment. PATEL MAFATLAL NARANDAS *v.* BAI PARSON **I. L. R., 19 Bom., 320**

21. ———— *Presentation of plaint—Return of plaint for amendment.*—A plaint was presented to the Court on the day previous to the expiration of the time limited for suing, but it was returned to the plaintiff for the purpose of being amended by the insertion of the particulars required by Act VIII of 1859, s. 26; and on the second day after (the intermediate day being Sunday), it was again presented, amended as required, and received. *Held* that the suit was commenced, for the purpose of saving the Statute of Limitations, when the plaint was first presented to the Court, and that it was therefore within time, notwithstanding the day when it was presented after amendment was beyond the period of limitation. SHAM CHAND KOONDOO *v.* KALLY KANTH ROY

[Marsh., 336: 2 Hay, 314

22. ———— *Presentation of plaint—Computation of time from which it runs.*—Where the plaintiff within three years from the time the cause of action arose presented his plaint, which the Court returned to him for amendment but without specifying any time for such amendment, and the plaint was again presented and filed some days beyond the three years, and the defendants pleaded that the suit was barred,—*Held* that the date of commencing the action was that of the original presentation of the plaint. ISMAIL SAHEB *v.* ARUMUGA CHETTI . . . . **1 Mad., 427**

GREESH CHUNDER SINGH *v.* PRAN KISHEN BHUTTACHARJEE . . . **7 W. R., 157**

MENGUR MUNDUR *v.* HUREE MOHUN THAKOOR **[23 W. R., 447**

RAM COOMAR SHAHA *v.* DWARKANATH HAZRA **[5 W. R., 207**

HUSRUTOOLLAH *v.* ABOO MAHOMED ABDOOL KADER . . . . . . **6 W. R., 39**

23. ———— *Presentation of plaint—Institution of suit—Return for amendment.*—Under the provisions of Act IX of 1871, a suit is instituted when a plaint is presented to a proper officer. The plaintiff, the limitation of whose suit expired on 5th October, presented his plaint to the Subordinate Judge on 20th September, improperly stamped, and it was returned to him with an order to make the deficiency good, without any time being specified within which the order was to be carried out. A vacation supervened. The deficiency was supplied, and the plaint accepted on 4th November, or eleven days after the Court opened. The defendant pleaded limitation. *Held* that, the date of presentation being taken as the date of institution for the purpose of calculating limitation, the suit was instituted within time. BEGEE BEGUM *v.* YUSUF ALI **6 N. W., 139**

24. ——— *Date from which appeal considered as instituted—Memorandum of appeal returned for correction.*—Where an appellant presented an appeal within the period of limitation prescribed therefor, and the Appellate Court returned the memorandum of appeal for correction without specifying a time for such correction, the appeal again presented some days after the period of limitation was presented within time, the date of its presentation being the date it was first presented. JAGAN NATH *v.* LALMAN . **I. L. R., 1 All., 260**

25. ——— *Civil Procedure Code, 1877, s. 54 (b)—Appeal when presented—Memorandum of appeal insufficiently stamped—Limitation.*—For the purposes of limitation, an appeal is preferred when the memorandum of appeal is presented to the proper officer, and not when, where the memorandum of appeal is insufficiently stamped and is returned in order that the deficiency may be supplied, it is again presented. When an Appellate Court returns an insufficiently-stamped memorandum of appeal, in order that it may be sufficiently stamped, it should fix a time within which the deficiency is to be supplied. SHEO PARTAB NARAIN SINGH *v.* SHEO GHOLAM SINGH . . . **I. L. R., 2 All., 875**

26. ——— *"Appeal presented"—Civil Procedure Code (Act XIV of 1882), s. 541—Execution of decree.*—The words "appeal presented" in the Limitation Act, 1877, mean an appeal presented in the manner prescribed in s. 541 of the Code of Civil Procedure. The words "where there has been an appeal" in art. 179, cl. 2 of sch. II of the Limitation Act, 1877, mean where a memorandum of appeal has been presented in Court. In execution of a decree against which an appeal has been presented, but rejected on the ground that it was after time, limitation begins to run from the date of the final decree or order of the Appellate Court. AKSHOY KUMAR NUNDI *v.* CHUNDER MOHUN CHATHATI . . . **I. L. R., 16 Calc., 250**

27. ——— *Memorandum of appeal insufficiently stamped—Deficiency in stamp on memorandum of appeal made good after period of limitation—Court Fees Act (VII of 1870), s. 28.*—A memorandum of appeal, insufficiently stamped, was presented in the Court of the District Judge on the 24th May, the last day allowed for it by limitation, and was received, and a memorandum endorsed on it "Appeal within time; stamp duty insufficient R204 odd." On the 27th May an order was passed by the District Judge, and endorsed on the memorandum, allowing the appellant one week within which to supply the deficiency, and this period was on the 5th June further extended by another fortnight being allowed. On the 13th June the full stamp duty was paid by the applicant. *Held* that the facts of the case did not bring it within either the spirit or the letter of s. 28 of the Court Fees Act, and that these proceedings were not such as were contemplated by that section, nor such as to put the appeal in order when the stamp duty was received on the 13th June, and that the appeal had been properly dismissed as being out of time. *Balkaran Rai* v. *Gobind Nath Tiwari, I. L. R., 12 All., 129,* referred to. YAKUTUNNISSA BIBEE *v.* KISHOREE MOHUN ROY . . . **I. L. R., 19 Calc., 747**

28. ——— *Unstamped memorandum of appeal—Stamp affixed after expiry of time of limitation.*—Where a petition of appeal was presented unstamped within the period of limitation, and the stamp was ultimately affixed after the appeal would have been barred by limitation,—*Held,* following *Skinner* v. *Orde, L. R., 6 I. A., 126,* that the appeal was in time. BATCHA SAHEB *v.* SUB-COLLECTOR OF NORTH ARCOT **I. L. R., 15 Mad., 78**

29. ——— *Memorandum of appeal insufficiently stamped—Conditional order admitting appeal—Deficiency made good after period of limitation—Court Fees Act, ss. 4, 5, 25, 28, 30—Memorandum of appeal from decree granting two distinct declarations—Civil Procedure Code, 1882, s. 541.*—An appeal under the Code of Civil Procedure is not presented within the meaning of s. 4 of the Limitation Act (XV of 1877) unless it is accompanied by the copies required by the Code. A memorandum of appeal is a document included in the first and second schedules to the Court Fees Act (VII of 1870), and is a document within the meaning of ss. 4, 25, 28, and 30 of that Act, and therefore cannot be filed or recorded in, or received by, the High Court unless and until the proper Court-fee in respect of it is paid, and is of no validity unless and until it is properly stamped. Consequently, if it is not, when tendered, properly stamped, it is not at that time a memorandum of appeal within the meaning of s. 541 of the Code, and the appeal cannot be regarded as having been at that time presented within the meaning of s. 4 of the Limitation Act, or as valid for any other purpose, except in the events specified in s. 28 of the Court Fees Act. When a memorandum of appeal which, when tendered, was insufficiently stamped, has subsequently been sufficiently stamped, the affixing of the full stamps cannot have a retrospective effect so as to validate the original presentation, unless it has been done by order made under the second paragraph of s. 28 of the Court Fees Act. In the case of a High Court, such an order can be made only by a Judge, and by him only in cases "of mistake or inadvertence." These words mean mistake or inadvertence on the part of the Court or its officers, and not on the part of the appellant or its advisers. The expression "head of the office" in s. 28 does not refer to the head of the office of a Court, or at all events to the head of the office of a High Court, acting not as such, but as a taxing officer; but it refers to the head of a public office such as the Board of Revenue. The officer mentioned in s. 5 of the Court Fees Act is not bound to advise parties as to the stamp required under the Act, or to give them notice that they have not sufficiently stamped documents which the Act requires to be stamped before presentation. A plaint contained a prayer for a declaration (i) that certain property was the joint property of the plaintiff, and (ii) that it was not liable to attachment and sale in execution of a decree held by one of the defendants against another ;

and, as a foundation for the latter relief, alleged collusion, fictitious transactions, and want of title. The decree in the suit, passed on the 14th September 1887, granted both the declarations prayed for. The defendants appealed to the High Court against the whole decree, and stamped their memorandum of appeal with a stamp of R10 only. On the 9th November 1887 it was tendered to a Judge for admission, and it then bore a report dated the 7th November by the officer appointed under s. 5 of the Court Fees Act, "report will be made on receipt of record." The Judge made an order, "admit, subject to stamp report," and the memorandum was then received by the office, and the appeal was entered on the register. On the 27th September 1888 the office reported that there was a deficiency in the stamp of R615 ; on the 9th November the taxing officer ordered that the deficiency should be made good; and on the 8th December 1888 it was made good. At the hearing of the appeal a preliminary objection was taken that the appeal had never been validly presented within time, or admitted, and that it could not be heard. *Held* that there was before the Court no valid appeal as to the merits of which the Court could give a decision. BALKARAN RAI *v.* GOBIND NATH TIWARI . . . . **I. L. R., 12 All., 129**

30. ———— *Amendment of decree, Application for—Civil Procedure Code, s. 206.*—Under a proper interpretation of the preamble and s. 4 of the Limitation Act (XV of 1877), the rule of limitation is confined to the litigants, and is inapplicable to acts which the Court may or has to perform *suo motu.* S. 206 of the Civil Procedure Code empowers a Court of its own motion to amend its decree, and the mere fact that one of the parties has made an application asking the Court to exercise that power will not render the action of the Court subject to the rule of limitation. *Roberts* v. *Harrison, I. L. R., 7 Calc., 333; Vithal Janardun* v. *Rakmi, I. L. R., 6 Bom., 586* ; and *Kylasa Goundan* v. *Ramasami Ayyar, I. L. R., 4 Mad., 172,* referred to. DHAN SINGH *v.* BASANT SINGH

[I. L. R., 8 All., 519

31. ———— *Amendment of plaint—Civil Procedure Code, 1877, s. 53.*—The plaint in a suit for money charged upon immoveable property which described such property as "the defendant's one biswa five biswansi share within the jurisdiction of the Court," was presented on the 21st November 1878 within the period of limitation prescribed for such a suit by Act XV of 1877. It was subsequently returned for amendment, and having been amended by the insertion of the words "in mouzah S, pergunnah S," after the word "share," was presented again on the 8th January 1879 after such period. *Held* that the date of the amendment of the plaint did not affect the question of limitation for the institution of the suit, and the return of the plaint for amendment and its subsequent presentation and acceptance by the Court did not constitute a fresh institution of the suit. RAM LAL *v.* HARRISON

[I. L. R., 2 All., 832

32. ———— *Application, Return of, for amendment.*—Where an application is returned for amendment, the period of limitation counts from the first presentation. CHOWDHRY PURLADH MAHAPATTUR *v.* CHOWDHRY JONARDUN MOHAPATTUR

[6 W. R., Mis., 15

Contra, GOUR MOHUN SURMAH *v.* JUGGERNATH ACHARJEE . . . . **14 W. R., 446**

33. ———— *Pauper suit—Civil Procedure Code, s. 308—Calculation of period of limitation.*—Under s. 308 of Act VIII of 1859, and the Limitation Act, 1859, in computing the period of limitation in a pauper suit, the commencement of the suit must be reckoned from the day when the application to sue *in formâ pauperis* was filed, and not from the day the application was admitted. GOLUCKNATH DUTT *v.* SEETARAM GOWER

[W. R., F. B., 53 : 1 Ind. Jur., O. S., 66

SEETARAM GOWER *v.* GOLUCKNATH DUTT

[Marsh., 174 : 1 Hay, 378

34. ———— *Suit in formâ pauperis—Payment of Court-fees by petitioner—Civil Procedure Code, 1859, ss. 308-310—Date of institution of suit.*—Where a person, being at the time a pauper, petitions, under the provisions of Act VIII of 1859, for leave to sue as a pauper, but subsequently, pending an enquiry into his pauperism, obtains funds which enable him to pay the Court-fees, and his petition is allowed upon such payment to be numbered and registered as a plaint, his suit shall be deemed to have been instituted from the date he filed his pauper petition, and limitation runs against him only up to that time. SKINNER *v.* ORDE

[I. L. R., 2 All., 241
L. R., 6 I. A., 126

Reversing the decision of the High Court

[I. L. R., 1 All., 230

35. ———— *Explanation—Petition in suit in formâ pauperis—Civil Procedure Code, 1859, s. 308.*—*A* put in a petition to sue *in formâ pauperis* for possession of certain foreclosed property within the time specified by the Limitation Act, but on her failing to appear on two occasions when called upon to give evidence of her pauperism, the case was struck off so far as the application to sue *in formâ pauperis* was concerned. At the instance of *A*, the case, however, was again re-opened, and a date fixed for her appearance. Two days prior to this date, but at a time beyond the limit fixed by the Limitation Act, *A* put in a petition asking that the petition which she then made to have her suit proceed as an ordinary suit might be joined with her application to sue *in formâ pauperis,* and the suit be duly tried in the ordinary way. She also paid in the regular amount of stamp duty for an ordinary suit. On the point of limitation,—*Held* that the plaint must be considered as filed, not on the day of filing the application to sue *in formâ pauperis,* but on the day on which the stamp duty was paid, and application made to have the suit tried in the ordinary way. The explanation to s. 4 of the Limitation Act only applies in cases where, under s. 308 of the Civil Procedure Code, the application for leave to sue *in formâ pauperis* is granted, and the application numbered and registered as a suit. Chunder Mohun Roy *v.* Bhubon Mohini Dabea . **I. L. R., 2 Calc., 389**

36. ——— *Application to sue in formâ pauperis—Renewal of application.*—An application to sue as a pauper having been refused on the ground that the suit was barred by limitation, the High Court on revision permitted the applicant to renew his application to the Court below. The Judge verbally rejected this application, saying he would deliver a written judgment. Before the written judgment was delivered, the applicant offered to pay the usual Court-fees, and asked that the petition might be taken as a plaint filed on the date of the first application: this was mentioned and refused in the written judgment. *Quære*—Whether the ruling in *Skinner* v. *Orde, I. L. R., 2 All., 241,* could be held to apply. Ram Sahai Sing *v.* Maniram

[I. L. R., 5 Calc., 807 : 6 C. L. R., 223

37. ——— *Application for leave to appeal in formâ pauperis—Subsequent appeal in regular form—Payment of Court-fee—Time of presentation of appeal—Retrospective effect.*—Where an application for leave to appeal *in formâ pauperis* having been presented and rejected, a regular appeal was subsequently filed, but after the period of limitation had expired,—*Held* that the payment of the Court-fee on the regular appeal could not be held to relate back to the memorandum of appeal which accompanied the application for leave to appeal as a pauper, so as to convert that memorandum of appeal into an appeal within time. Until the regular appeal was filed, there was nothing before the Court which it could treat, even provisionally, as a memorandum of appeal. Bishnath Prasad *v.* Jagarnath Prasad

[I. L. R., 13 All., 305

38. ——— *Institution of regular suit after refusal of application for leave to sue in formâ pauperis— Civil Procedure Code (1882), ss. 403 and 409—Presentation of plaint.*—When an application for leave to sue as a pauper is refused, and the applicant subsequently brings a suit for the same matter on a full Court-fee, such suit dates, for the purposes of limitation, from the time of filing the plaint, and not from the date of the application for leave to sue as a pauper. *Aliter* when leave to sue as a pauper having been granted, the applicant is dispaupered. Naraini Kuar *v.* Makhan Lal . . . **I. L. R., 17 All., 526**

39. ——— *Institution of suit after refusal of application for leave to sue as pauper—Extension of time granted for payment of Court-fees—Payment of fees after period of limitation for suit has expired—Presentation of plaint—Civil Procedure Code (1882), ss. 409 and 413.*—On the 2nd February 1890, the plaintiffs applied for leave to sue *in formâ pauperis.* After investigation, the Court, on the 15th July 1890, refused leave, but, on the plaintiff's application, granted him time to pay the Court-fees. He paid the fees on the 12th August 1890. At this date the suit was barred, and the defendant pleaded limitation. The plaintiff contended that the suit should be taken as instituted at the date of his application for leave to sue as a pauper. The lower Court held the suit barred and dismissed it. *Held,* confirming the decree, that the plaintiff's application to sue as a pauper having been disposed of under s. 409 of the Civil Procedure Code (Act XIV of 1882), there was no proceeding pending which could be continued and kept alive by the payment of Court-fees. On the rejection of an application for leave to sue as a pauper, the only course open to the applicant is that declared in s. 413, *viz.,* to institute a suit, and the date of the institution of that suit for the purposes of limitation is the actual date thereof. The plaintiff could not then be regarded as a pauper, and s. 4 of the Limitation Act (XV of 1877) would have no application. Keshav Ramchandra *v.* Krishnarao Venkatesh **I. L. R., 20 Bom., 508**

40. ——— *Application for leave to sue in formâ pauperis—Subsequent payment of Court-fees as for a regular suit—Limitation Act, art. 104—Civil Procedure Code (1882), ss. 403 and 413.*—*A B* applied for leave to sue as a pauper for the recovery of certain dower alleged to be due to her. Upon her right to sue as a pauper being disputed by the persons proposed by her in her application for leave to sue as a pauper as defendants to the suit, *A B* paid into Court the Court-fee necessary for a regular suit to recover the amount claimed, and prayed that her original application might be treated as the plaint in the suit, and the suit proceeded with in the ordinary manner. In the meantime, however, the period of limitation prescribed by art. 104 of sch. II of Act XV of 1877 for a suit to recover deferred dower had expired. *Held* that limitation ran from the time of presentation of the plaint, and not from the date of application for leave to sue as a pauper; the suit was therefore barred by limitation, and that s. 5 of Act XV of 1877 could not be applied. *Skinner* v. *Orde, I. L. R., 2 All., 241,* distinguished, *Balkaran Rai* v. *Gobind Nath Tiwari, I. L. R., 12 All., 129 ; Jainti Prasad* v. *Bachu Singh, I. L. R., 15 All., 65 ;* and *Naraini Kuar* v. *Makhan Lal, I. L. R., 17 All., 526,* referred to. Abbasi Begam *v.* Nanhi Begum . . **I. L. R., 18 All., 206**

41. ——— *Petition to appeal in formâ pauperis—Non-payment of stamp in time—Extension of time for furnishing security of costs of appeal.*—The plaintiff's suit having been dismissed for non-appearance under s. 98 of the Civil Procedure Code (Act XIV of 1882), she applied to have it restored to the list for hearing, but her application was refused on the 21st September 1896. On the 17th October 1896, she petitioned for leave to appeal *in formâ pauperis* against the order of the 21st September, and annexed to her petition an unstamped memorandum of appeal. On the 4th December 1896, her petition for leave to appeal *in formâ pauperis* was rejected, and she was directed by the Court to appeal in the ordinary way if she desired to appeal. On the 11th December 1896, she applied for further time to pay the stamp fee on the memorandum of appeal, and to deposit the usual security. The Court made no order as to the stamp fee, but gave her time to furnish security until the opening of the Court after the Christmas vacation. On the 21st December, she tendered to the officer of the Court the proper stamp, asking to have it affixed to her memorandum of appeal, but he refused on the ground that it was too late. The plaintiff therefore now applied to the Court of appeal asking that the stamp should be affixed and the appeal filed. *Held* that the application should be granted. As the Court had made no order on the 11th December as to the day on which the stamp duty should be paid, the case should be considered as if the stamp had been affixed to the memorandum of appeal on the 21st December, *i.e.*, the day on which the officer of the Court refused to receive the stamp. That being so, the memorandum of appeal should be regarded as presented on the 17th October 1896, and consequently within the time of limitation. JUMNABAI *v.* VISSONDAS RUTTONCHUND . . . **I. L. R., 21 Bom., 576**

42. ——————— *Application to sue in formâ pauperis—Refusal of application—Extension of time granted for payment of Court-fee—Payment of Court-fee after period of limitation—Civil Procedure Code (1882), ss. 409, 410, and 413.*—Where an application for permission to sue *in formâ pauperis* is rejected, and a full Court-fee is paid for a suit for the same relief, the suit must be considered, for the purposes of limitation, to have been instituted only after the payment of the Court-fee, and not at the date of presentation of the petition to sue as a pauper. S. 4 of the Limitation Act does not apply to such a case. The plaintiff, on the 26th November 1890, applied for leave to sue *in formâ pauperis* for the recovery of immoveable property. His application was rejected in May 1891, and time was given him to pay the full Court-fee, and his petition was then treated as the plaint in the suit. The period of limitation for the suit had then, however, expired, the cause of action being found to have arisen on the 28th November 1878. *Held* that the suit was instituted not when the petition to sue as a pauper was presented, but only on the payment of the full Court-fee, and it was therefore barred by lapse of time. *Keshav Ramchandra* v. *Krisnarao Venkatesh, I. L. R., 20 Bom., 508; Naraini Kuar* v. *Makhan Lal, I. L. R., 17 All., 526*; and *Abbasi Begam* v. *Nanhi Begam, I. L. R., 18 All., 206*, followed. *Skinner* v. *Orde, I. L. R., 2 All., 241*, distinguished. AUBHOYA CHURN DEY ROY *v.* BISSESSWARI . **I. L. R., 24 Calc., 889**

43. ——————— *Pauper appeal—Application for leave to appeal as a pauper—Such application rejected—Limitation for subsequent appeal—Limitation Act (XV of 1877), s. 5 and sch. II, arts. 152 and 170—Sufficient cause for delay—Civil Procedure Code (Act XIV of 1882), ss. 409, 410, 413, 582A, and 592.*—A plaintiff whose suit had been dismissed, presented an unstamped memorandum of appeal and with it a petition for leave to appeal as a pauper. Inquiry as to pauperism was directed, and in the result the leave to appeal as a pauper was refused, but the Judge gave leave to amend the memorandum of appeal by stating the claim at a lower valuation, thus reducing the amount of stamp fee required, and a week's time was granted to the appellant to pay the fee. The fee was duly paid, and the appeal was accepted, but when it came on for hearing, it was dismissed as barred by limitation. On second appeal to the High Court,—*Held* (reversing the decree and remanding the case) that the appeal was not barred by limitation. By FARRAN, *C.J.*, on the following grounds:—In the case of appeals, s. 592 of the Civil Procedure Code requires two separate documents to be presented,—a memorandum of appeal and an application for leave to appeal as a pauper. When the Judge disposes of the pauper application, he does not thereby necessarily dispose of the appeal. He may still treat it as an existing appeal if the appellant desires to continue it. The rule in s. 413 of the Civil Procedure Code cannot apply to appeals; for, in view of the fact that the Limitation Act (arts. 152 and 170) prescribes the same time for filing an appeal and for applying for leave to appeal as a pauper, the practical result would be that in every case where an application for leave to appeal as a pauper is refused, the appeal, if then presented, would be time-barred. These considerations must have been in the mind of the Legislature when it enacted the Civil Procedure Code of 1882, as the Limitation Act was then in existence. The District Judge was therefore under no legal obligation to dismiss the appeal when he refused the appellant leave to appeal as a pauper, and that he did not do so was clear from the fact that he allowed the memorandum of appeal to be amended. S. 582A of the Civil Procedure Code indicates the will of the Legislature that appeals shall not be rejected on the ground of their not being sufficiently stamped if such insufficient stamping arose from the appellant's mistake. In analogy thereto the District Judge was acting within his powers when he allowed the appellant to stamp the memorandum of appeal. By CANDY, *J.*, on the ground that under the circumstances there was sufficient cause for not presenting the appeal within the proper time, and that the delay might be excused under s. 5 of the Limitation Act. BAI FUL *v.* DESAI MANORBHAI BHAVASSIDAS

[I. L. R., 22 Bom., 849

44. ——————— *Application for leave to appeal as a pauper—Time of presentation of memorandum of appeal—Consent of the applicant to pay sufficient Court-fee after the statutory period of limitation—Sufficient cause—Limitation Act (XV of 1877), s. 5—Civil Procedure Code (Act XIV of 1882), s. 582A.*—A suit was brought *in formâ pauperis* on behalf of a minor represented by his next friend in the Court of the Munsif, and it was dismissed under some alleged compromise. An appeal was preferred to the District Judge within time, but the memorandum of appeal was insufficiently stamped. An application was also filed with the memorandum of appeal for leave to appeal *in formâ pauperis*. At the time of the hearing of the said application, objection having been taken by the respondent that the minor had become entitled to certain immoveable property, those representing the minor offered to pay proper Court-fees on the memorandum of appeal within a month. The Court allowed that to be done in the presence of both parties, and admitted the appeal. The Court-fees were also paid within the time allowed. On an objection by the defendant, appellant in the High Court, that the appeal by the plaintiff in the lower Appellate Court was out of time,—*Held* that, inasmuch as the appeal was admitted by the District Judge without any objection from the defendant, the case came either under s. 5 of the Limitation Act or under s. 582A of the Civil Procedure Code and therefore the appeal was not out of time. DURGA CHARAN NASKAR *v* DOOKHIRAM NASKAR . **I. L. R., 26 Calc., 925**

45. ———— **and art. 178**—*Summons to tax bill of costs—Summons to attend in Chambers at hearing of application.*—The taking out of a summons calling upon another to attend a Judge in Chambers on the hearing of an application is the act of the applicant and not of the Court taking cognizance of the application, and is not sufficient to save the application from being barred if the hearing of the application comes on after the time allowed by the Limitation Act for the application has expired. The present application therefore was held to have been made within the meaning of the Limitation Act, not when the summons was signed by the Registrar, but when the matter came before the Judge, which was more than three years from the time when the right to apply accrued. KHETTER MOHUN SING *v.* KASSY NATH SETT

[I. L. R., 20 Calc., 899

46. ———— *Act XIV of 1859, s. 1—Claim against company being wound up—Commencement of suit.*—Where *A* applied to the Court to realize a claim against a company which was being wound up by the Court,—*Held* that he was prosecuting a suit in Court, within the meaning of s. 1 of Act XIV of 1859. He commenced his suit when he first sent in his claim to the official liquidator. IN THE MATTER OF ACT XIX OF 1857 AND GANGES STEAM NAVIGATION COMPANY. ROBERTSON'S CASE . . . . **2 Ind. Jur., N. S., 180**

47. ———— *Appeal by prisoner in jail—Presentation of petition to officer in charge of jail.*—In the case of appeals by prisoners in jail, presentation of the petition of appeal to the officer in charge of the jail is, for the purpose of the Limitation Act, equivalent to presentation to the Court. QUEEN-EMPRESS *v.* LINGAYA

[I. L. R., 9 Mad., 258

48. ———— *Applications—Rules of Court—Applications of urgent nature.*—The rules of the Court, prescribing certain hours for the receipt of petitions and hearing of motions, cannot operate to alter the period of limitation prescribed by law, so as to exclude urgent applications made at any time in the day. IN THE MATTER OF DESPUTTY SINGH *v.* DOOLAB ROY . . . . . **1 C. L. R., 291**

49. ———— *Filing appeal after prescribed time—Removal from file.*—When a petition of appeal has been registered after lapse of the time allowed by law, the Judge has power, on discovery thereof, to reject or to remove it from his file. JAFER HOSSEIN *v.* MAHOMED AMIR

[4 B. L. R., Ap., 103 : 13 W. R., 351

———— **s. 5 (1871, s. 5).**

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.

[I. L. R., 2 Calc., 436

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—TIME FOR APPEALING.

[I. L. R., 2 Calc., 128

See COURT FEES ACT, 1870, SCH. I, ARTS. 4 AND 5 . **I. L. R., 9 Mad., 134**

See LETTERS PATENT, HIGH COURT N.-W. P., CL. 27.

[I. L. R., 11 All., 176

See SMALL CAUSE COURT—PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—RE-HEARING . **I. L. R., 12 Bom., 408**

1. ———— *Exception to section—Special law.*—The exceptions contained in s. 5 of Act IX of 1871 apply only to cases dealt with under the General Act of Limitation. THIR SING *v.* VENKATA RAMIER . . **I. L. R., 3 Mad., 92**

2. ———— *Madras Forest Act (Mad. Act V of 1882), ss. 14, 39—Period of limitation—Power to excuse delay.*—Delay in preferring an appeal under the Madras Forest Act beyond the period prescribed by s. 14 of that Act may be excused under s. 5 of the Limitation Act, 1877. REFERENCE UNDER MADRAS FOREST ACT (V OF 1882) . . . . **I. L. R., 10 Mad., 210**

3. ———— *General Clauses Act (I of 1887), s. 7.*—*Held* that a suit for profits under s. 93 (*h*) of the N.-W. P. Rent Act (XII of 1881), the period of limitation for the filing of which expired in respect of a portion of the claim on a day when the Court was closed, could not be brought on the day when the Court re-opened, but, so far as that portion was concerned, was barred by limitation, the provisions of the Limitation Act not applying to the N.-W. P. Rent Act. MUHAMMAD HUSEN *v.* MUZAFFAR HUSEN . . . . **I. L. R., 21 All., 22**

4. ———— *Time during which Court is closed.*—The time that the Courts are closed must be deducted in computing the period of limitation. MANEERUN *v.* LUTEEFUN . . **3 W. R., 46**

Contra RAMASAMY CHETTY *v.* VENKATACHETTAPATY CHETTY . . . . **2 Mad., 468**

5. ———— *Time expiring when Court is closed.*—When the time for doing an act expires whilst the Court is closed, the act, if done on the day on which the Court is next open, will be held to be done within time. MUCHUL KOOER *v.* LALJEE

[2 N. W., 112

AJMUDDIN *v.* MATHURADAS GORADHAN DAS

[11 Bom., 206

NARAYAN MANDAL *v.* BENI MADHAB SIRCAR

[4 B. L. R., F. B., 32 : 12 W. R., F. B., 21

DABEE RAWOOT *v.* HERAMUN MAHATOON

[8 W. R., 223

6. ———— *Order to pay money—Money paid after due date.*—When an order has been made for payment of money in a suit on a certain date and the Court was closed on that date, a payment made on the following day would be a good

payment for the purposes of the order. ARAVAMUDU AYYANGAR *v.* SAMIYAPPA NADAN
[I. L. R., 21 Mad., 385

See SHOSHEE BHUSAN RUDRO *v.* GOBIND CHUNDER ROY . . . . I. L. R., 18 Calc., 231

and PEARY MOHUN AICH *v.* ANUNDA CHARAN BISWAS . . . . . I. L. R., 18 Calc., 631

7. ———— *Appeal—Holiday, Time expiring on.*—When the last day for presenting an appeal falls upon a Sunday or close holiday, an additional day is to be allowed for the presentation of the memorandum of appeal. EX-PARTE KRISHNA PADHE
[6 Bom., A. C., 50

MOSURUF ALI CHOWDHRY *v.* JANOKENATH ODHICAREE . . . . W. R., 1864, Mis., 40

BISHEN PERKASH NARAIN SINGH *v.* BABOOA MISSER . . . . . . 8 W. R., 73

This section overrules the following cases, decided under the Limitation Act of 1859:—

KHODIE LAL *v.* BISWASU KUNWAR
[4 B. L. R., A. C., 131 : 13 W. R., 122

RAJKRISTO ROY *v.* DINOBUNDOO SURMA
[B. L. R., Sup. Vol., 360
3 W. R., S. C. C. Ref., 5

DEWAN ALI *v.* MUNSOOR ALI . 11 W. R., 259

KUDOMESSUREE DOSSEE *v.* EMAM ALI
[20 W. R., 167

COLLIS *v.* TARINEE CHURN SINGH
[3 W. R., 210

HOLEE RAM DOSS *v.* MIHEE RAM GOGOOEE
[6 W. R., 39

8. ———— *Suit on promissory note on demand—Closing of Court.*—A suit on a promissory note payable on demand, dated the 14th November 1867, was filed on 14th November 1870, that being the first day on which the Court was open after the Durga Puja holidays: the 13th November was a Sunday. *Held* the suit was not barred. ABDUL ALI *v.* TARACHAND GHOSE
[6 B. L. R., 292

S. C. on appeal. TARACHAND GHOSE *v.* ABDUL ALI . . 8 B. L. R., 24 : 16 W. R., O. C., 1

MUHTAB *v.* RAM DYAL . . . 3 Agra, 319

9. ———— cl. (a)—*Time expiring when Court is closed.*—Where a suit was filed in the Munsif's Court on the day on which the Court reopened after the vacation, but the Munsif found he had no jurisdiction, and on the same day the suit was filed in the Small Cause Court,—*Held* the plaintiff could not claim the benefit of s. 5, cl. (*a*), as to the time during which the Munsif's Court was closed, because the suit was not instituted in the Small Cause Court on the day on which that Court reopened. ABHOYA CHURN CHUCKERBUTTY *v.* GOUR MOHUN DUTT . . . . . 24 W. R., 26

10. ———— *Holiday—Act XI of 1865, s. 21.*—By s. 21, Act XI of 1865, notice of application for a new trial must be filed within seven days from the date of the decision. When the decree was made on 6th November, and the Court was closed on 12th, 13th, 14th, and 15th,—*Held* an application filed on the 16th was in time. GIRIJA BHUSAN HOLDAR *v.* AKHAY NIKARI
[5 B. L. R., Ap., 57 note : 13 W. R., 105

11. ———— *Time for institution of suit expiring when Court is closed.*—*Held* that, where the period of limitation prescribed for a suit expired when the Court was closed for a vacation, and the Court, instead of re-opening after the vacation on the day that it should have re-opened, re-opened on a later day, and the suit was instituted when it did re-open, it was instituted within time. BISHAN CHAND *v.* AHMAD KHAN . . . I. L. R., 1 All., 263

12. ———— *Adjournment of Court with office opened during adjournment for reception of plaints, etc.*—Where a District Court was adjourned for two months, but the notification stated that the Court would be open twice a week for one hour for the reception of plaints, petitions, and other papers,—*Held per Curiam* (INNES, *J.*, dissenting) that the Court was not closed till the last day of the adjournment within the meaning of s. 5 of the Limitation Act, 1877, so as to allow an appellant to present his appeal on the day the Court re-opened after the adjournment, the appeal time having expired during the adjournment. NACHIYAPPA MUDALI *v.* AYYASAMI AYYAR
[I. L. R., 5 Mad., 189

13. ———— *Time for presenting appeal expiring during the vacation.*—Where the period of limitation for the filing of an appeal has expired during vacation, a party to a suit has a right, under the provisions of the Limitation Act (XV of 1877), to have his appeal admitted on the day the Court re-opens, and the Prothonotary of the High Court has power to receive and file a memorandum of appeal on that day. KING *v.* KING
[I. L. R., 6 Bom., 487

14. ———— *Computation of period of limitation—Holiday.*—On the 13th April 1883 (corresponding with the 1st Bysack 1290), the plaintiff instituted a suit to recover money due on a simple unregistered bond, dated 8th Bysack 1286, and repayable on the 30th Cheyt 1286 (corresponding with the 11th April 1880). The 12th April 1883 (30th Cheyt 1290) was a holiday. *Held* that limitation began to run on the 12th April 1880, and that the suit was therefore barred. DEB NARAIN SINGH *v.* ISHAN CHUNDER MALO . . 13 C. L. R., 153

15. ———— *Suit for an account from agent—Courts being closed.*—Although a suit to recover moneys or obtain papers or accounts from an agent must, under s. 30 of Bengal Act VIII of 1869, be instituted within one year from the determination of the agency, yet, if on the last day of such year the Courts be closed, the suit will, under s. 5 of Act XV of 1877, not be barred if filed on the first day of the re-opening of the Court. GOLAP CHAND NOWLUCKHA *v.* KRISHTO CHUNDER DASS BISWAS
[I. L. R., 5 Calc., 314

16. ——— *Time for presenting plaint—Beng. Act VIII of 1869, s. 31.*—The provisions of s. 5 of the Limitation Act (XV of 1877) apply equally to suits under the Bengal Rent Act (Bengal Act VIII of 1869). In a suit for rent, where it appeared that a deposit had been made in Court under the provisions of the Bengal Rent Act (Bengal Act VIII of 1869), and that the six months allowed by s. 31 of that Act for the purpose of instituting a suit had expired on a day when the Court was closed for an authorized holiday, but that the plaint had been filed on the first day the Court re-opened,—*Held* that the provisions of s. 5 of the Limitation Act (XV of 1877) applied to such cases, and that consequently the suit was not barred. *Golap Chand Nowluckha* v. *Krishto Chunder Das Biswas, I. L. R., 5 Calc., 314,* and *Hossein Ally* v. *Donzelle, I. L. R., 5 Calc., 906,* followed. *Purran Chunder Ghose* v. *Mutty Lall Ghose Johiri, I. L. R., 4 Calc., 50,* dissented from. KHOSHELAL MAHTON *v.* GUNESH DUTT *alias* NANHOO SINGH

[I. L. R., 7 Calc., 690

17. ——— *Suit to compel registration—Registration Act, III of 1877, s 77.*—The provisions of s. 5 of Act XV of 1877 apply to suits instituted under the provisions of s. 77 of the Registration Act (III of 1877). NIJABUTOOLLA *v.* WAZIR ALI

[I. L. R., 8 Calc., 910 : 10 C. L. R., 333

18. ——— *Suit under s. 77 of Registration Act (III of 1877)—Filing of suit on re-opening of Court where limitation expires on a day when it is closed.*—When the period of limitation, prescribed by s. 77 of the Indian Registration Act, 1877, for suits brought under that section, expires on a day when the Court is closed, s. 5 of the Indian Limitation Act, 1877, does not apply, and the suit, if instituted on the day that the Court re-opens, is barred. APPA RAU SANAYI ASWA RAU *v.* KRISHNAMURTHI . **I. L. R., 20 Mad., 249**

See VEERAMMA *v.* ABBIAH

[I. L. R., 18 Mad., 99

19. ——— *Civil Procedure Code, 1877, s. 561—Time for filing objection—Holiday.*—Where the time for filing objections under s. 561 of the Civil Procedure Code expired on a day when the Court was closed, and objections were filed on the day the Court re-opened,—*Held* that such objections were filed within time. BAGHELIN *v.* MATHURA PRASAD . . . . **I. L. R., 4 All., 430**

20. ——— *Civil Procedure Code, s. 561, Objection under.*—S. 5 of Act XV of 1877 does not apply to an objection under s. 561 of the Procedure Code. KALLY PROSUNNO BISWAS *v.* MUNGALA DASSEE . . **I. L. R., 9 Calc., 631**

21. ——— *Objections to decree—Civil Procedure Code, 1877, s. 561—Extension of time.*—The seven days within which a notice of objections to a decree by a respondent under s. 561 of the Code must be given, is not a period to which the provisions of para. 2 of s. 5 of the Limitation Act can be extended, and the Court has no discretion

to extend the period. DEGAMBER MOZUMDAR *v.* KALLYNATH ROY

[I. L. R., 7 Calc., 654 : 9 C. L. R., 265

22. ——— *Objections taken under s. 348, Civil Procedure Code, 1859—Withdrawal of appeal—Ground for admitting appeal after time.*—The circumstance that a respondent who has taken, or intended to take, objections, under s. 348 of the Code of Civil Procedure, to the decree of the Court of first instance, at the hearing of an appeal already preferred by his opponent, has been prevented by the withdrawal of the appeal from having his objections heard, does not constitute a sufficient cause for admitting a cross-appeal by such respondent after the prescribed period, Act IX of 1871, s. 5. The High Court may consider and determine upon the sufficiency of the reasons which a Judge has given for admitting an appeal after the lapse of the period limited for that purpose by law. *Mowri Bewa* v. *Soorendra Nath Roy, 2 B. L. R., A. C., 184 : 10 W. R., 178,* followed. SURBHAI DAYALJI *v.* RAGHUNATHJI VASANJI . . . **10 Bom., 397**

23. ——— *Time expiring when Court is closed—Execution of decree—Transfer of decree for execution.*—Where parties are prevented from doing a thing in Court on a particular day not by any act of their own, but by the act of the Court itself, they are entitled to do it at the first subsequent opportunity. Where therefore, after previous attempts to execute a decree, dated 7th September 1877, an application for transfer of the decree under s. 223 of the Civil Procedure Code was made and granted on the 2nd September 1889, and on the 9th of September (the Court having been closed from the 3rd to the 8th inclusive on account of the Mohurrum) the decree-holder applied for execution under s. 230 of the Code,—*Held* that he was entitled to the benefit of the rule laid down in s. 5 of the Limitation Act upon the broad principle above stated. *Shooshee Bhusan Rudro* v. *Govind Chunder Roy, I. L. R., 18 Calc., 231,* applied in principle. PEARY MOHUN AICH *v.* ANUNDA CHARAN BISWAS

[I. L. R., 18 Calc., 631

24. ——— *Admission of, after limited period—Grounds for admission after time—Sufficient cause for delay—Act VIII of 1859, s. 333.*—As to what will be considered sufficient cause for delay in filing appeal and be ground for admitting a petition of appeal after the time limited by Act VIII of 1859, s. 333. SECRETARY OF STATE *v.* MUTU SAWMY

[4 B. L. R., Ap., 84 : 13 W. R., 245

25. ——— *Calculation of period allowed for—Reasonable ground for enlarging time—Review.*—The plaintiff, against whom a decree had been given, did not appeal within the twenty days allowed for that purpose; but, after the expiration of more than a month, he made an application for a review of judgment, which was refused after nine months. Nineteen days later he applied to have the time for filing his appeal enlarged. *Held* that the application was not made in time. Sufficient cause

was not shown for not having presented the appeal within the limited period. In calculating the number of days limited for appealing, the period occupied by the Court in disposing of an application for review presented during the time limited for appealing must not be reckoned. NOBO KISSEN SINGH *v.* KAMINEE DASSEE . . . **B. L. R., Sup. Vol., 349**
[2 W. R., Mis., 85: Bourke, A. O. C., 38

26. ——————— *Appeal preferred after time, Admission of—Ground for delay.*—In a case decided by a Deputy Collector, an appeal was preferred to the Collector, who rejected it, holding that he had no jurisdiction. An appeal was then preferred to the Judge, who also rejected it, on the ground of want of jurisdiction, and referred the parties to the Collector. The Collector accordingly tried the case, but his proceedings were quashed by the High Court as being without jurisdiction. The parties then applied to the Judge for a review of his order, which he refused to grant, suggesting an appeal. They accordingly filed an appeal, and the Judge reversed the order of the Deputy Collector. *Held* that the Judge, not having admitted the review as he might have done, was at liberty to treat the appeal as one filed after time on sufficient reasons assigned for the delay. TROYLUCKHNATH CHUCKERBUTTY *v.* JHABBOO SHAIKH
[10 W. R., 334

27. ——————— *Delay in appealing—Application for review.*—An application for review, if made within reasonable time and with due diligence, is a sufficient cause for delay in preferring an appeal, if the appeal is preferred as speedily as may be after the other proceedings. KULLER SINGH *v.* JEWAN SINGH . . . . . . **22 W. R., 79**

28. ——————— *Appeal admitted out of time—Review pending—Time excluded—Review when excuse for delay.*—In calculating the period allowed by the Limitation Act, 1877, for presenting an appeal, the time during which an application for review of judgment is pending cannot be excluded as a matter of right. But if an application for review has been presented with due diligence and admitted, and there was a reasonable prospect that the petitioner would obtain by the review all he could obtain by appeal, the Court would be justified in admitting an appeal presented out of time. VASUDEVA *v.* CHUNIASAMI . . . **I. L. R., 7 Mad., 584**

29. ——————— *Time for preferring—Pendency of application for review.*—In computing the period within which an appeal may be preferred, the time during which an application for review was pending is to be excluded. IN THE MATTER OF THE PETITION OF BROJENDRO COOMAR ROY
[B. L. R., Sup. Vol., 728: 7 W. R., 529

PORESH NATH ROY *v.* GOPAL KRISTO DEB
[15 W. R., 61

30. ——————— *Date from which time for appeal runs where an application for review is admitted.*—Whether a review order is rightly made upon legal grounds or not, when once made it has the effect of re-opening the hearing and of causing the judgment passed upon such hearing to be the final judgment as regards the parties to that review; consequently any such parties' right of appeal against the decretal order runs from the time of the final order on review, even if the Appellate Court should put aside the review matter. ROOP KALEE KOOER *v.* DOOLAR PANDEY . . . **20 W. R., 101**

31. ——————— *Delay in filing—Grounds for delay.*—Delay in preferring an appeal should be explained. Inasmuch as a new statement of the law by the High Court is not a sufficient excuse for delay in applying for a review of judgment, it is still less an excuse for delay in appealing against a judgment. MOWRI BEWA *v.* SOORENDRANATH ROY
[2 B. L. R., A. C., 184: 10 W. R., 178

AMRA NASHYA *v.* GAJAN SHUTAR
[2 B. L. R., Ap., 35: 11 W. R., 130

32. ——————— *Time for appealing—Alteration in law.*—An appeal will not be allowed after the time for appealing has expired, merely because a judgment altering the view of the law which prevailed at the time of the decision of the original suit has subsequently been given by the High Court. MAKHUN NAIKIN *v.* MANCHAND LADHABHAI
[5 Bom., A. C., 107

33. ——————— *Sufficient cause for admission of appeal after time—Appellate Court.*—A certain suit was dismissed on the 26th July 1875, on which day the plaintiff applied for a copy of the Court's decree. She obtained the copy on the 31st July, and on the 31st August, or one day beyond the period allowed by law, she presented an appeal to the Appellate Court. She did not assign in her petition any cause for not presenting it within such period, but alleged verbally that she had miscalculated the period. The Appellate Court recorded that it should excuse the delay, and admitted the appeal. *Held* that there was, under the circumstances, no sufficient cause for the delay. An Appellate Court should not admit an appeal after the period of limitation prescribed therefor without recording its reasons for being satisfied that there was sufficient cause for not presenting it within such period. ZAIBULNISSA BIBI *v.* KULSUM BIBI . . . . **I. L. R., 1 All., 250**

34. ——————— *Suits under Act X of 1859—Civil Procedure Code, 1859, s. 333—Act X of 1859, s. 161.*—Although in computing the period of limitation in suits under Act X of 1859 no deduction was allowed as in s. 14 of Act XIV of 1859, yet s. 161 of Act X of 1859, read together with s. 333 of Act VIII of 1859, gave the Court discretion to allow an appeal to be presented after time, on the ground that its pendency in a Court that had no jurisdiction "was sufficient cause for delay." MODHOOSOODUN MOJOOMDAR *v.* BROJONATH KOOND CHOWDHRY . . . . **5 W. R., Act X, 44**

But *see* KALEE KISHORE PAUL *v.* MONEE RAM SINGH . . . . **5 W. R., Act X, 46**

35. ——————— *Admission of appeal after time—Discretion of Judge.*—It is in the discretion of the Judge to consider whether sufficient cause has been shown for the non-presentation of an appeal in proper time, owing to delay on the part of the Collector, to whom the appeal was wrongly preferred in the first instance, and the High Court has no authority to interfere with such exercise of discretion by the Judge. RAJCOOMAR ROY *v.* MAHOMED WAIS **[7 W. R., 337**

36. ——————— *Power of Division Court to set aside order of single Judge admitting appeal after time.*—*Held* that the order admitting an appeal after time, made *ex-parte* by a single Judge of the High Court sitting to receive applications for the admission of appeals, under a rule of the Court made in pursuance of 24 & 25 Vict., c. 104, s. 13, and the Letters Patent of the Court, s. 27, was liable to be impugned and set aside at the hearing by the Division Court before which it was brought for hearing, on the ground that the reasons assigned for admitting it were erroneous or inadequate. DUBEY SAHAI *v.* GANESHI LAL . **I. L. R., 1 All., 34**

37. ——————— *Appeal filed after time—Order under cl. (b), s. 5 of the Limitation Act (IX of 1871).*—An order made *ex-parte* under cl. (*b*), s. 5 of the Limitation Act of 1871, permitting an appeal to be registered, although filed beyond time, may, on proper cause being shown, be set aside by the Court which made it; but such an order made by a District Judge cannot be afterwards cancelled by a Subordinate Judge upon the appeal coming on for hearing before him. JHOTEE SAHOO *v.* OMESH CHUNDER SIRCAR . . . **I. L. R., 5 Calc., 1**

38. ——————— *Appeal admitted after time by District Court—Power of subordinate Court to whom the appeal is transferred to entertain objections to it.*—A District Court by an *ex-parte* order admitted an appeal filed after the expiry of the period of limitation and transferred it for disposal to the subordinate Court, in which objection was taken that the appeal was time-barred. The Subordinate Judge held that he could not entertain the objection; he heard the appeal and remanded the suit. *Held* that the subordinate Court had jurisdiction to entertain and dispose of the objection, and that the objection was sound, and that the order of remand should be set aside. *Jhotee Sahoo* v. *Omesh Chunder Sircar, I. L. R., 5 Calc., 1,* dissented from. KRISHNA BHATTA *v.* SUBBAYA . **I. L. R., 21 Mad., 228**

39. ——————— *Admission of, when out of time, by District Judge—Transfer of same to Subordinate Judge for hearing—Power of Subordinate Judge to dismiss such appeal.*—Where an appeal out of time had been admitted by the District Judge, without being satisfied that there were good reasons for extension of the time, and the same had been transferred to the Subordinate Judge for hearing,—*Held* that the Subordinate Judge had power to dismiss the appeal on the ground of its presentation after time. *Jhotee Sahoo* v. *Omesh Chunder Sircar, I. L. R., 5 Calc., 1,* distinguished. *Mulna Ahmed* v. *Krishnaji Ganesh Godbole, I. L. R., 14 Bom., 594,* and *Chunder Dass* v. *Boshoon Lall Sookul, I. L. R., 8 Calc., 252,* referred to. MANICK DUKANDAR *v.* NAIBULLA SIRCAR . . . **2 C. W. N., 461**

40. ——————— *Admission of appeal out of time—Ex-parte order set aside at hearing.*—An order made *ex-parte,* under s. 5 of the Limitation Act, 1877, admitting an appeal after the period prescribed therefor, may be set aside on proper cause being shown by the Court which made it. VENKATRAYUDU *v.* NAGADU . **I. L. R., 9 Mad., 450**

See MOSHAULLAH *v.* AHMEDULLAH **[I. L. R., 13 Calc., 78**

41. ——————— *Appeal filed beyond time—Order for admission of such appeal without notice to respondent.*—The order for admission of an appeal under s. 5 of the Limitation Act (XV of 1877), made before issue of notice to the respondent, is an *ex-parte* order, and cannot bind him. MULNA AMAD *v.* KRISHNAJI GANESH GODBOLE . **I. L. R., 14 Bom., 594**

42. ——————— *Appeal—Admission after time—"Sufficient cause"—Poverty—Purdahnashin.*—On the 14th February 1884, the High Court dismissed an application of the 22nd March 1883, by a purdahnashin lady, for leave to appeal *in formâ pauperis* from a decree, dated the 16th September 1882, the application, after giving credit for 86 days spent in obtaining the necessary papers, being out of time by 73 days. On the 16th August 1884 an order was passed allowing an application which had been made for review of the previous order to stand over, pending the decision of a connected case. On the 24th April 1885, the connected case having then been decided, the application for review was heard and dismissed. Nothing more was done by the appellant until the 18th June 1885, when, on her application, an order was passed by a single Judge allowing her, under s. 5 of the Limitation Act (XV of 1877), to file an appeal on full stamp paper, and she thereupon, having borrowed money on onerous conditions to defray the necessary institution fees, presented her appeal, which was admitted provisionally by a single Judge. *Held* by TYRRELL, J. (MAHMOOD, J., dissenting), that the appellant had made out a sufficient case for the exercise of the Court's discretion under s. 5 of the Limitation Act, and that the Court should proceed to the trial of her appeal. *Held* by MAHMOOD, J., that the *ex-parte* order of the 18th June 1885 was one which the Civil Procedure Code nowhere allowed and was *ultra vires,* and that the Bench, before which the appeal came for hearing, was competent to determine whether the order admitting the appeal should stand or be set aside. *Dubey Sahai* v. *Ganeshi Lal, I. I. R., 1 All., 35,* referred to. *Held* also by MAHMOOD, J. (TYRRELL, J., dissenting), that the circumstances were such as to require the Court to set aside the order admitting the appeal and to dismiss the appeal as barred by limitation, inasmuch as it was presented more than two years beyond time, and neither the facts that the main reason why it was presented so late was that the appellant was awaiting the result of the connected case, and that the appellant was a pauper and a purdahnashin lady, nor the orders of the 16th August 1884, and the 18th June 1885, constitute "sufficient cause" for an extension of the limitation period within the meaning of s. 5 of the Limitation Act. *Moshaullah* v. *Ahmedullah, I. L. R., 13 Calc., 78,* and *Mangu Lal* v. *Kandhai Lal, I. L.*

R., *8 All.*, *475*, referred to. HUSAINI BEGUM *v.* COLLECTOR OF MUZAFFARNAGAR

[I. L. R., 9 All., 11

Held on appeal under the Letters Patent, affirming the judgment of MAHMOOD, *J.*, that the poverty of the appellant and the fact that she was a purdahnashin lady did not constitute "sufficient cause" for an extension of the limitation period within the meaning of s. 5 of the Limitation Act, and that such extension ought not to be granted. *Moshaullah* v. *Ahmedullah*, *I. L. R.*, *13 Calc.*, *78*, and *Collins* v. *Vestry of Paddington*, *L. R.*, *5 Q. B. D.*, *368*, referred to. HUSAINI BEGUM *v.* COLLECTOR OF MUZAFFARNAGAR . . **I. L. R., 9 All., 655**

43. ——— *"Sufficient cause" for not presenting appeal within time—Admission of appeal—Discretion of Court.*—In a suit for ejectment instituted in the Revenue Court under s. 93 (*b*) of the N.-W. P. Rent Act (XII of 1881), the Court gave judgment decreeing the claim on the 15th September 1884. The value of the subject-matter exceeded R100, and an appeal consequently lay to the District Judge; but there was nothing upon the face of the record to show that the decree was appealable. The period of limitation for the appeal expired on the 15th October, and the defendant, being under the impression that the decree was not appealable, applied to the Board of Revenue on the 8th January 1885 for revision of the first Court's decree. The proceedings before the Board lasted until the 24th April, when the defendant for the first time was informed that the value of the subject-matter being over R100, the decree was appealable, and that the application for revision had therefore been rejected. On the 23rd May the defendant filed an appeal to the District Judge, who, under s. 5 of the Limitation Act, admitted the appeal, and, reversing the first Court's decision, dismissed the claim. *Held* on appeal by the plaintiff that, under the circumstances, the High Court ought not to interfere with the discretion exercised by the District Judge in admitting the appeal under s. 5 of the Limitation Act after the period of limitation prescribed therefor. *Per* EDGE, *C.J.*, that under the circumstances above stated, he would not himself have held that the defendant had shown "sufficient cause," within the meaning of s. 5, for the admission of the appeal; but that the Court ought not to interfere with the discretion of the Judge when he had applied his mind to the subject-matter before him, unless he had clearly acted on insufficient grounds or improperly exercised his discretion. FATIMA BEGUM *v.* HANSI

[I. L. R., 9 All., 244

44. ——— *Guardian and minor—Decree against minor—Neglect of guardian to appeal—Leave to appeal granted to minor after attaining majority—Sufficient cause—Limitation Act, s. 14.*—One *J* died in 1886, and by his will directed his daughter-in-law, *L*, to adopt *K*, his nephew's son, and "to this lad as his inheritance" he gave the residue of his property. In a suit filed to have the will construed, a decree was passed on the 1st October 1887, declaring (*inter alia*) that, until his adoption by *L*, *K* was not entitled to any part of the estate. *K* was then a minor, and was represented in the suit by his father and guardian. No appeal was made against the decree, but the guardian and *L* began to negotiate with each other as to the sum of money which each should receive out of the testator's residuary estate as the price of giving and receiving the boy in adoption. These negotiations continued until 1890, when *L* died, and the adoption directed by the will thus became impossible. In December 1894, *K*, alleging that he had only attained majority on the 14th of that month, applied for a review of judgment, but his application was rejected. In March 1895, he obtained a rule *nisi* for leave to appeal against the decree of the 1st October 1887. He submitted that the circumstances amounted to "sufficient cause" under s. 5 of the Limitation Act (XV of 1877), and that he had not unduly delayed his application after attaining full age. *Held* that the special circumstances did amount to "sufficient cause" under the above section, and that leave to appeal should be granted. The guardian was desirous that the adoption ordered by the decree should take place, hoping that he would obtain a large sum of money for giving the minor in adoption. His interests were therefore in conflict with those of the minor, and the interests of the latter were not sufficiently consulted in deciding whether or not to appeal against the decree. CURSANDAS NATHA *v.* LADKAVAHOO

[I. L. R., 20 Bom., 104

45. ——— *Sufficient cause—Civil Procedure Code (1882), s. 108—Ex-parte decree—Limitation Act, s. 14.*—In a suit for possession of certain lands, after the defendants had filed their written statements, a commissioner was appointed to hold a local inquiry. The commissioner having completed his inquiry, a day was fixed for the hearing of the suit, and on that date the pleaders for some of the defendants having informed the Court that they had no instructions from their clients, and the rest of the defendants having accepted the report of the commissioner, the suit was decreed in accordance with it on the 13th April 1893. On the 10th May following, one of the defendants, who was not represented at the hearing of the suit, made an application under s. 108 of the Code of Civil Procedure to have the decree set aside. The Subordinate Judge, on the 30th November 1893, rejected the application, holding that the petitioner had not only notice of the day of hearing, but he was actually present in Court on that day. The petitioner, on the 24th February 1894, filed an appeal to the High Court against that order, and, on the 18th January 1895, that appeal was dismissed on the merits. On the 30th March 1895, an appeal was presented against the original decree to the High Court, and it was contended that, under s. 5 of the Limitation Act, sufficient cause was shown for not filing the appeal within time. It was also contended that the time during which the petitioner was prosecuting his application under s. 108 of the Code of Civil Procedure should be excluded in computing the period of limitation under s. 14 of the Limitation Act. *Held* that s. 14 of the Limitation Act did not apply to appeals. *Held* also that this was not a case in which an application could properly be made under

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s. 108 of the Code of Civil Procedure. Even supposing that the decree could be called an *ex-parte* decree, the petitioner, having failed in that application on the merits, could not now be allowed to fall back upon the remedy, by way of an appeal, which was open to him at the time when the original decree was passed, and of which he did not choose to avail himself, and that this was not a sufficient cause for not presenting the appeal within time. *Balwant Singh* v. *Gumani Ram, I. L. R., 5 All., 591,* and *Sital Hari Banerjee* v. *Heera Lall Chatterjee, I. L. R., 21 Calc., 269,* referred to. ARDHA CHANDRA RAI CHOWDHRY *v.* MATANGINI DASSI . **I. L. R., 23 Calc., 325**

46. ———— **and s. 14**—*Ground for admission of appeal after time.*—The circumstances contemplated in s. 14 of the Limitation Act, 1877, will ordinarily constitute a sufficient cause in the sense of s. 5 for not presenting an appeal within the period of limitation. BALVANT SINGH *v.* GUMANI RAM

[I. L. R., 5 All., 591

47. ———— *Review—Application for review—Sufficient cause for delay—Pendency of second appeal—Ignorance of effect of judgment.*—*G* obtained a decree against *M* in the Court of the Subordinate Judge of Ahmedabad for the refund of a certain sum of money alleged to have been illegally levied by *B* as inamdar for local fund cess due for certain years. In appeal, the District Court, on the 21st March 1882, varied the decree and reduced the amount. On second appeal the High Court, on 23rd June 1882, dismissed the appeal, on the ground that the lower Courts had no jurisdiction, the suit being a Small Cause Court suit. The decree of the District Court consequently remained in force. In July 1882, *G* brought a second suit against *M* in the Small Cause Court at Ahmedabad for moneys illegally levied by *M* in subsequent years. The Judge of that Court held that the decree in the former suit passed on 21st March 1881 estopped *M* from disputing *G's* claim, and that the matter was *res judicata*. *M* then procured the proceedings in the Small Cause Court to be stayed, and, on the 18th November 1882, applied to the District Court for a review of its decree of 21st March 1881. The District Judge granted the review on the ground that the time lost by *M* in the prosecution of the second appeal should be excluded from computation, and that the subsequent delay was justified by the fact that *M* was not aware of the effect of the decision in the first suit until informed of it by the Judge of the Small Cause Court at the hearing of the second suit. On appeal to the High Court,—*Held,* reversing the order of the District Judge, that the circumstances did not justify the admission of *M's* application for review after the expiration of the ninety days allowed by the Limitation Act. The pendency of an appeal is not a "sufficient cause" for not presenting the application earlier within the meaning of s. 5 of the Limitation Act (XV of 1877). GULAM HUSEN MAHAMED *v.* MUSA MIYA HAMAD ALI **I. L. R., 8 Bom., 260**

48. ———— *Review, Exclusion of time taken up with—Practice.*—The mere presentation of an application for review where it is not shown that the grounds therefor are reasonable and proper, is not a sufficient reason for admitting an appeal after the period of limitation prescribed for such appeal has passed. ASHANULLA *v.* COLLECTOR OF DACCA

[I. L. R., 15 Calc., 242

49. ———— *Time occupied in seeking review of judgment—Computation of time for appeal—Discretion of Court.*—An appellant is not entitled as of right to the exclusion of the time occupied by him in seeking a review of judgment, in the computation of the time within which his appeal is preferred. Where it appeared that the application for review proceeded on grounds dealt with in the judgment sought to be reviewed and on the discovery of fresh evidence which was made nearly three months before the application, the Court declined to exercise its discretionary power to exclude the time so occupied. GOVINDA *v.* BHANDARI

[I. L. R., 14 Mad., 81

50. ———— *Application insufficiently stamped—Sufficient cause for admitting application after period prescribed—Application for review—Court Fees Act (VII of 1870), ss. 6, 28.*—On the 26th January 1889, an application was presented to the Munsarim of the District Judge's Court for review of a judgment passed on the 19th December 1888. The application was insufficiently stamped, and the Munsarim endorsed on it "stamp insufficient." On this a dispute ensued between the pleader for the applicant and the Munsarim as to the sufficiency of the stamp. On the 25th April 1889, the deficiency pointed out by the Munsarim was made good. On the 26th May, the Judge admitted the application, on the applicant paying the Court-fee payable on an application presented on or after ninety days from the date of the decree. *Held* that s. 6 and the first paragraph of s. 28 of the Court Fees Act (VII of 1870) were applicable; that there was no mistake or inadvertence within the meaning of the second paragraph of s. 28; that the Judge had no power under the circumstances to admit the application as one presented after ninety days from the date of the decree; that there was no presentation within ninety days of an application which could have been received; that no sufficient cause had been shown, within the meaning of s. 5 of the Limitation Act, for not making the application within ninety days; and that the application was consequently barred by limitation, and ought to have been rejected. MUNRO *v.* CAWNPORE MUNICIPAL BOARD

[I. L. R., 12 All., 57

51. ———— *Application for review—Sufficient cause for delay in filing an appeal—Limitation Act (XV of 1877), s. 14—Deduction of time review was prosecuted without good grounds.*—Though under certain circumstances the presentation of an application for review may be considered as sufficient cause for delay in filing an appeal, the appellant is bound to satisfy the Court that such circumstances did exist in his case, and that he had sufficient cause for not presenting the appeal within the prescribed period. The plaintiff obtained a decree for possession of certain land in the Court of first instance. This decree was reversed by the Appellate Court on the 28th October 1890. The plaintiff applied for a review of judgment of the Appellate Court on the 27th January 1891. The petition of review was rejected on the 18th March 1891. Thereupon the plaintiff preferred a second appeal to the High Court on the 13th April 1891. *Held* that the second appeal was time-barred. The time taken in prosecuting the application for review could not be deducted in calculating the period of limitation, as the plaintiff had not shown that he had reasonable grounds for asking for a review. PUNDLIK *v.* ACHUT . **I. L. R., 18 Bom., 84**

52. ——— *Ground for non-prosecution of appeal.*—The fact that the plaintiff's attorney, on being served with notice of appeal, failed to notice that a party who had been a defendant in the Court below had not been made a respondent in the appeal, coupled with the fact that the application made by the plaintiff to make such defendant a party respondent after the period of limitation had expired was not made at the earliest opportunity possible, is not a sufficient ground under s. 5 of the Limitation Act for non-prosecution of the appeal within the period allowed. CORPORATION OF THE TOWN OF CALCUTTA *v.* ANDERSON . **I. L. R., 10 Calc., 445**

53. ——— *Mistake of counsel—Delay—"Sufficient cause."*—In a suit between *A* and *B* heard on the 29th January 1883, a certain conveyance was filed with the plaint, but up to the hearing this conveyance had been protected from discovery. *B's* counsel had, however, had a copy thereof delivered to him at the time *B's* written statement was being drawn, and a copy briefed to him at the hearing. At the hearing *A's* counsel stated that the effect of the conveyance was to vest the entirety of a certain property in *A*; this view was accepted by *B's* counsel, who did not read the conveyance. The only issue in the case was "who was in possession of the property," and the Court decided this issue on the 5th February in favour of the plaintiff. On the 26th February *B* brought a suit against *A* to set aside this conveyance on the ground of fraud. And in certain proceedings in this case taken on the 31st March, *B's* counsel discovered, as he alleged for the first time, that under the conveyance, a moiety of a seven twenty-fourth share remained in *B*. On that day instructions were given to *B's* counsel to draw up a petition of review of the judgment of the 5th February. This petition, owing to the Easter vacation, was not, and could not have been, presented till the 9th April. In deciding whether *B* had shown "sufficient cause," within the meaning of s. 5 of the Limitation Act, for not making the application within the time allowed by law, the Court, following the principles laid down by *Bowen, L.J.*, in *In re Manchester Economic Building Society, L. R., 24 Ch. D., 488,* in its discretion, held that "sufficient cause" had been shown by *B*. *Anderson* v. *Corporation of the Town of Calcutta, I. L. R., 10 Calc., 445,* distinguished. IN THE MATTER OF THE PETITION OF SOLOMON. GOPAUL CHUNDER LAHIRY *v.* SOLOMON . . . **I. L. R., 11 Calc., 767**

In the same case on appeal,—*Held* on the facts that there was no "sufficient cause" for not making an application for review within the time limited by s. 5 of the Limitation Act, 1877. GOPAL CHUNDRA LAHIRI *v.* SOLOMON . **I. L. R., 13 Calc., 62**

54. ——— *Discretion of Court to admit appeal after time.*—Exercise by Court of the discretion given to it by s. 5 of the Limitation Act, 1877, by making person a respondent when the time for appealing against him had expired. MANICKYA MOYEE *v.* BORODA PROSAD MOOKERJEE

[I. L. R., 9 Calc., 355 : 11 C. L. R., 430

55. ——— *Appeal in pauper suit—Application for review.*—The language of the Limitation Act precludes any other construction than that while a pauper may apply for a review of judgment with the same indulgence as to delay in making the application as a person who is not a pauper, yet, in making his application for leave to appeal, similar indulgence is not extended to him. LAKSHMI *v.* ANANTA SHANBAGA . **I. L. R., 2 Mad., 230**

56. ——— *Sufficient cause—Poverty—Admission of appeal after time.*—Poverty is not "sufficient cause," within the meaning of s. 5 of the Limitation Act (XV of 1877), for admitting an appeal after the ordinary period of limitation prescribed therefor has expired. MOSHAULLAH *v.* AHMEDULLAH . . . **I. L. R., 13 Calc., 78**

57. ——— *Application for leave to appeal to Privy Council.*—The provisions of the second paragraph of s. 5 of the Limitation Act (XV of 1877) do not extend to applications for leave to appeal to Her Majesty in Council. *Lakshmi* v. *Ananta Shanbhaga, I. L. R., 2 Mad., 230,* and *Ganga Gir* v. *Balwant Gir, Weekly Notes, All., 1881, p. 130,* referred to. IN THE MATTER OF THE PETITION OF SITA RAM KESHO

[I. L. R., 15 All., 14

58. ——— *Discretion of Court—Appeal out of time, Admission of.*—S. 5 of the Limitation Act gives a discretion to a Court to admit an appeal filed out of time. *A* valued his suit at R18,000, which was reduced to less than R5,000 by the Court of first instance at Rajshahye. A decree, dated the 20th December 1883, was given against the defendant, who applied for copies on the 3rd of February, and the decree was ready on the 7th. The defendant was apparently under the impression that the appeal would lie to the High Court; but on the 16th of March a letter was despatched by his Calcutta agent informing him that he was mistaken, and that the appeal lay to the District Judge. This letter reached Rajshahye on the 17th, and the appeal was filed on the 23rd of March. *Held* that, under the circumstances, the Court might admit the appeal in the exercise of its discretion under s. 5 of the Limitation Act. HURO CHUNDER ROY *v.* SURNAMOYI

[I. L. R., 13 Calc., 266

59. ——— **and s. 14**—*Delay—Sufficient cause—Deduction of time spent in another litigation in respect of the same subject-matter—Mistake of law.*—Mere ignorance of the law cannot be recognized as a sufficient reason for delay under s. 5 of the Limitation Act (XV of 1877). *A* obtained a decree against *B* as the heir and legal representative

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of his deceased uncle *C*. The decree directed that the amount adjudged should be recovered from *C*'s assets in the hands of *B*. In execution of this decree, certain property was attached. *B* claimed this property as his own, and sought to remove the attachment, but the Court passed an order confirming the attachment on the 20th November 1880. In 1881 *B* filed a regular suit to set aside this order. The suit was dismissed in 1885, as barred by s. 244 of the Civil Procedure Code (Act XIV of 1882). Thereupon *B* filed an appeal from the order in execution made on 20th November 1880. This appeal was rejected as time-barred under art. 152 of sch. II of the Limitation Act (XV of 1877). *Held* that the time spent in the actual proceedings in the suit to set aside the order in execution might be deducted in computing the delay that occurred before the appeal was filed. But the plaintiff was not entitled to a deduction of the time that intervened between the date of the order appealed against and the date of filing the suit. SITARAM PARAJI *v.* NIMBA VALAD HARISHET

[I. L. R., 12 Bom., 320

60. ——————— *Sufficient cause—Appeal, Presentation of, to wrong Court.*—The presentation of an appeal to a wrong Court under a *boná fide* mistake may be "sufficient cause" within the meaning of s. 5 of the Limitation Act. *Sitaram Paraji* v. *Nimba, I. L. R., 12 Bom., 320,* explained. DADABHAI JAMSETJI *v.* MANEKSHA SORABJI

[I. L. R., 21 Bom., 552

61. ——————— **and s. 14**—*Admission of appeal beyond time—"Sufficient cause"—Appeal filed in wrong Court—Boná fide proceedings.*—Presentation of an appeal within the period of limitation prescribed therefor to a wrong Court in ignorance of the provision of law is not a sufficient cause, within the meaning of s. 5 of the Limitation Act, for admitting the same appeal in the proper Court after the period of limitation prescribed therefor had expired. To enable the Court to admit an appeal after the period of limitation prescribed therefor had expired, on the ground that the same had in the first instance been preferred within the period of limitation provided therefor, but to a wrong Court, the appellant must satisfy the Court that he made his appeal to the wrong Court *boná fide,* that is, under an honest, though mistaken, belief, formed with due care and attention, that he was appealing to the right Court. JAG LAL *v.* HAR NARAIN SING

[I. L. R., 10 All., 524

62. ——————— *Appeal preferred to wrong Court through mistake of law—Exclusion of time.*—S. 14 of the Limitation Act (XV of 1877) does not contemplate cases where questions of want of jurisdiction arise from simple ignorance of the law, the facts being fully apparent, but is limited to cases where from *boná fide* mistake of fact the suitor has been misled into litigating in a wrong Court. The phrase "other cause of a like nature" in the section is vague, and cannot be held to release a person from the obligation to know the law of the land. The decree in this suit was passed by the Subordinate Judge as the Court of first instance on the 31st March 1886. Against the decree the plaintiffs preferred an appeal to the District Court on the 1st July 1886, and on the 11th December 1886 the District Court returned the memorandum of appeal filed in that Court to the plaintiff upon the ground that the subject-matter in dispute was above R5,000. The plaintiff then, on the 20th December 1886, presented the memorandum of appeal to the High Court, and it was admitted, subject to the consideration by the Bench determining the appeal of any question as to its admissibility after the period of limitation prescribed for presentation of appeals to the High Court. Upon the hearing of the appeal, the respondent objected to the appeal being entertained on the ground that it was presented beyond the period of limitation. *Held* that, no sufficient cause being shown for the delay in the presentation of the appeal, the appeal must be dismissed. *Balwant Sing* v. *Gumani Ram, I. L. R., 5 All., 591,* explained. RAMJIWAN MAL *v.* CHAND MAL . **I. L. R., 10 All., 587**

63. ——————— *Sufficient cause—Deduction of time appeal was prosecuted in wrong Court—Limitation Act, s. 14.*—An appellant who has preferred an appeal to the Court of the District Judge and *boná fide* prosecuted it, it being doubtful whether the appeal lay to the District Judge or to the High Court, is entitled to a deduction of the time during which the appeal was pending in the Court of the District Judge; such circumstances constituting a "sufficient cause" within the meaning of s. 5 of the Limitation Act. *Balwant Sing* v. *Gumani, I. L. R., 5 All., 591,* followed. BALARAM BHRAMARATAR RAY *v.* SHAM SUNDER NARENDRA

[I. L. R., 23 Calc., 526

64. ——————— **and s. 14**—*"Sufficient cause" to excuse delay—Mistake in law.* Land was sold in execution of a decree which was passed against the defendant for a sum exceeding R5,000. A suit to set aside the sale was instituted in a subordinate Court, and was dismissed. The plaintiff, who desired to appeal against the decree dismissing his suit, was advised that the appeal lay to the High Court, in which a memorandum of appeal was accordingly filed. On its appearing that the value of the property sold was less than R5,000, the High Court returned the memorandum of appeal for presentation to the District Court. The District Judge rejected it on the ground that it was barred by limitation, holding that the delay caused by the error, which the appellant committed in taking proceedings in the wrong Court, could not be excused. *Held* that the District Judge should have decided whether the appellant, under the special circumstances of the case in appealing to the High Court, acted on an honest belief formed with due care and attention, so as to bring the case within s. 14 of the Limitation Act, and enable the Judge to admit the appeal under s. 5. A mistake in law may be under some circumstances a "sufficient cause" within the meaning of s. 5 of the Limitation Act for admitting an appeal presented out of time. KRISHNA *v.* CHATHAPPAN

[I. L. R., 13 Mad., 269

65. ——————— *Sufficient cause—Mistake in law.*—*Per* MAHMOOD, *J.*—A bare mistake of law is not a "sufficient cause" within the meaning of s. 5

of the Limitation Act for extending the period of limitation. *Huro Chunder Roy* v. *Surnamoyi, I. L. R., 13 Calc.,* 266, dissented from. BECHI *v.* AHSAN-ULLAH KHAN . **I. L. R., 12 All., 461**

66. ——— *Leave to appeal after time expired—Sufficient cause—Two suits brought at same time by executors raising same questions of construction in respect of the same will—Similar decision in both—Appeal by a defendant in one suit and decree of Court of first instance reversed—Consequent application by plaintiffs for leave to appeal in second suit.*—The plaintiffs filed two suits (A and B) at the same time as executors of the will of one *D M.* In suit A they sued the two sons (*G* and *V*) of their testator for the purpose of having his will construed and of ascertaining the shares of his property taken under it by his said two sons respectively. Suit B was filed by them against *G,* one of the said sons of the testator, and against three other persons to whom he had mortgaged his interest in his father's estate. They alleged that *G* had made over possession of the whole of his father's estate to the mortgagees. and that they refused to give it up. The plaintiffs submitted that, under the mortgage, no charge was created, save upon *G*'s individual interest in the estate, and they prayed for a declaration as to the extent of the mortgage, for an order for possession, for an account, etc., etc. Suit A was heard and decided on the 15th August 1889, and after argument, the Court of first instance, construing the will, held that the fourth defendant, *G,* was entitled absolutely to certain property situate at the Girgaum Back Road in Bombay. Immediately after the said decree was made, suit B was called on for hearing before the same Judge. As the questions raised in both suits were the same, a decree in this suit was passed at once, without argument, in accordance with the construction put upon the will in suit A. Against the decree in suit A, *V* (one of the defendants therein) appealed, and, on the 27th February 1890, the Appeal Court reversed the decree of the Court below, and held that *G* was not entitled to an absolute estate in the abovementioned property, but was entitled only to be paid the income thereof for his life. The plaintiffs in the present suit, being executors and not personally interested, had taken no steps to appeal from the decree of the 15th August. As soon, however, as the decree in suit A was reversed, they proposed to have the decree in suit B amended, so as to be in accordance with the construction put upon their testator's will by the Appeal Court. The defendants refused to consent, and the plaintiff moved for leave to file an appeal, although the time limited for appealing had expired. It was contended that the fact that they were executors and trustees and as such could not appeal, save at their own risk, was "sufficient cause," under s. 5 of the Limitation Act (XV of 1887), for their delay until the other suit had been decided. *Held,* refusing the application, that no sufficient cause was shown for the plaintiffs' delay. The two suits were quite independent of each other. The plaintiffs thought proper to bring this second suit against the mortgagees, and they got a decision. If they were not satisfied, they should have appealed within the proper time. There was nothing in their position as executors to entitle them to any special consideration. THUCKER VUSSONJI MOWJI *v.* CANJI PURBHUT **[I. L. R., 14 Bom., 365**

67. ——— *"Sufficient cause"—Decree in suit for redemption—Appeal by mortgagee—Cross-objections filed by the mortgagors—Withdrawal of the appeal by the mortgagee—Application by mortgagors for extension of time to appeal.*—On the 1st March 1886, the plaintiffs (the mortgagors), obtained a redemption decree against the defendant (mortgagee), whereby it was ordered that, upon payment by the plaintiffs of R649-11-0 to the defendant, the mortgaged property should be redeemed. On the 19th April 1886, the defendant appealed to the High Court. On the 17th December 1886, the plaintiffs filed a cross-objection to the decree. On the 15th July 1890, the defendant obtained an order from the High Court allowing him to withdraw his appeal, and the plaintiffs consequently lost their opportunity of urging the cross-objection. On the 3rd September 1890, the plaintiffs applied, under s. 5 of the Limitation Act (XV of 1877), for an extension of time, for appealing against the decree of the 1st March 1886. *Held* that the withdrawal of the appeal, by which the plaintiffs lost their opportunity of having their cross-objection heard, afforded no sufficient reason for enlarging the time for the cross-appeal which he might have presented. CHUDASAMA MANABHAI MADARSANG *v.* ISHWARGAR BUDHAGAR **[I. L. R., 16 Bom., 249**

68. ——— *Appeal by defendants—Objections to decree filed by plaintiff under s. 561 of the Civil Procedure Code (1882)—Subsequent withdrawal of appeal—Application by plaintiff for leave to appeal—Sufficient cause for delay in filing appeal.*—The appellants (defendants) filed an appeal against the decree passed in this case on the 30th August 1898, and on the same day gave notice thereof to the respondents (plaintiffs), who, on the 28th September 1898, filed cross-objections to the decree under s. 561 of the Civil Procedure Code (Act XIV of 1882). On the 2nd March 1899, the appellants gave notice to the respondents that they would not proceed with the appeal. The respondents then applied to be allowed to appeal, alleging that they had from the first intended to appeal, but had not done so, only because the other side had filed an appeal. That being so, they had merely filed cross-objections. *Held* that the application should be granted. It appeared that the applicants had intended to appeal, and would have appealed, but for the fact that an appeal in the suit was already on the file. Under these circumstances, the applicants showed "sufficient cause" for not filing their appeal within s. 5 of the Limitation Act (XV of 1877). HURGOVINDAS PRANJIVANDAS *v.* JADAVAHOO **[I. L. R., 23 Bom., 692**

69. ——— **and s. 12**—*Appeal, Filing of, out of time—Period required for obtaining copy—"Sufficient cause" for delay.*—Where a decree was passed on the 3rd December and signed on the following day and application for a copy was not made until the 10th, and then with insufficient folios, and on the 11th the officer in charge made a report that the folios put in were insufficient, and 9 more were required, and the pleader for the appellant got the information the next day when he supplied the necessary folios, and the copy was ready for delivery on the 16th, and the appeal filed on the 9th January next, that is, 37 days after decree,—*Held* that the Judge in the Court below was in error in throwing out the appeal on the ground that it was out of time; and that under the circumstances he might have exercised his discretion under s. 5 of the Limitation Act. *Gungadas Dey* v. *Ramjoy Dey, I. L. R., 12 Calc., 30,* distinguished. *Sheogobind* v. *Ablaki, I. L. R., 12 All., 105,* and *Huro Chundra Roy* v. *Surnamoyi, I. L. R., 13 Calc., 266,* referred to. DULALI BEWA *v.* SARODA KINKAR PAULIT

[3 C. W. N., 55

————— **s. 5A**—*Delay in presenting appeal—Discretionary power of Court to excuse delay—Limitation Act, s. 5A and s. 14.*—S. 5A of the Limitation Act (XV of 1877) is, like s. 14, a mandatory section, but does not exclude the discretionary power of the Court, under s. 5, to excuse delay in presenting an appeal. SHRIMANT SAGAJIRAO KHANDERAV *v.* SMITH . **I. L. R., 20 Bom., 736**

————— **s. 6 (1871, s. 6).**

1. ————— *Act IX of 1871, s. 6—Rules for computing limitation.*—Though by s. 6 of the Limitation Act, 1877, nothing in that Act affects the period of limitation prescribed by any special or local law for any suit, appeal, or application, still the rules prescribed by that Act for computing the period of limitation are applicable to such suit, appeal, or application. S. 6 of Act IX of 1871 contrasted with s. 6 of Act XV of 1877. BEHARI LALL MOOKERJEE *v.* MUNGOLANATH MOOKERJEE . **I. L. R., 5 Calc., 110 : 4 C. L. R., 371**

2. ————— *Act IX of 1871, s. 6.*—S. 6 of Act IX of 1871 and s. 6 of Act XV of 1877 compared. GOLAP CHAND NOWLUCKHA *v.* KRISHTO CHUNDER DASS BISWAS

[I. L. R., 5 Calc., 314

3. ————— *Special law of limitation.*—In the absence of a special provision applicable to special laws, the general rule that when limitation once begins to run it continues to run, and its operation is not liable to be suspended either on Sundays, holidays, or during the recess of Courts, is applicable. THIR SING *v.* VENKATA RAMIER

[I. L. R., 3 Mad., 92

4. ————— *Construction of s. 6—Period of limitation.*—The true construction of s. 6 of the Limitation Act, 1877, is that, save as to the period of limitation, the other provisions of the Act are applicable to cases governed by special and local laws of limitation. SESHAMA *v.* SANKARA

[I. L. R., 12 Mad., 1

5. ————— *Special law of limitation—Mad. Reg. IV of 1816, s. 5—Village Munsif—Civil jurisdiction—Limitation of suits.*—S. 5 of Regulation IV of 1816, which prohibits Village Munsifs from trying any suit cognizable by them unless *inter alia*, the cause of action has arisen within twelve years previous to the institution of such suit, does not exclude such suits from the operation of the Limitation Act, 1877. ERAJABI *v.* MAYAN . . . **I. L. R., 9 Mad., 118**

————— **s. 7 (1871, s. 7; 1859, ss. 11, 12).**

See LUNATIC . **I. L. R., 19 Bom., 135**

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.

[I. L. R., 9 All., 411

1. ————— *Disqualification to sue.*—No other cause of disqualification than those mentioned in the Limitation Act is admissible to save limitation. RAM KISHORE ACHARJE CHOWDHRY *v.* LUKHEE DEBEE CHOWDHRAIN **W. R., 1864, 290**

2. ————— *Voluntary absence after attaining majority.*—The plaintiff's voluntary absence abroad after attaining majority does not bar the operation of Act XIV of 1859. VENKATA SUBHA PATTAR *v.* GIRI AMMAL . . **2 Mad., 113**

3. ————— *Ignorance of accrual of cause of action by absence from country.*—Ignorance of the cause of action having accrued when owing to any other cause than the fraud of the defendant, —*e.g.*, absence from the country,—does not give the plaintiff a longer time for suing. REAZ ALI KHAN *v.* GOVERNMENT OF INDIA . **19 W. R., 269**

4. ————— *Absence by reason of transportation.*—During the plaintiff's absence by reason of transportation, the defendant took possession of land which previously belonged to him as a tenant, and the landlord allowed the defendant to hold as his tenant. He held possession for more than twelve years. In a suit by the plaintiff on his return to turn the defendant out of possession, in which the landlord was made a defendant,—*Held* that the suit was barred, there being no exception in the Limitation Act with regard to plaintiffs who are beyond the sea in consequence of transportation. DOMUN *v.* SUDUNKOOLAH

[1 B. L. R., S. N., 25 : 10 W. R., 253

5. ————— *Adopted son—Disability.*—An adopted son, after he attains majority, is under no legal "disability" within the meaning of s. 11, Act XIV of 1859, although his title as adopted son may be disputed and has not been finally established. MUDDUN MOHUN TEWAREE *v.* NAND KISHORE DOSS

[5 W. R., 235

6. ————— He must bring his suit to set aside illegal acts of his adopting mother within three years of his attaining majority. KISHEN MOHUN KHOOND *v.* MUDDUN MOHUN TEWAREE

[5 W. R., 32

7. ————— *Minors—Law of the party.*—The term "minors" used in s. 12 of Act XIV of 1859 must be construed according to the law of the party in the case. HARI MAHADAJI JOSHI *v.* VASUDEV MORESHVAR JOSHI

[2 Bom., 344 : 2nd Ed., 325

LIMITATION ACT, 1877—*continued.*

8. ———— *Age of majority—Minor.*—For the purposes of the Limitation Act (IX of 1871), no person, whatever his domicile may be, is protected from the operation of the Act beyond the age of 18, and the three years of grace given by that Act. RAINEY *v.* NOBO COOMAR MOOKERJEE **[5 C. L. R., 543**

9. ———— *Object of section.*—The object of the section of the Limitation Act relating to disabilities is not to place minors under a special disability as compared with majors, but to make a special concession in their favour. BISSUMBHUR SIRCAR *v.* SOORODHUNY DOSSEE . . . **3 W. R., 21**

KALEE DOSS CHATTERJEE *v.* BEHAREE LOLL MOOKERJEE . . . . . **2 W. R., 305**

HURRIS CHUNDER NAG *v.* ABBAS ALI **[5 W. R., 204**

10. ———— *Construction of section.*—The section merely means that no limitation will apply to a case in which the person suing was disqualified at the time when the cause of action arose, provided the suit is brought within three years of the time of the disqualification ceasing. GUZ BEHARY SINGH *v.* WASHUN . . **W. R., 1864, 302**

11. ———— *Minority—Effect of section.*—The effect of it is to provide a distinct period of limitation applicable to every case in which but for legal disability the suit would be barred; in other words, to add three years from the time the disability ceases to the period of limitation made applicable by the Act to the particular case. RAMANUJA CHARIYAR *v.* VENKATA VARADH AIYANGAR **4 Mad., 54**

12. ———— *Disability of minority.*—In computing the period of limitation under s. 11, the period of the plaintiff's legal disability by reason of minority cannot be deducted. VIRA PILLAI *v.* MURUGA MUTTAYAN . . . **2 Mad., 340**

13. ———— *Suit by mother and guardian of minor.*—A mother and guardian of a minor is entitled to a deduction from the computation of limitation of the period of the minor's legal disability. RAM CHUNDRA ROY *v.* UMBICA DOSSIA **[7 W. R., 161**

14. ———— *Suit by minor through guardian.*—In a suit by a minor through her guardian for the recovery of property sold more than three years before the plaint was filed, plaintiff was held to be entitled to rely on the provisions of s. 11 of Act XIV of 1859, and to be therefore not barred by limitation. RAM GHOSE *v.* GREEDHUR GHOSE **[14 W. R., 429**

15. ———— *Effect of guardianship on minor's disability.*—The fact that a minor is for a time represented by a guardian does not remove the disability of the minor. ANANTHARAMA AYYAN *v.* KARUPPANAN KALINGARAYEN **[I. L. R., 4 Mad., 119**

16. ———— *Minor's right to sue—Disability.*—A suit by a guardian on behalf of a minor is that of the minor, and is governed by the law of limitation applicable to the minor. KHODABUX *v.* BUDREE NARAIN SINGH **[I. L. R., 7 Calc., 137 : 8 C. L. R., 306**

SUFFUROONISA BIBEE *v.* NOORUL HOSSEIN **[17 W. R., 419**

17. ———— *Minor's right to sue—Application by guardian for minor.*—Where a minor had been dispossessed of his share in certain property, which had been sold in execution of a decree and where an application under s. 268 of Act VIII of 1859 to obtain possession of the share was made by the then guardian of the minor and disallowed, and subsequently, but beyond the period of one year from the date of the application, a suit was brought to obtain possession by another guardian of the infant who had been duly appointed,—*Held* that such suit was not barred by limitation, the right to sue being that of the minor, and that it might be exercised by any one duly appointed on his behalf during his minority, or by the infant himself, within the time limited by s. 7 of Act XV of 1877, after attaining his majority. KHODABUX *v.* BUDREE NARAIN SINGH . **I. L. R., 7 Calc., 137: 8 C. L. R., 306**

18. ———— *Registration Act (III of 1877), s. 77—Suit by infant to enforce registration—Special rule of limitation.*—The Registration Act, 1877, being a special Act complete in itself, the provisions of the Limitation Act, s. 7, do not apply to suits instituted under s. 77 for a decree directing a document to be registered. *Held* accordingly that a suit by an infant to enforce the registration of a conveyance having been instituted more than thirty days after refusal on the part of a Registrar to register, it is barred by limitation. VEERAMMA *v.* ABBIAH **[I. L. R., 18 Mad., 99**

See APPA RAU SANAYI ASWAR RAU *v.* KRISHNAMURTHI . . . **I. L. R., 20 Mad., 349**

19. ———— *Suits under the Rent Act.*—The provisions of the section were formerly held to be not applicable to suits under the Rent Act. DINONATH PANDAY *v.* ROGHOONATH PANDAY **[5 W. R., Act X, 41**

LUCHMUN SINGH *v.* MIRIAM. LUCHMUN SINGH *v.* KAZIM ALI KHAN . . . **5 W. R., 219**

POORUN SINGH *v.* KASHEENATH SINGH **[6 W. R., 20**

SREE PERSHAD *v.* RAJGOOROO TREEUMBUKHNATH DEO . . . . **10 W. R., 44**

But there is now no distinction in that respect between rent suits and other suits.

20. ———— **and s. 6**—*Beng. Act VIII of 1869—Suit for arrears of rent—Disability of minority.*—In a suit under Bengal Act VIII of 1869 for arrears of rent, which accrued during minority, the plaintiff is not entitled to a fresh period of limitation under ss. 6 and 7 of the Limitation Act, 1877. *Dinonath Panday* v. *Roghoonath Panday, 5 W. R., Act X, 41; Behari Lall Mookerjee* v. *Mongolanath Mookerjee, I. L. R., 5 Calc., 110; Golap Chand Nowluckka* v. *Krishto Chunder Das Biswas, I. L. R., 5 Calc., 314;*

Khoshelal Mahton v. *Gonesh Dutt, I. L. R., 7 Calc., 690*; and *Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy, L. R., 3 I. A., 7 : I. L. R., 1 Calc., 226*, explained. *Khetter Mohun Chuckerbutty* v. *Dinabashy Shaha, I. L. R., 10 Calc., 265*, distinguished. GIRIJA NATH ROY *v.* PATANI BIBEE

[I. L. R., 17 Calc., 263

21. ——— *Act XIV of 1859, ss. 11 and 12—Civil Procedure Code, 1859, s. 246—Disability of minority.*—It was held that the limitation of one year, provided by s. 246 of Act VIII of 1859, was subject, in the case of a minor, to be modified by ss. 11 and 12 of Act XIV of 1859. *Mahomed Bahadur Khan* v. *Collector of Bareilly, 13 B. L. R., 292*, distinguished, on the ground that it was decided on an Act of a very special nature. PHOOLBAS KOONWUR *v.* LALLA JOGESHUR SAHOY

[I. L. R., 1 Calc., 226 : 25 W. R., 285
L. R., 3 I. A., 7

HURO SOONDUREE CHOWDHRAIN *v.* ANUNDNATH ROY CHOWDHRY . . . . **3 W. R., 8**

And the Act of 1877 now expressly applies to such cases, as also to cases of execution of decrees to which it was held the provisions of the Act of 1859 did not apply.

See ROTTY RUMUN OOPADHYA *v.* CHUNDEE BINODE OOPADHYA . . **5 W. R., Mis., 10**

CHUNDER COOMAR ROY *v.* SHURUT SOONDUREE DEBIA . . . . **6 W. R., Mis., 37**

TARUCKNATH MOOKERJEE *v.* POORNOCHUNDER CHATTERJEE . . . . **8 W. R., 137**

MUTHOORA DOSS *v.* SHUMBHOO DUTT

[20 W. R., 53

22. ——— *Minority—Minor inheriting decree.*—Where a decree-holder is under no legal disability to execute his decree, his son only succeeds to his right and is bound to execute his decree within the time which remained to the original decree-holder. ANNUNDIKOOMAR *v.* THAKOOR PANDAY

[1 Ind. Jur., N. S., 31
4 W. R., Mis., 21

23. ——— *Suit by guardian of minor—Application by minor for execution of decree.*—The guardian and administratrix of her minor sons obtained a money-decree against the defendants in August 1874, and on the 22nd February 1875 applied for its execution. The application was struck off on the 30th July 1875, as no property belonging to the defendants could be found. On the 16th of June 1881 the guardian died, and one of the sons, on the 20th of October 1882, soon after attaining his majority, made a fresh application for execution of the decree. *Held* that the fresh application was not time-barred, the time from which the period of limitation began to run against the applicant being the date on which he attained majority. *Khodabux* v. *Budree Narain Singh, I. L. R., 7 Calc., 137*, followed. JAGJIVAN AMIRCHAND *v.* HASAN ABRAHAM . . . . **I. L. R., 7 Bom., 179**

24. ——— *Execution of decree—Minor plaintiff—Application for execution by guardian.*—A plaintiff, who has obtained a decree during his minority, has the option either of applying through his guardian to execute the decree during his minority or to wait until the expiration of his minority before executing his decree. The application of the guardian is the application of the infant. The minor is under disability during the whole period of his minority. His disability does not cease because he, through his guardian, makes two or more applications for execution, however long the interval between them, provided they are all made during his minority. MON MOHUN BUKSEE *v.* GUNGA SOONDERY DABEE

[I. L. R., 9 Calc., 181 : 11 C. L. R., 34

25. ——— *Minor plaintiff—Application for execution by guardian—Limitation Act (XV of 1877), art. 179.*—*A* obtained a decree on the 22nd July 1881, and made several applications for execution. After the death of *A*, his heirs, who were minors, made another application for execution through their mother, who was their certificated guardian, on the 25th of March 1889. No further steps were taken during the next three years, but, on the 1st of April 1892, the minors through their mother again applied for execution. *Held* that the application for execution was not barred by s. 4 of the Limitation Act, read with art. 179 of the second schedule, but that the operation of the Act was arrested by s. 7. Art. 179 provides several points of time from which the period of three years shall begin to run, and for the purposes of the Limitation Act the period which begins from each point is a separate period, and if the person entitled is under a disability at the time when any one of such periods commences, the operation of the Act is suspended during the continuance of the disability by the operation of s. 7. *Mon Mohun Buksee* v. *Gunga Soondery Dabee, I. L. R., 9 Calc., 181*, approved. LOLIT MOHUN MISSER *v.* JANOKY NATH ROY

[I. L. R., 20 Calc., 714

26. ——— *Minor, Application by, and on behalf of, during minority—Pending suit, applicability of s. 7 of the Limitation Act.*—If an application is made on behalf of a minor during the period of his minority, it is not necessary that it must be made within the same period as if he were an adult. S. 7 of the Limitation Act applies not only when a minor makes an application himself after he has attained majority, but also when an application is made on his behalf during his minority. *Lalit Mohun Misser* v. *Janoky Nath Roy, I. L. R., 20 Calc., 714*, referred to. *Semble*—S. 7 of the Limitation Act applies to applications in pending suits. GUNESHWAR SINGH *v.* JAGADHATRI PERSAD NARAIN SINGH . . . . **3 C. W. N., 24**

27. ——— *Person under disability—Minor—Application by guardian on minor's behalf.*—Where the person entitled to make an application for execution of a decree is a minor at the time from which limitation is to be reckoned, s. 7 of the Limitation Act saves the execution of the decree from being barred, and any application made by his guardian on his behalf is equally exempt from the operation of limitation. *Lolit Mohun Misser* v. *Janokynath Roy, I. L. R., 20 Calc., 714,* and *Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy, I. L. R., 1 Calc., 226,* referred to. NORENDRA NATH PAHARI *v.* BHUPENDRA NARAIN ROY **I. L. R., 23 Calc., 374**

28. ——— *Civil Procedure Code (1882), ss. 596, 598, and 599—Limitation Act (XV of 1877), sch. II, art. 177—Application to admit appeal to Privy Council—Disability by reason of minority—Deduction of time.*—In 1885, the High Court in appeal passed a decree to which a minor under the Court of Wards was a party. Having attained his majority in 1894, he sought to appeal to Her Majesty in Council and presented an appeal within six months of the date when he attained majority. On an application under Civil Procedure Code, s. 598,—*Held* that the application was barred by limitation. THURAI RAJAH *v.* JAINILABDEEN ROWTHAN . . . **I. L. R., 18 Mad., 484**

29. ——— *Joint decree-holders—Minor, Right of, to execute whole decree when remedy of major joint decree-holder is barred.*—In execution of a decree for possession of certain lands and for mesne profits, dated the 15th August 1878, possession having been obtained in August 1880, two decree-holders, one of whom was a minor, applied on the 4th April 1882 for ascertainment of the amount of such mesne profits. Upon that application the ameen was directed to ascertain the amount due, but after repeated reminders had been sent him, and no report being submitted, the execution-case was struck off the file on the 9th October 1882. The minor judgment-creditor having attained his majority on the 17th April 1885, an application was made by both decree-holders for execution of the decree by ascertainment of the amount of mesne profits, and for the recovery of the amount when so ascertained. The judgment-debtors pleaded limitation. *Held* that, under s. 7 of the Limitation Act, the remedy of the minor decree-holder was not barred, as the other decree-holder could not give a valid discharge without his concurrence. *Ahamudeen* v. *Grish Chunder Shamunt, I. L. R., 4 Calc., 350,* distinguished, and that, under s. 231 of the Code of Civil Procedure, he was entitled to execute the whole decree, as though the remedy of the major decree-holder was barred, his right was not extinguished. ANANDO KISHORE DASS BAKSHI *v.* ANANDO KISHORE BOSE

[I. L. R., 14 Calc., 50

30. ——— **and s. 8**—*Disability of minority—Execution of decree—Joint decree-holders.*—A member of an undivided Hindu family and his two minor brothers (who sued by him as their next friend) brought a suit for partition of family property against their father and joined as defendants certain persons who were in possession of part of the property under alienations made by the father, but alleged in the plaint to be invalid as against the family. In 1875 a decree was passed in favour of the plaintiffs in the above suit. No application for the execution of the decree was made by either the first or second plaintiff; but the third plaintiff, having attained his majority in June 1881, applied for execution in April 1884; his application was opposed by two of the defendants. The District Judge made an order granting his application in respect of the one quarter share to which he was declared to be entitled under the decree. *Held* that the order of the District Judge was wrong, as neither s. 7 nor s. 8 of the Limitation Act was applicable to the case, and the application was accordingly barred by limitation. S. 7 applies to cases in which there is either one decree-holder and he is a minor, or in which all the joint decree holders are minors, or labour under some other disability It does not seem to be intended to apply to cases in which the minor's interest can be protected by joint decree-holders, who are also interested in the subject-matter of the decree. SESHAN *v.* RAJAGOPALA. RAJAGOPALA *v.* RAMANADA . . . . **I. L. R., 13 Mad., 236**

31. ——— *Joint decree, Execution of—Civil Procedure Code (1882), s. 231—Minority of joint decree-holder—Application for execution after attaining majority—Limitation Act, s. 8, and art. 179.*—*G* and his two minor nephews, *S* and *D*, obtained a decree on the 1st December 1885. *G* applied for execution on the 24th November 1886, and died in May 1887. *S* attained majority on the 15th December 1891, and, on the 24th July 1894, applied for execution, no application having been made since November 1886. *Held* that the application was not barred by limitation. Under s. 231 of the Civil Procedure Code (Act XIV of 1882), *S* was entitled equally with the other judgment-creditors to apply for execution of the whole decree for the benefit of all the decree-holders; and as he was a minor when the decree was passed, and when the last application for execution was made, he was entitled to the benefit of s. 7 of the Limitation Act (XV of 1877), and could apply for execution within three years of attaining majority. S. 8 of the Limitation Act applies only to those cases in which the act of the joint owner is *per se* a valid discharge. S. 7 applies where only some of the judgment-creditors, and not all, are affected by a legal disability. GOVINDRAM *v.* TATIA . . . . **I. L. R., 20 Bom., 383**

32. ——— **and s. 8**—*Minority.*—S. 8 of the Limitation Act, 1877, applies only to those cases in which the act of the adult joint creditor is *per se* a valid discharge. *Seshan* v. *Rajagopala, I. L. R., 13 Mad., 236,* and *Govindram* v. *Tatia, I. L. R., 20 Bom., 383,* followed. *Hargobind* v. *Srikishen, Weekly Notes, All., 1884, p. 58,* overruled. A decree was passed in 1881 in favour of two decree-holders. Subsequently one of the decree-holders died, and the names of his widow and his two minor sons and one minor daughter were entered as his representatives. In 1888 an application was made for execution by the widow on behalf of the minor sons, which was dismissed. In February 1894 the two sons of the deceased decree-holder, being still minors, made another application for execution through one Aijaz Husain. *Held* that s. 7 of the Limitation Act applied, and that this application was not time-barred. *Lolit Mohun Misser* v. *Janoky Nath Ray, I. L. R., 20 Calc., 714,* and *Norendra*

Nath Pahari v. *Bhupendra Narain Roy, I. L. R., 23 Calc., 374,* followed. ZAMIR HASAN *v.* SUNDAR
[I. L. R., 22 All., 199

33. ——— *Period of successive minorities.*—In a suit instituted before Act XIV of 1859 came into operation, the periods of successive minorities might be deducted in reckoning the term of limitation. AMIRTOLAL BOSE *v.* RAJONEEKANT MITTER . . **15 B. L. R., 10 : 23 W. R., 214**
[L. R., 2 I. A., 113

34. ——— *Act XIV of 1859, ss. 11 and 12—Right of minor to sue by guardian.*—The benefit of ss. 11 and 12 of Act XIV of 1859 is not limited to the period when the disability of minority has ceased, but applies also to the period during which the disability continues; and therefore, during the latter period, it is open to the minor to sue by his guardian. PHOOLBAS KOONWUR *v.* LALLA JOGESHUR SAHOY
[I. L. R., 1 Calc., 226 : 25 W. R., 285
L. R., 3 I. A., 7

S. C. in lower Court, SADABURT PERSHAD SAHOO *v.* LATF ALI KHAN PHOOLBAS KOOER *v.* LALL JUGESSUR SAHAI. BIKRAMJIT LALL *v.* PHOOLBAS KOOER. RAM DHYAN KOONWAR *v.* PHOOLBAS KOOER . . . . . **14 W. R., 339**

See RAM AUTAR *v.* DHUNEE RAM
[1 N. W., Ed. 1873, 122

and BAROO MULL *v.* CHUJJOO MULL **4 N. W., 125**

35. ——— *"Representative"—Purchaser from minor.—Quære*—Can the term "representative" in s. 11, Act XIV of 1859, be extended so as to include any purchaser from the minor suing in his lifetime? Whatever may have been the effect of s 11 of Act XIV of 1859 as to extending the privilege given to a minor to his representatives, s. 7, the corresponding section of Act IX of 1871, limits the privileges to the minor himself and his representative after his death; and therefore a purchaser from a minor cannot claim the benefit of that section. MAHOMED ARSAD CHOWDHRY *v.* YAKOOB ALLY . . **15 B. L. R., 357 : 24 W. R., 181**

36. ——— *Suit by minor on attaining majority.*—Suit to recover money advanced on a bond granted by the plaintiffs' father, on the allegation that the money advanced was the plaintiffs', who were minors at the time. In the absence of proof of knowledge on the part of the defendant of the benami character of the father's position, it was held that, whether the money of the loan really belonged to the plaintiffs or not, they could only sue as the representatives of their father, and that s. 11 prevented them from deriving any advantage from their minority in computing the period of limitation. NOSHEERAM ROY *v.* SHUSHEE BHOOSHUN ROY
[5 W. R., 169

MUKOOTNATH *v.* JUGWUNT LALL . **3 Agra, 389**

TARUCK CHUNDER SEN *v.* DOORGA CHURN SEN
[20 W. R., 2

37. ——— *Minority—Disability—Guardian.*—Where the father of a minor lent on account a sum of money to the defendant, and died without having received back the money, and the account was continued with the defendant by the mother and guardian of the minor, and the balance was struck during the minority of the infant, it was held that the cause of action arose at the time such balance was struck; and that, as the cause of action accrued to the minor during his disability, his representatives could sue to recover the balance at any time during the time of disability, and that a claim by the minor on attaining his majority, or if he should die, by his representative, would not be barred if preferred within three years from the cessation of the disability. Further, the extension of the period of limitation conceded to a minor on account of legal disability is not affected by the fact that during his minority he is represented by a guardian. MAHIPATRAV CHANDRARAV *v.* NENSUK ANANDRAV SHET MARVADI
[4 Bom., A. C., 199

38. ——— *Suspension of right of suit for disability.*—Limitation begins to run against a mother on her succeeding to a family estate as the heir of her son and under no disability, and cannot be stopped by any subsequent disability under s. 11. A dispossession by a stranger to a family of a portion of the family estate is only one cause of action to the family arising on the date of dispossession; and though, in consequence of the minority of a certain member of the family living at the time the period of limitation may under the law be enlarged, still no new cause of action accrues to a subsequently born son at the date of his birth, so as to enable him to postpone again the period of limitation which has begun to run against the family. GOBIND COOMAR CHOWDRY *v.* HURO CHUNDER CHOWDHRY
[7 W. R., 134

39. ——— *Disability of heir—Cause of action.*—Under s. 11, Act XIV of 1859, the subsequent disability of an heir will not save a suit instituted after a lapse of twelve years from the date of cause of action when such cause of action arose during the lifetime of the ancestor. MOHABAT ALI *v.* ALI MAHOMED KULAL
[3 B. L. R., Ap., 80 : 12 W. R., 1

40. ——— *Minority, Omission to sue within three years after.*—The mere fact of a plaintiff not suing within three years of his attaining majority will not, in cases where Act XIV of 1859 allows a general limitation of twelve years, bar his suit if brought within twelve years of the time when the cause of action accrued. RADHAMOHUN GOWEE *v.* MOHESH CHUNDER KOTWAL . **7 W. R., 3**

41. ——— *Disability of heir—Cause of action.*—*T, R,* and *N,* three of the heirs of one *H,* sued the defendant in 1865 for possession of certain property left by *H.* The defence was that the defendant had purchased the property from *H* in 1851, and had ever since been in possession. The lower Court found that the suit was barred as regarded some of the plaintiffs, but that the other two plaintiffs, *R* and *N,* had not, at the time the suit was brought, exceeded their majority by three years, the time allowed them by s. 11, Act XIV of 1859. *Held* that, whether limitation would bar *R* and *N* depended not on the question whether three years from their majority had elapsed or not before the institution of the suit, but whether twelve years having elapsed from the cause of action in 1857, limitation operated as a bar. If *H* had, at the time of his death, been out of possession for twelve years, then *R* and *N* would not be entitled to the extra three years after attaining their majority; but if he had died within twelve years, then the limitation should be calculated from the date of the cause of action to the date of his death, and then three years be allowed to *R* and *N* after they came of age. NUR MOHAMMED *v.* THAKOOR BIBI

[1 B. L. R., S. N., 18

42. ———— *Disability of heir—Cause of action.*—*A* sued to set aside a deed of sale of certain immoveable property, which she claimed as the property of her husband. The deed of sale had been executed by her husband's mother during her husband's minority. Her husband attained his majority more than twelve years after the deed of sale, and died about a year afterwards, leaving her, *A*, a minor. *A* alleged that she had attained her majority within three years of this suit. *Held* the suit was barred under s. 11, Act XIV of 1859. The husband could have sued after attaining his majority, and the subsequent disqualification of the plaintiff *A* could not extend the time. ABHAYA DURGA *v.* HARI KRISHNA GOPE

[1 B. L. R., S. N., 21: 10 W. R., 285

43. ———— *Suit to set aside alienation of ancestral property.*—A suit to set aside alienation of ancestral property, where a period twelve years from the date of such alienation had elapsed during plaintiff's minority, may be brought within three years (not twelve) from the time of his attaining majority. CHOWDHRY ZUHOORUL HUQ *v.* BAGOO JAN . . . . . **11 W. R., 532**

Affirmed on review, BAGOO JAN *v.* CHOWDHRY ZUHOORUL HUQ . . . . **13 W. R., 69**

44. ———— *Suit to recover immoveable family property unlawfully alienated during plaintiff's minority -Limitation Act, sch. II, art. 12—Minor, Suit by, on attaining majority to set aside alienation by father of impartible property.*—Where a suit is brought to set aside a sale of immoveable family property unlawfully alienated during the plaintiff's minority, it must be instituted within one year of the plaintiff's attaining his majority under sch. II, art. 12, of the Limitation Act. S. 7 of that Act must be read together with each article in sch. II, and when the period prescribed by the latter extends to three years or more and expires within three years from the date of attainment of majority, the intention is that the late minor should have the full three years. But when the period of limitation prescribed is less than three years, as in art. 12, and the minor has that period from the date of his majority, the prescribed period is not to be enlarged to three years. SUBRAMANYA PANDYA CHOKKA TALAVAR *v.* SIVA SUBRAMANYA PILLAI

[I. L. R., 17 Mad., 316

45. ———— **and art. 129**—*Cause of action—Minority.*—In a suit by the reversionary heirs of one *S* to set aside an adoption alleged to have been made with the permission of *S*, the plaintiffs alleged that *S* died in 1844; that the adoption took place in 1845; and that they attained their majority respectively on the 26th September 1871 and the 20th December 1872. The suit was instituted on 16th June 1873. *Held* that, the adoption having taken place after the death of *S*, the cause of action arose at the date of the adoption, as provided by art. 129, sch. II, Act IX of 1871; and that the plaintiffs, not having been in existence when the cause of action arose, were not entitled to the benefit of s. 7, Act IX of 1871, so as to enable them to sue within three years of attaining their majority. SIDDHESSUR DUTT *v.* SHAM CHAND NUNDUN

[15 B. L. R., 9 note: 23 W. R., 285

See MRINMOYEE DABEA *v.* BHOOBUNMOYEE DABEA

[15 B. L. R., 1: 23 W. R., 42

46. ———— **and art. 120**—*Suit for declaration that alienation by Hindu widow is void—Former suit by a former reversioner barred by lapse of time, Effect of, or subsequent suit by, minor.*—A minor plaintiff instituting a suit which falls within art. 120 of the second schedule of the Limitation Act, 1877, is not excluded from the benefit of s. 7, merely because the right of some other person through whom he does not claim to sue for similar relief has become time-barred. The "right to sue" mentioned in the third column of art. 120 means the right to sue of the plaintiff or of some one through whom he claims. The "period of limitation" mentioned in s. 7 means the period of limitation for the suit which the plaintiff or some one through whom he claims is entitled to institute. *Siddhessur Dutt* v. *Sham Chand Nundun, 15 B. L. R., 9 note: 23 W. R., 285; Mrino Moyee Debia* v. *Bhoobun Moyee Debia, 15 B. L. R., 1: 23 W. R., 42; Gobind Coomar Chowdhry* v. *Huro Chunder Chowdhry, 7 W. R., 134;* and *Gobind Chandra Sarma Mazoomdar* v. *Anand Mohan Sarma Mazoomdar, 2 B. L. R., A. C., 313,* referred to. BHAGWANTA *v.* SUKHI . **I. L. R., 22 All., 33**

47. ———— **and art. 44**—*Minority, Disability of—Alienation by guardian of property of minor—Cause of action.*—*K R* died in 1844, leaving a widow, *O T*, and a minor son, *G D*. In 1847 *O T* executed in favour of the defendant a mirasi ijara of certain property, but it did not appear whether she so acted as guardian or mother of *G D*. *G D* died in 1855 before attaining majority, and, under an anumati-patro executed by *K R* before his death, the plaintiff was adopted in 1858. *O T* died in 1861. In a suit brought by the plaintiff in 1873 to set aside the alienation by *O T* in 1847,—*Held* that, if the alienation was made by *O T* as guardian of *G D*, the suit was not barred, it having been brought within three years after the plaintiff attained his majority; if made by her as a Hindu widow, the suit was still not barred, the cause of action not arising until her death, when the plaintiff was a

LIMITATION ACT, 1877—*continued.*

minor. PROSONNA NATH ROY CHOWDRY *v.* AFZOLONNESSA BEGUM
[I. L. R., 4 Calc., 523: 3 C. L. R., 391

48. ——— *General principle of law as to the disability of minors—Provisions of the Civil Procedure Code (Act XIV of 1882)—Minor represented by a guardian.*—S. 7 of the Limitation Act, strictly speaking, only applies to cases dealt with by that Act itself. The provisions of the Civil Procedure Code must, in the absence of anything to the contrary, be deemed to be subject to the general principle of law as to the disability of minors, which is that time does not run against a minor, and the circumstance that a minor has been represented by a guardian does not affect the question. MORO SADASHIV *v.* VISAJI RAGHUNATH
[I. L. R., 16 Bom., 536

49. ——— *Minority—Right to sue,—Personal exemption—Assignment by minor.*—Under s. 7 of the Limitation Act, a minor has, in respect of a cause of action accruing during his minority, a right to sue at any time within three years of attaining his majority; but if during his minority, or if after attaining his majority and within three years thereof, such person assigns all his rights and interests to a third party, who is *sui juris,* the latter cannot claim the exemptions accorded to the minor by s. 7 of the Limitation Act, but is subject to the ordinary law of limitation governing suits in which relief of the same nature is claimed. RUDRA KANT SURMA SIRCAR *v.* NOBOKISHORE SURMA BISWAS. SAMOD ALI *v.* MAHOMED KASSIM
[I. L. R., 9 Calc., 663: 12 C. L. R., 269

50. ——— *Disability of minority—Suit by representative of minor in interest.*—Where a person whose right to sue is limited (say) to twelve years labours under a disability such as is specified in Act IX of 1871, s. 7, and the disability continues up to his death, which occurs within those twelve years, leaving some (say eight) years to run, his representative in interest has only the remainder of the period of limitation (*i.e.,* eight years in the case supported) within which to bring his suit. The fact of the representative being himself a minor does not give him any more time, as he can sue through his guardian or next friend. SOOKH MOYEE CHOWDHRAIN *v.* RAGHUBENDRO NARAIN CHOWDHRY **24 W. R., 7**

51. ——— *Malabar law—Compromise of doubtful claims by adult members of a tarwad—Suit by junior members to rescind the compromise.*—In 1878, the senior members of a Malabar tarwad, in *bonâ fide* compromise of certain doubtful claims, executed an instrument conveying away certain land of the tarwad. In 1891, certain junior members of that tarwad, including several minors, sued to recover possession of the land in question. Others of the junior members of the tarwad had attained majority more than three years before the suit, and had not impugned the validity of the conveyance; these persons were joined as defendants. None of the plaintiffs had attained majority in 1878. *Held* that the suit was barred by limitation. MOIDIN KUTTI *v.* BEEVI KUTTI UMMAH
[I. L. R., 18 Mad., 38

LIMITATION ACT, 1877—*continued.*

52. ——— **and sch. II, art. 165**—*Dispossession in execution—Application for restoration to possession on behalf of a minor.*—Limitation Act, 1877, sch. II, art. 165, is applicable to a case where the applicant is a party to the decree which is being executed as well as when he is a stranger. But an application made on behalf of a minor objecting to dispossession more than thirty days after it took place is not barred by limitation by reason of Limitation Act, 1877, s. 7. RATNAM AYYAR *v.* KRISHNA DOSS VITAL DOSS . **I. L. R., 21 Mad., 494**

53. ——— **and ss. 9, 19**—*Minority of plaintiff—General Clauses Act (I of 1868), s. 3, cl. 2—Acknowledgment.*—Suit to recover principal and interest due on a registered bond executed by defendants in favour of the plaintiff's father. The date of the bond was 20th June 1870; the principal sum was payable on the 20th June 1872; the plaintiff's father died in 1875; the defendants made acknowledgments of their liability in June 1877; the plaintiff came of age in 1885, and this suit was brought on 11th August 1887. *Held* the suit was not barred by limitation. S. 19 of the Limitation Act gives a new period of limitation, not an extension of the old period; and the plaintiff being a minor at the date from which the new period was to be reckoned (*viz.,* the acknowledgment), fell within the wording of s. 7. VENKATARAMAYYAR *v.* KOTHANDARAMAYYAR . . . . **I. L. R., 13 Mad., 135**

This section does not apply to suits for pre-emption. Under the Acts of 1859 and 1871, it was decided that ss. 11 and 12 of the Act of 1859 did not apply to pre-emption suits. MURTAZA *v.* LALLA NURSING SUHAE . . . . **7 W. R., 86**

and the cases of JUNGOO LALL *v.* LALA ALUM CHAND
[7 W. R., 279

and RAJA RAM *v.* BANSI . **I. L. R., 1 All., 207**

the former under the Act of 1859, and the latter under the Act of 1871, decided that the sections relating to the disability of minority in those Acts did apply to such suits.

——— **s. 8 (1871, s. 8).**

See MADRAS REVENUE RECOVERY ACT, s. 59 . . **I. L. R., 17 Mad., 189**

1. ——— *Joint Hindu family—Debt due to family—Joint creditors.*—The manager of a joint Hindu family, of which *S* was a minor member, lent money on behalf of the family to *K*. The time limited by law for a suit for such money was three years from the date of the loan. During that period there were several members of the family who were *sui juris.* After attaining his age of majority, *S* sued *K* for such money, and, as the period limited by law for such suit has expired, relied on the saving provisions of s. 8 of the Limitation Act, 1877. *Held* that, although during such period *S* was one of several joint creditors, who was under a disability, yet as more than one member of the family could have given a discharge to *K* without *S*'s concurrence, the provisions of s. 8 of the Limitation Act were not

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applicable ; his suit was therefore barred by limitation. SURJU PRASAD SINGH *v.* KHWAHISH ALI
[I. L. R., 4 All., 512

2. ——— *Cause of action, Accrual of, during minority—Minor's right to sue after attaining majority.*—The plaintiff, having attained majority on the 11th March 1882, sued the defendant, within three years from that date, upon a bond obtained in 1872 by his mother and guardian in the plaintiff's name alone. The defendant contended that, the plaintiff's brother, who was capable of giving a valid discharge to his debtors, having failed to sue within proper time, the suit was barred. On reference to the High Court,—*Held* that the suit was not barred. The plaintiff's brother not being a party to the bond, s. 8 of the Limitation Act (XV of 1877) would not apply. The bond was passed to the plaintiff alone, and the right of action accrued to him on the 8th July 1878 Being then a minor, time did not begin to run until he attained his majority. YEKNATH RAMCHANDRA *v.* WAMAN BRAHMADEB
[I. L. R., 10 Bom., 241

3. ——— *Joint decree-holders—Disability of minority—Civil Procedure Code, 1882, ss. 231, 258—Execution of decree.*—S. 8 of the Limitation Act does not appear to include execution-creditors, and the classes of persons contemplated by it are joint creditors or joint claimants, one of whom is under some disability, whilst there are others who can give a valid discharge in regard to his interest without his concurrence. The question whether one of several decree-holders can enter satisfaction on behalf of all is one of procedure, and a rule of decision must be looked for in the Civil Procedure Code. Ss. 231 and 258 of that Code appear to show that it is not the act of the joint decree-holder, but the act of the Court executing the decree that is intended to operate as a valid discharge. S. 8 of the Limitation Act applies only to those cases in which the act of the adult joint owner is *per se* a valid discharge. SESHAN *v.* RAJAGOPALA. RAJAGOPALA *v.* RAMANADA
[I. L. R., 13 Mad., 236

4. ——— and s. 7—*Disability of one of two joint claimants—Transfer of Property Act (IV of 1882), s. 99—Usufructuary mortgage—Suit to set aside sale in "execution" of decree.*—In a suit by the two sons of a usufructuary mortgagor (deceased) to set aside the sale of the mortgaged premises, which had taken place in execution of a money-decree obtained by the mortgagee, it appeared that the suit, if brought by the first plaintiff alone, would have been barred by limitation, but that it would not have been so barred if it had been brought by second plaintiff alone, who had not attained his majority three years before the suit. *Held* that the sale in execution sought to be set aside was illegal under Transfer of Property Act, s. 99, but that the suit to set it aside was barred by limitation. VIGNESWARA *v.* BAPAYYA . . . I. L. R., 16 Mad., 436

——— **s. 9.**

See s. 13 . . I. L. R., 6 Bom., 103
[I. L. R., 4 All., 530
I. L. R., 8 Bom., 561

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— **s. 10 (1871, s. 10; 1859, s. 2).**

See DEBTOR AND CREDITOR.
[I. L. R., 25 Calc., 642

See TRUST . I. L. R., 18 Bom., 551

1. ——— *Trustee—Benamidar.*—A benami transaction does not create the relation of trustee and *cestui que* trust. A benamidar is not a trustee within the meaning of s. 2, Act XIV of 1859. UMA SUNDARI DASI *v.* DWARKANATH ROY
[2 B. L. R., A. C., 284 : 11 W. R., 72

2. ——— *Trustee—Mortgagee in possession.*—A mortgagee in possession after the mortgage has been satisfied is not a trustee for the mortgagor within the meaning of s. 2 of Act XIV of 1859. LALL DOSS *v.* JAMAL ALI
[B. L. R., Sup. Vol., 901 : 9 W. R., 187

3. ——— *Trust—Master and servant.*—*A* advanced certain sums of money on different occasions to his servant, *B*, for the purpose of erecting buildings, etc., for *A*. In a suit by *A* for recovery of the balance, *B* raised the defence that the suit was barred so far as it related to sums advanced more than three years before the suit. *Held* that the matter was of the nature of a trust, and limitation would not apply. NARAYAN DAS *v.* MAHARAJA OF BURDWAN
[1 B. L. R., S. N., 11 : 10 W. R., 174

4. ——— *Trustee—Mahomedan lady's estate.*—In a suit by the purchaser of a Mahomedan lady's share in her father's property against her brother, it was held that as the property, while in the hands of the brother, was in the hands of a trustee, and not in adverse possession, limitation could not apply. BACHARAM CHOWDRY *v.* MAHTAB BEEBEE
[W. R., 1864, 377

5. ——— *Trust—Position, as regards the daughters, of sons managing estate of deceased Mahomedan.*—A solehnama in 1847, to which were parties the sons, daughters, and widow of a deceased Mahomedan proprietor, transferred the shares of two minor daughters in their father's estate, having been executed by their mother, the widow, on their behalf. In a suit in 1882 to set aside the solehnama at the instance of the two daughters, the evidence showed that the sons managed the property after their father's death, and at the time the solehnama was executed. *Held*, on the question of limitation, that it was not to be inferred that the sons, by reason of their having managed their late father's estate, should be regarded as trustees, at the time of the execution of the solehnama, for the daughters ; and therefore s. 10 of Act XV of 1877 was inapplicable. So that, as regards the property included in the solehnama, a suit brought in 1882 by the daughters would be barred by time. MAHOMED ABDUL KADIR *v.* AMTAL KARIM BANU
[I. L. R., 16 Calc., 161
L. R., 15 I. A., 220

6. ——— *Trustee—Depository—Immoveable property made over to defendant to sell and pay to plaintiff—Limitation Act, 1859, cl. 15, s. 1.*—Where immoveable property was given into the

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possession of the defendant, under an order of a Revenue officer, which directed the defendant to sell the crops and, after payment of Government dues, to account for the profits to the plaintiff on his claiming it, it was held that the defendant was not a depository, but a trustee of the property. VITAL VISHVANATH PRABHU *v.* RAM CHANDRA SADASHIV KIRKIRE . . . **7 Bom., A. C., 149**

7. ———— *Trustee—Possession of property not for person's own use.*—Where property is vested in a person partly for charitable purposes and partly for the benefit of others, and he is bound to use it for such purposes and not for his own advantage, he is a trustee with the meaning of Act XIV of 1859, *s.* 2. ALLEH AHMED *v.* NUSEEBUN **[21 W. R., 415**

8. ———— *Trustee—Idol.*—In a suit by the representatives of a shebait to recover possession of property of an idol from the assignees of a purchaser, on the ground that the purchaser was a mere trustee for the idol, and the defendants had notice of this or might have known it by reasonable enquiry,—*Held* that the suit was not one which came within s. 2, Act XIV of 1859, as a suit brought against a trustee. BRAJA SUNDARI DEBI *v.* LUCHMI KUNWARI . . . **2 B. L. R., A. C., 155**

S. C. on appeal to the Privy Council, BROJOSOONDERY DEBIA *v.* LUCHMEE KOONWAREE **[15 B. L. R., 176 note**

9. ———— *Suit against dharmakarta of temple to recover money misappropriated.*—Plaintiff, as dharmakarta of a Hindu temple, alleging that the defendant, a former dharmakarta, who had been removed from office, had, when in office, misappropriated certain temple funds held by him, sued to recover a certain sum alleged to have been misappropriated. *Held* that the defendant was a person in whom the temple funds had become vested in trust for a specific purpose within the meaning of s. 10 of the Limitation Act, 1887, and that, as the plaint disclosed a right to follow trust funds in his hands, the suit might be treated as a suit for that purpose. SETHU *v.* SUBRAMANYA **[I. L. R., 11 Mad., 274**

10. ———— *Persons holding endowed property in trust.*—No limitation applies in the case of persons holding endowed property in trust and under accountability, but no indulgence should be shown to a plaintiff who brings forward claims so stale and antiquated that difficulty arises in finding any reliable evidence whereby to decide on their validity and extent. BUZL ROHIM *v.* LUTAFUT HOSSEIN. KHODEJOONISSA BIBEE *v.* LUTAFUT HOSSEIN . . . . **W. R., 1864, 171**

11. ———— *Suit to establish right to beneficial interest in proceeds of debutter land.*—A suit to establish a right to a beneficial interest in the surplus proceeds of debutter and after providing for the worship of the idol, where the parties were shebaits, was held to be not a suit between co-trustees to the share claimed, but one to which the Law of Limitation would apply. MOHAMAYA DOSSEE *v.* BINDOO BASHINEE DOSSEE . **19 W. R., 35**

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12. ———— ———— *Specific trust—Suit to remove trustee.*—In a suit brought for the purpose of removing the trustees or managers of certain property which was made debutter for the benefit of an idol, and of establishing the plaintiff's claim to be appointed trustee or manager, it was objected that the suit was barred by limitation. *Held* that the suit was one for the purpose of following the property in the hands of trustees within the meaning of s. 10 of the Limitation Act (XV of 1877), and therefore limitation did not run. SREENATH BOSE *v.* RADHA NATH BOSE **[12 C. L. R., 370**

13. ———— *Suit for possession against agent in charge of endowed property.*—A suit for possession against an agent or deputy in charge of endowed property was not barred by limitation according to s. 2, Act XIV of 1859. GHOLAM NUJJUFF *v.* TOOSSOODDUCK HOSSEIN **[1 W. R., 126**

14. ———— *Religious endowments—Gosami muth—Grant by the head of the muth to his brother for his maintenance—Suit by a successor to recover the land.*—In 1544 a village was granted to the head of a gosami muth to be enjoyed from generation to generation, and the deed of grant provided that the grantee was "to improve the muth, maintain the charity and be happy." The office of head of the muth was hereditary in the grantee's family. In 1866, an inam title-deed was issued to the then head of the muth, whereby the village was confirmed to him and his successors tax-free, "to be held without interference so long as the conditions of the grant are duly fulfilled." Yadasts addressed by tahsildars to the then head of the muth in 1872 and 1882 were put in evidence to show what the object of the grant was. It was found, regard being had to usage, that the trusts of the institution were the upkeep of the muth, the feeding of pilgrims, the performance of worship, the maintenance of a watershed, and the support of the descendants of the grantee. From before 1840, it had been usual for the head of the muth for the time being to make grants to his brothers or younger sons for their maintenance. In 1842, the father of the present plaintiff, being then the head of the muth, granted certain lands in the village above referred to to his younger brother, the deed of grant being in terms absolute. The grantee died about thirty years before the suit, and the lands in question came into the possession of his widow (defendant No. 1) and a mortgagee from her (defendant No 2) respectively. In 1863, the plaintiff's father placed certain other lands in possession of defendant No. 3, who paid rent therefor and received pottahs for some years from the plaintiff. In a suit by the plaintiff for possession of the lands in the possession of the defendants, it was pleaded, *inter alia*, that the grant of 1843 was binding on him, and that defendant No. 3 had a right of permanent occupancy. *Held* that s. 10 of the Limitation Act was applicable, and the suit was not barred by limitation. SATHIANAMA BHARATI *v.* SARAVANABAGI AMMAL **I. L. R., 18 Mad., 266**

15. ———— *Trustee — Constructive trust—Court of Wards taking possession of estate* *under order of Government—Mad. Reg. V of 1804 —Mad. Reg. VII of 1808.*—The Government, by directing the Court of Wards to take charge of an estate during the minority of the next claimants, does not constitute itself a trustee for the rightful owner. The wrongful invasion or continuance in possession of a stranger, whether with or without knowledge of the infirmity of his title, will not make the wrong-doer a constructive trustee unless he has been admitted into possession by a trustee. PALKONDA ZAMINDAR (ZAMINDAR OF PALKONDA) *v.* SECRETARY OF STATE FOR INDIA **[I. L. R., 5 Mad., 91**

16. ——————— *Co-sharers — Trustees.*—The non-receipt of a share of the profits of an estate is no cause of action between shareholders from which limitation runs. SHIBO SUNDARI DASI *v.* KALI CHURAN RAI . . **W. R., 1864, 296**

17. ——————— *Trustee — Express trustee —Absent co-sharer.*—S 10 of the Limitation Act, 1877, has reference to express trustees, and in order to make a person an express trustee within the meaning of that section, it must appear either from express words or clearly from the facts that the rightful owner has entrusted the property to the person alleged to be a trustee for the discharge of a particular obligation. In 1813, *S*, being unable to pay the Government revenue due on his land, abandoned his village. In 1833, *H*, who had paid the revenue due by *S* and had taken, or obtained from the Government, possession of *S*'s land, attested a village paper, in which it was stated that, if *S* returned and reimbursed him, he should be entitled to his land. Sixty years after *S* abandoned his village, *B* as the representative of *S* sued the representative of *H* for such land, alleging that it had vested in *H* in trust to surrender it to *S* or his heirs on demand. As evidence of such trust, *B* relied on the village paper mentioned above, and on the village administration paper of 1862, in which it was stated that absent co-sharers might recover their shares on payment of the arrears of Government revenue due by them. *Held* that such documents did not prove any express trust within the meaning of s. 10 of the Limitation Act, 1877, and the suit was therefore barred by limitation. BARKAT *v.* DAULAT . . **I. L. R., 4 All., 187**

18. ——————— *Trust — Absconding co-sharer—Purchaser from remaining co-sharer, Right of.*—Where a clause of the wajib-ul-urz of a village stated in general terms that absconders from such village should receive back their property on their return, and certain persons who absconded from the village before the wajib-ul-urz was framed sued to enforce such clause against the purchaser of their property from the co-sharer who had taken possession of it on their absconding, and who was no party to the wajib-ul-urz, alleging that their property had vested in such co-sharer in trust for them,—*Held* that, assuming the trust to be established, as the purchaser had purchased in good faith for value and without notice of the trust, and was not the representative of such co-sharer within the meaning of s. 10 of Act IX of 1871, and had been more than twelve years in possession, the suit was barred by limitation. PIAREY LAL *v.* SALIGA **[I. L. R., 2 All., 394**

KAMAL SINGH *v.* BATUM FATIMA **[I. L. R., 2 All., 460**

19. ——————— *Trustee — Executor.* — An executor, who by the will is made an express trustee for certain purposes, is, as to the undisposed of residue, a trustee within the scope of s. 2 of Act XIV of 1859, for the heir or heirs of the testator. LALLUBHAI BAPUBHAI *v.* MANKUVARBAI **[I. L. R., 2 Bom., 388**

20. ——————— *Suit by representatives of testator against defaulting executor.*—Where no steps had been taken against the assets of a defaulting executor who died in 1836,—*Held* that the claim of the representatives of the testator was barred by limitation, the Court declining to express an opinion as to whether, in another form of suit, the claimants might not follow their testator's assets under s. 2. IN RE PALMER'S ESTATE . . . **Cor., 68**

21. ——————— *Suit to set aside trusts in trust-deed and to enforce others.*—S. 10 of the Limitation Act (XV of 1877) does not save a suit brought to set aside the trusts specified in a trust-deed and enforce resulting trusts not so specified. COWASJI NOWROJI POCHKHANAWALLA *v.* RUSTOMJI DOSSABHOY SETNA . . . **I. L. R., 20 Bom., 511**

22. ——————— *Specific property — Executors—Trustees—Suit for account.*—The firm of *C, T & Co.* acted as agents for the trustees of *G D*. It appeared from entries in their books, headed "Account of the Trustees for *G D*," that the firm had in their hands R12,453 to the credit of the trustees in 1848, at which time the firm stopped payment. *D T*, a member of the firm of *C, T & Co.*, and *W S* were the trustees. In the earlier accounts the names of *D T* and *W S* both appeared; in the later ones,—namely, from 1842 until they were closed in 1848,—at the head of the account there was a memorandum written in small letters, "*D T*, trustee," but it did not appear that *W S* had ever renounced the trust, or conveyed the trust estate to *D T*. In 1846 *D T* died, leaving *G* and *T* the surviving partners of the firm, the executors of his will. *W S* survived *D T*. In 1867, the representative of *G D* brought a suit for an account against *G* and *T*, as the executors of *D T*. *Held*, upon the facts, that there was no proof that any specific property, the subject of the trust, had come to the hands of *G* and *T* as executors of *D T*, and any other claim was barred by s. 2, Act XIV of 1859. MICHAEL *v.* GORDON . . . . **2 Ind. Jur., N. S., 271**

23. ——————— *Trust—Charge of debts by testator.*—A charge of debts generally by a testator upon his property, or any part of it, will not affect limitation, because it does not at all vary the legal liabilities of the parties or make any difference with respect to the effect and operation of the statute itself. The executors take the estate subject to the claims of the creditors, and are in point of law trustees for the creditors, and such a charge adds nothing to their legal liabilities. But the case is different when particular property is given upon trust to pay a particular debt or debts. In such a case the trustee has a new duty—not the ordinary duty of an executor to pay debts generally out of property generally, but a duty to apply a particular property to secure a particular debt; and there is a trust within the meaning of s. 10 of the Limitation Act. ANUND MOYE DABI *v* GRISH CHUNDER MYTI

[I. L. R., 7 Calc., 772: 9 C. L. R., 327

24. ——————— *Suit to recover property subject to a trust not carried out.*—S. 2 of Act XIV of 1859 is applicable to a suit for the recovery of property the possession of which had been transferred upon trust, and in respect of which there had been a disaffirmance of the trust, and a refusal to fulfil the conditions of the trust. SOOMRUN RAI *v.* MAHESH DUTT . . . . . . **4 N. W., 33**

25. ——————— *Trustee — Claim against rival trustee.*—A claim to vindicate the personal right of a trustee to the possession of immoveable property against another person claiming such right in the same character is not governed by s. 10 of the Limitation Act, 1877. KARIMSHAH *v.* NATTAN BIVI

[I. L. R., 7 Mad., 417

26. ——————— *Suit between co-trustees —Injunction to restrain some of trustees from excluding others from management of temple—Breach of trust, Liability for loss occasioned by.*—The plaintiffs and defendants, together with one *S* who died in 1884, were trustees of a temple, having been appointed by the committee under Act XX of 1863. For some years before his death *S* was left in exclusive management. Subsequently the defendants were in sole management of the temple until 1891, when the plaintiffs brought the present suit charging that the defendants had excluded them from the right of management, and claiming that they should make good sums lost to the institution by reason of breaches of trust alleged to have been committed by them. Some of the breaches of trust took place before 1884. Of the others, which took place subsequently, some consisted in improper dealings with the temple property to the detriment of the temple and to the advantage of certain relatives of the defendants. The plaintiffs also asked for an injunction to restrain the defendants from excluding them from management. *Held* (1) that in the absence of evidence of an absolute denial by the defendants of the plaintiffs' right to act as trustees, the suit for an injunction was not barred by limitation; (2) that the suit could not be regarded as a suit by the beneficiaries, and was not within the operation of the Limitation Act, s. 10; (3) that the suit was not maintainable in respect of breaches of trust committed in the lifetime of the deceased manager, as being to that extent barred by limitation, and also for the reason that such breaches were not more imputable to the defendants than to the plaintiffs; (4) that even if it had been proved that the community interested in the temple had sanctioned the acts of the defendants now complained of, that circumstance would not suffice to excuse the defendants; (5) that the defendants were liable to make good the loss occasioned by any breach of trust committed within six years of the date when the suit was instituted even in the absence of fraud, and that, in estimating such loss, prospective loss should be assessed. RANGA PAI *v.* BABA . . **I. L. R., 20 Mad., 398**

27. ——————— *Suit against Secretary of State to recover possession of a khoti village and mesne profits.*—In the year 1892 plaintiffs brought a suit against the Secretary of State to recover possession of a khoti village with mesne profits. It was found as a fact that Government had been in possession of the rights to which the suit related for upwards of fifty years, and during that time no acknowledgment of their title to khotship had been made either to plaintiffs or their predecessors. *Held* that the claim was time-barred; Government not being in possession or control of the village as stakeholder, s. 10 of the Limitation Act (XV of 1877) was not applicable, they not holding the village "in trust for a specific purpose" within the meaning of that section. SECRETARY OF STATE FOR INDIA *v.* SAKHARAM BAPUJI NAIK **I. L. R., 24 Bom., 23**

28. ——————— *Express trust—Suit against trustees to charge property with trust.*—A suit against trustees for the purpose of charging certain property with the trusts declared by the author of the trust in respect of that property and for an account is a suit to follow property, and as such is not barred by any lapse of time. HURRO COOMAREE DOSSEE *v.* TARINI CHURN BYSACK .

[I. L. R., 8 Calc., 766

29. ——————— *Trust for specific purpose—Implied trusts—Adverse possession.*— The words of s. 10 of the Limitation Act of 1871 mean that when a trust has been created expressly for some specific purpose or object, and property has become vested in a trustee upon such trust (either from such person having been originally named as trustee or having become so subsequently by operation of law), the person or persons who for the time being may be beneficially interested in that trust may bring a suit against such trustee to enforce that trust at any distance of time without being barred by the law of limitation. The language of the section is specially framed so as to exclude implied trusts, or such trusts as the law would infer merely from the existence of particular facts or fiduciary relations. KHERODEMONEY DOSSEE *v.* DOORGAMONEY DOSSEE

[I. L. R., 4 Calc., 455: 3 C. L. R., 315

S. C. in lower Court . . **2 C. L. R., 112**

30. ——————— **and arts. 118, 133, 134.** —*"Trust for a specific purpose."*—*Per* GARTH, *C.J.*—The words "in trust for a specific purpose" are intended to apply to trusts created for some defined or particular purpose or object, as distinguished from trusts of a general nature such as the law impresses upon executors and others who hold recognized fiduciary positions. *Per* WHITE, *J.*—The words "in trust for a specific purpose" are used in a restrictive sense, and limit the character and nature of the trust attaching to the property which is sought to be followed. The phrase is a compendious form of expression for trusts of the nature and character mentioned in arts. 133 and 134 of the Limitation Act, namely, such as attach to property conveyed in trust, deposited, pawned, or mortgaged. GREENDER CHUNDER GHOSH *v.* MACKINTOSH

[I. L. R., 4 Calc., 897 : 4 C. L. R., 193

31. ——— *Trustee and cestui que trust—Will—Void gift—Residue—Gift of interest—Share of rents and profits—Corpus of estate.*—*A* by his last will and testament gave his property to trustees, partly in trust for religious and other purposes, and partly to pay thereout to certain persons and their heirs for ever certain annuities, being fixed portions of the net profits of a certain estate called the Hurro estate, which amounted to R3,150. *A* died in November 1863. On the 11th of August 1879, the heir of one of the annuitants instituted a suit claiming a share under the will, and asking for a partition of that share. The plaintiff alleged, besides, that certain of the trusts and provisions in the will were invalid in law; that consequently a large portion of the testator's property remained undisposed of at his death, and she claimed a share of this residue as one of the heirs of the testator. *Held* that, under the circumstances, the gift of the share of the rents and profits amounted to a gift of a share in the corpus of the estate; and that, in respect of that portion of the plaintiff's claim, the suit was not barred by limitation. *Kherodemoney Dossee* v. *Doorgamoney Dossee, I. L. R., 4 Calc., 455; Greender Chunder Ghosh* v. *Mackintosh, I. L. R., 4 Calc., 897; Anund Moye Dabi* v. *Grish Chunder Myti, I. L. R., 7 Calc., 772; Mannox* v. *Greener, L. R., 14 Eq., 456;* and *Sookmoy Chunder Dass* v. *Monohari Dassee, I. L. R., 7 Calc., 269,* cited. Where an estate is given by will to trustees for religious and other purposes, some of which are invalid or fail, the heirs of the testator may be barred by limitation from recovering the portion undisposed of, though they might still bring a suit against the trustees to compel them to properly administer the trusts which had not failed. HEMANGINI DASI *v.* NOBIN CHAND GHOSE

[I. L. R., 8 Calc., 788 : 11 C. L. R., 370

32. ——— *Trustee for specific purposes—Will, Construction of—Void clause in will and consequent intestacy—Suit by heir against executor as trustee for specific purposes.*—*G* died without issue in 1854. By his will he appointed three executors, and after making certain bequests he directed as follows. "After all the above matters shall have been settled, whatever property of mine may remain, that remaining property shall be disposed of in a righteous manner, in a pious and charitable way, as may appear advisable to all my three executors. It shall be disposed of in such manner that people may speak well of me, and that all my three heirs may acquire great fame. The last surviving executor (the brother's widow) died in 1868, leaving a will, whereby she appointed four executors, and confirmed and continued the provisions of *G*'s will. In 1886 *C*, one of *G*'s heirs, assigned all his interest in *G*'s estate to the plaintiff, who in 1887 filed this suit for administration. He contended that the above claim in the will was void for uncertainty; that there was therefore an intestacy as to the residue of the estate; and that the executors held such residue in trust for *G*'s heirs within the meaning of s. 10 of the Limitation Act (XV of 1877); and that the suit was therefore not barred. *Held* that s. 10 of the Limitation Act did not apply, and that the suit was barred by Limitation. The executors of *G* were no doubt trustees, and for some specific purposes property became vested in them under the will, but with regard to the residue there was no trust declared and no direction given to distribute it among the heirs-at-law. In the absence of such a trust or direction, the executors could not be held to be express trustees, or trustees for a specific purpose, and it is to such trustees alone that the section applies. NANALAL LALLUBHOY *v.* HARLOCHAND JAGUSHA

[I. L. R., 14 Bom., 476

33. ——— *Express trust.*—Where the property became vested in the defendants for specific purposes; and, although it was no longer in their hands, the money could be traced to the hands of the trustees, and the losses were caused by their misconduct and improper dealing with it,—*Held* that the suit fell within the section, and that, under the provision of s. 10 of the Limitation Act (XV of 1877), it was not barred. THAKERSEY DEVRAJ *v.* HURBHUM NURSEY . **I. L. R., 8 Bom., 432**

34. ——— **and art. 62**—*Trust for specific purpose—Money received.*—*R* sued his father and brother *A* for partition of the family estate, and obtained a decree by which he was entitled to recover, *inter alia*, one-third of a debt due to the family. In May 1878 the debtor, having received no notice of *R*'s claim, paid the debt to the father. The father died and his estate came into the possession of *A*. *Held*, in a suit brought by *R* in July 1881 against *A* for one-third of the debt, that the money received by the father was not held in trust for a specific purpose within the meaning of s. 10 of the Limitation Act, 1877, and that the suit was barred by limitation under art. 62 of sch. II of the said Act. ARUNCHALA PILLAI *v.* RAMASAMYA PILLAI

[I. L. R., 6 Mad., 402

35. ——— *Allegation of holding in trust.*—By Act XV of 1877, s. 10, where property has become vested in a person in trust for a specific purpose, a suit to follow such property in his hands is not barred by lapse of time. Acting under Regulation V of 1804, the Court of Wards took charge of an impartible zamindari, on the death of the zamindar, leaving minor sons, of whom the eldest was afterwards recognized as heir and received possession on attaining full age. Upon a subsequent adjudication of forfeiture against him under Regulation VII of 1808, the Government obtained possession of the zamindari. *Held* that the Government was not placed in the position of a person in whom property had become vested for a specific purpose, and that the above section was not applicable to prevent the operation of the law of limitation under Act XV of 1877, which barred the suit brought by another of the sons, alleging title to the zamindari. VIZIARAMARAZU *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL

[I. L. R., 8 Mad., 525 : L. R., 12 I. A., 120

36. ———— and arts. 118, 123, and 145—*Limitation of suit relating to property held in trust.*—A suit, in order to fall within Act IX of 1871, s. 10, excepting suits against trustees from limitation, must be brought for the purpose of recovering the trust property for the benefit of the trust; that section meaning that, when trust property is used for some purpose other than that of the trust, it may be recovered, without any bar of time, from the hands of those in whom it has been vested in trust. Where the plaintiff sued to enforce his own personal right to manage an endowment dedicated to religious purposes, there being no question whether or not the property was being applied to such purposes by the manager in possession, the above section was held inapplicable. The possession of the defendant having been adverse for more than twelve years,—*Held* that the suit might fall within art. 123 or 145 of the second schedule of Act IX of 1871, in force when the suit was brought. If it fell within neither of the above, it would be barred under art. 118. BALWANT RAO *v.* PURAN MAL **I. L. R., 6 All., 1**

S. C. BALWANT RAO BISHWANT CHANDRA CHOR *v.* PURAN MAL CHAUBE . **L. R., 10 I. A., 90**

37. ———— *Trust—Suit by representative of settlor against trustee on failure of the object of a trust to recover the trust money for herself.*—S. 10 of Act XV of 1877 does not apply to a suit brought on failure of the object of a trust to recover for the plaintiff's own use, and not for the purposes of the trust, the trust money remaining in the hands of the trustee. *Balwant Rao* v. *Puran Mal, I. L. R., 6 All., 1: L. R., 10 I. A., 90,* followed. JASODA BIBI *v.* PARMANAND **I. L. R., 16 All., 253**

38. ———— *Trust—Resulting trust—Suit against trustee for possession of share and for account and recovery of profits.*—*M* and *S* purchased certain property jointly in 1865, and had equal interests in it till 1868, when *M's* interest was reduced to one-third. *S* paid the entire purchase-money in the first instance, and incurred expenses in conducting suits for possession of the property, and for registration of the deed, and ultimately obtained possession in 1869 or 1870, and took the profits from that date. *M* did not pay any part of the money up to 1870, and it was not till 1871 that the whole of his share of it was subscribed, and he paid little or nothing towards the expenses. Subsequently he sued *S* for possession of his share, to have an account taken of the profits, and to recover his share of them with future mesne profits and costs. *Held* that, under the above circumstances, there was a resulting trust in favour of the plaintiff, and the defendant became liable to account to him for his share; but, inasmuch as there was no express trust, and the property did not become vested in trust for a specific purpose within the meaning of s. 10 of the Limitation Act, and the suit was not brought for the purpose of following such trust property in the hands of a trustee, within the meaning of the section, such suit was not one which under s. 10 might not be barred by any length of time. *Bulwant Rao Bishwant Chor* v. *Puran Mal Chaube, L. R., 10 I. A., 90,* referred to. MUHAMMAD HABIBULLAH KHAN *v.* SAFDAR HUSAIN KHAN . **I. L. R., 7 All., 25**

39. ———— *Constructive trust.*—*B* and *D,* father and son, were jointly entitled to a moiety of certain property, *B's* brother *E,* and *K, E's* son, being jointly entitled to the other moiety. *B* and *D* were transported for life. Thirty years afterwards (*B* having meantime died) *D* returned from transportation, and asserted his right to a moiety against a person deriving his title from *E* and *K,* who had taken possession of the whole. *Held,* looking to all the circumstances of the case, that *E* and *K* had taken possession subject to a constructive trust in favour of *B* and *D,* and that accordingly *D* was entitled to assert his right, and no limitation could affect it. DURGA PRASAD *v.* ASA RAM

[I. L. R., 2 All., 361

40. ———— and art. 98—*Liability of estate of deceased director—Banker, who is a.*—The plaintiffs' company went into liquidation early in the year 1879, in consequence of losses sustained by the failure of Nursey Kessowji & Co., which firm had been the bankers of the said company. The said firm had stopped payment on the 26th December 1878, having then in its hands the sum of R8,80,250-14-1, belonging to the company. In this suit the official liquidators of the company sought to recover that sum from the defendants, who had been directors of the company, and a further sum of R2,48,670-14-0 as damages sustained by the company through the fraud and gross negligence of the defendants in permitting Nursey Kessowji, the agent of the company, to deal with certain shares for his own purposes. One of the defendants (No. 3) died after the institution of the suit, and his sons were made parties. *Held* that the estate of the deceased director was liable on the ground that the misfeasance of a director is a breach of trust, and not a mere personal default. *Held* further that the claim, not being a claim for any specific property still in the hands of the representatives, was not covered by s. 10 and art. 98 of the second schedule of the Limitation Act, and was barred by the lapse of three years; that as the limitation counted from the date of the institution of the suit, and not from the date of the amendment of the plaint, the whole claim survived in this case. NEW FLEMING SPINNING AND WEAVING COMPANY *v.* KESSOWJI NAIK . **I. L. R., 9 Bom., 373**

41. ———— *Creditor's trust fund—Suit for distribution of unclaimed dividends.*—Where a creditor's trust-deed contained no provision for redistribution of unclaimed dividends and a suit was brought by the representatives of one of the creditors, party to the deed, for the administration and distribution of funds in the defendants' possession allotted to other creditors by way of dividends, but unclaimed by them for forty years,—*Semble*—That, as the trust sought to be established in favour of the plaintiffs would be a resulting trust not expressly declared, s. 10

of the Limitation Act, 1877, would not apply. MANICKAVELU MUDALI *v.* ARBUTHNOT & Co.

[I. L. R., 4 Mad., 404

42. ——— *Suit by cestui que trust against trustee—Trust.*—*A* alleged that his father *B* had, before his death, placed in the hands of *C* a certain sum of money, and had also transferred to *C* his landed property upon trust that *C* should, during the minority of *A*, hold the money and manage the property for the benefit of *A* and maintain *A*, and should, on *A*'s attaining his majority, make over to him the property and so much of the money as should then be unexpended; and that *C* had accepted the trust, but, upon *A*'s coming of age, had refused to render any account. *A* accordingly brought a suit for an account. *C* pleaded that *A* had attained his majority at a much earlier period than he alleged, and that the suit was barred by limitation. *A* replied that, under s. 10 of Act XV of 1877, his suit could not be barred by any length of time. *Held* that s. 10 of Act XV of 1877 did not apply to such a case, and that *A*'s suit would be barred if not brought within six years from the time when he attained his majority, and became entitled to demand an account. In India, suits between a *cestui que* trust and a trustee for an account are governed solely by the Limitation Act (XV of 1877), and, unless they fall within the exemption of s. 10, are liable to become barred by some one or other of the articles in the second schedule of the Act. To claim the benefit of s. 10, a suit against a trustee must be for the purpose of following the trust-property in his hands. If the object of the suit is not to recover any property in specie, but to have an account of the defendant's stewardship, which means an account of the moneys received and disbursed by the defendant on plaintiff's behalf, and to be paid any balance which may be found due to him upon taking the account, it must be brought within six years from the time when the plaintiff had first a right to demand it. SARODA PERSHAD CHATTOPADHYA *v.* BROJO NATH BHUTTACHARJI

[I. L. R., 5 Calc., 910: 6 C. L. R., 195

43. ——— *Act XI of 1859, s. 31—Collector—Trustee—Suit for surplus sale-proceeds of sale for arrears of revenue.*—Where *A* instituted a suit in November 1889 to recover from the Secretary of State for India in Council the surplus sale-proceeds of three talukhs sold for arrears of Government revenue on 3rd October 1877, which sale-proceeds were in the hand of the Collector,—*Held* that s. 31 of Act XI of 1859 did not vest the surplus sale-proceeds in the Collector as trustee, that a deposit did not necessarily create a trust, and that therefore s. 10 did not apply. SECRETARY OF STATE FOR INDIA *v.* FAZAL ALI **I. L. R., 18 Calc., 234**

See SECRETARY OF STATE FOR INDIA *v.* GURU PROSHAD DHUR . **I. L. R., 20 Calc., 51**

44. *Suit against a trustee.*—The plaintiff sued his father in 1887 for a declaration of his title to, and for possession of, certain property as being stridhanam property of his late mother, whose only son he was. The plaint alleged that some of the property had been given to the plaintiff's mother about the time of her marriage in 1836; that in 1843 her father had appointed the defendant trustee of the property for the plaintiff and his mother, and that further sums had been since paid to the defendant in his capacity of trustee, on account of the stridhanam of the plaintiff's mother, and that he had traded with the property and misappropriated it. *Held* that, under Limitation Act, s. 10, the suit was not barred by limitation on the allegations in the plaint. SETHU *v.* KRISHNA

[I. L. R., 14 Mad., 61

45. ——— *Laches—Suit against directors of company—Stale demand—Trustees.*—The plaintiff company was formed in 1864, and the company went into liquidation in 1867. In April 1890, the present suit was filed against the defendant, who had been one of the directors of the company, and it was alleged that, after the formation of the company, the defendant and his co-directors had carried on speculative dealings in shares of other companies and had used the funds of the company for this purpose, which was not warranted by the memorandum of association. The plaintiffs alleged that their dealings, which were duly set forth in their plaint, had resulted in a heavy loss to the company, and they now sought to recover from the defendant the sum of R3,37,700-13-5. There had been originally five directors of the company, but at the date of suit two of them were dead and two had become insolvent. *Held* (affirming the dicision of PARSONS, *J.*) (1) that s. 10 of the Limitation Act (XV of 1877) does not apply to directors of companies, the directors not being persons in whom the property of the company is vested as contemplated by that section. (2) That in any case, the staleness of the demand was a valid defence to the action, the liquidators of the company having had full knowledge of the facts since the company went into liquidation, but no suit was filed until the expiration of twenty-three years. KATHIAWAR TRADING CO. *v.* VIRCHAND DIPCHAND . **I. L. R., 18 Bom., 119**

46. ——— *Auction-purchaser—Assignee of trustee.*—An auction-purchaser acquiring trust property for valuable consideration at a sale in execution of a decree is an assignee of the trustee within the meaning of that term as used in s. 10 of the Limitation Act (XV of 1877), and consequently a suit against such a person by a plaintiff claiming to be entitled as trustee to possession of the trust property is governed by the ordinary rules of limitation and not excluded therefrom by the provisions of s. 10. CHINTAMONI MAHAPATRO *v.* SARUP SE

[I. L. R., 15 Calc., 703

——— s. 12 (1871, s. 13; Act VIII of 1859, s. 333).

See APPEAL—ACTS—COMPANIES ACT.

[I. L. R., 18 All., 215

See REVIEW—FORM OF, AND PROCEDURE ON, APPLICATION **I. L. R., 17 All., 213**

1. ——— *Computation of period of limitation—Day on which cause of action arises.*—In calculating the period of limitation for bringing suits provided by Act XIV of 1859, the day on which

the cause of action arose was to be excluded from the computation. MUNDY CHINNA COMARAPPA SETTI *v.* RAMASAMY SETTI . . . . **4 Mad., 409**

DURSHUN LALL SAHOO *v.* ASMUTOONISSA **[19 W. R., 94**

2. ———— *Calculation of period of limitation.*—In calculating the period of limitation for bringing suits, the day on which the cause of action arose should be included in the computation; and in excluding from the limitation the period during which a suit was pending, the day on which proceedings therein were commenced and the day on which they ended should both be counted. HURRO SOONDEREE DABEA *v.* KALLYMOHUN **[Marsh., 138: W. R., F. B., 46: 1 Hay, 301**

3. ———— *Exclusion of day on which contract is made or debt is payable.*—The date on which a contract is made is to be excluded in computing the time allowed for its performance. The date on which a debt becomes payable is to be excluded in calculating the period of limitation. LAKSHUMAN SAKHARAM *v.* RANU BIN SIDOJI **[6 Bom., A. C., 51**

4. ———— *Exclusion of day on which agreement was made.*—In a suit for balance of an account stated, the defendant had given a written acknowledgment, on 22nd July 1867, that the sum sued for was due from him to the plaintiff. The plaint was presented on 22nd July 1870. *Held* the day on which the acknowledgment was made was to be excluded, and therefore the suit was not barred. MADAN MOHUN DAS *v.* GAUR MOHUN SIRKAR **[6 B. L. R., 293 note**

5. ———— *Suit on bond—Exclusion of date of bond.*—The day mentioned in a bond for the repayment of money as that on which the money is to be repaid is to be excluded from the period of computation under the Limitation Act. The borrower in such case has until the last moment of the day mentioned for the payment, and the right to sue accrues not on, but from, that day. EX-PARTE PALANY ANDY PILLAY . . . . **4 Mad., 330**

6. ———— *Suit on bond—Exclusion of day specified for payment—Limitation Act, 1871, s. 13.*—In a suit on a bond where a day is specified for payment, the period of limitation is to be computed from, and exclusive of, the day so specified as being the day on which the right to sue accrued. RAM CHURN DEY *v.* INA SHEIK . **24 W. R., 463**

7. ———— *Exclusion of day on which cause of action arose—Suit on bond.*—On the 29th November 1886, this suit was filed on a bond, dated the 29th November 1881, payable in two years. The Subordinate Judge dismissed it as time-barred, being of opinion that the cause of action had accrued on the 28th November 1883. Against this decision the plaintiff applied to the High Court under s. 623 of the Code of Civil Procedure (Act XIV of 1882). *Held,* reversing the decision of the Subordinate Judge, that the suit was not barred by time, the cause of action having accrued on the 29th November 1883, that is, the day of the month corresponding with the day on which the bond was dated. VENKUBAI *v.* LAKSHMAN VENKOBA KHOT . . **I. L. R., 12 Bom., 617**

8. ———— *Holiday—Cause of action—Promissory note payable on demand.*—The plaintiff sued on a promissory note payable on demand dated November 14th, 1867. He filed his plaint on November 14th, 1870, that being the first day on which the Court was open after the Durga Puja holidays. The 13th November was Sunday. *Held* the day on which the note was made was to be excluded in computing the period of limitation, and that therefore the suit was not barred. ABDUL ALI *v.* TARACHAND GHOSE . . . . . **6 B. L. R., 292**

S. C. on appeal. TARACHAND GHOSE *v.* ABDUL ALI . . **8 B. L. R., 24: 16 W. R., O. C., 1**

MUHTAB *v.* RAM DYAL . . **3 Agra, 319**

9. ———— *Civil Procedure Code, 1859, s. 246—Time for suing.*—The day on which judgment is pronounced is not to be reckoned within the time allowed for bringing a suit under s. 246. PETAMBUR SHAHA *v.* KUROONA MOYEE DEBEA **[W. R., 1864, 321**

10. ———— *Civil Procedure Code, 1859, s. 246.*—The day on which the order under s. 246 was passed must be excluded in computing the year allowed by that section. KASHEENATH SHAHA *v.* JOGENDRONATH BABOO . . **22 W. R., 68**

11. ———— *Computation of period of—Civil Procedure Code, 1859, s. 246.*—In computing the time for bringing a suit to set aside an order made under s. 246 of the Code of Civil Procedure, the date upon which the order is signed, and not the date upon which it is verbally made, should be considered. BAPU BIN ISHVAR *v.* LAKSHUMAN BAJI **[10 Bom., 19**

12. ———— *Computation of time—Exclusion of day under s. 20 of the Limitation Act, 1859.*—The day on which the application for execusion is made is not to be reckoned in computing the three years alluded to in s. 20, Act XIV of 1859. VIRASAMY MUDALI *v.* MANOMMANY AMMAL. VENKATA BALAKRISHNA CHETTI *v.* VIJIARAGUNADHA VALAJI KRISHNA GOPALER . **4 Mad., 32**

13. ———— *Act IX of 1871, s. 13—Computation of period of limitation.*—In calculating the period of limitation prescribed in sch. II of Act IX of 1871 for applications as well as for suits and appeals, the day on which the order or decree appealed against was made should be excluded. GUJAR *v.* BARVE . **I. L. R., 2 Bom., 673**

MANCHARAM KALLIANDAS *v.* RATILAL LALSHANKAR . . . . **6 Bom., A. C., 39**

14. ———— *Execution of decree—Holiday—Sunday.*—A decree was passed on the 6th September 1865. Application for execution was made on 7th September 1868; the 6th September 1868 was Sunday. *Held* that the day on which the application for execution was made was not to be excluded from the computation, and that the application must be made within three calendar years from the passing of the decree. KHODIE LAL *v.* BISWASU KUNWAR **4 B. L. R., A. C., 131 : 13 W. R., 122**

But *see* BRAJABEHARI *v.* KAMAL ROY **[1 B. L. R., S. N., 1**

S. C. BROJO BEHAREE SAHOY *v.* KEWAL RAM **[10 W. R., 5**

This section does away with the case of ELIAS *v.* HABOOL MOOSHEE MOOSHEE **[1 Ind. Jur., N. S., 18 : Bourke, 382**

in which it was held that on the original side delay in furnishing office copies of judgments afforded no ground for not filing the memorandum of appeal within the time prescribed.

15. ———— *Time for obtaining copy of judgment.*—The time which intervenes between the putting in stamps and obtaining a copy of the decree should be excluded from the time prescribed for the presentation of an appeal. LALL GOPALNATH SAHEE DEO *v.* PUDUM KOONWAR **[5 W. R., Mis., 44**

GOPEENATH ROY *v.* GOPEENATH CHATTERJEE **[6 W. R., Mis., 106**

16. ———— *Deduction of time necessary for obtaining copy of decree—Copy of judgment—Appeal.*—In computing the period of ninety days under s. 13 of Act IX of 1871 for filing an appeal, the appellant is, as a matter of right, entitled to deduct the number of days required for taking a copy of the decree only. The word "decree" in that section does not include the "judgment." Under the circumstances, however, the Court admitted the appeal, although presented after time. HORIL PATTUCK *v.* BHOWANEERAM **[15 B. L. R., 273 note : 21 W. R., 308**

17. ———— *Deduction of time necessary for obtaining copy of decree.*—In computing the period of limitation prescribed for an appeal by s. 13 of Act IX of 1871, the time from which the period must be taken to run is the date of the decree appealed against; and the days which under that section may be excluded are only the days requisite for obtaining a copy of the decree. But if in any case it is impossible for the appellant to obtain a copy of the decree or to obtain a copy of the judgment in time, the Court, if satisfied that the appellant is not to blame, may consider that there is sufficient cause within the meaning of s. 5, cl. (*b*), of Act IX of 1871, and may on application admit the appeal after the period of limitation prescribed by the Act. JAGARNATH SINGH *v.* SHEWRATAN SINGH **[15 B. L. R., F. B., 272 : 24 W. R., 105**

18. ———— *Application for copy of decree—Practice.*—A suit for possession of land having been decided on the 6th January 1881, a copy of the judgment was applied for on the 7th January, but the paper and fees for the copy were not deposited till the following day. The copy was delivered on the 31st January, and an appeal was filed by the applicant on the 2nd March. The Court to which the appeal was presented held that, according to the practice of the Court, the fees ought to

have been paid on the day on which the application was made, and in calculating the period of limitation excluded only the period between the 8th and 31st January, and accordingly rejected the appeal as having been presented one day late. *Held,* on appeal to the High Court, that the question as to whether the period excluded should have begun on the 7th or 8th was a matter to be determined by the practice of the Court. NOBIN CHUNDER ROY *v.* BROJENDRO COOMAR ROY . . . . **12 C. L. R., 541**

19. ———— **and art. 151**—*Appeal—Time requisite for obtaining a copy of the decree.*—A plaintiff wishing to appeal from a decision passed against him on the original side of the High Court, dated 16th August 1883, presented for filing his memorandum of appeal to the Registrar on the 5th September 1883, but by reason of the decree not having been signed on that date, no copy of the decree was presented therewith. The Registrar refused to accept the appeal. On the 6th September the decree was signed, and on the 7th an office copy thereof was obtained by the defendant's attorney, who, on the 8th September, served a copy at the office of the plaintiff's attorney. On the 12th September, the plaintiff applied for an office copy, which he obtained on the 13th, and on the 15th tendered such copy and his memorandum of appeal to the Registrar. The Registrar refused to accept the appeal, unless under an order of Court, it being in his opinion out of time. On the 6th December 1883, a Juge sitting on the original side admited the appeal. The appeal subsequently came on for hearing, when the defendant contended that the appeal was barred, it not having been filed within twenty days from the date of the decree. The Court held that the appeal was so barred. *Held,* on review, that the plaintiff having allowed five days to expire after the decree was signed before applying for a copy, and not having filed his appeal, after so obtaining a copy, at the earliest opportunity possible, such a delay being entirely unaccounted for, could not be held to be "time requisite for obtaining a copy of the decree," and that therefore the appeal was out of time. RAMEY *v.* BROUGHTON **[I. L. R., 10 Calc., 652**

20. ———— *Exclusion of time necessary for obtaining copy of judgment.*—Certain accused persons were convicted on the 29th February 1884, and made their first application for a copy of the judgment on the 25th March, tendering stamped paper for such copy on the 26th and 29th March. The copy was prepared on the 30th, and the prisoners, who had been admitted to bail on the 5th March, presented their appeal on the 7th April 1884, which was rejected as being out of time. *Held* that the appeal ought to have been admitted. IN THE MATTER OF JHABBU SINGH . **I. L. R., 10 Calc., 642**

21. ———— *Appeal under cl. 10 of the Letters Patent.*—In computing the period of limitation prescribed for an appeal under cl. 10 of the Letters Patent, the time requisite for obtaining a copy of the judgment appealed from cannot be deducted, such copy not being required under the rules of the Court to be presented with the memorandum of appeal. FAZAL MUHAMMAD *v.* PHUL KUAR **[I. L. R., 2 All., 192**

22. ———— *Time for obtaining copy of decree.*—In computing the time required for obtaining a copy of the decree appealed against, the day on which the stamp paper was deposited and the day on which the copy was supplied must each be counted. BEER CHUNDER JOOBRAJ *v.* MOHAMED ASGUR . . . . **W. R., 1864, 145**

23. ———— *Delay in appealing—Time for obtaining copy of decree—Civil Procedure Code, 1859, s. 333.*—In calculating the ninety days allowed for an appeal by Act VIII of 1859, s. 333, the period between the date on which judgment was pronounced and that on which the decree was signed by the Judge was allowed to be deducted, as coming within the words "exclusive of such time as may be requisite for obtaining a copy of the decree" in that section. IN THE MATTER OF CHOWDHRY MOHENDRO NARAIN ROY . . . . **18 W. R., 512**

24. ———— *Time for obtaining copy of judgment.*—The "time requisite for obtaining a copy of the decree" appealed against, which, under s. 12 of the Limitation Act (XV of 1877), is to be excluded in computing the period of limitation for the appeal, is determined when the copy is ready for delivery. GOPAL CHUNDER ROY *v.* BROJO BEHARY MITTER . . . . **9 C. L. R., 293**

25. ———— *Appeal presented after time—Time requisite for obtaining copy of decree.*—Where a decree was passed on the 22nd September, and application for a copy was made not until 29th, and then with insufficient folios, and the Court was closed for the vacation from 30th September to 1st November, the deficient folios being filed on the day it re-opened, 2nd November, the copy delivered on the 6th, and the appeal filed on the 14th,—*Held* that the appeal was out of time under s. 12 of the Limitation Act, the appellant not being entitled to a deduction of the time occupied in ascertaining what the requisite number of folios was. GUNGA DASS DEY *v.* RAMJOY DEY . . . **I. L. R., 12 Calc., 30**

26. ———— *Exclusion of time between delivery of judgment and signing decree—Time for obtaining copy of decree.*—Where a suitor is unable to obtain a copy of a decree from which he desires to appeal, by reason of the decree being unsigned, he is entitled, under s. 12 of the Limitation Act, to deduct the time between the delivery of the judgment and that of the signing of the decree in computing the time taken in presenting his appeal. BANI MADHUB MITTER *v.* MATUNGINI DASSI. KALI SHUNKER DASS *v.* GOPAL CHUNDER DUTT **[I. L. R., 13 Calc., 104**

27. ———— **s. 5, and art. 152**—*Civil Procedure Code, ss. 542, 587—Time requisite for obtaining copy of decree—Exclusion of time between delivery of judgment and signing of decree—Exclusion of time between furnishing of estimate of cost of copy and compliance with estimate.*—Judgment was pronounced by the Court of first instance on the 23rd May 1887. The decree was signed on the 31st May. An application for copies was made by the defendants on the same day. Information of the estimate of the cost of copies was given to them on the 1st June, but they did not comply with that estimate until the 9th June. The copies were delivered on the 11th June. On the 30th June, the defendants filed their memorandum of appeal in the lower Appellate Court which, on an office report that it was within time, admitted it, and fixed the 19th August for the hearing. On the 1st August, another office report was submitted, which showed that the appeal was beyond time. Accordingly the Judge on the 2nd August directed the defendants to be informed that their appeal was dismissed. On the 27th August, however, the defendants presented a petition to the Judge, in consequence of which he re-admitted the appeal, and cancelling his order of the 2nd August, directed that the appeal should be heard. *Held* that the appeal was barred by limitation under art. 152, sch. II of the Limitation Act (XV of 1877). S. 5 of the Limitation Act cannot be applied in making the computation of time provided for by s. 12, and does not become applicable until after such computation has been made. *Raj Coomar Roy* v. *Mahomed Waris, 7 W. R., 337,* dissented from. In computing the time to be excluded under s. 12 of the Limitation Act from a period of limitation, the time "requisite for obtaining a copy" does not begin until an application for copies has been made. If, therefore, after judgment, the decree remains unsigned, such interval is not to be excluded from the period of limitation, unless an application for copies having been made, the applicant is actually and necessarily delayed through the decree not having been signed. *Beni Madhub Mitter* v. *Matungini Dassi, I. L. R., 13 Calc., 104,* dissented from. *Per* EDGE, *C.J.*, BRODHURST and YOUNG, *JJ.*—A Court, in computing, under s. 12 of the Limitation Act, 1877, the time requisite for obtaining a copy of a decree or of a judgment, has no discretion, and is confined to ascertaining, for the purposes of such computation, the time occupied by the office, after application made, in preparing the estimate, and, after payment of the amount of the estimate has been made, the time occupied by the office in preparing the copy or copies ready to be delivered to the party who has applied for them. *Per* EDGE, *C.J.*—The only section in the Limitation Act which enables a Court to admit an appeal or an application which is presented beyond the period of limitation prescribed by that Act is s. 5. *Per* MAHMOOD, *J.*—Where there is delay in compliance with the estimate which is unavoidable and due to causes beyond the control of the applicant, such delay may be included in "the time requisite for obtaining a copy." Whether or not such delay is unavoidable is a question of fact in each case. BECHI *v.* AHSAN-ULLAH KHAN **[I. L. R., 12 All., 461**

28. ———— **s. 5, and art. 170**—*Application for leave to appeal as a pauper—Time requisite for obtaining copy of decree—Exclusion of time betweeen delivery of judgment and signing* *of decree.*—Judgment was pronounced by the lower Appellate Court, dismissing the appeal of the plaintiff, on the 29th March 1887. The decree was signed by the Judge on the 1st April, but, in accordance with s. 579 of the Civil Procedure Code, it bore date the day on which the judgment was pronounced. On the 15th April the plaintiff applied for a copy of the decree; on the 16th she received notice that the estimate of the costs of preparing the copy was prepared; on the 19th she paid into Court the amount required by the estimate. She had notice to attend on the 23rd for delivery to her of the copy, and on the 25th she attended and received the copy. On the 12th May she presented in the High Court, to the proper officer, an application, under s. 592 of the Code, for leave to appeal as a pauper. *Held* that the application was barred by limitation under art. 170, sch. II of the Limitation Act (XV of 1877), and that s. 5 of the Act did not apply. *Per* EDGE, *C.J.*—In computing the period of limitation prescribed for an appeal or for an application for leave to appeal as a pauper, where the decree appealed against is not signed until a date subsequent to the date of delivery of judgment, the intermediate period should, under s. 12 of the Limitation Act, be excluded if the delay in signing the decree has delayed the appellant or applicant in obtaining a copy of the decree, and not otherwise. *Beni Madhub Mitter* v. *Matungini Dassi, I. L. R., 13 Calc., 104,* referred to. A delay caused by the carelessness or negligence of a party applying for copy of decree, such as negligence in coming forward to pay the money required, cannot be taken into consideration or allowed for in computing the time requisite for obtaining the copy. The time requisite, within the meaning of s. 12 of the Limitation Act, does not mean requisite by reason of the carelessness or negligence of the applicant: it means the time occupied by the officer who has got to provide the copy, in making the copy. The important date with reference to s. 12 and art. 170 is not the date when the copy of the decree is delivered, but the date when it is ready for delivery to the applicant if the applicant chooses to apply, where he has had notice that the copy will be ready on that date. PARBATI *v.* BHOLA . **I. L. R., 12 All., 79**

29. ——————— *Delay in obtaining copies of judgment for the purpose of appeal—Limitation Act (XV of 1877), art. 170.*—In a suit for land the Court of first instance passed a decree for the plaintiff, the judgment and decree bearing date the 29th of September. Defendant, being desirous of appealing *in formâ pauperis,* applied for copies on the following day. Stamp papers were called for on the 28th of October, but were not produced by the 31st, when the application was struck off under the copyist rules. On the 6th of November, a petition was put in explaining the circumstances which prevented the stamps being produced within the period of three days, and praying for restoration of the previous application. *Held* that the application of the 6th of November must be considered a continuation of the former one for the purpose of computing the time allowed by the Limitation Act within which an appeal should be preferred to the District Court. RAMANUJA AYYANGAR *v.* NARAYANA AYYANGAR

[I. L. R., 18 Mad., 374

30. ——————— *Exclusion of time requisite for obtaining copies of the decree and judgment—Delay in presentation of appeal owing to Court being closed—Limitation Act, s. 5, and art. 152.*—If the period prescribed by the second schedule of the Indian Limitation Act, 1877, for the presentation of an appeal expires on a day on which the Court is closed, and if the appellant has not obtained copies of the decree and judgment before the closing of the Court and applies for such copies on the date of the re-opening of the Court, whilst his right of appeal is still alive, he is entitled to the benefit of the time requisite for obtaining the copies, and if his appeal be presented before the expiry of that time, it is not barred by limitation. A decree was passed against a defendant by the Court of a Munsif on the 17th of September 1894. The Appellate Court (Subordinate Judge's Court) was closed from the 6th of October to the 4th of November, both days inclusive. On the 5th of November, the defendant-appellant applied for copies of the decree and judgment. The copies were delivered to her on the 6th November, and on the same day she presented her appeal to the Appellate Court. *Held* that the appeal was within time. SIYADAT-UN-NISSA *v.* MUHAMMAD MAHMUD

[I. L. R., 19 All., 342

31. ——————— **and art. 152**—*Appeal from decree or order—Civil Procedure Code (Act XIV of 1882), s. 205—Time from which limitation runs—Time requisite for obtaining copy of the decree—Time between pronouncement of judgment and signing of the decree.*—The time for presenting an appeal against a decree or order is thirty days from the date of such decree or order (art. 152 of the Limitation Act, XV of 1877). The date of the decree or order is the date on which judgment is pronounced. The time excluded from the period of limitation by s. 12 of the Limitation Act must be taken to commence only when the party appealing does something in order to obtain the copy of the judgment or decree, and to end when he obtains the copy. A party who delays to apply for such copy is not entitled to exclude the period of such delay. A party is at liberty to apply for a copy of the decree, whether the decree has been signed or not. If he has applied, but the copy cannot be prepared because the decree has not been signed, then this time and the time taken up in preparing the copy will be excluded, but so long as he has made no application, the non-signature of the decree can have no effect at all upon him. Judgment was pronounced on the 18th December 1897, rejecting an application made by a plaintiff in execution of a decree; but the bill of costs (the order as to costs being a part of the order or decree) was not signed until 18th January 1898. The plaintiff, proposing to appeal against the above order, applied for copies of the judgment and order on the 14th January. The copies were furnished to him on the 24th January 1898. The appeal was presented on the 24th February. The lower Court held the appeal barred by limitation under art. 152 of the Limitation Act, not having been presented within thirty days from the date of judgment. On appeal to the High Court,—*Held* that the appeal was barred. The only time allowed by law to be excluded was from the 14th January 1898, on which date copies of the judgment and order were applied for, to the 24th January 1898, on which date they were furnished. The judgment was pronounced on the 18th December 1897. The non-signing of the decree was no cause for or explanation of the delay between that date and the 14th January 1898, or for the delay between the 24th January 1898 and the 24th February 1898. YAMAJI *v.* ANTAJI

[I. L. R., 23 Bom., 442

32. ——— **s. 5, and art. 156**—"*Time requisite for obtaining a copy of the decree appealed against*"—*Neglect of Court officials in issuing copies.*—A decree of a lower Appellate Court was passed on the 26th March 1888, and an appeal therefrom was presented to the High Court on the 6th July, or twelve days beyond the time allowed by art. 156, sch. II of the Limitation Act (XV of 1877). An application for a copy of the judgment under appeal was made by the appellants on the 28th March, and the 29th March was fixed by the office as the date when the estimate of the cost of such copy was to be delivered, and it was delivered on that day. The estimate was not complied with until the 5th April, when the appellants put in the necessary stamp paper according to the estimate. Upon the entry of the stamp paper no intimation was made by the office to the appellants as to when the copy would be ready for delivery. The copy was delivered on the 10th April. *Held* that, under s. 12 of the Limitation Act, the appellants were entitled to a deduction of the whole period between the 28th March and the 10th April, and that, if this were not so, the appeal should be admitted under s. 5 of the Act. The words in s. 12, "the time requisite for obtaining a copy of the decree appealed against," imply that the appellant is not to lose his right of appeal by reason of the neglect of the officials who issue copies, or who are required to give notice when such copies are ready. SHEOGOBIND *v.* ABLAKHI . **I. L. R., 12 All., 105**

See DULALI BEWA *v.* SARODA KINKAR PAULIT

[3 C. W. N., 55

33. ——— *Civil Procedure Code, 1882, s. 599*—*Period of limitation for an admission of an appeal to Privy Council.*—On a petition for leave to appeal to the Privy Council presented on the 8th April, it appeared that the period of six months from the date of the decree to be appealed against had expired on the 23rd of March if the time occupied by the petitioner in getting a copy of the decree was to be computed in that period. *Held* that the petition was barred by limitation. *Per Cur.*—It is not at all clear that the word "ordinarily" in s. 599 of the Code of Civil Procedure does not refer to the circumstance referred to in the second paragraph of that section, *viz.*, when the last day happens to be one on which the Court is closed. LAKSHMANAN *v.* PERYASAMI . . . **I. L. R., 10 Mad., 373**

34. ——— *Application for certificate for appeal to Privy Council—Limitation Act (XV of 1877), art. 177.*—In computing the period of limitation for an application for a certificate admitting an appeal to Her Majesty in Council, the time occupied in obtaining copies of the decree and judgment sought to be appealed against cannot be excluded, this section not being applicable. ANDERSON *v.* PERIASAMI . . . **I. L. R., 15 Mad., 169**

35. ——— *Act XXIV of 1839, Appeal under—Time for obtaining copy of decree and judgment.*—Limitation Act, s. 12, is applicable to an appeal to His Excellency the Governor in Council, under the rules made by virtue of Act XXIV of 1839 against a decree passed by the Agent to the Governor, and assuming the time for such an appeal to be three months from the date of the decision, the time necessary for procuring copies of decree and judgment appealed against may be deducted. *Held,* however, that no time for such an appeal was fixed. MAHADEVI *v.* VIKRAMA . **I. L. R., 14 Mad., 365**

36. ——— *Madras Rent Recovery Act (Mad. Act VIII of 1865), ss. 18 and 69—Deduction of time occupied in obtaining copy of judgment appealed against.*—A tenant whose property had been distrained for arrears of rent sued under the Rent Recovery Act, s. 18, by way of appeal against the distraint. The Revenue Court decided in his favour. The landlord preferred an appeal under s. 69 more than thirty days after the date when the decision was pronounced. He claimed that the time occupied in procuring a copy of the judgment appealed against should be deducted in the computation of the thirty days' period of limitation. *Held* that the appellant was not entitled to have the deduction made, the provisions of s. 12 of the Limitation Act not being applicable to an appeal filed under s. 69 of the Madras Rent Recovery Act, and that the appeal was barred by limitation. KUMARA AKKAPPA NAYANIM *v.* SITHALA NAIDU

[I. L. R., 20 Mad., 476

37. ——— **and art. 154**—*Appeal by prisoner—Limitation—Time necessary to obtain copy of judgment.*—In computing the period of limitation prescribed for an appeal from a sentence of a Criminal Court by art. 154 of sch. II of the Limitation Act, 1877, the time taken in forwarding an application by a prisoner for a copy of the judgment and in transmitting the same from the Court to the jail must be excluded. QUEEN-EMPRESS *v.* LINGAYA . . . **I. L. R., 9 Mad., 258**

38. ——— *Computation of limitation—Act XIV of 1859, s. 1, cl. 6.*—In computing the period of limitation under cl. 6, s. 1 of Act XIV of 1859, the day on which the award was passed was to be excluded. RUMONEE SOONDERY DOSSIA *v.* PUNCHANUN BOSE . . . **4 W. R., 105**

——— s. 13 (1871, s. 14; 1859, s. 13).

1. ——— *Ignorance of defendant's residence—Absence from India.*—Ignorance of defendant's residence does not fall within any of the provisions of the Limitation Act, extending the periods of limitation prescribed by that Act. But under s. 13 plaintiff is entitled to exclude from the computation of the periods of limitation applicable to his claims the time during which the defendant is absent out of British territories. The law of limitation being a law which bars the remedy and does not destroy the right, if by any of its sections indulgence is shown to suitors, the Court will feel bound to give full effect to the language in which that indulgence is conceded. MAHOMED MUSEEHOOD-EEN KHAN *v.* MUSEEHOODDEEN

[2 N. W., 173

2. ———— **and s. 9**—*Continuous running of time—Exclusion of time of defendant's absence from British India.*—S. 13 of the Limitation Act, 1877, is not in any way affected or qualified by s. 9 of the same Act. In computing, therefore, the period of limitation prescribed for a suit, the time during which the defendant has been absent from British India should be excluded, notwithstanding that such period had begun to run before the defendant left British India. *Narronji Bhimji* v. *Mugniram Chandaji, I. L. R., 6 Bom., 103,* dissented from. BEAKE & CO. *v.* DAVIS

[I. L. R., 4 All., 530

3. ———— *Defendant's absence from British India—Computation of the period of limitation—Adjusted and signed account.*—Ss. 9 and 13 of Act XV of 1877 adopt the law of limitation in England, and they must be read together in computing the period of limitation. Where the statutory period has once begun to run in respect of any cause of action, the subsequent absence of the defendant from British India will not stop it from running. The defendant adjusted and signed his account with the plaintiffs in Bombay on the 13th of January 1871, and shortly afterwards went to reside out of British India, in the territories of His Highness the Nizam. There was no subsequent payment of interest as such, and no payment of any part of the principal. *Held* that the plaintiffs' suit for the balance of the account was barred by the law of limitation, not having been brought within three years after the adjustment. NARRONJI BHIMJI *v.* MUGNIRAM CHANDAJI . **I. L. R., 6 Bom., 103**

4. ———— *Defendant's absence from India.*—The plaintiff sued on a bond, dated 20th August 1879, payable by monthly instalments, the first to be due on 4th September 1879; the bond provided that, if default should be made in one instalment, the obligor should, if so required, pay the whole amount. The defendant made default in the fourth instalment, and no more instalments were paid, and no demand of payment was made until 30th January 1884. The suit was brought on 28th April 1884. The defendant had been absent from India for more than two years and three months out of the four years and four months which had elapsed between the date of the defendant's default and the date of suit. *Held,* dissenting from *Naronji Bhimji* v. *Mugniram Chandaji, I. L. R., 6 Bom., 103,* that, even if the cause of action had arisen on the 4th December 1879, nevertheless the suit was not barred, inasmuch as the period during which the defendant had been absent from India was to be deducted in computing the period of limitation. HANMANTRAM SADHURAM PITY *v.* BOWLES

[I. L. R., 8 Bom., 561

5. ———— *Absence of defendant from British India.*—S. 13 of the Limitation Act, which excludes the time during which a defendant has been absent from British India in computing the period of limitation for any suit, does not apply to a case when, to the knowledge of the plaintiff, the defendant, though not residing in British India, is represented by a duly constituted agent and mookhtar. HARRINGTON *v.* GONESH ROY

[I. L. R., 10 Calc., 440

6. ———— *Absence from India—Defendant carrying on business by agent.*—The words "absent from British India" in s. 13 of the Limitation Act should be construed broadly, and not limited in their application only to such persons as have been present there, or would ordinarily be present, or may be expected to return. *Semble*—A defendant is within s. 13, notwithstanding his having carried on a trade or had a shop or a house of business under an agent in British India. *Harrington* v. *Gonesh Roy, I. L. R., 10 Calc., 440,* commented upon. ATUL KRISTO BOSE *v.* LYON & CO.

[I. L. R., 14 Calc., 457

7. ———— *Absence of defendant from British India—Defendant carrying on business in British India through an authorized agent.*—S. 13 of Limitation Act, which excludes the time during which a defendant has been absent from British India in computing the period of limitation for any suit, applies even where, to the knowledge of the the plaintiffs, the defendants, partners in a firm, are during the period of their absence carrying on business in British India through an authorized agent. *Harrington* v. *Gonesh Roy, I. L. R., 10 Calc., 440,* overruled. POORNO CHUNDER GHOSE *v.* SASSOON

[I. L. R., 25 Calc., 496
2 C. W. N., 269

8. ———— *Absence from British India—Proceedings in execution of decree.*—The provisions of s. 13 of Act XV of 1877 are not applicable to proceedings in the execution of a decree. AHSAN KHAN *v.* GANGA RAM . . **I. L. R., 3 All., 185**

———— **s. 14 (1871, s. 15; 1859, s. 14).**

The corresponding section of the Act of 1859 was held not to apply to cases under the Rent Act (X of 1859). ROY KALLY PROSONNO SEIN *v.* KISTO NUND DUNDEE . . . **W. R., 1864, Act X, 13**

SOUDAMONEE DOSSEE *v.* POORNO CHUNDER ROY **[W. R., 1864, Act X, 113**

DABEE *v.* NUKEESUNNISSA **[W. R., 1864, Act X, 116**

JUGGURNATH ROY CHOWDHRY *v.* RAJ CHUNDER ROY . . . **W. R., 1864, Act X, 120**

RAM SUNKUR SANAPUTTY *v.* GOPAUL KISHEN DEO . . . . **1 W. R., 68**

MODHOO SOODUN MOJOOMDAR *v.* BROJONATH KOOND CHOWDHRY . . **5 W. R., Act X, 44**

LIMITATION ACT, 1877—*continued.*

Nor to its amending Act for the North-West Provinces (Act XIV of 1863). Nona *v.* Dhoomun Dass . . . . **5 N. W., 30**

It was also held not applicable to s. 42 of Bombay Act VII of 1867. Hari Ramchandra *v.* Vishnu Krishnaji . . . . . **10 Bom., 204**

1. ———— *Computation of period of limitation—Suit for arrears of rent—Act X of 1859.*—The provisions of s. 14 of Act XV of 1877 are not applicable to suits for arrears of rent under Act X of 1859. Nagendro Nath Mullick *v.* Mathura Mohun Parhi . . **I. L. R., 18 Calc., 368**

2. ———— *Appeal—Suit—Computation of time for appeal.*—S. 14 of the Limitation Act does not apply to the computation of time for appeals, but only to suits. Ardha Chandra Rai Chowdhry *v.* Matangini Dassi **[I. L. R., 23 Calc., 325**

3. ———— and s. 6—*Application to special laws—Bombay District Municipal Act (Bom. Act VI of 1873), s. 86.*—The general provisions of the Limitation Act, 1877, are applicable to cases for which periods of limitation are specially provided by local or special laws. Therefore, where a suit was brought in the Court of the District Judge of Belgaum on 30th January 1882 and was subsequently presented on the same day in the Court of the Subordinate Judge of Belgaum, the High Court held that the provisions of s. 14 taken with s. 6 of Act XV of 1877 applied to the case so as to exclude the period between 10th January and 6th February 1882 in computing the period of three months prescribed by the Bombay District Municipal Act (Bombay Act VI of 1873), s. 86. *Golapchand Nowlukha* v. *Krishto Chunder, I. L. R., 5 Calc., 314; Nijabutoola* v. *Wazir Ali, I. L. R., 8 Calc., 910;* and *Khetter Mohun Chuckerbutty* v. *Dinabashy Shaha, I. L. R., 10 Calc., 265,* followed. *Hori Ramchandra* v. *Vishnu Krishnaji, 10 Bom., 204,* distinguished. Guracharya *v.* Collector of Belgaum **[I. L. R., 8 Bom., 529**

4. ———— *Special limitation under Acts other than the Limitation Act—Suit under Registration Act (III of 1877), s. 77.*—S. 14 of the Limitation Act provides for cases in which a plaintiff in perfect good faith, but under mistake, has instituted proceedings in a Court not having jurisdiction in the matter, and is applicable not only to the provisions of the Limitation Act itself, but also to the provisions of all Acts providing a special time for the limitation of suits. Khetter Mohun Chuckerbutty *v.* Dinabashy Shaha **[I. L. R., 10 Calc., 265**

The corresponding section of Act XIV of 1859 and Act X of 1871 was held not to apply to cases of execution of decrees. Khettronath Dey *v.* Gossain Doss Dey . . . . **1 Ind. Jur., N. S., 49** **[4 W. R., Mis., 18**

Sheo Narain *v.* Joogul Kishen Ram **[7 W. R., 327**

Krishna Chetty *v.* Rami Chetty **8 Mad., 99**

Naran appa Aiyan *v.* Nanna Ammal *alias* Parvathy Ammal . . . **8 Mad., 97**

Mahalakshmi Ammal *v.* Lakshmi Ammal **[8 Mad., 105**

Jiwan Singh *v.* Sarnam Singh **[I. L. R., 1 All., 97**

Timal Kuari *v.* Ablakh Rai **[I. L. R., 1 All., 254**

Dhonessur Kooer *v.* Roy Gooder Sahoy **[I. L. R., 2 Calc., 336**

Woomachurn Mitter *v.* Mohamoya. Woomachurn Mitter *v.* Bejoy Kishore Roy **[W. R., 1864, 130**

Banee Kant Ghose *v.* Haran Kisto Ghose **[24 W. R., 405**

Giridhara Doss Manakji Tadahayai Birzi Mohondoss *v.* Suraneni Lakshmi Venkamma Row. Calapatapu Kristnayya *v.* Lakshmi Venkamma Row . . . . **5 Mad., 93**

Contra, Promothonath Roy Bahadoor *v.* Watson & Co. . . . . . . **24 W. R., 303**

But s. 14 of Act XV of 1877 now expressly applies to applications of any sort.

5. ———— *Decree passed by Mamlatdar in possessory suit—Execution of decree stayed by proceedings in Subordinate Judge's Court—Suit in Subordinate Judge's Court ultimately dismissed—Subsequent application to Mamlatdar for execution of decree—Jurisdiction of Mamlatdar to grant order for execution—Deduction of time spent on proceedings in second suit.*—A Mamlatdar having in a possessory suit passed a decree awarding possession of certain land to the applicant, the opponents instituted a suit in the Court of the first class Subordinate Judge for a declaration that the land in question was their property, and for an injunction to restrain the applicant from obstructing them in the enjoyment of their rights. Owing to this suit, the Subordinate Judge stayed execution of the Mamlatdar's decree. The opponent's suit was subsequently dismissed by the Subordinate Judge, whose decree was ultimately confirmed by the High Court in second appeal. The applicant then applied to the Mamlatdar for the execution of his decree in the possessory suit. The Mamlatdar rejected the application on the ground that that decree of the High Court in the civil suit prevented him from executing his decree. *Held* that the applicant was entitled to obtain from the Mamlatdar an order for the execution of his decree, unless it was barred by limitation. It was not barred, inasmuch as in computing the period of limitation allowance was to be made for the time during which the decree remained in abeyance by reason of the proceedings in the other suit. S. 14 of the Limitation Act (XV of 1877) applies to proceedings in execution. *Hira Lal* v. *Badri Das, I. L. R., 2 All., 792: L. R., 7 I. A., 167.* Navalchand Nemchand *v.* Amichand Talakchand **I. L. R., 18 Bom., 734**

6. ———— *Deduction of time occupied by former suit under old law of limitation.*—

LIMITATION ACT, 1877—*continued.*

The plaintiff instituted a suit under the old law (Bengal Regulation III of 1793), and was non-suited on appeal, because the plaint was defective in not stating the boundaries of the land claimed. While the appeal was pending, Act XIV of 1859 came into operation. He instituted a fresh suit, and claimed to deduct the time occupied in prosecuting the former suit and appeal under the provisions of Act XIV of 1859, s. 14. *Held* (by the majority of the Court) that the plaintiff was non-suited owing to his negligence, and the time sought to be deducted from the period of limitation could not be allowed. *Per* LOCH and PUNDIT, *JJ.*—Under the circumstances, the time should be deducted in computing the period of limitation. CHUNDER MADHUB CHUCKERBUTTY *v.* RAM COOMAR CHOWDHRY

[B. L. R., Sup. Vol., 553
6 W. R., 184

The former proceeding must have been taken by the plaintiff or some one through whom he claims (see the definition of "plaintiff" in s. 3 of the Act), and this was the same under the former Acts. BARODAKANT ROY *v.* SOOKMOY MOOKERJEE **1 W. R., 29**

MORRIS *v.* SAMBAMURTHI RAYAN **6 Mad., 122**

7. ———— *Suit bonâ fide brought in Court without jurisdiction.*—The time for which suits may have been pending in Courts which had not jurisdiction should be deducted in computing the period of limitation if the Judge should find that the suits were prosecuted *bonâ fide* and with due diligence. NOBO COOMER CHUCKERBUTTY *v.* KOYLASCHUNDER BAROOEN . . **17 W. R., 518**

8. ———— *Deduction of time former suit was being prosecuted.*—The plaintiffs sued the son of a deceased debtor without ascertaining whether or not he was of age, and then, when the plaint was returned to them, they sued the minor's mother, also without ascertaining whether she was legally constituted guardian of the minor. The lower Courts determined the suit, but the High Court was unable to support their decrees in consequence of the defect, which came to light in special appeal. The plaintiffs having brought a second suit, it was held that, in computing the period of limitation, they were not entitled, under provisions of s. 15 of Act IX of 1871, to an exclusion of the time occupied by them in prosecuting the first suit. The Court doubted whether, assuming the case fell under the provisions of the section, the plaintiffs could be said, under the circumstances, to have prosecuted the first suit with due diligence and in good faith. BAHAL SINGH *v.* GAURI . **7 N. W., 284**

9. ———— *Execution of decree—Attachment of decree.*—*Held* that, in calculating the period of three years from the date when effectual proceedings had last been taken to keep alive a decree, the period during which the decree had remained under attachment in execution of a decree against the judgment-creditor should be deducted, the decree-holder having been prevented from exercising due diligence. CHANDI PRASAD NANDI *v.* RAGHUNATH DHAR . . **3 B. L. R., Ap., 52**

LIMITATION ACT, 1877—*continued.*

10. ———— *Application for transmission of decree—Proceedings bonâ fide in Court without jurisdiction.*—On the 2nd March 1887, *S* obtained a mortgage-decree against *P* in the Court of the Munsif of Hajipore. On the 9th September 1887, *S* applied for execution, and on the 7th November 1887 the mortgaged property was sold by the Hajipore Court. On appeal, on the 2nd September 1890, the High Court set aside the sale on the ground of want of jurisdiction. Thereupon, on the 6th September 1890, *S* applied to the Hajipore Court to transfer the decree for execution to the Munsif's Court at Muzaffarpur. On the 19th December 1890, *S* applied for execution to the Muzaffarpur Court. *L*, who had meanwhile purchased the mortgaged property from *P*, objected that the application was barred. *Held* that the application was not barred, as the application of the 6th September 1890 was a step in aid of execution, and also as s. 14, para. 3, of the Limitation Act clearly applied to the facts of the case, and under it the decree-holder was entitled to a deduction of all the time occupied in executing the decree in the Court having no jurisdiction, the application having been manifestly made in good faith. *Nilmoney Singh Deo* v. *Biressur Banerjee, I. L. R., 16 Calc., 744*, distinguished. *Latchman Pundeh* v. *Maddan Mohun Shye, I. L. R., 6 Calc., 513*, referred to. RAJBULLUBH SAHAI *v.* JOY KISHEN PERSHAD *alias* JOY LAL

[I. L. R., 20 Calc., 29

11. ———— *Suit on hundi payable at fixed date—Deduction of time former suit prosecuted in Court without jurisdiction.*—On the 14th April 1889, the defendant at Gwalior drew a hundi for R2,500 on his firm at Bombay in favour of *D*, payable forty-five days after date. It was subsequently indorsed at Gwalior by *D* to the plaintiff at Cawnpore, who sent it to the Bank of Bombay at Bombay for collection. It was to become payable on the 1st June 1889, but on the 23rd April 1889 the Bank presented it to the defendant's firm at Bombay for acceptance, which was refused. The Bank thereupon returned it to the plaintiff at Cawnpore, and it was never presented for payment. On the 16th June 1891, the plaintiff filed a suit upon the hundi against the defendant at Cawnpore, but on the 18th March 1893 the plaint was returned to him, the Court holding that it had no jurisdiction. On the 16th April 1893, the plaintiff filed this suit in the High Court of Bombay. The defendant contended that the suit was barred by limitation. *Held* that the suit was not barred by limitation, the plaintiff being entitled to the benefit of s. 14 of the Limitation Act (XV of 1877). RAM RAVJI JAMBHEKAR *v.* PRALHADDAS SUBKARN . **I. L. R., 20 Bom., 133**

12. ———— *Ineffectual appeal proceedings.*—When a person appealed from an award of a Collector under Act XIII of 1848, which appeal was struck off for default of prosecution, and he then sued to set aside the award,—*Held* that the proceeding had not been prosecuted with due diligence, and that limitation commenced to run from the date of the award, and not from the date of the order in the ineffectual appeal proceedings. GHOLAM DARBESH CHOWDHRY *v.* SHAM KISHORE ROY

[W. R., 1864, 378

13. ——————— *Due diligence—Non-production of Collector's certificate.*—The plaintiff brought in 1876 a suit against the defendant in respect of the same cause of action as the present suit. In that suit a certificate of the Collector under s. 6 of the Pensions Act (XXIII of 1871), which was necessary to give jurisdiction to the Court, not having been obtained, the claim was rejected on that ground. *Held,* in the subsequent suit, that the non-production of the Collector's certificate does not necessarily constitute such a want of due diligence on the plaintiff's part as to disentitle him to the deduction of time allowed by s. 14 of the Limitation Act (XV of 1877). PUTALI MEHETI *v.* TULJA

[I. L. R., 3 Bom., 223

14. ——————— *Court having no jurisdiction.*—A deduction of the time a former suit was pending from the period of limitation can only be claimed under s. 14, when the Court before whom the former suit was brought had no jurisdiction and where there has been no adjudication. NUND DOOLAL SIRCAR *v.* DWARKANATH BISWAS **2 W. R., 9**

KALEE CHUNDER CHOWDHRY *v.* RUTTUN GOPAL BHADOOREE . . . . **2 W. R., Mis., 1**

15. ——————— *Deduction of time former suit was pending—Institution of fresh suit before former is disposed of.*—The period during which a suit is pending in a Court not having jurisdiction is to be excluded from the period of limitation provided by Act XIV of 1859, and the fact that the second suit, in bar of which the Act is pleaded, was instituted before the Court not having jurisdiction disposed of the first suit, is immaterial. MORRIS *v.* SAPAMTHEETHA PILLAY . . . . **6 Mad., 45**

16. ——————— *Deduction of time proceedings are prosecuted in Court the order of which is afterwards set aside.*—A period, during which a party to a suit is engaged in prosecuting a claim for wasilat, counts towards limitation if the Court in which the claim is prosecuted has jurisdiction to adjudicate upon it, though its order was reversed as being one which it was beyond the power of the Court to give. PERLADH SEIN *v.* GUNNESS LALL TEWARY . . . **25 W. R., 540**

17. ——————— *Deduction of time claim was being prosecuted in another Court.*—To meet a plea of limitation, a judgment-debtor was held entitled to a deduction of the time occupied by him in prosecuting his claim in the Civil Court according to the directions of the Collector. CHUNDEE ROY *v.* ISREE PERSHAD NARAIN SINGH BAHADOOR

[23 W. R., 274

18. ——————— **and arts. 29, 49**—*Time occupied in prosecuting suit in another Court—Dismissal of suit through defect of jurisdiction or other cause of like nature—Court unable to entertain suit because misconceived.*—Defendants having attached certain goods on 12th June 1895, in execution of a decree obtained by them against *M,* a claim was preferred by plaintiff on 19th June 1895 and disallowed. Plaintiff thereupon brought a declaratory suit on 2nd August 1895 in the City Civil Court, Madras, and obtained an injunction to stop the sale of the goods, which, however, was dissolved on 27th August 1895, the goods being sold on 5th October 1895, while the suit in the City Civil Court was pending. On 4th December 1896, the City Civil Court declared plaintiff to be the sole owner of the property, which decree was upheld by the High Court on 7th February 1898. On 4th December 1897, plaintiff brought a suit in the Court of Small Causes, Madras, to recover from the defendants the goods or their value, which was dismissed on 2nd May 1898. The dismissal was upheld by a Full Bench of the Court of Small Causes on 22nd October 1898 and by the High Court on 13th April 1899. In these decisions it was held that plaintiff's suit was not maintainable. Plaintiff filed the present suit, on 28th April 1899, in the Court of Small Causes, Madras, and claimed that the cause of action had arisen on 7th February 1898, the date on which plaintiff's right to the specific moveable property had been finally declared. He also claimed that the time occupied in the proceedings in the Court of Small Causes should be deducted under s. 14 of the Limitation Act. *Held* that the suit was barred, and that plaintiff was not entitled to have the time spent in prosecuting the previous small cause suit deducted from the period of limitation. That suit had been dismissed, not because the Court, through defect of jurisdiction or other cause of a like nature, was unable to entertain it, but because it was misconceived. MURUGESA MUGALIAR *v.* JATTARAM DAVY

[I. L. R., 23 Mad., 621

19. ——————— *Deduction of time suit was being prosecuted in another Court.*—*L* and *R,* the holders of a patni estate, granted in 1856 a dar-patni lease to *S* at an annual rent, the lease stipulating that *S* should have full power of sale and gift, but should not sublet without the patnidar's consent. The lease contained no stipulation for the registration of any vendee or donee. In 1860 *S* sold the dar-patni lease to *K,* the deed of sale, which was duly registered, providing for mutation of names in the patnidar's books. No such mutation was ever effected by *K,* who was never recognized as their tenant by *L* and *R,* the rent of the dar-patni being paid in the name of *S.* In 1864, the rent due from the patnidars being in arrear, the zamindar proceeded to sell the patni under Regulation VIII of 1819. Thereupon *K,* in order to protect his under-tenure, deposited in the Collectorate on 17th November 1864 a sum of money on which the sale was stayed. *K,* being then in arrear in the payment of his dar-patni rent, claimed to set off the amount deposited in the Collectorate against the rent due to *L* and *R.* This *L* and *R* refused to allow, and they brought a suit in the Collector's Court against *S* and his sureties to recover the arrears of rent. In that suit *K* intervened claiming the benefit of the set-off, to which, however, the High Court on 26th June 1866, on appeal, held that he was not entitled, the deposit being merely a voluntary payment by *K.* On 30th October 1867, *K* brought a regular suit against *S* and *L* and *R* to recover the amount of the deposit, and obtained a decree, but the decision was reversed on appeal, and the suit dismissed for want of jurisdiction. On 6th June 1869 *K* filed his plaint in the proper Court. *Held* that, whether the period of three years under s. 1, cl. 9, of Act XIV of 1859, or of six years as provided by cl. 16, s. 1 of that Act, be the limitation applicable to such a suit, the suit was not barred, inasmuch as *K* was entitled to deduct the time during which he was *bonâ fide* prosecuting with due diligence a suit for the same purpose in a Court not having jurisdiction. LUCKHINARAIN MITTER *v.* KETTRO PAL SINGH ROY

[13 B. L. R., P. C., 146 : 20 W. R., 380
24 W. R., 407 note

Affirming decision of lower Court in KHETTER PAUL SINGH *v.* LUCKHEE NARAIN MITTER

[15 W. R., 125

20. ——————— *Deduction of time suit was being prosecuted in another Court.*—A suit for arrears of rent was brought by the plaintiff in the Revenue Court, but it was held that there being no actual contract between the plaintiff and defendant, and the defendant's liability arising out of equitable considerations with which the Collector's Court could not deal, that Court had no jurisdiction to decide it. In a subsequent suit in the Civil Court,—*Held* the plaintiff was, under s. 14, Act XIV of 1859, entitled to a deduction of the time he was prosecuting his claim in the Revenue Court. PROSONNOCOOMAR PAL CHOWDHRY *v.* MUDDUN MOHUN PAL CHOWDHRY

[11 B. L. R., Ap., 31 note

21. ——————— *Deduction of time suit was being prosecuted in another Court.*—Where a part-proprietor of a talukh, who was also co-sharer in a fractional portion thereof, brought suits in the Revenue Courts against his co-talukhdars for arrears of rent without allowing any deduction on account of his share, which suits were dismissed for want of jurisdiction,—*Held,* in a subsequent suit in the Civil Court for the rent for the same period, that the plaintiff was entitled, under s. 14, Act XIV of 1859, to a deduction of the time during which he was prosecuting his suit in the Revenue Court. GOBINDO COOMAR CHOWDHRY *v.* MANSON

[15 B. L. R., 56 : 23 W. R., 152

22. ——————— *Dismissal of former suit for want of any cause of action.*—Where a former suit was dismissed on the ground that as framed no cause of action was shown against the defendant,—*Held* that the time occupied in prosecuting the former suit could not be excluded when computing the period of limitation. Though the plaintiffs had acted with due diligence in instituting their former suit, it was dismissed, not on any technical ground of misjoinder of parties or of causes of action, but on the substantive ground that, having regard to the frame of the suit, no cause of action had been established against any of the defendants; and the suit was not one which the Court, from defect of jurisdiction or other cause of a like nature, was unable to entertain. COMMERCIAL BANK OF INDIA *v.* ALLAOODDEEN SAHEB . **I. L. R., 23 Mad., 583**

23. ——————— *Defect of jurisdiction, "of other cause of a like nature"—Misjoinder or causes of action—Deduction of time occupied by former suit wrongly instituted.*—A Hindu widow alienated certain property belonging to the estate left by her husband, a moiety of it in favour of one party and a moiety in favour of another, and died on the 22nd June 1878. The reversionary heirs sold a share of the property, and the purchaser brought a suit for recovery of the property alienated by the widow on the 25th April 1890, making the reversionary heirs defendants. On the 19th June 1890 the reversionary heirs were added as co-plaintiffs, and the suit was dismissed on the ground of misjoinder of causes of action on the 19th February 1891. The present suit was then brought for one moiety only of the property on the 23rd February 1891, and deduction of the time taken up by the previous proceeding was claimed. *Held* that, when a suit is instituted upon distinct causes of action against different sets of defendants severally, the Court may fairly be said to be "unable to entertain it" from a cause of a "like nature" with defect of jurisdiction. *Held* also that s. 14 of the Limitation Act (XV of 1877) applied to this case, and that the plaintiffs were entitled to deduct the time during which they were prosecuting the former suit, and the present suit was not barred by limitation. MULLICK KEFAIT HOSSEIN *v.* SHEO PERSHAD SINGH . **I. L. R., 23 Calc., 821**

24. ——————— *Exclusion of time of former suit without jurisdiction.*—In 1892 a suit was instituted in the Presidency Court of Small Causes against defendants not resident within the jurisdiction, the leave of the Registrar of the Court having been first obtained. Subsequently it was ruled that the Registrar was not empowered to give such leave, and the suit was dismissed. A similar suit was then instituted, the leave of the Court having been first obtained. *Held* that the time during which the first suit was pending should be deducted in the computation of the period of limitation applicable to the second suit. SUBBARAU NAYUDU *v.* YAGANA PANTULU . . **I. L. R., 19 Mad., 90**

25. ——————— *Cause of like nature—Misjoinder of causes of action—Want of leave under Civil Procedure Code, s. 44.*—In March 1891, the plaintiff sued the defendant to recover the sum of money due on the taking of an account between the plaintiff and the defendant, who was his agent, and to recover possession of certain land. The plaintiff did not obtain leave under the Civil Procedure Code, s. 44, for the institution of this suit, which was accordingly dismissed for misjoinder of causes of action. The plaintiff now instituted, on the 5th April 1893, two suits, the one for the money and the other for the land. *Held* that the plaintiff was entitled, under the Limitation Act, s. 14, to have the time occupied in the previous proceedings deducted in the computation of the period of limitation applicable to his suit for money, which accordingly was not barred by limitation. VENKITI NAYAK *v.* MURUGAPPA CHETTI . . **I. L. R., 20 Mad., 48**

26. ——————— *Suit instituted in wrong Court—Bonâ fide mistake of law.*—S. 14 of the

Limitation Act, 1877, applies to a case where a plaintiff has been prosecuting his suit in a wrong Court in consequence of a *bonâ fide* mistake of law. *Sitaram Paraji* v. *Nimba, I. L. R., 12 Bom., 320; Huro Chunder Roy* v. *Surnamoyi, I. L. R., 13 Calc., 266;* and *Krisna* v. *Chathappan, I. L. R., 13 Mad., 269,* referred to. *Ramjiwan Mal* v. *Chand Mal, I. L. R., 10 All., 587,* considered. BRIJ MOHAN DAS *v.* MANNU BIBI . **I. L. R., 19 All., 348**

27. —————— *Bonâ fide mistake of law —Rejection of appeal on ground of limitation.*— That a *bonâ fide* mistake of law upon a doubtful point of jurisdiction of procedure as much entitles a person to the benefit of s. 14 of the Limitation Act as a *bonâ fide* mistake of fact. *Brij Mohan Das* v. *Mannu Bibi, I. L. R., 19 All., 348,* referred to. Where a sale under Act VII of 1880 was confirmed on the 28th May 1894 and an appeal to the Commissioner was rejected as being out of time and a suit was subsequently instituted in the Civil Court to set aside the sale on the 29th of July 1895,—*Held* (BANERJEE and PRATT, *JJ.*, in referring the case to a full Bench) that the mere fact of the Commissioner having rejected the appeal on the ground of limitation is not sufficient to disentitle the plaintiff to the deduction of time under s. 14 of the Limitation Act during which that appeal was pending. But it is for the Court, before which the question whether this suit is barred by limitation is raised, to determine whether the appeal was really out of time or failed from defect of jurisdiction or other cause of a like nature. The appeal to the Commissioner being in this case clearly out of time, it was held by the Court that the appeal had failed for reasons other than "defect of jurisdiction or other cause of a like nature" and was accordingly outside the scope of s. 14 of the Limitation Act. BISHAMBHAR HALDAR *v.* BONAMALI HALDAR . . **3 C. W. N., 233**

28. —————— *Exclusion of time of proceeding bonâ fide in Court without jurisdiction—Misjoinder of causes of action—"Cause of a like nature."*—Two suits were brought for partition of the property of a deceased by his heirs under the Mahomedan Law—the first, by his widow and six children in the Court of the Subordinate Judge; the second, by two other children by his first wife, in the Court of the District Munsif, from which Court it was transferred to the Court of the said Subordinate Judge. The Subordinate Judge having ruled that the plaintiffs in each suit were not entitled to sue jointly, the plaints were permitted to be amended. The first plaint was accordingly re-presented in the subordinate Court as that of the widow; the second, also, in the subordinate Court, as that of the first child of the first wife; and seven further plaints were filed in the subordinate Court on behalf of the remaining children, respectively. These seven further plaints were unstamped. Six of them, presented by the widow's children, stated explicitly that the duty payable thereon was included in that already paid on the widow's plaint, which sum correctly represented the duty payable on the footing that the share of each formed a distinct subject-matter. All the plaints were by order placed on the file of the District Munsif's Court. The plaints were at first treated at the Munsif's Court as being duly stamped, though payment of fresh Court-fees was subsequently ordered after the expiration of the period of limitation. The deceased had died in 1882; the two original suits had been filed in 1893 and 1894, respectively—within twelve years of his death; and the two amended suits and the seven fresh plaints had been filed in December 1894, more than twelve years from his death. *Held* (on the question of limitation) that the suits by the two children of the first wife were not barred, as they should be treated as a continuation of their original joint claim, which had been instituted in the same Court before the period of limitation had expired. That where there has been a misjoinder which has precluded a Court from entertaining a suit, the period during which such suit has been prosecuted diligently and in good faith may be deducted in computing the period of limitation; the inability of the Court to entertain a suit combining causes of action which could not be combined, being covered by the words "from other cause of a like nature,"—in s. 14 of the Limitation Act. That with reference to the widow's amended suit, inasmuch as her original suit (on behalf of herself and her six children) had been filed before the period of limitation had expired and had been prosecuted diligently and in good faith, the time during which that original suit had been pending must be deducted and her amended suit held to be not barred. That for similar reasons a like deduction should be made in favour of the six fresh suits of her children (unless a contrary decision were necessitated by the fact that their plaints had remained unstamped until after the expiration of the extended period of limitation). ASSAN *v.* PATHUMMA

[I. L. R., 22 Mad., 494

29. —————— *Execution by Collector—Application to Collector to set aside sale—Civil Procedure Code (Act XIV of 1882), ss. 244, 310A, 311, and 320.*—A decree passed against the applicant *N* was transferred for execution to the Collector under s. 320 of the Civil Procedure Code (Act XIV of 1882). On the 8th May 1897, the Collector in execution sold certain property belonging to the applicant, which was purchased by the respondents. On the 17th May 1897, the applicant applied to the Collector to set aside the sale on the ground of alleged irregularities, and the Collector, having referred the matter to the Mamlatdar for report, forwarded the record to the Court on 30th July 1897. On the 6th August 1897, the applicant, fearing that he had not applied to the proper Court, applied to the Subordinate Judge to set aside the sale, framing his application both under s. 310A and s. 311 of the Civil Procedure Code. He contended that, under s. 14 of the Limitation Act (XV of 1877), his application was not barred. *Held* that the application was barred by limitation. Under the rules made by the Government of Bombay under s. 320 of the Civil Procedure Code, the Collector had no jurisdiction. There was therefore no *bonâ fide* mistake of jurisdiction such as would justify the Court in excluding the time occupied in applying to the Collector from the period of limitation. Under the rules made by the Local Government of the Bombay Presidency, a Collector has not the power of the Court, under s. 311 of the Civil Procedure Code, to set aside a sale. NARAYAN *v.* RASULKHAN . . **I. L. R., 23 Bom., 531**

30. ——— *Deduction of time suit was being prosecuted in another Court.*—The plaintiff sued under Act X of 1859 in the Revenue Court to recover her share of certain arrears of rent due from the defendants on a kabuliat executed by them in favour of the plaintiff's mother, but her suit, on the objection by the defendants that her co-sharer was not a party, was dismissed by the Collector, and his decision was upheld by the High Court on appeal on 3rd July 1861. The plaintiff then brought a fresh suit under Act X of 1859, making her co-sharer a party defendant, but the suit was again dismissed, and the dismissal upheld by the High Court on 14th April 1870 on the ground that the plaintiff's share was not her own, and therefore the Collector's Court had no jurisdiction to determine any question of right as between her and her co-sharer. In a suit brought in the Civil Court on 31st May 1870 for a moiety of the rents from 1864 to 1869,—*Held* it was not a suit for an arrear of rent as that term is defined in s. 21, Bengal Act VIII of 1869, and s. 29 of that Act would not apply. The limitation applicable was that provided by Act XIV of 1859, under s. 14 of which Act the plaintiff was entitled to deduct the time during which she was *boná fide* prosecuting her claim in the Revenue Courts. HARIS CHANDRA DUTT *v.* JAGADAMBA DASI

[8 B. L. R., 190 note: 16 W. R., 61

31. ——— *Certificate granted by Collector under the Public Demands Recovery Act, Suit to set aside.*—Where rent was payable jointly to certain wards of Court, and another proprietor, whose guardianship under the Court of Wards had ceased, and the Collector issued a certificate, under Bengal Act VII of 1880, for a proportionate share of the rent due to the wards, in a suit to set the certificate aside as invalid, the plaintiff was allowed, under s. 14 of the Limitation Act, to deduct the period during which he was *boná fide* seeking redress from the Revenue authorities, who had no jurisdiction to deal with the questions raised by him, and the suit was held to be not barred by lapse of time. GIRJANATH ROY CHOWDHRY *v.* RAM NARAIN DAS

[I. L. R., 20 Calc., 264

32. ———*Deduction of time plaintiff was prosecuting another suit.*—Plaintiff as payee of an order drawn by defendant at Ahmedabad, where he (defendant) resided, on a firm at Bankok in Siam, and dishonoured on presentation, sued defendant and an agent of the Bankok firm who resided at Surat in the Subordinate Judge's Court at Surat. Permission to proceed with the suit against the defendant (the drawer) having been refused by the High Court, plaintiff withdrew his plaint and filed his suit in the Court at Ahmedabad against the drawer alone. The Subordinate Judge rejected the claim as barred by limitation. *Held* by the High Court in appeal that under s. 15 of the Limitation Act (IX of 1871) a deduction might properly be made of the time during which the suit was pending in the Court at Surat, and that the deduction on this account was to run from the filing of the plaint to the final refusal of the High Court to allow the suit to proceed at Surat against the drawer (defendant). SHETH KAHANDAS NARANDAS *v.* DAHIABHAI

[I. L. R., 3 Bom., 182

33. ——— *Summary decree—Calculation of period of limitation.*—A plaintiff is not bound to sue to enforce a summary decree against the immoveable property of the defendant pending a regular suit brought by the defendant in the Civil Court to set aside the summary decree. Limitation will count not from the date of the summary decree, but from the date at which the suit, brought in the nature of an appeal to set aside that decree, is determined. GYAN CHUNDRA ROY CHOWDHRY *v.* KALEE CHURN ROY CHOWDHRY . . **7 W. R., 48**

34. ——— *Deduction from period of limitation of time during which former suit was pending—Application for execution of decrees.*—In computing the period of limitation, for a suit to set aside a summary order, the time during which the judgment-creditor was prosecuting another suit to obtain a reversal of the order dismissing his application for execution of decree and for attachment of the property of the judgment-debtor cannot be deducted. KRISHNA CHETTY *v.* RAMI CHETTY

[8 Mad., 99

35. ——— *Computation of period of limitation—Exclusion of time while prosecuting suit in Court without jurisdiction.*—On the 26th August 1878 *R* and *B* joined in instituting a suit in the Court of the Subordinate Judge, the period of limitation of which expired on the 21st September 1878. This suit was transferred to the District Court, which on the 16th September 1878 returned the plaint to the plaintiffs on the ground that they should have sued separately. On the 23rd September 1878 *R* presented a fresh plaint to the District Court, which, on the 1st October 1878, made an order rejecting it, on the ground that he should have instituted the suit in the Court of the Subordinate Judge. *R* appealed from this order to the High Court, which affirmed it on the 28th January 1879, but observed that the plaint should be returned to *R*. On the 10th April 1879 *R*'s plaint was returned to him, and on the same day he presented it to the Subordinate Judge. *Held* that, in computing the period of limitation, *R* could not claim to exclude any other period than from the 23rd September 1878 to the 10th April 1879, for from the 26th August 1878 to the 16th September 1878 he was prosecuting his suit in a Court which had jurisdiction, and the inability of that Court to entertain it did not arise from defect of jurisdiction or any cause of the like nature, but from misjoinder of plaintiffs — a defect for which he must be held responsible; and from the 16th to the 23rd September he was not prosecuting his suit in any Court, and could not claim to have that period excluded. RAM SUBHAG DAS *v.* GOBIND PRASAD . . **I. L. R., 2 All., 622**

36. ——— *Exclusion of time former suit was being prosecuted—"Other cause of a like nature."*—The words "other cause of a like nature" in s. 14 of the Limitation Act (XV of 1877) mean some cause analogous to defect of jurisdiction. Where a suit was dismissed on the ground that the debt sued for was due not to the plaintiff alone, but to the plaintiff and his partner, the latter not having been joined in the suit; and where the plaintiff subsequently brought a fresh suit for the same debt, making his co-partner a party,—*Held* that the case was not within s. 14 of the Limitation Act, and that the time during which the plaintiff had been prosecuting the former suit could not be excluded in computing the period of limitation prescribed for the second suit. *Ram Subhag Das* v. *Gobind Prasad, I. L. R., 2 All., 622,* and *Chunder Madhub Chuckerbutty* v. *Ram Coomar Chowdry, 6 W. R., 184,* referred to. *Deo Prasad Singh* v. *Pertab Kairee, I. L. R., 10 Calc.,* 86, not followed. JEMA *v.* AHMAD ALI KHAN **I. L. R., 12 All., 207**

37. ———— *Previous suit—Deduction of time.*—In August 1885 the plaintiff and defendant entered into an agreement of partnership in a certain venture. On the 2nd September 1887 the plaintiff filed a suit against the defendant in a District Munsif's Court to recover his share of the profits under the agreement. In his evidence the plaintiff stated that there had been a settlement of the accounts between himself and defendant. The suit was thereupon dismissed as being cognizable by the Court of Small Causes, and the plaint was returned on the 1st March 1889. On the 27th the plaint was filed in the Court of Small Causes, an addition having been made to it. The Court held that the addition was irregular, and on the 19th November permitted the plaintiff to withdraw his suit with permission to bring a fresh one. He accordingly instituted the present suit on 6th December 1889. *Held* that in computing the period of limitation, the period from 2nd September 1887 to 1st March 1889 should be deducted under Limitation Act, s. 14. SAMINADHA *v.* SAMBAN **[I. L. R., 16 Mad., 274**

38. ———— *Deduction of time suit was being prosecuted in another Court.*—Where *A* brought a suit in the Munsif's Court, and it was found that the suit had been improperly valued, and that the Munsif had no jurisdiction to try it, and the Munsif returned the plaint in order that the suit might be brought in the proper Court,—*Held* that *A* was entitled to deduct from the period of limitation the time during which he had prosecuted his suit in the Munsif's Court, and under s. 14, Act XIV of 1859, his suit was not barred. CHANDI DASI *v.* JANAKIRAM . . . **1 B. L. R., S. N., 12**

Contra, SHAM KANT BANERJEE *v.* GOPAL LAL TAGORE . . . . . **1 W. R., 328**

39. ———— *Deduction of time suit was in wrong Court through being overvalued.*—A suit was instituted in the Court of the Subordinate Judge, who, after seven months, returned the plaint to be filed in the Munsif's Court on the ground that the suit had been overvalued. There was nothing to show want of *bonâ fides* in the plaintiff's instituting the suit in the Court of the Subordinate Judge. *Held* that, in computing the period of limitation prescribed for the suit, the time during which the plaint was on the file of the Subordinate Judge's Court must be deducted. OBHOY CHURN NUNDI *v.* KRITARTHAMOYI DOSSEE . **I. L. R., 7 Calc., 284**

40. ———— *Deduction of time occupied by former suit—Omission to obtain registered certificate—"Cause of like nature."*—At a Court sale held on the 15th November 1871, in execution of a decree, the plaintiff's deceased husband purchased a house, but neglected to register his sale certificate. In attempting to recover possession he was obstructed by the defendant, who claimed the property as her own. Summary proceedings under s. 269 of Act VIII of 1859 were thereupon instituted against the defendant, and the defendant's claim was upheld by an order passed on the 7th November 1872. In the meantime the plaintiff's husband having died, plaintiff filed, on the 31st March 1873, a regular suit to establish her title. On the 8th July 1873 she obtained a second certificate, and registered it. The Court of first instance awarded her claim, but on appeal by the defendant the lower Appellate Court reversed that decree, on the ground that, at the institution of the suit, plaintiff had not a registered certificate of sale. That decree was confirmed on the 17th November 1879, on second appeal, by the High Court. On the 30th April 1880 plaintiff brought this suit on the strength of her registered certificate. The Court of first instance allowed her claim. The defendant appealed, and the lower Appellate Court held her suit not maintainable. On appeal by plaintiff to the High Court,—*Held* the suit was barred. The plaintiff was not entitled to a deduction of the time during which she was unsuccessfully prosecuting the former suit, inasmuch as her inability to produce a registered certificate was not a "cause of a like nature," to want of jurisdiction within s. 14 of Act XV of 1877. BAI JAMNA *v.* BAI ICHHA . **I. L. R., 10 Bom., 604**

41. ———— *"Prosecuting"—"Good faith"—"Other cause of a like nature"—Limitation Act, Construction of.*—In October 1881 an account was struck between *K* and *M,* and a sum of R1,457 was agreed between them to be the correct balance then due by the latter to the former. Of this amount a sum of R885 was paid. In March 1885 *K* sued *M* for the balance of R600 then due on the account stated. The plaintiff claimed the benefit of s. 14 of the Limitation Act (XV of 1877) as suspending the running of limitation during the pendency of a former suit which he had prosecuted against the defendant in 1884 and 1885, and which had been dismissed on the merits. That was a suit for the redemption of certain zamindari property on which the defendant held a mortgage, and the plaintiff claimed in that suit that the amount of the balance due by the defendant on the account stated should be deducted from the mortgage-money under an oral agreement entered into by the parties in October 1881. *Held* that the plaintiff could not be said to have formerly prosecuted his remedy in respect of the items now claimed in a Court, which, for want of jurisdiction or other cause of a like nature, was unable to entertain it; that the provisions of s. 14 of the Limitation Act therefore were not applicable; and that the suit was barred by limitation. *Per* STRAIGHT, *Offg. C.J.*—The former suit was not founded upon the same cause of action as the present, inasmuch as it was founded upon the alleged oral agreement and not upon the account stated. *Per* MAHMOOD, *J.*—The Courts of British India in applying Acts of Limitation are not bound by the rule established by a balance of authority in England, that statutes of this description must be construed strictly. On the contrary, such Acts, where their language is ambiguous or indistinct, should receive a liberal interpretation, and be treated as "statutes of repose" and not as of a penal character or as imposing burdens. *Roddam* v. *Morley, 26 L. J. Ch., 438; Ali Saib* v. *Sanyairaz Peddabaliyra Simhula, 3 Mad., 5; Empress* v. *Kola Lalang, I. L. R., 8 Calc., 214; Beil* v. *Morrison, 7 Peters (U. S), 360; Keramut Hossein* v. *Gulab Koonwar, 3 W. R., 101;* and *Muhummad Bahadoor Khan* v. *Collector of Bareilly, L. R., 1 I. A., 167,* referred to. MANGU *v.* LAL KANDHAI LAL . **I. L. R., 8 All., 475**

42. ———— *Prosecution of appeal bonâ fide.*—The time during which a plaintiff prosecutes an appeal *bonâ fide* and with due diligence, as well as that during which he prosecutes his case in the Court of first instance, must be deducted in computing the period of limitation. SHUMBHOONATH BISWAS *v.* KISTO DHUN SIRCAR **[5 W. R., S. C. C. Ref., 8**

43. ———— *Deduction of period appeal was pending.*—Where a suit is brought and dismissed for want of jurisdiction, and an appeal is preferred in which the first decree is affirmed, if a suit be afterwards brought in the right Court, the period which elapsed between the decision of the first Court and the disposal of the appeal should be excluded in computing the period of limitation prescribed by Act XIV of 1859. RAJ KISTO ROY *v.* BEER CHUNDER JOOBRAJ . . **6 W. R., 308**

44. ———— *Deduction of time suit was pending in wrong Court.*—Where a suit, prosecuted *bonâ fide* and with due diligence, was dismissed in appeal for want of jurisdiction in the Court of first instance, and a second suit was afterwards brought in a right Court,—*Held* that, in computing under s. 14 of Act XIV of 1859 the period of limitation of the suit, the time between the decree of the Court of first instance and the institution of the appeal should be excluded. AJOODHYA PERSHAD *v.* BISHESHUR SAHAI . . . **6 N. W., 141**

45. ———— *Deduction of time—Prosecution of suit in another Court.*—A bond-suit was filed in a Munsif's Court on the day on which the Court re-opened after the Dusserah vacation, during which the period of limitation expired as regards the payment of the bond-debt. The Munsif decreed the suit; but the Subordinate Judge in appeal found that the Munsif had no jurisdiction, and ordered him to return the plaint. This was done, and the plaint was filed in the Small Cause Court on the same day. The defendants pleaded limitation. *Held* that, under Act IX of 1871, s. 15, the plaintiff was entitled to exclude the time during which he had been prosecuting the suit in the regular Court up to the date of the lower Appellate Court's judgment, but not the time during which he waited to get the plaint back. ABHAYA CHURN CHUCKERBUTTY *v.* GOUR MOHUN DUTT . . . . . **24 W. R., 26**

46. ———— *Suit not against same defendants.*—A former suit brought, not against the same defendants, but only against one of them, did not fall within s. 14, Act XIV of 1859; consequently the time of its pendency could not be deducted in computing limitation in a subsequent suit. NILMADHUB SURNOKAR *v.* KRISTO DOSS SURNOKAR **[5 W. R., 281**

47. ———— *Deduction of time suit was being prosecuted in another Court.*—The question whether the plaintiff is entitled, in computing the period of limitation, to deduct the time occupied in prosecuting a former suit, depends in the first place upon the question whether the former suit was brought upon the same cause of action as the new suit. Where the plaintiff brought two suits, one against one branch of the family and the other against another branch, to recover a share of that portion of the property which was in the possession of each, and these suits were rejected on the ground of their having been improperly brought, it was held that in bringing a consolidated suit against all sharers for a general partition the plaintiff was not entitled to deduct the time occupied in prosecuting his former suits. JOITARAM BECHAR *v.* BAI GANGA **[8 Bom., A. C., 228**

48. ———— *Deduction of time suit is being prosecuted in Court without jurisdiction.*—Under a decree made in a suit brought by *A* against *B*, *A* obtained possession of certain property. The decree was reversed on appeal, but no order was made by the Appellate Court with regard to mesne profits. After such reversal, *B* applied to and obtained an order from the Court of first instance for possession and mesne profits. This order, so far as it awarded mesne profits, was set aside by the High Court as being an order he had no power to make, no right to mesne profits having been declared by the Appellate Court, and as being made "altogether without jurisdiction;" they held that *B* should have applied to the Appellate Court which reversed the decree, or should have brought a separate suit for the mesne profits. An application for review of this judgment being rejected, *B* instituted a suit for such mesne profits. *Held per* PEACOCK, *C.J.*, KEMP and MACPHERSON, *JJ.* (LOCH, *J.*, dissenting), that in the proceedings taken by *B* in the former suit to obtain the mesne profits she was engaged in prosecuting a suit upon the same cause of action against the same defendant within the meaning of s. 14, Act XIV of 1859. HURRO CHUNDER ROY CHOWDHRY *v.* SOORADHONEE DEBIA **[B. L. R., Sup. Vol., 985: 9 W. R., 402**

49. ———— *Presentation of plaint in wrong Court—Madras Boundary Act, s. 25.*—In 1883 a plaint, by way of appeal from a decision purporting to be passed under s. 25 of the Boundary Act, was presented to the Court of a District Munsif and returned on the ground that the subject-matter of the suit was beyond the jurisdiction of the said Court. The plaint was then filed in the District Court more than two months after the date when the decision of the Boundary Settlement Officer was communicated to the parties. *Held* that s. 14 of the Limitation Act, 1877, applied, and that the suit was not barred by limitation. SESHAMA *v.* SANKARA

[I. L. R., 12 Mad., 1

50. ———— *Proceedings bonâ fide prosecuted in a Court without jurisdiction—Rent Recovery Act (Mad. Act VIII of 1865), s. 78.*—A landlord not having tendered a legal pottah to his tenant made a demand on him as for rent, and on his refusal to pay attached his holding. The tenant, to release the attachment, paid the sum demanded under-protest on 23rd September 1885. On 22nd March 1886 the tenant filed a suit on the Small Cause side of the District Munsif's Court to recover the amount so paid: that suit was dismissed for want of jurisdiction on 2nd September 1886. On the last-mentioned date the tenant filed the present suit on the same cause of action. *Held* the suit was not barred by limitation under the six months' rule in s. 78 of the Rent Recovery Act by reason of the provisions of s. 14 of the Limitation Act, 1877. KULLAYAPPA *v.* LAKSHMIPATHI

[I. L. R., 12 Mad., 467

51. ———— *Execution of time during which former suit was pending—Suit to set aside order—Limitation Act, 1877, art. 11.*—Under a decree obtained against the karnavan and anandravan of a Malabar tarwad, a suit was brought on 8th August 1884, to declare that a sale in execution was not binding on the tarwad. The present plaintiffs being members of the tarwad intervened in execution of the decree, but their claim was dismissed on 5th September 1882. On the 27th September 1882, they filed a suit in the Court of the District Munsif, praying for the relief now sought. The District Munsif dismissed the suit on the ground that he had no jurisdiction. On appeal the District Judge made an order directing him to dispose of it, which he accordingly did, and he passed a decree against which an appeal was pending on 17th August 1883. But on the last-mentioned date the High Court set aside the order of the District Judge and directed him to ascertain the market value of the land and make a fresh order, and the enquiry, directed by the High Court, did not terminate until 30th October 1883, when another order was made by the District Judge by which the original decision of the District Munsif was confirmed. *Held* that under s. 14, expln. 1 of the Limitation Act, the prior suit terminated only on the 30th October 1883, and that the present suit was not barred, under sch. II, art. 11. SANKARAN *v.* PARVATHI . . . **I. L. R., 12 Mad., 434**

52. ———— *Deduction of time spent in another litigation in respect of the same subject-matter—Mistake of law.*—*A* obtained a decree against *B* as the heir and legal representative of his deceased uncle *C*. The decree directed that the amount adjudged should be recovered from *C's* assets in the hands of *B*. In execution of this decree, certain property was attached. *B* claimed this property as his own, and sought to remove the attachment, but the Court passed an order confirming the attachment on the 20th November 1880. In 1881 *B* filed a regular suit to set aside this order. The suit was dismissed in 1885, as barred by s. 244 of the Civil Procedure Code (Act XIV of 1882). Thereupon *B* filed an appeal from the order in execution made on the 20th November 1880. This appeal was rejected as time-barred under art. 152 of sch. II of Limitation Act (XV of 1877). *Held* that the time spent in the actual proceedings in the suit to set aside the order in execution might be deducted in computing the delay that occurred before the appeal was filed. But the plaintiff was not entitled to a deduction of the time that intervened between the date of the order appealed against and the date of filing the suit. SITARAM PARAJI *v.* NIMBA VALAD HARISHET

[I. L. R., 12 Bom., 320

53. ———— *Exclusion of time taken up in prosecuting former suit eventually withdrawn—Civil Procedure Code, 1882, s. 374.*—On the sale of certain thikans in execution of decrees against his father, the plaintiff intervened, and obstructed the auction-purchasers in obtaining possession. His obstruction was, however, removed by an order of the Court, dated 23rd October 1873. In a suit which was filed in 1883, for partition of the ancestral property and possession of his share,—*Held* that the suit not having been brought within one year from the date of that order, as required by the law then in force, the claim was clearly time-barred. The plaintiff was not entitled to a deduction of the time taken up in prosecuting a former suit, which was filed in 1872 and disposed of in 1883; as that suit did not fail for want of jurisdiction or any defect of a like nature such as is contemplated by s. 14 of the Limitation Act (XV of 1877), but was withdrawn by the plaintiff himself for want of parties, with liberty to bring a fresh suit. S. 374 of the Code of Civil Procedure (Act XIV of 1882) therefore applied to the present case. KRISHNAJI LAKSHMAN *v.* VITHAL RAVJI RENGE . . **I. L. R., 12 Bom., 625**

54. ———— *Appeal preferred to wrong Court through mistake of law—Exclusion of time.*—S. 14 of the Limitation Act (XV of 1877) does not contemplate cases where questions of want of jurisdiction arise from simple ignorance of the law, the facts being fully apparent, but is limited to cases where from *bonâ fide* mistake of fact the suitor has been misled into litigating in a wrong Court. The phrase "other cause of a like nature" in a section is vague, and cannot be held to release a person from the obligation to know the law of the land. *Balwant Singh* v. *Gumani Ram, I. L. R., 5 All., 591,* explained. RAMJIWAN MAL *v.* CHAND MAL

[I. L. R., 10 All., 587

55. ———— *Suit for rent from alleged mal land—Deduction.*—Where a plaintiff claims rent on account of lands as mal from defendants, who set up a lakhiraj title and produced lakhiraj sanads in support, he has first of all to prove that he has collected rents from the lands as mal within twelve years of the suit; and in calculating the period of limitation, the plaintiff is not entitled to deduction on account of the periods of pendency of suits for rent and for small portions for the land, they not being suits for the same cause of action. PRODHAN GOPAUL SINGH *v.* BHOOP ROY OJHA [9 W. R., 570

56. ———— *Deduction of time suit is pending in Court without jurisdiction.*—Where limitation is pleaded, a plaintiff was not entitled, under s. 14, Act XIV of 1859, to deduction for the time of the pendency of a suit brought by defendants upon the same cause of action, if it was not a suit in which the Courts were unable to decide the question from defect of jurisdiction or other such cause. OODOYMONEE DABEE *v.* BISHONATH DUTT . 9 W. R., 455

57. ———— *Deduction of time suit was pending.*—In a suit by an executrix, to recover, under deeds of mortgage and sale, dated, respectively, October 1837 and April 1840, executed to the testator by first defendant's deceased husband, certain villages which first defendant in 1848 and 1851 mortgaged to second and third defendants, the defendants pleaded that the suit was barred by lapse of time. For the plaintiff it was contended that the operation of the Limitation Act was suspended from 1844 until 1867, by reason of the pendency of an equity suit, commenced by bill filed by the present first defendant against the testator, to set aside the deeds of October 1837 and April 1840, which bill was dismissed by consent in June 1867. *Held* (reversing the decision of the lower Court) that these proceedings had no such effect; that the plaintiff might have brought a suit for ejectment at any time; and that the present suit was barred. TRANQUEBAR SAMI AYYAN *v.* NATHAMBEDU AMMAI AMMAL . 6 Mad., 234

58. ———— *Deduction of time during which former suit for rent was pending which was dismissed for non-joinder of parties.*—In suits by the Receiver of the Tanjore estate to recover rent due under muchalkas executed by defendants, the mirasidars of certain villages, agreeing to take the villages on rent for five Faslis, from 1273 to 1277, at an annual rent, the defendants pleaded limitation as to part of the rent claimed. The plaintiff claimed to be entitled to the advantage of s. 14 of that Act, because he was for a time prosecuting suits against defendants separately for the arrears of rents alleged to be barred, all which suits were dismissed on the ground that plaintiff could not sue the defendants separately while they had executed the muchalka jointly. The District Judge found for the defendant on the questions on the Act of Limitations. *Held*, on appeal, that the period of limitation applicable to a suit for rent was three years (under Act XIV of 1859), and that, as to the claim to the exception under s. 14, it failed at every turn. The cause of action was not the same, for there the obligation sued upon was several, here it is joint; and the Court which decided the former suits not only did not fail to decide them, but did decide them. MORRIS *v.* SIVARAMAYYAN . . . 7 Mad., 242

59. ———— *Deduction of time former suit was pending.*—Where a plaintiff sues upon his jenm title, having previously instituted a suit in which he unsuccessfully set up his kanam right, the latter suit cannot avail to prevent the Statute of Limitations from running against him. PARAKUT ASSEN CUTTY *v.* EDAPALLY CHENNEN [2 Mad., 266

60. ———— *Meaning of "suit"—Appeal forbidden by law—Good faith.*—*Held* that the word "suit" used in s. 14, Act XIV of 1859, had only one, and that the common and ordinary sense of the term. *Held*, further, that the plaintiff, in preferring an appeal from a summary order, which appeal was expressly forbidden by law, could not be considered to have been prosecuting a suit within the meaning of s. 14, and was therefore not entitled to the indulgence given by the aforesaid section, even assuming that section to be applicable to suits to contest the order under s. 246, Act VIII of 1859. FUTTEH RAM *v.* MONOHUR LALL . 3 Agra, 3

61. ———— *Deduction of time for appeal from order under s. 246, Civil Procedure Code, 1859.*—An unsuccessful claimant, instead of bringing a regular suit to establish his right as provided by s. 246, Act VIII of 1859, chose to file an appeal against the order rejecting his claim. His appeal, though successful before the lower Appellate Court, having been thrown out in special appeal, as illegal under the section above cited, he sued to set aside the order rejecting his claim. *Held* that he was not entitled, under s. 14, Act XIV of 1859, to deduct from the period of limitation the time during which the appeal proceedings were pending. RAMDASS BABOO *v.* WATSON . . W. R., 1864, 371

62. ———— *Suit brought in wrong Court.*—Where a plaintiff, relying upon the defendant's representation as to the latter's place of residence, brought his suit in a Court which had not jurisdiction, the time of the pendency of the suit in such Court was held to be properly excluded under s. 14, Act XIV of 1859, in computing limitation. BANEE MADHUB LAHOREE *v.* BIPRO DASS DEY [15 W. R., 69

The words "or other cause of a like nature," in s. 14, exclude many of the causes which were held to come within the meaning of the corresponding section of the Act of 1859.

63. ———— *"Other cause."*—The words "or other cause" in s. 14, Act XIV of 1859, applied to cases where the action of the Court was prevented by causes not arising from laches on the part of the plaintiff,—in other words, by accidental circumstances beyond his control. LUCHMUN PERSHAD *v.* NIMHOO PERSHAD . . 17 W. R., 266

RAMAKRISTNACASTRULU *v.* DARBA LAKSHMIDEVAMMA . . . . . 1 Mad., 320

as where the former suit had been dismissed as not having been brought in proper form. KERAMUT HOSSEIN *v.* GOLAP KOONWAR . 3 W. R., 101

64. ———— *Other causes of a like nature—Suit wrongly non-suited.*—Where a suit was non-suited wrongly on a point unconnected with jurisdiction, it was held in a subsequent suit that the time could not be deducted. DHUNMONEE CHOWDHRAIN *v.* BRINDABUN CHUNDER SIRCAR CHOWDRY

[7 W. R., 160

65. ———— *Other causes of a like nature—Suit against wrong party.*—For litigation against a wrong party no deduction can be allowed. MUNNA JHUNNA KOONWAR *v.* LALJI ROY

[1 W. R., 121

KAVASJI SOREBJI *v.* BARJORJI SORABJI

[10 Bom., 224

66. ———— *Suit on bond against obligor missing—Subsequent suit against his representatives on presumption of his death.*—S. 14 of the Act of 1859 was held to apply to a case in which the plaintiff was unable, after due diligence, to procure due service upon the defendant of the summons to appear and answer the claim, and consequently to prosecute the suit to a decision, and would, where a suit on a bond had been afterwards brought against the representatives of the obligor on presumption of his death, prevent the suit from being barred. KARUPPAN CHETTI *v.* VERIYAL . **4 Mad., 1**

67. ———— *Deduction of time in suit by adoptive son to set aside alienation by mother.*—No deduction from the period of limitation can be allowed to the adopted son for a period of pendency of suits brought by or against him, to prove or disprove the validity of his adoption. KISHEN MOHUN KOOND *v.* MUDDUN MOHUN TEWAREE

[5 W. R., 32

68. ———— *Suit for mesne profits.*—In a suit for mesne profits, the Limitation Act allows no deduction for the pendency of the suit for possession. The only deduction which that Act allows is for the pendency of a suit not adjudged on its merits owing to some objection as to jurisdiction, etc. ISSUREENUND DUTT JHA *v.* PARBUTTY CHURN JHA **3 W. R., 13**

69. ———— *Mesne profits.*—Plaintiff sued for, and recovered possession of, land. He afterwards sued for mesne profits. *Held per* PEACOCK, *C.J.*, and NORMAN and SETON-KARR, *JJ.* (*dissentiente* STEER, *J.*) that under Regulation III of 1793, s. 14, the plaintiff was entitled to recover mesne profits for twelve years prior to suit, excluding from such computation the period of the pendency of the suit for possession from the date of the plaint till the final decree. ANNADA GOBIND CHOWDHRY *v.* SWARNAMAYI. ABHAY GOBIND CHOWDHRY *v.* SWARNAMAYI . . **B. L. R., Sup. Vol., 7**

S. C. UNNODA GOBIND CHOWDHRY *v.* SURNOMOYEE. OBHOY GOBIND CHOWDHRY *v.* SURNOMOYEE

[W. R., F. B., 163

70. ———— *Deduction of period occupied by suit annulled from defect in jurisdiction or other like cause.*—Under a decree made in a suit brought by *A* against *B*, *A* obtained possession of certain property. The decree was reversed on appeal, but no order was made by the Appellate Court with regard to mesne profits. After such reversal, *B* applied to, and obtained an order from, the Court of first instance for possession and mesne profits. This order, so far as it awarded mesne profits, was set aside by the High Court as being an order the Court had no power to make, no right to mesne profits having been declared by the Appellate Court, and as being made altogether without jurisdiction. The High Court held that *B* should have applied to the Appellate Court which reversed the decree, or should have brought a separate suit for the mesne profits. An application for review of judgment being rejected, *B* instituted a suit for the mesne profits. *Held per* KEMP, MACPHERSON, and LOCH, *JJ.* (PEACOCK, *C.J.*, dissenting), that the order of the Court of first instance awarding mesne profits was not annulled from "defect of jurisdiction or for any such cause" within the meaning of s. 4, Act XIV of 1859; and, consequently, that the period occupied in obtaining and seeking to uphold such order could not be deducted in computing the period of limitation for the suit subsequently brought by *B* for the mesne profits. HURRO CHUNDER ROY CHOWDHRY *v.* SOORADHONEE DEBIA

[B. L. R., Sup. Vol., 985: 9 W. R., 402

71. ———— *Deduction of time former suit was pending.*—An objector's claim under Act VIII of 1859, s. 246, having been disallowed, he brought a regular suit to establish his right, and to have the sale stayed. The attached property was, however, sold pending this suit, which was subsequently dismissed. He then brought another suit for a declaration that the property (which was still in his possession) was his, and was not affected by the sale. *Held* that, in calculating limitation, no deduction could be made for the time consumed, it not having been dismissed for defect of jurisdiction or for some analogous cause to defect of jurisdiction, in the first suit; and it was also barred because the cause of action in the second suit was the same as that in the first. RAGHOONATH PERSHAD *v.* SURJOO PERSHAD SINGH . . . . . **22 W. R., 162**

72. ———— *Exclusion of time of proceeding bonâ fide in Court for a cause of like nature to want of jurisdiction.*—The plaintiff, on the 31st March 1884, brought a suit in the Small Cause Court on a promissory note, dated the 24th April 1879. In his plaint he omitted to set out certain payments of interest by the defendant, which payments (if so set out) would have had the effect of saving the suit from being barred by limitation. The Judge of the Small Cause Court held that, on the face of the plaint, the suit was barred, and rejected the plaint on the 24th April 1884, under cl. (*c*) of s. 54 of the Civil Procedure Code. On the 25th April 1884, the plaintiff brought a fresh suit on the same promissory note, and in his plaint set out how it was that he claimed exemption from limitation. *Held* that, in computing the period of limitation, the plaintiff was not entitled, under s. 14 of Act XV of 1877, to exclude the time during which he was prosecuting the previous suit. NOBIN CHUNDER KURR *v.* ROJOMOYE DOSSEE

[I. L. R., 11 Calc., 264

73. ——— *Deduction of time during which another suit was being tried.* – The defendants cut down and carried away some trees which had been growing on the plaintiff's land. The plaintiff's manager brought a suit in his own name against the defendants for the value of the trees so cut and carried away. The suit was dismissed on the ground that the manager had no cause of action against the defendants. In a subsequent suit brought by the plaintiff against the defendants for the value of the same trees, he contended that the time occupied in the former suit ought to be excluded in computing the period of limitation prescribed for the second suit. *Held* that the provisions of Act XV of 1877, s. 14, did not apply, and that the time could not be excluded, as the reason why the previous suit was dismissed was, because it was brought in the name of the wrong person, not from defect of jurisdiction, or from any cause of a like nature. RAJENDRO KISHORE SINGH *v.* BULAKY MAHTON . **I. L. R., 7 Calc., 367**

74. ——— *Deduction of time during prosecution of suit with due diligence—Defect of jurisdiction – Cause of like nature.*—On the 2nd of September 1869, a suit was instituted for, among other things, the possession of land claimed under a kobala, dated the 31st October 1867. This suit was dismissed on the ground of misjoinder of causes of action. On the 14th of April 1881, the plaintiff sued for possession of the land only. *Held* that the suit was not barred by limitation, as the plaintiff had, within the meaning of s. 14, been prosecuting his claim in a Court which, from a cause of "like nature" to defect of jurisdiction, was unable to entertain it. *Ram Subhag Das* v. *Gobind Prasad, I. L. R., 2 All., 622.* DEO PROSAD SING *v.* PERTAB KAIREE **[I. L. R., 10 Calc., 86 : 13 C. L. R., 218**

75. ——— *Exclusion of time of proceeding with suit bonâ fide—Cause of like nature.*—Of six persons in whom was vested the obligee's interest under a hypothecation-bond, three brought a suit upon it in a District Court, and the other three brought a similar suit in a District Munsif's Court to recover, with interest, their respective shares of the sum secured. The former suit was dismissed as not being maintainable, and the latter was withdrawn. The present suit was brought by all six. *Held* that in computing the time within which the plaintiffs had to sue, the time occupied by them in prosecuting the former suits should be deducted. *Deo Prosad Sing* v. *Pertab Kairee, I. L. R., 10 Calc., 86,* followed. NARASIMMA *v.* MUTTAYAN **I. L. R., 13 Mad., 451**

76. ——— *Deduction of time during prosecution of suit with due diligence—Defect of jurisdiction—Other cause of a like nature—Misjoinder of causes of action and parties.*—Where a previous suit by the same plaintiff against the same defendant has failed by reason of misjoinder of causes of action and parties, the plaintiff in a second suit is not entitled to the extra period of limitation allowed by s. 14 of the Limitation Act, since the cause of failure of the previous suit is not due to "defect of jurisdiction" in the Court which entertained the suit, nor is it a cause "of a like nature" thereto. *Deo Prosad Singh* v. *Pertab Kairee, I. L. R., 10 Calc., 86,* dissented from. TIRTHA SAMI *v.* SESHAGIRI PAI **[I. L. R., 17 Mad., 299**

77. ——— *Multifariousness and misjoinder of parties—"Other cause of a like nature" to defect of jurisdiction—Error in procedure.*—In cases in which s. 14 of the Indian Limitation Act, 1877, is pleaded as protecting the plaintiff from the bar of limitation, if there was an inability in the Court to entertain the former suit produced by any cause not connected in any way with want of good faith or due diligence in the plaintiff, that cause is of like nature to defect of jurisdiction within the meaning of s. 14. It is not necessary that the cause which prevented the former Court from entertaining the suit should be a cause which was independent of, and beyond the control of, the plaintiff. Hence where the inability of the Court to entertain the former suit arose from misjoinder of plaintiffs and causes of action, and there was on the plaintiff's part in the former suit no want of good faith or due diligence, the plaintiff was held entitled to the benefit of the time during which he was prosecuting the former suit, that is, from the time when the plaint in that suit was filed until the time when it was returned to the plaintiffs for amendment. *Chunder Madhub Chuckerbutty* v. *Ram Coomar Chowdry, B. L. R., Sup. Vol., 553 : 6 W. R., 184; Brij Mohan Das* v. *Mannu Bibi, I. L. R., 19 All., 348; Deo Prosad Sing* v. *Pertab Kairee, I. L. R., 10 Calc., 86; Bishambhur Haldar* v. *Bonomali Haldar, I. L. R., 26 Calc., 414; Ram Subhag Das* v. *Gobind Prasad, I. L. R., 2 All., 622; Jema* v. *Ahmad Ali Khan, I. L. R., 12 All., 207; Mullick Kefait Hossein* v. *Sheo Pershad Singh, I. L. R., 23 Calc., 821; Bai Jamna* v. *Bai Ichha, I. L. R., 10 Bom., 604; Narasimma* v. *Muttayan, I. L. R., 13 Mad., 431; Tirtha Sami* v. *Seshagiri Pai, I. L. R., 17 Mad., 299; Subbarau Nayudu* v. *Yagana Pantulu, I. L. R., 19 Mad., 90; Venkiti Nayak* v. *Murugappa Chetty, I. L. R., 20 Mad., 48;* and *Assan* v. *Pathumma, I. L. R., 22 Mad., 494,* referred to. MATHURA SINGH *v.* BHAWANI SINGH **[I. L. R., 22 All., 248**

78. ——— *Deduction of period—Defect of jurisdiction.*—In a suit for rent in which limitation was pleaded the plaintiffs alleged that, in answer to a former suit brought against them by the defendants, they had *bonâ fide* claimed to set off the same rent, but that their claim to a set-off had been, on technical grounds, disallowed on appeal, and they contended that, under s. 14 of the Limitation Act, (XV of 1877), they were entitled to exclude the period during which that suit was pending. *Held* that the plaintiff's claim of set-off was not disallowed on account of any defect of jurisdiction nor any defect of a like nature, and that therefore he was not entitled to exclude the period as he contended. HAFIZUNNESSA KHATUN *v.* BHYRAB CHUNDER DAS **[13 C. L. R., 214**

79. ——— *Withdrawal of application with leave to renew it—Deduction of time—Civil Procedure Code, 1877, s. 374.*—The rule laid down in s. 374 of the Code of Civil Procedure (Act X of 1877), that, where a suit is withdrawn with leave to bring a fresh suit, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought, applies to applications for execution. The bar created by s. 374 of the Code of Civil Procedure is, in such a case, not removed by s. 14 of the Limitation Act, as causes for which the withdrawal of a suit or application may be permitted are not causes "of a like nature" with defect of jurisdiction. PIRJADE *v.* PIRJADE

[I. L. R., 6 Bom., 681

80. ———— *Mistake or want of enquiry—Deduction of time during which plaintiff was prosecuting another suit.*—A plaintiff who through want of enquiry or mistake, brings a suit which he is unable to establish, will not be allowed, on discovering his error and bringing a suit in which he would have been entitled to recover, had he brought it within time, to take advantage of his own mistake to relieve himself from the law of limitation. HURRO PROSHAD ROY *v.* GOPAL DASS DUTT

[I. L. R., 3 Calc., 817 : 2 C. L. R., 450

S. C. on appeal to Privy Council

[I. L. R., 9 Calc., 255
12 C. L. R., 129
L. R., 9 I. A., 82

81. ———— *Suit in foreign Court, Deduction for.*—The provision of the Limitation Act, 1877, s. 14, which excepts such time as is spent in litigating in a Court of defective jurisdiction in favour of a plaintiff does not apply where the plaintiff brought his suit in a foreign Court which, according to its own laws, had ample jurisdiction, but according to the law of British India had no jurisdiction whatever. PARRY & CO. *v.* APPASAMI PILLAI

[I. L. R., 2 Mad., 407

82. ———— *Deduction of time pending suit.*—A plaintiff is entitled to deduction from the period of limitation of the period of pendency of a former suit in which he as defendant was urging the same claim as he afterwards prefers as plaintiff. JUGTENDER BUNWAREE *v.* DIN DYAL CHATTERJEE

[1 W. R., 310

1. ———— **s. 15**—*Deduction of time injunction afterwards dissolved has been in force.*—Where an injunction obtained against the execution of a decree has been dissolved, the time during which it was in force cannot be deducted under s. 15 of Act XV of 1877 in computing the period of limitation within which an application for execution may be made. S. 15 only relates to injunctions which stay the institution of suits, and the word "suit" does not include an application (s. 3). KALYANBHAI DIPCHAND *v.* GHANASHAMLAL JADUNATHJI

[I. L. R., 5 Bom., 29

2. ———— *Injunction to restrain partner collecting debts—Suit by receiver.*—In a suit brought in 1880 by the widow of a deceased partner, to wind up a partnership, the surviving partner was prohibited by the Court, at the instance of the plaintiff, from collecting debts due to the firm; but leave was given to apply for the recovery of debts which might become barred by limitation. After decree, on the application of the plaintiff, a receiver was appointed to collect outstanding debts for the purpose of executing the decree. The receiver having sued in 1883 to recover a debt which was due to the firm in 1879, the suit was dismissed on the ground, among others, that the debt was barred by limitation. *Held* that, under s. 15 of the Limitation Act, the suit was not barred. SHUNMUGAM *v.* MOIDIN

[I. L. R., 8 Mad., 229

3. ———— *Period of time injunction was in force.*—A member of a firm sued for a partnership debt and obtained a decree; he died before execution. In a suit brought by his widow an injunction was issued restraining his partner from realizing the partnership assets. Subsequently, a receiver was appointed for the partnership assets, and he applied for execution of the above decree. *Held* that the time during which the injunction was in force was not to be excluded in computing the period of limitation. RAJARATHNAM *v.* SHEVALYAMMAL

[I. L. R., 11 Mad., 103

4. ———— *Order prohibiting creditor from recovering debt—Attachment of debt—Civil Procedure Code, s. 268—Injunction or order staying suit.—Semble*—An order of attachment under s. 268 of the Civil Procedure Code is not an injunction or order staying a suit within the meaning of s. 15 of the Limitation Act (XV of 1877). SHIB SINGH *v.* SITA RAM . **I. L. R., 13 All., 76**

5. ———— *Attachment of debt secured by bond—Civil Procedure Code, ss. 268, 485, 486—Injunction or order staying suit.*—An attachment before judgment, under s. 485 read with ss. 486 and 268 (*a*) of the Civil Procedure Code, of a debt secured by a bond, or an injunction obtained by a third party and restraining the attaching creditor from subsequently bringing the bond to sale in execution of his decree, is not an injunction or order staying the institution of a suit upon the bond by the obligee, within the meaning of s. 15 of the Limitation Act. *Shib Singh* v. *Sita Ram, I. L. R., 13 All., 76,* followed. COLLECTOR OF ETAWAH *v.* BETI MAHARANI . . . . **I. L. R., 14 All., 162**

6. ———— *Civil Procedure Code (1882), ss. 268, 485, and 486—Attachment of debt by third party—Order staying institution of suit by creditor against debtor—Right of suit.*—An attachment before judgment under s. 485, Civil Procedure Code, issued by a Court at the instance of a third party, prohibited the creditor from recovering, and the debtor from paying, the debt. *Held* that an order in those terms was not an order staying the institution of a suit within the meaning of s. 15 of the Limitation Act (XV of 1877). *Sib Singh* v. *Sita Ram, I. L. R., 13 All., 76,* referred to and approved,—the same rule relating to all attachments, whether before or after judgment, couched in similar terms. The person restrained from receiving payment may, nevertheless, assert his right in a suit for the money due. BETI MAHARANI *v.* COLLECTOR OF ETAWAH . . . . **I. L. R., 17 All., 198**

[L. R., 22 I. A., 31

1. ———— s. 17—*Suit for account against manager of company—Accrual of right on death of manager against representatives.*—On the death of the manager of a company, a fresh right to an account accrues to the employer as against the manager's representatives. In a suit for such an account accruing to the employer on the death of his manager limitation will not commence to run until administration has been taken out to such manager's estate. Lawless *v.* Calcutta Landing and Shipping Co., Ld. Calcutta Landing and Shipping Co., Ld. *v.* Lawless . . . **I. L. R., 7 Calc., 627**

2. ———— *Suit against the representatives of deceased person.*—Where the defendant in a suit died before the plaint against him was filed, and the suit was some time after carried on against his representatives, the time during which the suit was being prosecuted *bonâ fide* against the dead man may be deducted in calculating the period of limitation against his representatives. Mohan Chand Kandu *v.* Azim Kazi Chowkidar

[3 B. L. R., A. C., 233 : 12 W. R., 45

3. ———— *Death of partner—Subsequent recovery of asset by surviving partner—Suit by administrator of deceased partner against surviving partner for recovered assets—Suit for partnership account—Form of decree.*—In 1889 one *H*, a widow and a partner in a firm carrying on business in partnership with two persons, *viz.*, *G* and *B* (defendants Nos. 1 and 2), in Sind and at Behrin in the Persian Gulf, died, and the partnership was then dissolved. *H* had no children, but it was alleged that she had adopted one *P*, the brother of the second defendant. On the 13th February 1890, the guardian of one *K*, a minor (*H*'s husband's nephew), applied to the High Court of Bombay for letters of administration to her estate, alleging that *K* was her heir and next of kin. A caveat was filed by her father and others, in which they denied that *K* was her heir, and alleged that *P* had performed her funeral ceremonies. The matter came on as a suit on the 19th February 1894, when an order was made, without prejudice to any of the questions raised by the issues, dismissing the application and ordering letters of administration to *H*'s estate to issue to the Administrator General of Bombay. Letters of administration were accordingly granted to him on the 30th March 1894. In the meantime, however, *viz.*, on the 12th April 1893, *B* (defendant No. 2) had filed three suits in the High Court of Bombay, in the name of himself and *G* (defendant No. 1), as surviving partners of *H*'s firm, to recover certain debts due to that firm. Disputes subsequently arose between *B* and *G*, and by a consent order of the 22nd July 1893 it was ordered that any moneys recovered in the said three suits should be paid over to a receiver (defendant No. 3), to be held by him until further order. On the 1st August 1893, consent decrees were passed in the above three suits for a total sum of R28,335, which was forthwith handed over to the receiver. On the 22nd April 1894, this suit was filed by the Administrator General of Bombay as administrator of *H* appointed as above stated. He claimed to recover the whole sum paid to the receiver, alleging that the first and second defendants as *H*'s partners were largely indebted to the firm, and that the money really belonged to her estate. He prayed that the receiver might be directed to pay over the money to him, and that, if necessary, the partnership accounts should be taken. The second defendant (*inter aliâ*) pleaded that the suit was one for partnership accounts, and was barred by limitation. *Held* that s. 17 of the Limitation Act (XV of 1877) applied, and that under its provisions the suit was not barred. Rivett-Carnac *v.* Goculdas Sobhanmull . . **I. L. R., 20 Bom., 15**

Held by the Privy Council, affirming the decision of the High Court of Bombay, that the suit was not barred by time; on the ground that the Administrator General having been the only person capable of suing within the meaning of s. 17 of Act XV of 1877 (Limitation), that section operated to allow the period of art. 106 to be computed from the issue of administration of the estate. A decree was made for a general partnership account to establish what was due to the estate of the deceased in respect of her share in the partnership, and of any money of hers employed in the business continued by the survivors. Bhagwandas Mitharam *v.* Rivett-Carnac

[I. L. R., 23 Bom., 544
L. R., 26 I. A., 32
3 C. W. N., 186

———— **s. 18 (1871, s. 19; 1859, s. 9).**

1. ———— *Fraud—Want of knowledge of rights.*—S. 9, Act XIV of 1859, was only applicable when the plaintiff had been kept from a knowledge of his rights by means of fraud. Muksood Ali *v.* Gowhur Ali . **W. R., 1864, 364**

2. ———— *Fraud—Person with means of knowledge.*—When he was or had been in a position in which he might have known of the fraud and ought to have done so, s. 9, Act XIV of 1859, was not applicable; his knowledge must be presumed. Indrobhoosun Deb Roy *v.* Kenny

[3 W. R., S. C. C. Ref., 9

3. ———— *Fraud—Cause of action—Act I of 1845, s. 29.—Semble*—S. 19 of Act IX of 1871 was applicable only to those cases where the fraud was committed by the party against whom a right is sought to be enforced. *Per* Mitter, *J.*—*Quære*—Whether, if the plaintiffs' case were established, their claim would not be saved from the operation of the Law of Limitation by s. 29, Act I of 1845. Ramdoyal Khan *v.* Ajoodhia Ram Khan . **I. L. R., 2 Calc., 1 : 25 W. R., 425**

4. ———— *Suit against auction-purchaser.*—This section does not apply as against an auction-purchaser, unless the plaintiff can show that she was by intention and fraud ignorant of the sale at or immediately after the time it occurred. Sheo Sahae Panday *v.* Rutta Beebee . **2 N. W., 180**

5. ———— *Fraud—Person kept from knowledge of fraud.*—Where a plaint sufficiently alleged that the plaintiffs being entitled to property were ousted from its enjoyment under colour of a fictitious revenue sale in pursuance of a fraudulent

LIMITATION ACT, 1877—*continued.*

contract, the fraud having been so contrived as to make the plaintiffs believe that they had no right of action at all, it was held that the allegation, if true, showed that the plaintiffs had been kept by fraud from a knowledge of their right of action, and brought the case within Act XIV of 1859, s. 9. DWARKANATH BHOOYA *v.* AJOODHYA RAM KHAN **[21 W. R., 109**

See ROBERT *v.* LOMBARD **[1 Ind. Jur., N. S., 192**

6. ———— *Fraud—Concealment of cause of action.*—In a suit to recover landed and other property to which plaintiff made title by inheritance, and endeavoured to set aside defendant's plea of limitation by alleging fraud,—*Held* that, even if the allegation were true, as it did not exhibit concealment of the cause of action within s. 9, Act XIV of 1859, and the alleged fraud did not constitute an ingredient in plaintiff's cause of action, it could not get rid of the effect of time. BYJNATH SUHAYE *v.* BROHMO DEO NARAIN . **9 W. R., 255**

7. ———— *Suit for money received by agent and concealed from principal.*—A suit against an agent to recover money received by him and concealed from the plaintiff fell within Act XIV of 1859, s. 9. HOSSEIN BUKSH *v.* TUSSUDUCK HOSSEIN . . . . . **21 W. R., 245**

8. ———— *Application by Collector to set aside sale of unrecognized portion of bhag—Bhagdari Act (Bom. Act V of 1862), ss. 1 and 2.*—*N* held an unrecognized fourth share in a certain bhag. *R* obtained a decree against *N*, and in execution of it sold his right, title, and interest in the bhag on the 28th February 1876. It was purchased by *B*. The sale was subsequently confirmed, and *B* was put in possession of a portion of the land. On the 30th September 1880, the Collector applied to the Court to set aside the sale on the ground that it was illegal under Bombay Act V of 1862. It appeared that the Collector did not know till November 1877 that the land sold was an unrecognized portion of the bhag, and not the whole of it. *Held* that the sale might be set aside under the provisions of s. 2 of Act V of 1862, notwithstanding its confirmation and the subsequent delivery of possession. *Held,* further, that the application was not barred, even if the provisions of Act XV of 1877 applied to it, inasmuch as, under s. 18, time began to run against the Collector only from November 1877. *Quære*—Whether any provision of limitation applied to such applications under the Bhagdari Act. COLLECTOR OF BROACH *v.* RAJARAM LALIDAS **[I. L. R., 7 Bom., 542**

No limitation does apply to such applications. *See* COLLECTOR OF BROACH *v.* DESAI RAGHUNATH **[I. L. R., 7 Bom., 546**

9. ———— *Fraudulent concealment of "necessary document"—Cause of action.*—Upon the construction of the passage in s. 9 of Act XIV of 1859 "If any document necessary for establishing such right shall have been fraudulently concealed,"—*Held* that the preceding words of the section show clearly that the document must have been fraudulently concealed from the knowledge of the plaintiff; he must, through the fraudulent concealment, be unaware of its existence, and when this is so, the statute runs against the person guilty of the fraudulent concealment, or accessory thereto, from the time at which plaintiff had the means of producing or compelling its production, if it is a document necessary for establishing such right of action. What is a "document necessary" considered. MUNGAMURU ANANTA LAKSHMINARASU PANTALU *v.* YARLAGEDDA ANKINID . . . . . . **7 Mad., 22**

10. ———— *Notes lost or plundered in Mutiny.*—*Held* that the limitation applicable to suits for recovery of notes lost or plundered during the Mutiny is six years, and that this should be computed from the time of the losers having requisite knowledge to institute legal proceedings. ALI NUQUEE *v.* BHUGWAN DAS . . **1 Agra, 213**

11. ———— *Landlord and tenant—Sale by landlord of land held by tenant—Fraud in such sale—Suit by purchaser against tenant—Plea by tenant impeaching sale by his landlord.*—The defendant was tenant of the lands in dispute under a lease, dated 22nd June 1875. In 1878 his landlord sold the lands to the plaintiffs by registered deed, but in 1879 complained to the Mamlatdar that he had been cheated by the plaintiffs who, he alleged, had not paid the purchase-money. This allegation the plaintiffs denied. In September 1881, the defendant brought a suit against the plaintiffs, in which he prayed for a declaration that the sale of the land to the plaintiffs was fraudulent, and that no consideration had been paid. This suit, however, was withdrawn by the defendant on the 15th November 1881, with leave to bring a fresh suit, but no fresh suit was brought by him within three years from November 1881, nor was any suit brought by the plaintiff's vendors to set aside their sale to the plaintiffs. In 1883 the plaintiffs brought this suit against the defendant to recover R960 as arrears of rent for four years for the lands described in their plaint. They alleged that the lands in question had been sold to them on the 12th September 1878, and that the lands mentioned in their plaint had been leased on the 22nd June 1875 to the defendant by their (the plaintiffs') vendors, and that in that lease the defendant had contracted to pay R240 annually. The defendant in his defence again raised the question whether the sale to the plaintiffs was not fraudulent and without consideration. *Held* that the right of the defendant to plead as a defence to this suit, that the plaintiff's purchase of the 12th September was fraudulent and void, was barred. As a tenant he had no independent right to impeach the sale by his own landlords. He could only do so with their consent, assuming it to be still open to them to impeach it. But their complaint to the Mamlatdar in 1879 showed that they were then acquainted with the facts which entitled them to set aside the sale, and by the end of 1882, at the latest, their right to file a suit for that purpose was therefore barred. Their right to impeach the sale by suit being thus barred, their tenant (the defendant) could not be allowed to impeach it as a defence to an action by the plaintiffs. JUGALDAS v. AMBASHANKAR . . **I. L. R., 12 Bom., 501**

12. ———— **and art. 166**—*Civil Procedure Code (Act XIV of 1882), ss. 311, 312—Sale in execution—Application to set aside—Fraud.*—An application under s. 311 of the Civil Procedure Code to set aside a sale cannot be made after the expiry of thirty days from the date of such sale and after such sale has been confirmed, even though it be alleged that the sale was fraudulently kept from the knowledge of the applicant until after such confirmation. *Semble*—That if, before such sale had been confirmed, an application had been made, although after thirty days from the date of the sale, the Court would possibly have been justified in granting the application and extending the period of limitation if sufficient cause under s. 18 of the Limitation Act were made out. GOBIND CHUNDRA MAJUMDAR v. UMA CHARAN SEN **I. L. R., 14 Calc., 679**

13. ———— *Application by judgment-debtor to set aside sale on ground of fraud—Concealment of right to set aside sale.*—When a judgment-debtor makes an application to have an execution-sale set aside under s. 311 of the Civil Procedure Code after the expiry of the period of limitation prescribed in art. 166, sch. II of the Limitation Act, he must bring his case within s. 18 of the Act; and to enable him to do this it is not enough for him to show that the execution proceedings were irregular and fraudulent; he must carry the fraud further and show that the existence of his right to set aside the sale has been kept concealed from his knowledge by the fraud of the decree-holder or the auction-purchaser. KAILASH CHANDRA HALDAR v. BISSONATH PARAMANIC **[1 C. W. N., 67**

14. ———— *Fraud—Knowledge kept from the Official Assignee, of his right to sue for an account of assets fraudulently transferred by an insolvent—Burden of proving when first the plaintiff had clear and definite knowledge—Account, Decree for.*—Prior to and in the year 1865 the defendant's brother *B* carried on an extensive business in Bombay and in China. The defendant and another brother (*A*) carried on a separate business under the name *A H.* In December 1866 *B* became insolvent and his property vested in the Official Assignee. The present suit was brought in 1887 against the defendant by the Official Assignee to recover certain property which he alleged belonged to the insolvent and ought to be distributed among his creditors. The plaintiff alleged that in 1865 the insolvent was possessed of a very large amount of property, and that, being unwilling to meet his liabilities, he and his son and his two brothers, *viz.*, *A* and the defendant *B*, fraudulently concealed his property from his creditors, and in September 1866 he himself went to Daman, beyond British jurisdiction. In 1881 the plaintiff, having obtained information that some of insolvent's property was in the possession of his brother *A*, filed a suit (No. 473 of 1881) against *A*, to recover it. That suit was referred to arbitration, and the plaintiff obtained a decree for R3,60,000. The plaintiff now alleged that shortly before the hearing of that suit, and subsequently, he had obtained information which led him to believe that the defendant had obtained some of the insolvent's property for which he was accountable. The defendant had been made a party to the former suit, No. 473 of 1881, for the purpose of discovery only, and it was in the course of such discovery being given that some of the above information had been obtained. The plaint then set forth, in detail, the various items of claim in respect of which the plaintiff sought to make the defendant liable. The defendant pleaded that the claims were barred by limitation. *Held* by SCOTT, *J.*, that the suit was not barred by limitation. There was sufficient evidence of fraud to bring the case under s. 18 of the Limitation Act (XI of 1877). The limitation only began to run from the time the fraud became fully known to the Official Assignee, which was not until December 1885. The knowledge required by s. 18 of the Limitation Act is not mere suspicion. It must be knowledge of such a character as will enable the person defrauded to seek his remedy in Court. The Court of Appeal (SARGENT, *C.J.*, and BAYLEY, *J.*) confirmed the decree of the Court of first instance, except as to one of the allowed items, which it held to be barred by limitation. *Held,* on appeal to the Privy Council: In order to make limitation operate when a fraud has been committed by one who has obtained property thereby, it is for him to show that the injured complainant has had clear and definite knowledge of the facts, constituting the fraud, at a time which is too remote for the suit to be brought. Suggestion of his having been defrauded does not amount to such knowledge as is required by s. 18, Act XV of 1877. In this suit it was established that the defendant, receiving in 1869, upon a voluntary transfer, some of the insolvent's assets, joined and assisted him in defrauding his creditors; and that no disclosure of this fraud was made to the Official Assignee, while the defendant did what he could to prevent the latter from seeing the accounts of the assets transferred. *Held,* therefore, that the burden of proof was on the defendant to show that the plaintiff had clear and definite knowledge of this fraud for more than the period of limitation. This burden had not been discharged by proof of the fact that some hints and clues had reached the Official Assignee which might have led to such knowledge; and *held* that the Official Assignee had been kept from knowledge of his right to sue, within the meaning of s. 18. A decree that the defendant should account to the Official Assignee for the assets received by him from the insolvent, after the date of the insolvency was affirmed. RAHIMBHOY HABIBBHOY v. TURNER

[I. L. R., 17 Bom., 341
L. R., 20 I. A., 1

Affirming on appeal RAHIMBHOY HABIBBHOY v. TURNER . . . **I. L. R., 14 Bom., 408**

15. ———— *Salt Act (XII of 1882)—Limitation prescribed for charging with offence—Fraud in concealing date of offence.*—The provisions of s. 18 of the Limitation Act of 1877 do not apply to criminal cases, and the peremptory terms of s. 11 of

the Indian Salt Act (XII of 1882) are not affected by that section. Queen-Empress *v.* Nageshappa Pai
[I. L. R., 20 Bom., 543

——— **s. 19 (1871, s. 20; 1859, s. 1, cl. 15, and s. 4).**

Col.

1. Acknowledgment of Debts . . 4857
2. Acknowledgment of other Rights . 4876

See Account stated.
[I. L. R., 22 Bom., 513

See Bengal Rent Act, 1869, s. 30.
[I. L. R., 5 Calc., 303

See Civil Procedure Code, s. 258.
[I. L. R., 16 All., 228

See Contract Act, s. 25.
[I. L. R., 4 Calc., 500
I. L. R., 6 Bom., 683

See Evidence—Civil Cases—Secondary Evidence—Unstamped and Unregistered Documents.
[I. L. R., 18 Bom., 614
I. L. R., 21 Bom., 201

See Stamp Act, 1879, s. 34.
[I. L. R., 18 Bom., 614

See Stamp Act, 1879, sch. I, art. 1.
[I. L. R., 15 All., 56

1. ACKNOWLEDGMENT OF DEBTS.

This section, like s. 4 of the Act of 1859 and s. 20 of that of 1871, requires a distinct acknowledgment.

1. ——— *Oral evidence of acknowledgment—Acknowledgments made before the coming into force of Act XV of 1877.*—Under s. 19 of the Limitation Act (XV of 1877), oral evidence of the contents of an acknowledgment cannot be received, nor is there any saving of acknowledgments received or given back before the Act came into operation. Ziulnissa Ladli Begam *v.* Motidev Ratandev
[I. L. R., 12 Bom., 268

2. ——— *Distinct acknowledgment.*—Act XIV of 1859 required a distinct acknowledgment of a debt as due by the person who makes the acknowledgment to entitle the creditor to a fresh period of limitation. Kalai Khan *v.* Madho Pershad . . . . . . **3 N. W., 129**

3. ——— *Acknowledgment how to be gathered or inferred.*—S. 4 did not require that the writing should express in terms a direct admission that the debt, or part thereof, was due. It was left to the Court to decide in each case whether the writing, reasonably construed, contained a sufficient admission that the debt, or part of it, was due. Kristna Row *v.* Hachapa Sugapa . . **2 Mad., 307**

It is not necessary to specify the precise amount of the debt.

4. ——— *Acknowledgment of debt.*—Where a plaintiff sued for a debt due under a kararnama,—*Held* that in order to bring the case within the exception in the law of limitation, it was sufficient to show, by clear and positive proof, that within the period prescribed he had asserted his right to his claim under the kararnama, and that the defendant admitted this claim to be as of right. It was not necessary that a precise sum should have been mentioned by either party, or that a promise to pay should have been made by the defendant. Gupikishen Goswami *v.* Brindabun Chandra Sirkar Chowdhry . . . **3 B. L. R., P. C., 37**

S. C. Gopee Kishen Goshamee *v.* Bindabun Chunder Sircar Chowdhry **12 W. R., P. C., 36**
[13 Moore's I. A., 37

Contra, Nobin Chunder Mozoomdar *v.* Kenny
[5 W. R., S. C. C. Ref., 3

5. ——— *Promise to pay debt of third person.*—A promise to pay a third person's debt would be sufficient, though the amount were not ascertained. Pearee Lall Shaha *v.* Woomesh Chunder Mozoomdar . . . **9 W. R., 140**

6. ——— *Letters containing no precise sum or promise to pay.*—In a suit for the price of goods, the period of limitation had expired, but the Court held that certain letters written by the defendant to the plaintiffs, though they contained no mention of the sum due, nor any promise to pay, were a sufficient acknowledgment of the debt under s. 4, Act XIV of 1859. Harrison *v.* Hope
[9 B. L. R., Ap., 43

7. ——— *Want of assent to amount acknowledged.*—A creditor who does not openly assent to an amount acknowledged by his debtor to be due to him is nevertheless entitled to take advantage of such acknowledgment so long as it remains uncontradicted and unexplained by his debtor. Laljee Sahoo *v.* Roghoonundun Lall Sahoo
[I. L. R., 6 Calc., 447

8. ——— *Letter in indefinite terms.*—A letter containing no distinct admission of a debt, but only doubtful expressions, *held* not to be a written acknowledgment such as s. 4, Act XIV of 1859, requires for the revival of a right of suit. Gash *v.* McLean . . . **2 N. W., 403**

9. ——— *Acknowledgment inferred from tenor of correspondence.*—An acknowledgment not coming directly from the debtor himself, but merely deduced as an inference from the tenor of a series of letters, was not a sufficient acknowledgment to satisfy s. 4, Act XIV of 1859. To satisfy that section, there must be some principal writing of a particular date, which can be relied on by itself, when properly construed, as constituting an acknowledgment of the debt. Rogers *v.* Montriou
[6 B. L. R., 550

10. ——— *Suit for arrears of rent—Limitation Act, sch. II, art. 110.*—The plaintiffs sued the defendants for arrears of rent from the 4th December 1889 to the 31st July 1894, relying upon the following letter as an acknowledgment sufficient to take their demand out of the Limitation Act: "As we have informed your client, we are quite willing to pay him the rent due under our mourasi pottah if he can show a title to give us a good receipt for it that will satisfy our lawyers. If he is in the same position that his father was up to the time of his death unable to produce a perfect title, we are still willing to pay him the rent on his giving us a substantial indemnity similar to that which we had from his father." *Held* that this was a sufficient acknowledgment within s. 19 of the Limitation Act. RUNGO LALL LOHEA *v.* WILSON

[I. L. R., 26 Calc., 204
2 C. W. N., 718

11. ———————— *Law under Punjab Code —Acknowledgment.*—Under the Punjab Code, and before Act XIV of 1859 took effect in Oudh, letters offering to pay a debt by instalments, and praying to be excused from the payment of interest, were an ample acknowledgment of the debt to save limitation. MUKHUM LALL *v.* IMTIAZOODDOWLAH

[5 W. R., P. C., 18 : 1 Ind. Jur., N. S., 142
10 Moore's I. A., 362

12. ———————— *Letter with remittance "on old account."*—The defendant sent a letter, dated 22nd December 1865, to the plaintiffs, which contained the following postscript: "*P.S.*—Enclosed a remittance of £40 to old account." *Held* (on appeal, reversing the decision of NORMAN, *J.*) the words "remittance of £40 to old account" were ambiguous, and did not necessarily import that a further sum was due, so as to constitute an acknowledgment of a debt which would give a new period of limitation. SHEARMAN *v.* FLEMING . **5 B. L. R., 619**

13. ———————— *Admission of debt with averment it is not due.*—An admission of a debt with the appended averment that it is not yet payable in point of time may be an acknowledgment of a debt under s. 4, Act XIV of 1859. An assertion that a sum of money will be payable on the happening of an event future and uncertain is not an acknowledgment of a debt, but the allegation of incidents out of which a debt may at some time arise. YOUNG *v.* MANGALAPILLY RAMAIYA . **3 Mad., 308**

14. ———————— *Bom. Reg. V of 1827, s. 7, cl. 1—Acknowledgment.*—*Held* that an admission in writing of the making of a promissory note, accompanied by a repudiation of liability in respect thereof, was not such an acknowledgment as would revive a barred claim. NARBADASHANKAR *v.* RUGHNATH ISHVARJI . . . . **2 Bom., 349**

15. ———————— *Admission of debt to third person.*—The admission to a third party in writing that a sum is due is not such an acknowledgment of a debt as to remove such debt out of the Statute of Limitations. PERSHAD DOSS *v.* DENONATH DEY

[2 Hyde, 14

IN THE MATTER OF THE GANGES STEAM NAVIGATION COMPANY . **2 Ind. Jur., N. S., 180**

16. ———————— *Admission to third person.*—An admission by *A* of his debt to *B* contained in a burat given by *A* to his agent may take a suit against *A* out of the Statute of Limitations. HURO CHUNDER ROY *v.* MONEE MOHINEE DOSSEE

[3 W. R., S. C. C. Ref., 6

17. ———————— *Admission to third person.*—An acknowledgment made in writing to a third party and not to the creditor is sufficient under the section. *Quære*—Whether an acknowledgment to satify the section must be made before suit. The English and Indian law of limitation considered and contrasted. NIJAMUDIN *v.* MAHAMMADALI

[4 Mad., 385

18. ———————— *Admission—Exemption from limitation.*—In a suit for the recovery of costs incurred by the Government of Bengal, in virtue of the Stat. 3 & 4 Will. IV, c. 41, authorizing the Crown to appoint the East India Company to take charge of appeals, and bring them to a hearing, the admission by a defendant that a demand was claimable from some quarter or other, but not as against the property in question, was held not to be an admission within the meaning of Regulation III of 1793, excepting a suit from limitation under that Regulation. GOVERNMENT OF BENGAL *v.* SHUREUFOOTOONISSA . . . . **3 W. R., P. C., 31**

[8 Moore's I. A., 225

19. ———————— *Memo. of payments endorsed on bond.*—Memoranda of payments made, endorsed on the bond and signed by the defendant, were not acknowledgments in writing within the meaning of s. 4, Act XIV of 1859. GORACHAND DUTT *v.* LOKENATH DUTT . . . **8 W. R., 334**

20. ———————— *Verbal admission of correctness of account.*—A mere verbal admission of the correctness of an account, the items of which are barred by the Statute of Limitations, does not furnish a new starting-point for the operation of the statute. SUBBARAMA *v.* EASTULU MUTTUSAMI **3 Mad., 378**

21. ———————— *Admission of balance of account.*—When an indigo planter and a raiyat contract, the former to make advances of money or seed for the cultivation of indigo plant, and the latter to deliver the indigo plant grown, a mere verbal admission by the raiyat of the correctness of an account containing cross items due, without a written acknowledgment from him that the balance is due, does not operate to create or renew any liability with reference to the law of limitation. DOYLE *v.* ALLUM BISWAS . . . **4 W. R., S. C. C. Ref., 1**

DOYLE *v.* EDOO GAZEE

[3 W. R., S. C. C. Ref., 13

22. ———————— *Suit for balance of account—Balance struck and amount orally admitted.*—In a suit for the recovery of certain sums advanced as loans at different times the account rendered was simply a statement of advance, repayment, and balance which was adjusted, struck, and verbally admitted by the debtor. *Held* that the balance so struck and admitted by the debtor did not amount to a written acknowledgment within the 4th section of Act XIV of 1859, or to a new contract so

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*continued.*

as to revive the old cause of action. KUNHYA LALL *v.* BUNSEE . **Agra, F. B., 94 : Ed. 1874, 71**

23. ———— *Commission agent.*—*A* acted as commission agent for *B* and *C*. *A* furnished a debit and credit account in February 1878. The account was disputed, and the matter was referred to arbitration; for which purposes in March 1880 a "memorandum of items to be settled" was drawn up and signed by *B* and *C*, in which they denied that any balance would be found due to *A*, but acknowledged that accounts must be taken, and that they would be liable if any balance were found due to *A*. In June 1880 *B* signed and supplied to the arbitrator an account on behalf of himself and *C*. The arbitrator made an award which was set aside. *A* filed a suit against *B* and *C* in September 1882 for a balance due to him. *Held* that *B* and *C* had made an acknowledgment of their debt to *A*, and that the suit was not barred by limitation. SITAYYA *v.* RANGAREDDI . . . **I. L. R., 10 Mad., 259**

24. ———— *Acknowledgment within "the new period."*—In a suit brought on the 20th July 1886, by the plaintiff, to recover the price of goods sold on the 12th March 1881, to the defendant, the plaintiff filed two khatas under the defendant's signature, acknowledging the debt, and bearing dates the 6th March 1882 and the 29th October 1884. The Subordinate Judge, being of opinion that the suit was barred, referred the case to the High Court. *Held* that the suit was not barred; the second acknowledgment, having been made within "the new period" arising from the first acknowledgment, was made within a period prescribed for the suit, and was therefore itself the starting point of a new period. ATMARAM *v.* GOVIND

[I. L. R., 11 Bom., 282

25. ———— *Acknowledgment — Agreement by debtor to give a bond for amount of debt.*—On the 7th April 1888 an agriculturist in the Deccan passed a writing to his creditor to the following effect: "Receipt taken by *V* from *R*, agriculturist. I have borrowed R1,045 from you from time to time for my private expenses. I have passed you no bond for the money. To-day I have taken R300 more making R1,345 in all. For that I will give you a bond 15 days hence. I have received the money." In a suit, brought in June 1897, to recover principal and interest due on this document,—*Held* it was not a mere acknowledgment of a debt, but an agreement containing a distinct undertaking that the debtor would pass a bond for the debt within 15 days. *Shankar* v. *Mubila, I. L. R., 22 Bom., 513,* referred to VASUDEO ANANT *v.* RAMKRISHNA RAO NARAYAN

[I. L. R., 24 Bom., 394

26. ———— *Verbal promise to pay—New contract.*—In a suit by the plaintiff to recover money lent more than three years before suit, the plaintiff alleged an express verbal promise by the debtor to pay the amount sued for made upon a settlement of accounts. *Held* by HOLLOWAY and KINDERSLEY, *JJ.*—That a verbal promise was not sufficient to prevent the application of the Act of Limitation. *Per* KINDERSLEY, *J.*—If a debtor and creditor enter into a new contract, the debtor promising to pay a barred debt, that would seem to be a new cause of action, and it is doubtful whether it was the intention of the Limitation Act to insist that the new promise should be in writing. KITTAPPA *v.* SOMANNA **6 Mad., 51**

27. ———— *Acknowledgment to third person.*—An admission or acknowledgment in writing, under s. 4, Act XIV of 1859, was sufficient to give a new period of limitation, although a promise to pay on request is not inferrible from it. The word "due" in the section means no more than that the debt is owing, and that there is an existing obligation to pay it. NIJAMUDIN *v.* MAHAMADALI . **4 Mad., 385**

28. ———— *Promise to pay sum for which promissory note was given.*—A suit was brought on a promissory note, by which the defendant promised to pay to the plaintiff R1,000 with interest at the rate of 12 per cent. per annum. The defendant afterwards wrote the following letter to the plaintiff: "I further hold myself responsible to you for the two sums of R1,000 and R900 respectively, the latter sum bearing interest at 24 per cent. per annum. Both these sums of R1,000 and R900 I engage to pay you." *Held* that the letter was an acknowledgment within s. 4, Act XIV of 1859. UMESH CHUNDER MOOKERJEE *v.* SAGEMAN . . . **5 B. L. R., 633 note**

S. C. WOOMESH CHUNDER MOOKERJEE *v.* SAGEMAN **[12 W. R., O. C., 2**

See GUPIKISHEN GOSWAMI *v.* BRINDABUN CHANDRA SIRKAR CHOWDHRY

[3 B. L. R., P. C., 37 : 12 W. R., P. C., 36
13 Moore's I. A., 37

29. ———— *Admission in bill of sale.*—The defendant, who was the owner of a moiety of certain property (the plaintiff and another being owners of the other moiety), mortgaged his moiety to the plaintiff; the mortgage-deed, dated 11th June 1863, contained a covenant to pay off the principal and interest at the expiration of a year, and gave a power of sale in default of payment. The whole property, including the mortgaged portion, was conveyed to one *I D* on 27th November 1864, by a bill of sale executed by the three owners of the property. On the execution of the bill of sale, the sum of R16,250, the half of the purchase-money which belonged to the defendant, was handed over to the plaintiff in part-payment of a sum of R19,555, which was therein recited as being then due on the mortgage. In a suit for the balance brought in November 1869, the defence was that it was barred by the law of limitation. *Held* that the admission by the defendant contained in the bill of sale of November 1864 was a sufficient acknowledgment to take it out of the operation of Act XIV of 1859, s. 4. MADHUSUDAN CHOWDHRY *v.* BRAJANATH CHANDRA

[6 B. L. R., 299

30. ———— *Admission in writing.*—In a suit to recover the balance alleged to be due on certain promissory notes, the plaintiff relied on a document to prevent the operation of Act XIV

1859, which was in these terms: "If I have to stump up, the sooner it is done the better, though it would go against all my ideas of justice and right." *Semble*—There was no admission that a debt was due. UNCOVENANTED SERVICE BANK *v.* MARSHALL [6 N. W., 306

31. ———— *Admission in writing.*—A debt due on a decree is a sufficient consideration for the making of a promissory note, although execution of the decree be barred by limitation at the time the note is made. Where the endorsee of certain promissory notes sued to recover their value, alleging that in respect of four of the notes a new period of limitation had been created by the letter of the maker to the holder's agent which follows, *viz.*: "with regard to your communication anent promissory notes given by me to Mr. *S*, and which I have not paid, I must only say that Mr. *S* must trust to my integrity to pay him, and as soon as I have cleared off a couple of decrees against me, I will commence paying him; but if you put the matter in Court, I must only plead want of consideration, and throw Mr. *S* back on the original decree which had lapsed some three years before I wrote the promissory notes,"—*Held* that the letter was a sufficient acknowledgment to take the claim on the four notes out of the statute of limitation. MULLINS *v.* BEDDY . **6 N. W., 150**

32. ———— *Suit for compensation for land—Acknowledgment in writing.*—*Held*, in a suit for compensation for lands taken by Government under Act VI of 1857, that a letter from the Commissioner of Revenue expressing his willingness to recommend Government to pay for certain land is not an acknowledgment in writing within s. 4. HILLS *v.* MAGISTRATE OF NUDDEA . . . **11 W. R., 1**

33. ———— *Acknowledgment in writing.*—*R*, who owed *V* money, drew a hundi in favour of *V*, which was dishonoured. *V* sued *R* to recover the sum for which the hundi had been drawn. Within three years before suit *R* wrote a letter to the drawee of the hundi, requesting him to pay the amount due by *R* upon the hundi. *Held* that the letter was a sufficient acknowledgment, within the meaning of s. 19 of the Limitation Act, 1877, of *R*'s liability for the debt for which the hundi was drawn. RAMAN *v.* VAIRAVAN **I. L. R., 7 Mad., 392**

34. ———— *Acknowledgment in writing—Deposition signed by a witness.*—In a suit brought in 1890 to recover the principal and interest due on a bond, dated 1st September 1879, which provided for the repayment of the debt secured thereby within six months from the date of its execution, it appeared that the obligor had made a part payment of R50 on the 24th July 1882, which was endorsed on the bond. No other payments had been made, but the plaintiff pleaded in bar of limitation that the debt had meanwhile been three times acknowledged in writing. One of the acknowledgments relied upon was said to be contained in a deposition given by the obligor and signed by him, as a witness in a suit to which he was not a party. *Held* that an acknowledgment in order to satisfy the requirements of Limitation Act, s. 19, must be an acknowledgment of the debt as such and must involve an admission of a subsisting relation of debtor and creditor, and an intention to continue it until it is lawfully determined must also be evident. *Semble per* MUTTUSAMI AYYAR, *J.* (WILKINSON, *J.*, dissenting), that a deposition given and signed by a party as a witness in a suit is as much a writing contemplated by s. 19 as is his written statement or a letter addressed by him to a third party. VENKATA *v.* PARTHASARADHI [I. L. R., 16 Mad., 220

35. ———— *Acknowledgment in holograph will unsigned.*—In a suit against the legal representative of a deceased debtor to recover the amount of the debt, it appeared that the debt was contracted more than three years, but was payable less than three years, before suit. In bar of limitation the plaintiff relied upon an admission of the debt in a draft will, written by the testator, in the first line of which his name appeared. *Held per* WEIR, *J.*, that the admission in the will did not constitute an acknowledgment under Limitation Act, s. 19. RAMASAMI *v.* MUTTUSAMI [I. L. R., 15 Mad., 380

36. ———— *Acknowledgment of liability in petition—Liability for contribution—Joint debtors.*—By a payment into Court under an order on account of decrees for rent and revenue in arrear, due to the landlord zamindar from the joint owners of an under-tenure, their estate was saved from sale. In respect of a proportionate share of liability for money raised for this purpose one of the joint owners became liable to be sued by another of them for contribution; and a question arose as to the application of art. 61 of sch. II of the Limitation Act, 1877. More than three years before this suit all the joint owners had filed in Court a petition for the appointment of a manager of their estate, who should, out of its profits, pay debts and interest to creditors from whom had been borrowed the money for the payment into Court. *Held* that this was an acknowledgment of the joint debt by the co-owner who had not contributed, within s. 19 of the Limitation Act; whence had followed the legal consequences, one of which was her liability to be sued within due time for contribution. SUKHAMONI CHOWDHRANI *v.* ISHAN CHUNDER ROY . **I. L. R., 25 Calc., 844**
[L. R., 25 I. A., 95
2 C. W. N., 402

37. ———— *Post-card sent by defendant to plaintiff.*—In a suit for R465 the defendant pleaded limitation. In reply the plaintiff relied on an acknowledgment of the debt given by the defendant. The alleged acknowledgment was written on a post-card sent by the defendant to the plaintiff. It was in Gujarati, and was as follows:—"I was bound to send R30 according to my vaida (fixed time), but on account of the receipt of the intelligence of the death of my father I have not been able to fulfil my promise. But now, on his obsequies being over, I will positively pay R30 at Shet Merwanji's. You, Sir, should not entertain any anxiety whatever in respect thereof.

As to whatever debts may be due by my old man, I am bound to pay the same so long as there is life in me. This is, indeed, my earnest wish. After this, God's will be done. Therefore I will positively pay R30." The post-card bore on it also the words "without prejudice" in English. The lower Courts held that it was therefore inadmissible in evidence, and consequently that the plaintiff's claim was barred, and they dismissed the suit. *Held* for an application to the High Court in its extraordinary jurisdiction discharging the rule, that even if the post-card were admissible in evidence, it did not amount to an acknowledgment of the debt claimed by the plaintiff, which was therefore barred by limitation. MADHAVRAV GANESHPANT OZE *v.* GULABBHAI LALLUBHAI
[I. L. R., 23 Bom., 177

38. ——— *Unstamped acknowledgment of debt—Stamp Act (I of 1879), sch. I, art. 1.*—An acknowledgment of a debt coming under art. 1, sch. I of the Stamp Act (I of 1879), cannot be given in evidence for any purpose including the purpose of saving limitation. MULJI LALA *v.* LINGU MAKAJI
[I. L. R., 21 Bom., 201

But *see* FATEH CHAND HARCHAND *v.* KISAN
[I. L. R., 18 Bom., 614

39. ——— *Default on payment of instalment.*—Where a default having been made in payment of an instalment the debtor subsequently filed a suit to compel his creditor to receive his debt by instalments, as they should become due, and in his plaint set out the provisions of the bond, and stated that he had tendered the instalments as they became due to his creditor, which the latter had refused to receive, and that thereupon the debtor had deposited the amount with a third person,—It was held that the plaint did not contain such an acknowledgment of the whole debt being due as to give a new starting point from which the limitation commenced to run. NARAYANAPPA *v.* BHASKAR PARMAYA
[7 Bom., A. C., 125

40. ——— *Acknowledgment—Muchalka under the Rent Recovery Act (Madras), 1865.*—A muchalka given by a tenant at the end of a fasli, containing an undertaking to pay instalments of rent at dates then passed, amounts to an acknowledgment of liability for the purpose of Limitation Act, 1877, s. 19. VENKATAGIRI RAJA *v.* BADE SAHEB
[I. L. R., 22 Mad., 32

41. ——— *Admission after execution of decree.*—The admission of a debt after execution is taken out gives a decree-holder a fresh starting point from which to reckon limitation. DIGAMBUREE DEBIA *v.* SARODA PERSHAD ROY
[3 W. R., Mis., 27

JOTEERAM DOSS *v.* HURUF . 6 W. R., Mis., 115

LUCHMEE NARAIN *v.* SHUDASHEO SINGH
[5 W. R., Mis., 12

PROSUNNO COMMAR ROY CHOWDHRY *v.* KASHEE KANT BHUTTACHARJEE . . 5 W. R., Mis., 31

CHUNDER KANT MITTER *v.* RAMNARAIN DEY SIRCAR . . . . . . 8 W. R., 63

42. ——— *Instalment bond—New contract.*—An instalment bond is not "a promise or acknowledgment" within the meaning of Act IX of 1871, s. 20, but is complete in itself and does not require any reference to the old bond which it supersedes. It is a new contract with new stipulations and terms, and limitation runs from the due dates therein mentioned. TARA SOONDUREE KULOONEE *v.* BHOOBUN CHUNDER GHOSE 23 W. R., 462

43. ——— *Admission of debt—Petition to file kistbundi.*—A petition put into Court by a judgment-debtor, for time to pay the instalments due under a kistbundi, may be considered as evidence of a new contract formally entered into with the decree-holder and declared in Court. PEAREE MOHUN MITTER *v.* MOHENDRO NARAIN SINGH
[23 W. R., 465

44. ——— *Signature not by debtor.*—A letter not signed by the debtor was not an acknowledgment in writing within the meaning of s. 4, Act XIV of 1859. RAMNARAIN *v.* HUREE DASS
[3 Agra, 81

45. ——— *Acknowledgment not signed.*—An acknowledgment in writing sealed, but not signed, by a defendant, was not an acknowledgment within the meaning of s. 4, Act XIV of 1859. LUCHMUN PERSHAD *v.* RUMZAN ALI
[8 W. R., 513

46. ——— *Signature not formally added.*—To entitle a plaintiff to the benefit of a new period of limitation under that section, he must prove that the party sued has in writing authenticated by his signature, either in express terms or by reasonable construction, acknowledged and admitted that the debt or a part thereof is due from him. This signature need not be formally subjoined or added to an acknowledgment written by the debtor, unless it appears from the writing that such signature was intended, or unless the writing would be incomplete in itself, as an admission without a signature. If the body of the admission is in the debtor's own handwriting, and contains his signature, and was given over by him as complete in itself, it would be an acknowledgment in writing within the meaning of s. 4. MUHAMMAD JANULA *v.* VENKATARAYAR
[2 Mad., 79

47. ——— *Signature by mark—Acknowledgment in writing.*—Payment endorsed on a bond by direction of the obligor who cannot write and signed with his mark is an acknowledgment in writing within the meaning of s. 20 of Act IX of 1871. BHEEMANGOWDA *v.* EERANAH
[7 Mad., 358

48. ——— *Suit for balance of account for advances.*—In a suit to recover a balance on account of indigo advances made on a kabuliat executed by a defendant, where defendant had broken no contract, but the discontinuation of the cultivation had been the act of the plaintiff, limitation was held to run from the date of the kabuliat which operated as a written acknowledgment signed by defendant (s. 4, Act XIV of 1859). *Held* too that a statement of balances found in one of plaintiff's books duly verified, without any signature by defendant (who could not write), was not an acknowledgment within the meaning of s. 4. The entry of defendant's name in one column, taken in connection with a cross in another column, formed no valid signature. BENGAL INDIGO COMPANY *v.* KOYLASH CHUNDER DOSS [10 W. R. 293

49. ———— *Acknowledgment of debt—Secondary evidence of acknowledgment—Authority to bind minor by acknowledgment.*—An original account book containing an acknowledgment of a debt had been filed in Court, and subsequently lost whilst in Court. *Held* that secondary evidence of such acknowledgment might be given, notwithstanding the words of s. 19 of the Limitation Act. A person merely by reason of being the mother and guardian of a minor has no authority to make an acknowledgment of a debt on behalf of the minor so as to give a creditor a fresh start for the period of limitation. WAJIBUN *v.* KADIR BUKSH [I. L. R., 13 Calc., 292

50. ———— *Acknowledgment—Entry of a debt in a debtor's book.*—An entry in a debtor's own book does not amount to an acknowledgment within the meaning of s. 19 of Act XV of 1877, unless communicated to his creditor or to some one on his behalf,—Explanation 1 to s. 19 showing that the acknowledgment is contemplated as "addressed" to the creditor. Every acknowledgment, in order to create a new period of limitation, must be signed by the debtor, or some one deputed by him, no matter in what part of the document the signature is placed. MAHALAKSHMIBAI *v.* FIRM OF NAGESHWAR PURSHOTAM . . . . I. L. R., 10 Bom., 71

51. ———— *Application by judgment-debtor for postponement of sale.*—An application by the defendant for a postponement of the sale of his property when he promised to pay the amount of the decree was held to be an admission of the plaintiff's right to execute the decree within the contemplation of s. 19 of the Limitation Act (XV of 1877), and created a new period of limitation. VENKATRAV BAPU *v.* BIJESING VITHALSING [I. L. R., 10 Bom., 108

52. ———— *Deposition signed by the debtor.*—To satisfy the requirements of s. 19 of the Limitation Act, an acknowledgment of a debt must amount to an acknowledgment that the debt is due at the time when the acknowledgment is made. A record made by a Judge of the evidence given by a debtor as a witness at the trial of a suit, and signed by the debtor, is a writing signed by the debtor within the meaning of s. 19 of the Limitation Act. PERIAVENKAN UDAYA TEVAR *v.* SUBRAMANIAN CHETTI. SUBRAMANIAN CHETTI *v.* PERIAVENKAN UDAYA TEVAR . . . I. L. R., 20 Mad., 239

53. ———— *Account stated—Signing by debtor.*—Although to make an account a stated account it is not necessary that it should be signed, yet, unless it is signed by the debtor, the intention and effect of s. 4 of Act XIV of 1859 is to prevent it being made the foundation of an action to recover a debt which would otherwise be barred by that Act. MULCHAND GULABCHAND *v.* GIRDHAR MADHAV [8 Bom., A. C., 6

54. ———— *Signature.*—Where an account stated was written by a debtor himself, by his name at the top of the entry, it was held to be sufficiently signed within the meaning of s. 4 of Act XIV of 1859. ANDARJI KALYANJI *v.* DULABH JEEVAN [I. L. R., 5 Bom., 88

55. ———— *Signature.*—Where the whole of an account stated (khata) was written by a debtor himself with the introduction of his name at the top of the entry, the khata was held to be sufficiently signed within the meaning of Act XV of 1877, s. 19. JEKISAN BAPUJI *v.* BHOWSAR BHOGA JETHA . . . . I. L. R., 5 Bom., 89

56. ———— *"Signing," What amounts to—Signature.*—Certain letters admitting a debt were written by the authority of the debtor, who was a desai. The only words, however, of the letter which were actually in his own handwriting were the words "guru samarth" (the exalted preceptor is strong) at the beginning of each letter, and the words "*kalave, bahut kay lihine, lobh karava hi vinanti*" (let this be known; what more need be written; keep regard; this is the representation) at the end. It was proved by evidence that this was the usual mode of signing and authenticating letters and informal documents among the class to which the defendant belonged. *Held* that, by analogy, the writing of specified words by desais at the top and bottom of letters, which was shown to be the usual way amongst persons of that class, of authenticating letters was a "signing" within s. 19 of the Limitation Act (XV of 1877), and that the letter was a valid acknowledgment. The ground upon which it is held that the mark of an illiterate debtor is a sufficient signature, is that the signing in such a manner as is usually adopted by the debtor with the view of showing that he intends to be bound by the document, renders the document effective as an acknowledgment under the section. Whether the circumstance of the debtor not signing his name is the result of necessity as in the case of an illiterate debtor, or of custom as in the case of a class of debtors having a special status in the community, can be of no importance. GANGADHARRAO VENKATESH *v.* SHIDRAMAPA BALAPA DESAI . . . . I. L. R., 18 Bom., 586

57. ———— *Acknowledgment of guardian for minor.*—The signature of a guardian of a minor to an acknowledgment of a debt does not make it such an acknowledgment under s. 19 of the Limitation Act as would give a new period of limitation against the minor, the signature of the guardian not being a signature by the person against whom the right is claimed. AZUDDIN HOSSAIN *v.* LLOYD . . . . . 13 C. L. R., 112

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*continued.*

58. ———————— *Acknowledgment signed by agent.*—Under s. 4, Act XIV of 1859, an acknowledgment in writing, signed by the agent or constituted attorney of the debtor, is not sufficient. Purshotam Mancharam *v.* Abdul Latif

[6 Bom., O. C., 67

Budoobhoosun Bose *v.* Enaeth Moonshee

[8 W. R., 1

59. ———————— *Powers of sarbarakar—Authority of agent—Collector, Notice by, as acknowledgment of debt—Evidence, Admissibility of—Parol evidence.*—A debtor, since deceased, had executed a bond to his creditor. The heir of the debtor having been disqualified, and a sarbarakar of the estate having been appointed, the latter had executed a muktarnamah or power-of-attorney empowering an agent to act in reference to the land, and the charges thereon. The agent admitted the debt. *Held* that on the construction of the power given to him, authority to the agent to acknowledge a personal liability of the debtor and his heir, within the meaning of s. 19 of Act XV of 1877, could not be implied. It was doubted whether the sarbarakar, not having been appointed guardian of the heir, could have made such an acknowledgment herself. Another acknowledgment, a notice from the Collector, as agent for the Court of Wards, admitting the estate's indebtedness to the original holder of the bond, was relied upon. In addition to the bond-debt now in suit, another sum, due on a mortgage, was claimed by the same creditor, and the terms of the notice would apply to either. *Held* that the debt referred to in the notice not having been identified with the bond-debt in suit, acknowledgment of the latter by the Collector was not established within s. 19. The oral evidence of the Collector as to his intention was not admissible to construe the notice, but accompanying circumstances might be shown and considered. Beti Maharani *v.* Collector of Etawah . . . **I. L. R., 17 All., 198**

[L. R., 22 I. A., 31

60. ———————— *Acknowledgment of agent.*—The acknowledgment of an agent for the management of a zamindar's property is not the acknowledgment of the principal within the meaning of s. 4, Act XIV of 1859. Reazoodeen *v.* Collector of Cuttack . . . . **10 W. R., 175**

61. ———————— The plaintiff sued three executors for the balance due of their testator's simple contract debt of more than three years' standing. A part payment had been made by the defendants within the three years previous to the commencement of the suit. Two of the defendants had also, but during their testator's lifetime, given a personal undertaking in writing to pay the debt out of a fund coming to their hands. The defendants had also signed as executors, and sent a letter to the plaintiff informing him that they had registered his claim against the testator's estate, and that notice would be given to him when the assets, if any, were to be distributed. *Held* that neither the personal undertaking nor the letter was such an acknowledgment in writing as to bring the case within s. 4 of Act XIV of 1859. Iovara Das *v.* Richardson . . **2 Mad., 84**

62. ———————— *Acknowledgments by agent.*—Acknowledgments which, under Act XIV of 1859, were insufficient to keep alive a cause of action, because they were signed only by an agent, *held* to be sufficient to sustain a suit on the same cause of action under Act IX of 1871. Where a series of acknowledgments of a debt have been made, each within three years of the one next preceding, and the first of the series has been made within three years of the date on which the debt was contracted, a suit for the recovery thereof is under Act IX of 1871 in time, if instituted within three years from the date of the last acknowledgment. Discussion as to who is an authorized agent, what is a sufficient signature, and what amounts to a sufficient acknowledgment within the meaning of s. 20 of Act IX of 1871. Under s. 20 of Act IX of 1871, the authorized agent may sign either his own name or that of his principal. Mohesh Lal *v.* Busunt Kumaree

[I. L. R., 6 Calc., 340 : 7 C. L. R., 121

63. ———————— *Acknowledgment by agent.*—*Held*, upon the evidence in the case, that an acknowledgment of the debt sued for had not been signed by an agent of the defendant, generally or specially authorized in that behalf within the meaning of s. 20, Act IX of 1871. Whatever general authority such agent may once have had from the defendant, it had ceased within the knowledge of the plaintiff at the time of the signature. Special authority in that behalf cannot be proved by secondary evidence of the contents of a letter, the non-production of which is not satisfactorily accounted for. Dinomoyi Debi *v.* Roy Luchmiput Singh

[L. R., 7 I. A., 8

64. ———————— *Acknowledgment by agent—Signature.*—*B*'s agent, under the orders of *B*, wrote a letter to *S* containing an acknowledgment in respect of a debt. This letter was headed as follows: "Written by *B* to *S*." The concluding portion of the letter was written by *B* in his own handwriting. *Held* that, under these circumstances, there was sufficient evidence that the heading of the letter was written by an agent duly authorized. *Held* also, looking at the heading of the letter, that the letter was "signed" by *B* within the meaning of s. 20 of Act IX of 1871. Mathura Das *v.* Babu Lal

[I. L. R., 1 All., 683

65. ———————— *Payment of part of judgment-debt by debtor and acknowledgment of his liability by pleader.*—The payment of part of the judgment-debt by the judgment-debtor, with the acknowledgment of liability by his pleader, is sufficient, under the provisions of s. 19 of the Limitation Act (XV of 1877), to give a fresh period of limitation. Trimbak Bapuji Patvardhan *v.* Kashinath Vidyadhar Gosavi . **I. L. R., 22 Bom., 722**

66. ———————— *Acknowledgment by agent—Plaint signed by vakil.*—A plaint signed by a vakil before the Limitation Act (IX of 1871) came into operation does not save limitation, as the earlier

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*continued.*

Limitation Acts do not give authority to an agent to sign an acknowledgment for his principal similar to that given by s. 20 of that Act and s. 19 of Act XV of 1877. Acknowledgments which are insufficient to keep alive a cause of action because they were signed only by an agent, are equally insufficient to sustain a suit on the same cause of action under Act XV of 1877, as s. 2 of the Act expressly bars the revival of a right to sue barred under the earlier Acts, although they might have been sufficient under Act IX of 1871. DHARMA VITHAL *v.* GOVIND SADVALKAR **[I. L. R., 8 Bom., 99**

67. ———— *Acknowledgment—Authorized agent.*—A balance of account was written by a person at the request of an illiterate debtor in the debtor's name, and signed by the writer in his own name. *Held* a binding acknowledgment by a duly authorized agent within the meaning of s. 19, explanation 2 of Act XV of 1877. HEMCHAND KUBER *v.* VOHORA RAJI HAJI . **I. L. R., 7 Bom., 515**

68. ———— *Signature by agent.*—An application by a judgment-debtor in writing for the postponement of a sale in execution of a decree and the issue of fresh notification of sale signed by the pleader expressly authorized to make it is an acknowledgment "signed" by an "agent duly authorized in the judgment-debtor's behalf" within the meaning of s. 19, Act XV of 1877. RAMHIT RAI *v.* SATGUR RAI **[I. L. R., 3 All., 247**

69. ———— *Petition filed on behalf of minor by vakil accompanied by part payment of money due under decree.*—A petition filed on behalf of a minor by his vakil, admitting liability and accompanied by part payment of the money due under a decree, was held to be an acknowledgment of liability sufficient to prevent execution being barred. *Taree Mahomed* v. *Mahomed Mabood Bux, I. L. R., 9 Calc., 730,* referred to. NORENDRA NATH PAHARI *v.* BHUPENDRA NARAIN ROY **[I. L. R., 23 Calc., 374**

70. ———— *Admission of liability contained in a memorandum of appeal in a different suit—Admission necessary for the pleadings in suit—Authority of advocate or vakil.*—An admission made by an advocate or duly authorized vakil on behalf of his client in a memorandum of appeal in a case not *inter partes,* that a certain decree was a subsisting decree capable of execution, will amount to an acknowledgment within the meaning of s. 19 of Act XV of 1877 so as to give a fresh starting point to limitation for execution of such decree, provided that such admission was necessary for the purposes of the pleadings in the former case. *Sed quære*—Whether such admission will have a similar effect if it was not necessary for the purposes of the suit in which it was made. *Ram Hit Rai* v. *Satgur Rai, I. L. R., 3 All., 247,* followed. HINGAN LAL *v.* MANSA RAM . . **I. L. R., 18 All., 384**

71. ———— *Manager of joint Hindu family—Agent, Authority of—Principal and agent.*—The relation of the managing member of a Hindu family to his co-parceners does not necessarily imply an authority upon his part to keep alive, as against his co-parceners, a liability which would otherwise become barred. The words of s. 20 of Act IX of 1871 must be construed strictly, and the manager of a Hindu family as such is not an agent "generally or specially authorized" by his co-parceners for the purpose mentioned in that section. KUMARASAMI NADAN *v.* PALA NAGAPPA CHETTI . . . **I. L. R., 1 Mad., 385**

72. ———— *Manager of Hindu family—Authority to revive barred debt.*—The manager of a Hindu family has the same authority to acknowledge as he has to create debts on behalf of the family, but has no power, without special authority, to revive a claim, already barred by limitation, against the family. CHINNAYA *v.* GURUNATHAM **[I. L. R., 5 Mad., 169**

See GOPAL NARAIN MOZOOMDAR *v.* MUDDOMUTTY GOOPTEE . . . **14 B. L. R., 21**

73. ———— *Manager of a joint Hindu family—Authority to acknowledge a family debt.*—The manager of a joint Hindu family has authority to acknowledge the liability of the family for the debts which he has properly contracted, so as to give a new period of limitation against the family from the time the acknowledgment is made. He is an agent duly authorized in this behalf within the meaning of s. 19 of the Limitation Act. *Chinnaya Nayadu* v. *Gurunatham Chetti, I. L. R., 5 Mad., 169,* approved and followed. BHASKER TATYA SHET *v.* VIJALAL NATHU **[I. L. R., 17 Bom., 512**

74. ———— *Manager of joint family—Power of manager to revive a time-barred debt.*—The manager of a Hindu family has no power to revive by acknowledgment a debt barred by limitation, except as against himself. DINKAR *v.* APPAJI **[I. L. R., 20 Bom., 155**

75. ———— *Authority of guardian to acknowledge debt due by minor.*—A guardian has authority to acknowledge a debt on the part of the minor, provided that the debt is not barred by limitation at the date of the acknowledgment. *Chinnaya* v. *Gurunatham, I. L. R., 5 Mad., 169,* followed. *Wajibun* v. *Kadir Buksh, I. L. R., 13 Calc., 295,* disapproved. SOBHANADRI APPA RAU *v.* SRIRAMULU **[I. L. R., 17 Mad., 221**

KAILASA PADIACHI *v.* PONNUKANNU ACHI **[I. L. R., 18 Mad., 456**

76. ———— *Authority of guardian to acknowledge debt on behalf of minor—Agent.*—A guardian has no authority to acknowledge a debt on behalf of his ward so as to give the creditor a fresh start for the period of limitation, as he is not an agent on the part of his ward within the meaning of s. 19 of the Limitation Act (XV of 1887). *Sobhanadri Appa Rau* v. *Sriramulu, I. L. R., 17 Mad., 221,* dissented from. RANMALSINGJI *v.* VADILAL VAKHATCHAND **I. L. R., 20 Bom., 61**

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*continued.*

77. ——————— *Acknowledgment by guardian of minor—Guardians and Wards Act (VIII of 1890), ss. 27 and 29—Act XL of 1858.*—An acknowledgment of a debt by the guardian of a minor appointed under the Guardians and Wards Act does not bind the minor and is not such an acknowledgment under s. 19 of the Limitation Act as would give a new period of limitation against the minor. CHHATO RAM *v.* BILTO ALI

[I. L. R., 26 Calc., 51

See also AZUDDIN HOSSEIN *v.* LLOYD

[13 C. L. R., 112

78. ——————— and art. 59—*Prescribed period.*—The expression "prescribed period" in s. 20 (*a*) of the Limitation Act (IX of 1871) means the period prescribed by that Act. Where a suit was brought on the 11th September 1877 for money paid by the plaintiff on the 16th November 1868 to the use of the defendant, and the plaintiff based his claim upon two acknowledgments of the defendant in writing, of which the first was dated the 3rd November 1872,—*Held* that, to bring the case within s. 20 (*a*) of the Limitation Act (IX of 1871), the first acknowledgment should have been made before the expiration of the period prescribed by art. 59 of sch. II of that Act, *viz.*, three years from the period when the money was paid. LUVAR CHUNILAL ICHHARAM *v.* LUVAR TRIBHOBAN LAL DAS

[I. L. R., 5 Bom., 688

79. ——————— *"Promise"—Suit on bond executed for barred debt—Contract Act, s. 25, cl. 3.*—The "promise" referred to in s. 20 of Act IX of 1871 is a promise introduced by way of exception, in a suit founded on the original cause of action, and not a promise constituting a new contract, and extinguishing the original cause of action. Accordingly a suit is not barred which is brought on a bond executed in consideration of a barred debt, after the expiration of the period prescribed for its recovery. RAGHOJI BHIKAJI *v.* ABDUL KARIM

[I. L. R., 1 Bom., 590

80. ——————— *Promissory note for barred debt—Contract Act, s. 25, cl. 3.*—Act IX of 1871, s. 20, cl. (*a*), does not prevent a plaintiff from maintaining a substantive action on a promissory note passed to secure the amount due on an old note which was barred by limitation at the time of the making of the new, the plaintiff's right to bring such action being recognized by the later enactment, Act IX of 1872, s. 25, cl. 3. CHATUR JAGSI *v.* TULSI

[I. L. R., 2 Bom., 230

81. ——————— *Acknowledgment of barred decree.*—In the case of a decree for money payable by instalments with the proviso that in the event of default the decree should be executed for the full amount, the decree-holder did not apply for execution within three years after default was made. *Held,* the judgment-debtor having, three years after the first default, acknowledged in writing his liability under the decree, and signed such acknowledgment, that, the decree being already barred, such acknowledgment did not create a new period of limitation. SHIB DAT *v.* KALKA PRASAD

[I. L. R., 2 All., 443

82. ——————— *Acknowledgment after period of limitation has expired—Promise to pay—Conditional promise to pay barred debt—Contract Act (IX of 1872), s. 25.*—Where the defendant, after his debt had become barred by limitation, wrote as follows to his creditor in reply to a demand for payment: "I bear the matter in mind, and will do my utmost to repay this money as soon as I possibly can." *Held* that this promise by the defendant was only a conditional promise, *viz.*, to pay when he was able; and the plaintiff having failed to prove the defendant's ability to pay, the promise did not operate, and the plaintiff could not recover. WATSON *v.* YATES

[I. L. R., 11 Bom., 580

83. ——————— *Agent—Signature procured after determination of agency.*—Notwithstanding the general provisions of s. 19 of the Limitation Act of 1877, by which a new period of limitation, according to the nature of the original liability, is allowed, provided that the acknowledgment of liability is made in writing before the expiration of the period prescribed for the suit, a suit cannot be brought upon an acknowledgment or account stated, signed by a person who has been an agent to collect rents, if his signature was not procured till more than a year after the determination of his agency. PARBUTTINATH ROY *v.* TEJOMOY BANERJI

[I. L. R., 5 Calc., 303

84. ——————— *Account stated—Adjusted account—Adjustment of accounts, Effect of—"Ruzu"—Contract Act (IX of 1872), s. 25, cl. 3.*—The "ruzu" or adjustment of an account can operate either as a revival of an original promise or as evidence of a new contract. If it is to be used as an acknowledgment giving a fresh starting point for computing a new period of limitation, it must be made in writing and signed before the expiration of the period of limitation prescribed. If it is to be used as evidence of a new contract furnishing a basis for a new cause of action, it must contain a promise in writing duly signed as required by the Contract Act (IX of 1872), s. 25, cl. 3, a bare statement of an account not being such a promise. RAMJI *v.* DHARMA . . . I. L. R., 6 Bom., 683

85. ——————— *Account stated—Promise—Balance admitted due—Baki deva—Act IX of 1872, s. 25.*—The Gujarati words "baki deva," which are of common use in balancing accounts, import no more than the English words "balance due," from which an unwritten contract may be inferred, but which do not of themselves amount to a promise to pay within the sense of Act IX of 1872, s. 25, cl. 3. RANCHHODDAS NATHUBHAI *v.* JEYCHAND KHUSALCHAND . . I. L. R., 8 Bom., 405

See RAMJI *v.* DHARMA . I. L. R., 6 Bom., 683

86. ——————— *Agreement to pay as per account—Acknowledgment of debt.*—The plaintiff

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*continued.*

as receiver to the estate of *S* instituted a suit on the 11th July 1898 against the defendants to recover the sum of R2,808-13-2, a portion of the said sum being the rent of a house occupied by the defendants at Mandalay since January 1894 till the 11th July 1898, the remaining portion being the price of goods sold by the defendants as agents of *S*. It was contended by the defendants that the plaintiff's claim to rent prior to July 1894 was barred. The plaintiff submitted that the letters written by the defendants to the plaintiff within three years of the institution of the suit agreeing to pay as per account enclosed by them to the plaintiff was a sufficient acknowledgment to save the claim for rent from being barred. *Held* that the plaintiff's claim for the portion of rent claimed beyond three years was not barred; the defendants' letters were a sufficient acknowledgment to save limitation; there being an admission that there was an open account between the parties, and that there was a right to have it taken, implied a promise to pay. *Prance* v. *Sympson, 1 Kay, 678*, and *Banner* v. *Berridge, L. R., 18 Ch. D., 254*, referred to. FINK *v.* BULDEO DASS

[I. L. R., 26 Calc., 715
3 C. W. N., 524

87. ——— **sch. II, art. 110**—*Contract Act (IX of 1872), s. 25, cl. (3)—Promise to pay a barred debt.*—In defence to a suit for rent a tenant pleaded that a portion of the claim was barred by limitation. Plaintiff relied on a letter which had been signed by defendant, after the disputed portion had become barred, and in which the defendant, after referring to the periods in respect of which the arrears of rent were due, said "I shall send by the end of Vysakha month." *Held* that the document contained the ingredients required by s. 25, cl. (3), of the Contract Act, and that the claim was not barred by limitation. A document sufficiently complies with s. 25 of the Contract Act when it is signed by the person to be charged, and refers to the debt in such a way as to identify it, and contains a promise to pay wholly or in part the debt referred to therein, or expresses an intention to pay which can be construed to be a "promise." To create a "promise" within the meaning of the section, it is not necessary that there should be an accepted proposal reduced to writing, a written proposal, accepted before action, becoming by the definition clause a promise when accepted. The words of the section show that it is the debt and not a sum of money in consideration of the barred debt that the promisor should refer to. APPA RAO *v.* SURYAPRAKASA RAO

[I. L. R., 23 Mad., 94

88. ——— *Admission of debt being due in writing itself.*—To bring a case within s. 4, Act XIV of 1859, the writing must contain within itself an admission that a debt is due, and oral evidence is not admissible to add to its meaning. LUTCHUMANAN CHETTY *v.* MUTTA IBURAKI MARAKKAYER . . . . . . **5 Mad., 90**

89. ——— *Oral evidence.*—The want of an admission or acknowlegment in writing, as required by s. 4, Act XIV of 1859, to qualify the limitation prescribed by cl. 9, s. 1 of that Act, cannot be supplied by oral evidence of the admission of the debt sued for. GIREE DHAREE SINGH *v.* KALIKA SOOKUL. DOORGA DUTT SINGH *v.* KALIKA SOOKUL

[7 W. R., 46

WOOMA SOONDERY DOSSEE *v.* BIRESSUR ROY

[8 W. R., 289

90. ——— *Contents of acknowledgment of debt, Secondary evidence of—Evidence Act (I of 1872), s. 91.*—Para. 2, s. 19 of the Limitation Act, 1877, belongs to that branch of the law of evidence which is dealt with by s. 91 of Act I of 1872, and ought not to be read in derogation of the general rules of secondary evidence so as to exclude oral evidence of the contents of an acknowledgment which has been lost or destroyed. SHAMBHU NATH NATH *v.* RAM CHUNDRA SHAHA . **I. L. R., 12 Calc., 267**

91. ——— *Acknowledgment in writing—Evidence Act (I of 1872), ss. 65 and 91—Secondary evidence.*—Limitation Act, s. 19, must be read with Evidence Act, ss. 65 and 91, and does not exclude secondary evidence in cases where such would be admissible under s. 65. *Shambhu Nath Nath* v. *Ram Chundra Shaha, I. L. R., 12 Calc., 267*, followed. CHATHU *v.* VIRARAYAN

[I. L. R., 15 Mad., 491

92. ——— *Registration—Non-registration of kobala, Effect of—Act VIII of 1871, s. 17—Act IX of 1871, s. 20, cl. (c), and s. 49.*—Although, under s. 49 of Act VIII of 1871, no instrument which is "required by s. 17 to be registered shall, if unregistered, be received as evidence of any transaction affecting the property to which it relates," this provision does not prevent such an instrument being used for the purpose of showing that a fresh period of limitation has been acquired under s. 20, cl. (c), of Act IX of 1871, by an acknowledgment of a debt in writing signed by the party to be charged therewith before the expiration of the prescribed period of limitation. NUNDO KISHORE LALL *v.* RAMSOOKHEE KOOER

[I. L. R., 5 Calc., 215 : 4 C. L. R., 361

93. ——— **expln. 1**—*Acknowledgment in writing.*—In a suit upon a bond brought against the defendant as a principal debtor, an acknowledgment of liability as a surety only is sufficient to save limitation, with reference to s. 19, expln. 1, of the Limitation Act (XV of 1877). UNCOVENANTED SERVICE BANK *v.* GRANT

[I. L. R., 10 All., 93

LIMITATION ACT, 1877—*continued.*

1. ACKNOWLEDGMENT OF DEBTS—*concluded.*

2. ACKNOWLEDGMENT OF OTHER RIGHTS.

94. ——— *Acknowledgment of title to immoveable property.*—An acknowledgment of title to immoveable property gives a new starting point for limitation under s. 19 of the Limitation Act (XV of 1877). JAGABANDHU BHATTACHARJEE *v.* HARIMOHON ROY . . . **1 C. W. N., 569**

95. ———— *Landlord and tenant—Acknowledgment of different tenancy.*—Where a landlord sued to recover arrears of rent due from a tenant who entered as a mulgeni tenant for one year and continued in possession without executing a fresh agreement,—*Held* that an admission, made in writing and signed by the tenant, that he held the land as mulgeni or permanent tenant at a lower rent, was not an acknowledgment of the landlord's right, which, under s. 19 of the Limitation Act, 1877, would entitle the landlord to recover arrears of rent for three years prior to the date of the admission. VENKATARAMANAYYA *v.* SRINIVASA RAU

[I. L. R., 6 Mad., 182

96. ———— *Mortgage—Right to redeem mortgage.*—Where a mortgage has not legally been put an end to, the mortgagor (or his representatives) is entitled to come into Court and ask to be allowed to redeem, provided sixty years have not elapsed since the last recognition by the mortgagee of the plaintiff's title to the mortgaged property. RUNJEET NARAIN SINGH *v.* SHUREEFOONISSA

[10 W. R., 478

97. ———— *Suit for redemption of mortgage—Acknowledgment.*—A mortgage deed having been executed in 1761 and an acknowledgment of the mortgagor's right to redeem having been made in writing in 1838,—*Held* that a suit to redeem in 1878 was barred. The words "in the meantime" in cl. 15 of s. 1 of the Limitation Act (XIV of 1859) mean within sixty years from the date of the mortgage. *Vassudavan Nambudri* v. *Mussa Kutti, 6 Mad., 138,* followed. *Daiachand* v. *Sarfraz Ali, I. L. R., 1 All., 425,* dissented from. MUKKANNI *v.* MANNAN . **I. L. R., 5 Mad., 182**

KAMMANA KALLACHERI ILLATH VASSUDAVAN NAMBUDRI *v.* CHEMBRAKANDY MUSSA KUTTY

[6 Mad., 138

MAHOMED ABDOOL RUZZAH *v.* ASIF ALI SHAH

[3 N. W., 119

NARAIN LALL *v.* LALLA NUND KISHORE LALL

[19 W. R., 78

98. ———— *Limitation Act, s. 21, and sch. II, art. 148—Limitation Act (XIV of 1859), s. 1, cl. 15—Right of redemption of mortgage—Acknowledgment of title of mortgagor.*—*Held* that an acknowledgment of the title of the mortgagor made by one only of two mortgagees would not avail to save the mortgagor's right of redemption being barred by limitation, where the mortgage was a joint mortgage and not capable of being redeemed piecemeal. *Bhogilal* v. *Amritlal, I. L. R., 17 Bom., 173,* referred to. DHARMA *v.* BALMAKUND . . . **I. L. R., 18 All., 458**

99. ———— *Acknowledgments of liability—Suit for possession.*—Acknowledgment of liablity, in order to be within the meaning of s. 19 of the Limitation Act, must be an acknowledgment of liability to the person who is seeking to recover possession, or some person through whom he claims. MYLAPORE IYASAWMY VYAPOORY MOODLIAR *v.* YEO KAY . . . **I. L. R., 14 Calc., 801**

[L. R., 14 I. A., 168

100. ———— *Acknowledgment made to third party.*—A written acknowledgment by the mortgagee of the title of the mortgagor, or of his right of redemption, was sufficient within the meaning of cl. 15, s. 1, Act XIV of 1859, though made to a third party and not the person entitled to the land. DUR GOPAL SINGH *v.* KASHEERAM PANDAY

[3 W. R., 3

101. ———— *Acknowledgment to third person.*—An acknowledgment of title under cl. 15, s. 1 of Act XIV of 1859, need not be made to the mortgagor or his representatives; any acknowledgment in writing signed by the mortgagee is sufficient. AHILOJI VALAD KHANDOJI *v.* DONGAR HARICHAND GUJAR **5 Bom., A. C., 176**

UNICHA KHANDYIB KUNHI KUTTI NAIR *v.* VALIA PIDIGAIL KUNHAMED KUTTY MARACCAR

[4 Mad., 359

ALI HOSSEIN *v.* RAMDYAL . . **3 N. W., 78**

102. ———— *Suit to redeem mortgage—Acknowledgment.*—The first plaintiff claimed to redeem a mortgage to defendants' ancestor for R320. Defendants pleaded that the mortgage was for R2,336-4, and redeemable only at the pleasure of the mortgagee. They also pleaded the Limitation Act. The original Court decreed redemption on payment of the amount stated by defendants. The lower Appellate Court reversed that decree and dismissed the suit as barred. *Held,* reversing the decree of the lower Appellate Court, that an acknowledgment by the mortgagees of the mortgagor's title, sufficient to take the case out of the statute, was evidenced by their written answer in suit No. 238 of 1830 and by the answer in original suit No. 441 of 1861, as recited in the judgment in that suit, although the right to redeem and the amount of the mortgage were denied, and the acknowledgments were not made before those suits were brought. The Act for the limitation of suits does not require that the acknowledgment of the title of a mortgagor should be made to any particular person or at any particular time before the institution of the suit in which the bar is pleaded. NARRAINA TANTRI *v.* UKKOMA . **6 Mad., 267**

103. ———— *Entry in wajib-ul-urz—Acknowledgment.*—An entry in a wajib-ul-urz is not tantamount to an acknowledgment on the part of the defendant, mortgagee, of the plaintiff's proprietary right so as to allow him to sue within sixty years from that date as provided by cl. 15, s. 1, Act XIV of 1859. CHUJJOO SINGH *v.* NAZIR HOSSEIN

[2 Agra, 227

104. ———— *Acknowledgment by vakil.*—A solemn and *bonâ fide* acknowledgment in writing of the mortgage and right of the mortgagor, made by the mortgagee for the purpose of a suit through his vakil, whose act and statement for the purpose of the suit were within the scope of his

LIMITATION ACT, 1877—*continued.*

2. ACKNOWLEDGMENT OF OTHER RIGHTS —*continued.*

authority according to the law then in force (cl. 1, s. 21 of Regulation XXVII of 1814), and were to be considered as if his client were personally present and consenting, was a sufficient acknowledgment in writing of the mortgagor's right to redeem as provided by cl. 15, s. 1, Act XIV of 1859, and gave a fresh starting point to the mortgagor to sue for redemption within sixty years from the date of such acknowledgment. Such acknowledgment in writing need not be made directly to the party entitled, or, in other words, to the mortgagor. ESREE SINGH *v.* BISHESHER SINGH . . . . **3 Agra, 255**

105. ——— *Acknowledgment by mooktear—Usufructuary mortgage.*—Where sixty years have elapsed from the date of a usufructuary mortgage, a suit by the mortgagor to recover possession of the mortgaged property is barred by cl. 15, s. 1, Act XIV of 1859. Where a mortgagee signed a mooktearnama, in which he stated that he would abide by any arguments which might be urged, and any documents which might be filed, by the mooktear thereby appointed, and the mooktear subsequently filed a written statement signed by himself alone, in which he admitted the mortgagor's title,—*Held* that the mooktearnama and written statement could not be read together as amounting to an acknowledgment sufficient to satisfy the requirements of cl. 15, s. 1, Act XIV of 1859. LUCHMEE BUKSH ROY *v.* RUNJEET RAM PANDAY

[13 B. L. R., P. C., 177 : 20 W. R., 358

S. C. in lower Court . . **12 W. R., 443**

See RAHMANI BIBI *v.* HULASA KUAR

[I. L. R., 1 All., 642

106. ——— *Acceptance of sale certificate—Acknowledgment of title.*—The acceptance of a sale certificate granted by a Zillah Court in 1824 to the purchaser of a mortgagee's interest in land sold by auction in satisfaction of a decree is not an acknowledgment, by the purchaser, of the title of the mortgagor which will satisfy the conditions of s. 19 of the Limitation Act and give a fresh starting point from which limitation will run for redemption. AMBALA VAVERI MANAKEL RAMAN SOMAYAJIPAD *v.* NADUVAKAT KRISHNA PODUVAL

[I. L. R., 6 Mad., 325

107. ——— *Suit for redemption of mortgage—Limitation Act (XIV of 1859), s. 1, cl. (15)—Acknowledgment—Secondary evidence—Beng. Reg. IV of 1793.*—In a suit instituted on the 20th of February 1893 to redeem a mortgage executed on the 17th October 1788, it must be first seen whether the suit was barred under Act XIV of 1859, inasmuch as, if it was so barred, nothing in the subsequent Acts could revive it. Where sixty years have elapsed from the date of an usufructuary mortgage, a suit by the mortgagor to recover possession of the mortgaged property is barred unless it can be shown that there is an acknowledgment signed by the hand of the mortgagee himself to take the case out of the operation of the Act. *Luchmee Buksh Roy* v. *Runjeet Ram Panday, 13 B. L. R., 177,* followed. A mere statement in a plaint or written statement, which is not proved to have been signed by the mortgagees, and which, under Bengal Regulation IV of 1793, was not required to be so signed, does not amount to an acknowledgment within the meaning of the above rule. SUNDER DAS *v.* FATIMULUNISSA . . . . **1 C. W. N., 513**

Upheld on appeal to Privy Council in FATIMATULNISSA BEGUM *v.* SUNDAR DAS

[I. L. R., 27 Calc., 1004
L. R., 27 I. A., 103
4 C. W. N., 565

108. ——— *New period—Revival of barred suit—Plaint—Receipt—Decree—Agent—Vakil—Mortgage—Redemption.*—The plaintiff's ancestor mortgaged a piece of land to the defendants' ancestor in 1797, and placed him in possession as agreed upon. Three years afterwards both the mortgagor and the mortgagee went out of the country. The mortgagor returning first resumed possession of the land; the mortgagee returning afterwards filed a suit in 1826 to recover possession under the terms of the mortgage, and obtaining a decree in his favour, possession was restored to him by the Civil Court in 1827. When taking delivery of the possession from the Court, the mortgagee passed to the officers of the Court a receipt in which the mortgagee acknowledged having received possession of the mortgaged land as directed by the decree. The plaintiff, the representative of the original mortgagor, on the 4th of December 1880, sued the defendant, the representative of the original mortgagee, to redeem the land. *Held* that the suit was barred; the receipt incorporating the decree by reference did not operate as an acknowledgment of a mortgage subsisting in 1827, so as to give to the mortgagor a new period of limitation under s. 19 of Act XV of 1877. This section intends a distinct acknowledgment of an existing liability or jural relation, not an acknowledgment without knowledge that the party is admitting anything. DHARMA VITHAL *v.* GOVIND SADVALKAR

[I. L. R., 8 Bom., 99

109. ———**and art. 148**—*Redemption of mortgage—Acknowledgment of the mortgagor's title signed by mortgagee's agent.*—*Held,* following the decision of the Privy Council in *Luchmee Buksh Roy* v. *Runjeet Ram Panday, 13 B. L. R., 177,* under Act XIV of 1859, that an acknowledgment of the title of the mortgagor or of his right of redemption signed by the mortgagee's agent is not sufficient under art. 148, sch. II of Act IX of 1871, to create a new period of limitation. RAHMANI BIBI *v.* HULASA KUAR

[I. L. R., 1 All., 642

110. ——— *Acknowledgment of title prior to Act XIV of 1859.*—In a suit for redemption of landed property the plaintiffs, representatives of the mortgagors, relied on an acknowledgment of the mortgagors' title contained in an entry in the settlement records of the year 1841, which was attested by the representatives of the mortgagees, defendants in the suit, and the lower Courts having differed as to whether the acknowledgment was sufficient without proof that it was made within sixty years from date of the alleged mortgage,—*Held* that, inasmuch as there was no limitation to suits for redemption of mortgage of landed property prior to Act XIV of 1859, it was unnecessary to ascertain when the mortgage was effected, the acknowledgment of 1841 being an acknowledgment of a right still subsisting, and one which fulfilled the requirements of art. 148, sch. II, Act IX of 1871. DAIA CHAND *v.* SARFRAZ ALI . **I. L. R., 1 All., 425**

111. ———— *Suit for redemption of mortgage—Acknowledgment of title of mortgagor or of his right to redeem.*—Where the defendants attested as correct the record-of-rights prepared at a settlement with them of an estate in which they were described as mortgagees of the estate, but which did not mention the name of the mortgagor,—*Held* (SPANKIE, *J.*, dissenting) that there was an acknowledgment of the mortgagor's right to redeem within the meaning of art. 148, sch. II, Act IX of 1871. *Per* PEARSON, *J.*—That there was also an acknowledgment of the mortgagor's title. *Per* SPANKIE, *J.*, *contra.* DAIA CHAND *v.* SARFRAZ ALI . **I. L. R., 1 All., 117**

But *see* MUKKANNI *v.* MANAN BHATTA **[I. L. R., 5 Mad., 182**

112. ———— *Suit for redemption of mortgage—Acknowledgment of title of mortgagor or of his right to redeem.*—An acknowledgment to be within the meaning of art. 148, sch. II, Act IX of 1871, must be an acknowledgment of a present existing title in the mortgagor. An acknowledgment of the original making of the mortgage-deed and of possession having been taken under it, coupled with the allegation of the subsequent execution of two other deeds practically superseding the mortgage and altering the relation of the parties, contained in a written statement filed previous to the expiry of the sixty years allowed, is not a sufficient acknowledgment within the meaning of that article, so as to prevent limitation from operating. RAM DAS *v.* BIRJNUNDUN DAS *alias* LALOO BABOO **[I. L. R., 9 Calc., 616 : 12 C. L. R., 284**

113. ———— *Acknowledgment of liability—Will of mortgagee—Suit for redemption.*—In a suit to redeem a kanom of 1805 the plaintiff set up in bar of limitation an acknowledgment contained in the will of the deceased mortgagee, who thereby devised to his son lands therein described as held by him on kanom. The mortgagor's name was not mentioned, nor the date of the kanom, nor was there any further description of the land which, however, was admitted to be the land in question in the suit. *Held* that the will constituted an acknowledgment under s. 19. UPPI HAJI *v.* MAMMAYAN . . . **I. L. R., 16 Mad., 366**

114. ———— *Execution of decrees—Petition.*—S. 4, Act XIV of 1859, is not applicable to the execution of decrees. Thus an incidental mention by a judgment-debtor, in a petition filed by him in another case in which another decree-holder had taken out execution, that he owed money to the decree-holder in the present case, was held not to be an admission within the meaning of that section to keep the decree alive. LUCHMUN KOONWAR *v.* LUCHMUN BHUKUT . **7 W. R., 79**

115. ———— *Execution of decree—Petition.*—The word "debt" in s. 20 of Act IX of 1871 applies only to a liability for which a suit may be brought, and does not include a liability for which judgment has been obtained: therefore, where the last application for execution of a decree had been made on the 14th of December 1872, and a notice under s. 216, Act VIII of 1859, issued on the 19th of January 1873, and on the 28th of April 1873 the judgment-debtor filed a petition notifying part-payment, which petition was signed by the judgment-creditor,—*Held*, in an application for execution made on the 27th of April 1876, that further execution was barred by limitation. KALLY PROSONNO HAZRA *v.* HEERA LAL MUNDLE **[I. L. R., 2 Calc., 468**

116. ———— *Execution of decree.—Petition.*—An application was made for execution of a decree against the heir of the judgment-debtor on the 26th July 1871. On the 30th November of the same year the debtor applied by petition for two months' time. *Held* that the petition was not an acknowledgment within the meaning of s. 20 of Act IX of 1871 so as to save limitation. *Kally Prosonno Hazra* v. *Heera Lal Mundle, I. L. R., 2 Calc., 468,* followed. ISHANA DABIA *v.* GRIJA KANT LAHIRY CHOWDHRY . **3 C. L. R., 572**

117. ———— *Acknowledgment in writing of debt by judgment-debtor.*—An acknowledgment in writing of a debt by a judgment-debtor is not such an acknowledgment as is contemplated by Act IX of 1871, s. 20, and will not therefore operate to extend the period of limitation in favour of the judgment-creditor. The "debt" referred to in that section is not a judgment-debt, but a liability to pay money for which a suit can be brought. MUNGOL PRASHAD DICHIT *v.* SHAMA KANTO LAHORY CHOWDHRY . . . . **I. L. R., 4 Calc., 708**

118. ———— *Execution of decree—Acknowledgment in writing.*—An application for the execution of a decree is an application in respect of a "right,"—that is to say, the "right of the decree-holder to execution," within the meaning of s. 19 of Act XV of 1877. An application in writing by a judgment-debtor for the postponement of a sale in the execution of the decree and the issue of a fresh notification of sale is "an acknowledgment of liability" within the meaning of the same section, in respect of such "right." RAMHIT RAI *v.* SATGUR RAI **[I. L. R., 3 All., 247**

119. ——— *Application for execution of decree.*—The provisions of s. 19 of the Limitation Act, 1877, are not applicable to applications in execution of decrees. The ruling of the Allahabad Full Bench in *Ramhit Rai* v. *Satgur Rai, I. L. R., 3 All., 247,* dissented from. RAMA *v.* VENKATESA . . **I. L. R., 5 Mad., 171**

120. ——— *Application for execution of decree—Acknowledgment.*—An application for the execution of a decree is an application in respect of a "right" within the meaning of s. 19, Act XV of 1877, and a petition made by a judgment-debtor, and signed by his vakeel, praying for additional time for payment of the amount of a decree, constitutes an "acknowledgment of liability" within the meaning of that section, and a new period of limitation should be computed from the date of such petition in order to ascertain whether the execution of the decree is barred or not under the provisions of art. 179, sch. II of the Limitation Act. *Ramhit Rai* v. *Satgur Rai, I. L. R., 3 All., 247,* and *Ram Coomar Kur* v. *Jakur Ali, I. L. R., 8 Calc., 716,* followed. TOREE MAHOMED *v.* MAHOMED MAHBOOB **[I. L. R., 9 Calc., 730 : 13 C. L. R., 91**

121. ——— *Execution of decree—Acknowledgment in writing—Part-payment—Act XV of 1877, s. 20, and sch. II, No. 179.*—A decree for money, dated the 24th June 1878, directed that a certain instalment should be paid on the 22nd July 1878, and a like instalment on the 20th December 1878, and the balance by certain instalments commencing from a certain date, and that, in case of default, the decree-holder might realize the whole amount of the decree. The instalments were not paid at the fixed dates, but part-payments of the amount of the decree were made by the judgment-debtor from time to time out of Court. On the 7th May 1879, he made a part-payment and an endorsement on the decree to the following effect: "I, *G*, judgment-debtor of this decree, have myself paid R—, and have endorsed this payment on the decree in my own handwriting." On the 5th September 1881, the decree-holder applied for execution of the whole decree. *Held* by the Court that the application was governed by the rule contained in s. 19 of the Limitation Act, 1877; that the endorsement made by the judgment-debtor on the decree was an acknowledgment of liability under the decree; and that consequently the period of limitation for the application should be computed from the time such endorsement was made, and the application was therefore within time. *Ramhit Rai* v. *Satgur Rai, I. L. R., 3 All., 247,* followed, but with doubt. *Per* MAHMOOD, *J.*—That following the *ratio decidendi* in *Ramhit Rai* v. *Satgur Rai, I. L. R., 3 All., 247,* the part-payment made and endorsed on the decree by the judgment-debtor fell within the terms of s. 20 of the Limitation Act, 1877. *Asmutullah Dalal* v. *Kally Churn Mitter, I. L. R., 7 Calc., 56,* distinguished. Also *per* MAHMOOD, *J.*—That it was doubtful whether in this case the decree-holder was bound to execute the whole decree when the first default occurred, as the terms of the decree appeared to give the decree-holder an option in the matter, and therefore whether the application for execution was barred because it was made more than three years after that date. *Shib Dat* v. *Kalka Prasad, I. L. R., 2 All., 443,* distinguished. JANKI PRASAD *v.* GHULAM ALI **[I. L. R., 5 All., 201**

122. ——— **and art. 179**—*Acknowledgment in writing—Authority to sign acknowledgment.*—On the 7th of December 1877, additional time for payment of the amount of a decree, dated the 24th of March 1876, was granted to the judgment-debtor upon a petition signed by his vakil. On the 4th of December 1880, a fresh application for execution was made. *Held* that it was not barred under art. 179, sch. II of Act XV of 1877, inasmuch as the petition constituted an acknowledgment of liability under s. 19 of the same Act, and a new period of limitation began to run from the 7th of December 1877. The object of the words "application in respect of any property or right" in s. 19 is to extend to the applications mentioned in sch. II the same privilege as is accorded to suits. *Ramhit Rai* v. *Satgur Rai, I. L. R., 3 All., 247,* approved of. RAM COOMAR KUR *v.* JAKUR ALI **[I. L. R., 8 Calc., 716 : 10 C. L. R., 613**

123. ——— *Execution of decree—Contract superseding decree—Adjustment of decree—Certification—Civil Procedure Code, s. 258—Acknowledgment in writing.*—In the course of proceedings in execution of a decree, dated the 14th June 1878, the parties, on the 11th January 1881, entered into an agreement, which was registered and filed in the Court executing the decree. The deed recited that the decree was under execution, and that a mortgage-bond, dated the 1st December 1873, in favour of the judgment-debtor by a third party, had been attached and advertised for sale, and that the decree-holder and judgment-debtor had arranged the following method of satisfying the decree: That the judgment-debtor should make over the said bond to the decree-holder, in order that he might bring a suit thereon at his own expense against the obligor, and realize the amount secured by the bond, and out of the amount realized satisfy the decree under execution, with costs and future interest, together with all costs of the suit to be brought against the obligor, and together with a sum due by the judgment-debtor to the decree-holder under a note of hand for R250 with interest; and other details which need not be stated. On the same day that this deed was executed, the decree-holder filed a petition in the Court, to the effect that under the agreement an arrangement had been made for payment of the judgment-debt by which the judgment-debtor made over to him the bond advertised for sale, in order that the petitioner should file a suit under it at his own cost against the obligor, and realize the debt due under the decree in execution with interest and costs; and he prayed that the sale to be held that day might be postponed, and the application for execution struck off for the present, and the previous attachment maintained, and stated that, after realization of

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the amount entered in the bond advertised for sale, an application for execution would be duly filed. On this the order was that the execution case be struck off the file, and the attachment maintained. On the 24th December 1883, the decree-holder applied for execution of the decree, alleging that the judgment-debtor had failed to make over the bond to him according to the agreement. The judgment-debtor objected that the decree was no longer capable of execution, having been superseded by the agreement of the 11th January 1881, and that the application was barred by limitation, the previous application being dated the 9th November 1880. *Held* that the application was within time, inasmuch as the acknowledgment in the deed of the 11th January 1881 came within the terms of s. 19 of the Limitation Act, so as to originate a fresh period of limitation in respect of the execution of the decree. *Ghansham* v. *Mukha, I. L. R., 3 All., 320; Janki Prasad* v. *Ghulam Ali, I. L. R., 5 All., 201;* and *Ramhit Rai* v. *Satgur Rai, I. L. R., 3 All., 247,* followed. FATEH MOHAMMAD *v.* GOPAL DAS . . . **I. L. R., 7 All., 424**

124. ——————— *Decree partly in favour of plaintiff and partly in favour of defendant—Effect of application for execution by one party as to preventing limitation running against the other.*—*A* obtained a decree against *B* for possession and for R27 mesne profits. In execution he got possession. On appeal, however, the decree was reversed so far as it ordered possession to be given to him, and the amount of mesne profits awarded to him was reduced to R13-8-0. The appellate decree was passed on the 6th June 1889. On the 18th December 1891, the defendant *B* applied to be restored to possession. That application was dropped, and on the 24th September 1895 he made a second application. In the interval in 1892 and again in 1894 the plaintiff had applied for execution in respect of the R13-8-0 awarded to him. The lower Courts were of opinion that the application in 1895 by the defendant was not barred by limitation by reason of the plaintiff's applications in 1892 and 1894, which they held to be an acknowledgment by the plaintiff of the defendant's right to execute his part of the decree. *Held* (reversing the order of the lower Court) that the plaintiff's applications in 1892 and 1894 did not operate as an acknowledgment so as to prevent limitation. JEDDI SUBRAYA VENKATESH SHANBHOY *v.* RAMRAO RAM CHANDRA MURDESHVAR **I. L. R., 22 Bom., 998**

——————— s. 20 (1871, s. 21).

1. ——————— *Case under Punjab Code before Limitation Act, 1859.*—In a case under the Punjab Code before the Limitation Act of 1859 came into operation in Oudh it was held by the Privy Council that payments made by an agent upon account, and continued monthly for several months, ought to be regarded as tantamount at least to, if not correctly described as, a running account, and were therefore part-payments which amounted to "a partial satisfaction of demand," whereby the period of limitation was renewed. MUKKUM LALL *v.* IMTIAZ-OOD-DOWLAH

[5 W. R., P. C., 18: 1 Ind. Jur., N. S., 142
10 Moore's I. A., 362

See GOWRA BEBEE *v.* KISSEN MISSER **[1 Ind. Jur., N. S., 224**

and POTITPABUN SEN *v.* CHUNDER CAUNT MOOKERJEE . . . **1 Ind. Jur., N. S., 329**

Under the Act of 1859, part-payment was not an admission of a debt, though evidenced by writing. MUHAMAD JANULA *v.* VENKATANAYAR **2 Mad., 79**

IOVARA DAS *v.* RICHARDSON . **2 Mad., 84**

KRISTNA ROW *v.* HACHAPA SUGAPA **[2 Mad., 307**

MADHO SINGH *v.* THAKOOR PERSHAD **[5 N. W., 35**

2. ——————— *Prescribed period.*—Two of the sons out of a joint Mitakshara family, consisting of a father and three sons and the widow and sons of a deceased son, and carrying on business in partnership, sued to recover money due on a hath-chitta, dated 11th December 1876, the last payment made and entered by the defendant being on the 20th July 1877; no time was fixed for payment of the money, so that it became payable on the date of the hath-chitta. The suit was instituted on the 19th July 1880 and came on for hearing on the 26th of July, when an objection was taken that all the parties who ought to sue were not on the record. On the application of the original plaintiffs, the names of the father and the third son were then added, and the plaintiffs were described as surviving partners of the deceased son. At the time the additional plaintiffs were made parties, the suit was, as regards them, barred by limitation. *Held* that the suit, if all the plaintiffs had originally joined in suing, would not have been barred by s. 20 of Act XV of 1877. The words "prescribed period" in that section mean, not the period prescribed for the payment of the debt, but the prescribed period of limitation. RAMSEBUK *v.* RAMLAL KOONDOO . . **I. L. R., 6 Calc., 815**
[8 C. L. R., 457

IN THE MATTER OF MONGOLA KOIBORTO *v.* ANNODA RAM . . . **12 C. L. R., 277**

See LUVAR CHUNILAL ICHHARAM *v.* LUVAR TRIBHOVAN LALDAS . . **I. L. R., 5 Bom., 688**

3. ——————— *Part-payment of principal—Payment in kind.*—A payment may be made not only in the current coin of the realm, but in any other medium that the creditor may choose to accept. Where goods are delivered by the debtor and taken by the creditor in payment either of principal or interest as such, such delivery would be a good payment of principal or interest, as the case may be, so as to extend the period of limitation under s. 20 of the Limitation Act (XV of 1877). RAGHO SHITARAM *v.* HARI . . . **I. L. R., 24 Bom., 619**

4. ——————— *Payment of interest*—S. 21 of Act IX of 1871 has no application where the payments of interest admitted were made after the expiration of the period prescribed for the repayment of the loan. TARINEY CHURN NUNDY *v.* ABDUR ROHOMAN . . . . **2 C. L. R., 346**

5. ——— *Payment of interest—Payment made before Act came into operation.*—The exception of payment of interest contained in s. 21, Act IX of 1871, is not confined to payments made after that Act came into force, but applies also to payments made before that date. TEAGARAYA MUDALI *v.* MARIYAPPA PILLAI

[I. L. R., 1 Mad., 264

6. ——— *Bond—Payment of interest—Adjustment of accounts.*—Suit to recover the principal sum and one year's interest due on a bond, dated the 11th March 1866. By the terms of the bond the rent of certain land was assigned to the lender as security for interest. No date was specified in the bond for the payment of the principal sum. The interest was regularly paid up to October 1871, and the present suit was brought in June 1874. *Held,* on special appeal, by HOLLOWAY, *J.,* that assuming that the period of limitation was three years, and that it had run out both before action brought and before Act IX of 1871 came into operation, s. 21 of that Act operated to save the action; that at the period of that law coming into force there was still a contractual right existing, and that the right of action was restored by the payment of interest. *Vencatachella Mudali* v. *Sheshagherri Rau, 7 Mad., 283,* and *Mokatalla Naganna* v. *Pedda Narappa, 7 Mad., 288,* distinguished. *Held* by MORGAN, *C.J.,* that no question of limitation arose. That the lender having been constituted by the bond a trustee and receiver of the rents and profits of land, it was only on an adjustment of his accounts that the principal became payable. VALIA TAMBURATTI *v.* VIRA RAYAN . . **I. L. R., 1 Mad., 228**

7. ——— *Payment of interest—Contract in writing.*—The defendant at different times made payments to the plaintiff, who was his creditor, in reduction of the general balance of account against him, but without intimating that any of such payments was to be appropriated in satisfaction of the interest due on his debt. *Held* that there had been no payment of interest, "as such," by the defendant so as to bring the case within cl. 1 of s. 21 of the Limitation Act (IX of 1871), and that the plaintiff's claim was barred. HANMANTLAL MOTICHAND *v.* RAMBABAI . **I. L. R., 3 Bom., 198**

8. ——— *Receipt of rent—Payment of interest—Mortgage.*—In 1858 land was mortgaged to the plaintiff with possession for a term of five years, and in 1861 the defendant, the mortgagor, took a lease of the land from the plaintiff, under which he paid rent until 1870-71. The mortgage-debt was repayable on the expiry of the term. Plaintiff brought the suit out of which this appeal arose to recover the debt from the mortgagor. It was pleaded that the suit was barred by limitation, to which plaintiff replied that the receipt of rent was in fact a payment of interest, and that from the last payment of interest a new period of limitation arose. *Held* that the case being governed by the provisions of Act IX of 1871, the payment of rent under an agreement entirely independent of the original mortgage could not be regarded as a payment of interest. UMMER KUTTI *v.* ABDUL KADAR

[I. L. R., 2 Mad., 165

9. ——— *Payment of interest—Prescribed period—Extension of period.*—The words "prescribed period," used in s. 20 of the Limitation Act, 1877, mean the period prescribed by the Act. The contention that only one extension of the period of limitation is given by payment of interest is unfounded. VENKATARATNAM *v.* KAMAYYA

[I. L. R., 11 Mad., 218

10. ——— *Payment of interest—Entry on account of interest in debtors' books in presence of plaintiff.*—The plaintiffs, who were members of the Dalvadi community, sued in 1883 to recover from the defendant the sum of R2,611-3-6 as found credited to their account in 1880 by the defendants' father, with whom the community had lodged a sum of R2,320 in 1874. They alleged that the sum was lodged on the condition that it was to be returned with interest on demand. It appeared that small sums were paid by *K* to the plaintiffs from time to time, and entries of interest were made in the defendants' books as being credited to the plaintiffs. The defendants contended that the suit was barred. For the plaintiffs it was contended that the entry of interest in the defendants' book was made in the plaintiffs' presence and amounted to a payment of interest within the meaning of s. 20 of the Limitation Act (XV of 1877). *Held* that such an entry did not amount to payment of interest within the meaning of the section so as to save limitation. Nothing took place which could be regarded as equivalent to payment of interest. ICHHA DHANJI *v.* NATHA . **I. L. R., 13 Bom., 338**

11. ——— *Payment of interest as such—Mortgage—Payment of rents to mortgagee in lieu of interest on debt—Deed of assignment showing payment of rent in lieu of interest—Admissibility of deed in evidence—Registration Act (III of 1877), ss. 3 and 17.*—By a bond, dated the 15th July 1872, *A* assigned to *B* the "vahivat of assessment" of certain lands belonging to him as security for a loan of R10,000. The bond provided that *B* should receive the assessment, and, after making certain payments, should retain the balance in lieu of interest until the principal debt should be repaid. The bond was not registered. The assessment was duly received by *B* until April 1887. In February 1890, *B* filed this suit to recover the principal sum from *A* personally, relinquishing his claim against the land, as the bond was not registered. *A* pleaded limitation. *B* contended that the receipt of the assessment in lieu of interest was a payment of "interest as such" within the meaning of s. 20 of the Limitation Act (XV of 1877), and that the last of such payments having been made within three years before suit, his claim was not barred. *Held* that the suit was barred by limitation. The assignment of the "vahivat of assessment" contained in the bond was an assignment of a benefit arising out of immoveable property within the meaning of ss. 17

and 3 of the Registration Act (III of 1877) or else a mortgage; and in either case the bond could not be admitted in evidence, as it was not registered. But it was only by reading the terms of the bond that the Court could gather that the assessment was to be received in lieu of interest. This would be to admit indirectly the provisions of the bond in evidence. Apart from the bond, there was no evidence that the plaintiff (B) had been paid "interest as such" within three years of the filing of the suit by the duly authorized agents of the defendants, and the claim was therefore barred. VENKAJI BABAJI NAIK *v.* SHIDRAMAPA BALAPA DESAI

[I. L. R., 19 Bom., 663

12. ———— *Payment of interest on a debt—Authority of a previous guardian of a debtor remaining in management after the debtor's majority—Hindu law—Guardian.*—The mother and guardian of an infant borrowed money for his expenses and executed a bond in 1886 to secure the repayment. In a suit by the obligee in 1892, it appeared that the mother had remained in management of her son's affairs, and had paid interest on the debt after he had attained majority and less than three years before the institution of the suit. *Held* that the mother and guardian was a "person authorized to pay" interest on behalf of the debtor within the meaning of s. 20 of the Limitation Act, and that the suit was not barred by lapse of time. *Sobhanadri Appa Rau* v. *Sriramulu, I. L. R., 17 Mad., 221,* referred to. KAILASA PADIACHI *v.* PONNUKANNU ACHI

[I. L. R., 18 Mad., 456

13. ———— *Payment of interest as such—Credit of interest made in accounts of defendants.*—In a suit brought by a creditor against certain persons to whom she had lent money on interest,—*Held* that, in order to save the bar of limitation, a mere credit of interest entered in the accounts of the defendants was not a sufficient payment of "interest as such" under s. 20, Limitation Act, to save the bar. KOLLIPARA PULLAMMA *v.* MADDULA TATAYYA . **I. L. R., 19 Mad., 340**

14. ———— *Acknowledgment of liability—Interest paid on debt—Contribution—Joint debtors.*—By a payment into Court under an order on account of decrees for rent and revenue in arrear, due to the landlord zamindar from the joint owners of an under-tenure, their estate was saved from sale. In respect of a proportionate share of liability for money raised for this purpose one of the joint owners became liable to be sued by another of them for contribution; and a question arose as to the application of art. 61 of sch. II of the Limitation Act, 1877. More than three years before this suit all the joint owners had filed in Court a petition for the appointment of a manager of their estate who should, out of its profits, pay debts and interest to creditors from whom had been borrowed the money for the payment into Court. Whilst the three years from the date of that acknowledgment were running and at a date less than three years before this suit, interest on part of the money borrowed had been paid by the manager whom the appellant, jointly with the other co-owners of the estate, had authorized as her agent to pay it. *Held* that this interest, being clearly a payment in exoneration, *pro tanto*, of the plaintiff's liability, was such a payment as was contemplated by s. 20, and gave a new departure for the period of limitation. SUKHAMONI CHOWDHRANI *v.* ISHAN CHUNDER ROY

[I. L. R., 25 Calc., 844
L. R., 25 I. A., 95
2 C. W. N., 402

15. ———— *Payment of interest as such—Settlement of accounts.*—To satisfy the requirements of s. 20 of the Limitation Act (XV of 1877), the payment of principal or interest as such need not be in money. It may be in goods or by a settlement of accounts between the parties; but the payment must be of such a nature that it would be a complete answer to a suit brought by the creditor to recover the amount. Where a debtor consents that money due by him for interest should be credited to the account of the principal, and the interest balance reduced by that amount, such a consent is really tantamount to a payment of interest; it is as if the debtor makes the payment and the creditor advances it again. When both parties agree to such a settlement, and the accounts are so adjusted, the adjustment operates as a payment of interest under s. 20 of the Limitation Act (XV of 1877). Plaintiffs used to lend moneys to the defendants' firm. The accounts of the dealings between the parties were settled from time to time. On the occasion of each settlement, the interest was calculated up to the date of the settlement, and the amount found due was credited to the interest account, and debited to the account of the principal in the creditors' books, and the amount so debited was thenceforward treated as principal for calculation of future interest. Corresponding entries were made in the debtors' books. *Held* that such a settlement of accounts constituted a payment of interest as such within the meaning of s. 20 of the Limitation Act (XV of 1877). KARIYAPPA *v.* RACHAPA . **I. L. R., 24 Bom., 493**

16. ———— *Suit for money—Payment on account of principal within the period of limitation—Evidence of such payment by writing made after period expired.*—The obligee of a registered mortgage bond, dated the 30th January 1875, sued in February 1891 to recover from the obligor the principal and interest remaining due thereunder. In bar of limitation the plaintiff relied on entries of part-payments from time to time in an account written by the defendant. These part-payments were made at such times as to keep alive the obligee's right of suit up to the date of the last of them. The last of these payments was made on a date which was less than six years (the period of limitation for the suit) before the date of institution of the suit, but it was not entered in the defendant's accounts until after the date when the claim would otherwise have been barred by limitation. *Held* that the provisions of the Limitation Act, s. 20, were satisfied, and that the suit was not barred by limitation. VENKATASUBBU *v.* APPUSUNDRAM

[I. L. R., 17 Mad., 92

LIMITATION ACT, 1877—*continued.*

17. ———— *Mortgage—Suit for arrears of rent.*—Where a kanom was granted in 1858 for five years to secure repayment of a loan, and a lease made in 1·6· to the grantor of the kanom by the kanom-holder and rent paid under the lease until 1871,—*Held* that a suit brought in 1877 to recover the kanom amount and arrears of rent for seven years was barred by limitation except as to three years' arrears of rent. PALLIAGATHA UMMER KUTTI *v.* ABDUL KADAR **I. L. R., 3 Mad., 57**

18. ———— *Entry of account stated by debtor in creditor's books—Implied contract.*—An entry of an account stated, made by a debtor in his creditor's books, is not a contract in writing within the meaning of Act IX of 1871, s. 21. AMRITLAL MANSUK *v.* MANIKLAL JETHA **[10 Bom., 375**

This case was followed in HANMANTMAL MOTICHAND *v.* RAMBABAI . **I. L. R., 3 Bom., 198**

where it was held that, consequently, the payments made by the defendant on account were not such payments of the principal of the debt due by him as would bar the operation of the Act.

See RAMCHODDAS NATHUBHAI *v.* JEYCHAND KHUSAL CHAND . **I. L. R., 8 Bom., 405**

19. ———— *Payments towards adjusted account.*—Where, subsequently to the adjustment of his account with the plaintiffs, the defendant had been credited with amounts of surplus proceeds of goods and of a hundi, held that such amounts were not payments within the meaning of s. 20 of the Limitation Act. NARRONJI BHIMJI *v.* MUGNIRUM CHANDAJI . . **I. L. R., 6 Bom., 103**

20. ———— *Sum realized by execution sale—Part-payment.*—A sum realized by an execution-sale cannot be considered a part-payment under s. 21, Act IX of 1871, so as to give a new period of limitation. RUGHOONATH DOSS *v.* SHIROMONEE PAT MOHADEBEE . . . **24 W. R., 20**

BEMUL DOSS *v.* IKBAL NARAIN . **25 W. R., 249**

RAMCHANDRA GANESH *v.* DEVBA **[I. L. R., 6 Bom., 626**

21. ———— *Part-payment of principal of bond—Endorsement, Facts which must appear in.*—To satisfy the conditions of s. 20 of the Limitation Act, the endorsement in the handwriting of the person making a part-payment of the principal of a bond need not show the appropriation of the payment to principal, but only the fact of the payment. JADA ANKAMMA *v.* NADIMPALLE RAMA **[I. L. R., 6 Mad., 281**

22. ———— *Part-payment of principal—Endorsement—Handwriting of payer—Marksman.*—In s. 20 of the Limitation Act, 1877, the condition that the fact of payment in the case of part-payment of the principal of a debt must appear in the handwriting of the person making the same, is satisfied if the payer signs or affixes his mark beneath an endorsement not written by him. MADABHUSHI SESHACHARLU *v.* SINGARA SESHAYA **[I. L. R., 7 Mad., 55**

LIMITATION ACT, 1877—*continued.*

23. ———— *Part-payment of principal—Endorsement—Handwriting of payer—Marksman.*—The mark of the payer subscribed to an endorsement not in the handwriting of the payer will satisfy the proviso to s. 20 of the Limitation Act, 1877, which requires that the fact of the payment of part of the principal of a debt made by the debtor or his agent duly authorized in that behalf shall appear in the handwriting of the person making the payment, in order that a new period of limitation may run from the date of such payment. ELLAPA NAYAK *v.* ANUMATI GOUNDAN **[I. L. R., 7 Mad., 76**

24. ———— *Part-payment of principal of debt—Endorsement of cheque by debtor.*—Where the only evidence in the handwriting of the debtor of the part-payment of the principal of a debt was the endorsement of a cheque to the creditor,—*Held* that such endorsement did not satisfy the conditions of s. 20 of the Limitation Act so as to give rise to a new period of limitation from the date of such endorsement. MACKENZIE *v.* THIRUVENGADATHAN **[I. L. R., 9 Mad., 271**

25. ———— *Part-payment of principal of debt—"Person making the same"—Mode of creating new period of limitation by part-payment.*—In order to create a new period of limitation under the proviso to s. 20 of the Limitation Act (XV of 1877), the fact of part-payment of the principal of a debt must appear in the handwriting of the person making the part-payment, and not in that of any other person, however authorized. *Bhugabuth Thakur* v. *Madhub Kristo Sett, I. L. R., 23 Calc., 553 note,* overruled. MUKHI HAJI RAHMUTULLA *v.* COVERJI BHUJA . . **I. L. R., 23 Calc., 546**

Contra, BHUGABUTH THAKUR *v.* MADHUB KRISTO SETT . . . **I. L. R., 23 Calc., 553 note**

26. ———— *Part-payment of principal of debt.*—An insolvent in debt to a Bank had given a promissory note for the full amount of the debt due. He also gave, by way of collateral security for the promissory note and for any future advances, a letter of lien over his stock-in-trade, etc., and undertook at the time to execute, whenever called upon to do so, an assignment of his business. This undertaking was never carried out. Two years and three months from the date of the loan, the insolvent had addressed a letter to the Bank enclosing a cheque for R600, and requesting that it should be placed to the credit of the loan account. *Held* that the payment of R600 was a part-payment, and that the fact of such part-payment appeared in the handwriting of the insolvent within the meaning of s. 20 of the Limitation Act. IN THE MATTER OF SUMMERS **[I. L. R., 23 Calc., 592**

27. ———— *Part-payment of debt—Endorsement of hundi by debtor.*—Where the only evidence in the handwriting of the debtor of the part-payment of the principal of a debt was the endorsement of a hundi to the creditor,—*Held* that such endorsement was not sufficient within the meaning of s. 20 of Act XV of 1877 to give a new starting point for limitation. *Mackenzie* v. *Tiruvengadathan,*

LIMITATION ACT, 1877—*continued.*

I. L. R., 9 Mad., 271, referred to. RAM CHANDAR *v.* CHANDI PRASAD . . **I. L. R., 19 All., 307**

28. ———— *Unregistered mortgage—Receipt of produce in lieu of interest.*—Receipt of the produce of land held under a deed of mortgage required to be, but not registered, cannot be deemed to be a payment for the purpose of s. 20 of the Limitation Act, 1877. PICHANDI *v.* KANDASAMI

[I. L. R., 7 Mad., 539

29. ———— *Agent, Authority of, to make payment.*—An agent may be impliedly authorized within the meaning of s. 20 of the Limitation Act to make a payment of interest or principal before the expiration of the period prescribed. BIRJMOHUN LALL *v.* RUDRA PERKASH MISSER

[I. L. R., 17 Calc., 944

30. ———— *Usufructuary mortgage—Right of redemption.*—The last clause of s. 20 of Act XV of 1877 does not have the effect of extending indefinitely the period within which a usufructuary mortgage must be redeemed. KALLU *v.* HALKI

[I. L. R., 18 All., 295

———— **s. 21 (1871, s. 20, expl. 2; 1859, s. 4).**

1. ———— *Acknowledgment by partner.*—An acknowledgment by one partner sufficient to save limitation will not bind another partner who has not subscribed such acknowledgment. BENARSEE DASS *v.* KHOOSHAL CHUND. KHOOSHAL CHUND *v.* PALMER . . . . **2 Agra, Pt. II, 170**

2. ———— *Partnership accounts.*—S. 20, Act IX of 1871, does not apply to, partnership accounts. KHOODEE RAM DUTT *v.* KISHEN CHAND GOLEECHA . . . . **25 W. R., 145**

3. ———— *Acknowledgment given by one partner when binding on the firm—Partnership—Practice—Parties—Same person both plaintiff and defendant.*—The plaintiff, as heir of his mother, sued a firm, in which he was himself a partner, to recover the amount of certain loans which he alleged that his mother in her lifetime had made to the said firm. The plaintiff was made a defendant in the suit along with the other partners. The alleged loans were made on the 2nd November 1881 and the 12th October 1882. The present suit was not filed until December 1885. The plaintiff, however, relied on an acknowledgment signed in his mother's account book by himself as partner in the firm on the 1st November 1883. The first defendant did not appear, or put in any defence. The second defendant pleaded limitation, and alleged that, on the 2nd November 1880, prior to the date of the alleged loans, he had retired from the firm, and therefore was not liable. From the evidence given at the hearing it appeared that the business stopped, so far as buying and selling and fresh trading were concerned, at the end of the year 1881, and that subsequently to that date the partners were occupied solely in winding up the affairs of the firm. *Held* that, under the circumstances, the acknowledgment given by the plaintiff did not bind the other partners, and that the claim against them was barred. If, at the time the acknowledgment was given, the firm had been a going concern, the plaintiff's authority to make such an acknowledgment on behalf of the firm might have been presumed; but in this case the business had been closed, and the partnership entirely dissolved. The presumption, therefore, which arises in active partnership, no longer existed, and there was no evidence that the plaintiff had been expressly authorized to act for the other partners in making the acknowledgment. The meaning of the word "only" in s. 21 of the Limitation Act (XV of 1877) is that it must also be shown that the partner signing the acknowledgment had authority, express or implied, to do so. In a going mercantile concern such agency is to be presumed as an ordinary rule. PREMJI LUDHA *v.* DOSSA DOONGERSEY

[I. L. R., 10 Bom., 358

4 ———— *Acknowledgment signed by one of several partners.*—The word "only" in s. 21 of the Limitation Act (XV of 1877) is not to be treated as a surplusage. It means that the mere writing or signing of an acknowledgment by one partner does not necessarily of itself bind his co-partner, unless it can be shown that he had otherwise power to bind that partner for the purpose of making such acknowledgment and in effect purported so to bind him. GADU BIBI *v.* PARSOTAM

[I. L. R., 10 All., 418

———— **s. 22 (1871, s. 22).**

See FALSE IMPRISONMENT.

[I. L. R., 9 Bom., 1

See PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS **I. L. R., 14 All., 524**

[I. L. R., 17 Bom., 29, 413

See PARTIES—ADDING PARTIES TO SUITS—RESPONDENTS **I. L. R., 13 All., 78**

[I. L. R., 14 All., 154

See PLAINT—AMENDMENT OF PLANT.

[I. L. R., 16 Mad., 319

1. ———— *Party added under s. 73, Civil Procedure Code, 1859.*—When a party was substituted or added as a defendant, under s. 73 of Act VIII of 1859, the suit was held to be commenced against him at the time, and not before; therefore, where *A* sued *B* as representative of *C* for land, and more than twelve years after the cause of action accrued found that *B* was not in possession, but *D*, and by order of Court *D* was substituted as defendant,—*Held* the claim against *D* was barred. RAJ KISHOREE DOSSEE *v.* BUDDEN CHUNDER SHAW

[2 Ind. Jur., N. S., 49: 6 W. R., 298

NUNDO GOPAL ROY *v.* JANKEERAM CHUCKERBUTTY . . . . . **W. R., 1864, 316**

ESHAN CHUNDER BANERJEE *v.* KRISTO GUTTY NAG . . . . . . **14 W. R., 377**

2. ———— *Act XIV of 1859—Parties added after expiration of period of limitation.*—A suit was held not to be barred by the Limitation Act, 1859, as against parties added after the expiration of the period allowed by law, provided the plaint be filed against the original parties prior to the expiration of such period. ISSUREEPERSAUD *v.* URJOONLOLL . . . . **2 Hyde, 248**

LIMITATION ACT, 1877—*continued.*

Kalee Kishore Chatterjee *v.* **Luckhee Debia Chowdhrani** . . . **6 W. R., 172**

3. ———— *Act XIV of 1859—Suit by widow on behalf of minor son—Son afterwards joined as plaintiff.*—In 1864, a Hindu widow having a minor son sued, in her own name and on her own behalf, to recover certain immoveable property. The action was brought on a lease which expired in 1854. The defendant denied the lease, and contended that the suit should be dismissed, as it could not be maintained by the widow in her own name. In 1871, the son, who had in the meantime attained his majority in 1865, was made a co-plaintiff on his own application. *Held* that the suit was barred, inasmuch as it must, if maintainable, be deemed to have been instituted in 1871, when the son was made a co-plaintiff, the plaint previously to that time having been in the widow's own name and expressly on her own behalf. *Held* also that making the son a co-plaintiff in 1871 could not change the character of the suit as it had existed previous to that date, so as to defeat the law of limitation. *Held* (by Pinhey, *J.*) that the minor was wrongly made a plaintiff in 1871. *Dhurm Dass Pandey* v. *Sham Soondri Dabiah, 6 W. R., P. C.,* **44**, distinguished. **Gopal Kashi** *v.* **Rama Bai Saheb Patvar** . . . **12 Bom., 17**

4. ———— *Act IX of 1871, s. 1 and s. 22—"Commenced," "Instituted"—Added defendants—Suit for contribution or partnership account—Cause of action.—Quære*—Whether the word "commenced" in s. 22 of Act IX of 1871 is equivalent to the word "instituted" in s. 1, and whether s. 1 does not exclude from the operation of the Act all suits instituted before 1st April 1873, even as to defendants added after that date. Supposing the provisions of s. 22 of Act IX of 1871 to apply to defendants added by amendment subsequently to 1st April 1873, in a suit instituted before that date, such added defendants will, (under the terms of that section, and if that section does not apply, then under a general principle of law, be allowed to reckon the period of limitation on which they rely from the date at which they were added, but the periods of limitation provided by Act IX of 1871 do not necessarily apply to defendants so added. The plaintiff and three of the defendants, being four members of a partnership, consisting of seven persons, borrowed, in January and February 1865, on account of the partnership, from the Commercial, Finance, and Stock Exchange Corporation, two sums of R1,21,614 and R1,08,000. for which they gave their joint and several promissory notes, and shortly afterwards two of the partners retired, leaving the plaintiff and the four defendants alone constituting the firm. On 27th September 1865, the plaintiff and first defendant were sentenced to transportation for life, and on 15th April 1867 one of the other defendants became insolvent. On 25th April 1867, the liquidators of the Commercial, Finance, and Stock Exchange Corporation obtained a decree against the plaintiff and the three defendants who had joined in the making of the promissory notes for the amount due on their joint and several promissory notes and costs. In March 1868, the immoveable and moveable property of the plaintiff and the moveable property of the first defendant were sold in execution, and the whole of the proceeds of the plaintiff's immoveable property, together with the balance of the proceeds of the moveable properties of the plaintiff and first defendant, after satisfying thereout two prior decrees against them, were applied in part satisfaction of the decree of 25th April 1867, and the moneys so recovered were distributed to the shareholders by the liquidators, who, however, retained in their hands such portion as would have been payable in respect of the shares held by the judgment-debtors, and thus the whole decree was satisfied, leaving a balance of R25,212. The distribution of assets was made on 3rd April 1869, and the final dividend to shareholders other than the judgment-debtors paid on 3rd August 1869. The two defendants other than the first and the insolvent took the benefit of Act XXVIII of 1865, and obtained their discharge in April and December 1869. The plaintiff therefore sued the first defendant alone on 18th March 1873 as contributory for the satisfaction of the joint decree, but subsequently, by amendment made on the 6th February 1874, added the other defendants, and prayed for a decree that he was entitled to receive and appropriate the balance of R25,212, and that the first defendant should pay to the plaintiff the balance of the moneys paid by him in excess of his share in satisfying the decree of 25th April 1867, with interest, after deducting three-fourths of the sum of R25,212, on that, if necessary, the partnership accounts might be taken, and the plaintiff be paid such sums as might be found to be due to him. *Held*, first, that the period of limitation as to all the defendants was that provided by Act XIV of 1859, whether the suit was to be treated as one for a partnership account, or one for contribution of an ascertained sum. Second, that as to the first defendant, the period of limitation was to be reckoned back from 18th March 1873. Third, that as to the added defendants, the period of limitation was to be reckoned back from 6th February 1874. Fourth, that the plaintiff's cause of action arose in April 1868, when his property was sold and applied in satisfaction of the joint decree of 25th April 1867, and not on the date of the decree itself. **Dayal Jairaj** *v.* **Khatav Ladha** . . . **12 Bom., 97**

5. ———— *Substitution of heirs of decree-holder.*—In a suit to set aside the sale of certain lands which had been attached and sold by a decree-holder as the property of his debtor, plaintiff brought his action against the decree-holder and a party whom he supposed to be the auction-purchaser. Subsequently, finding that his supposition had been erroneous, he applied to have real purchaser made a party, and the heirs of the decree-holder (who had died) substituted as defendants. *Held* that the suit against the heirs was not barred by lapse of time, as it was originally brought within the period of limitation against the decree-holder, of whose death the plaintiff first learnt the news from the return made to the summons. **Sree Kishen Chowdhry** *v.* **Ram Kisto Bhuttacharjee** . . **10 W. R., 317**

6. ———————— and art. 60—*Adding party as defendant.*—On 2nd August 1872, *A K* filed a plaint against *M H* and *M R*, in which he alleged that on 1st April 1870 *M R* had given a hundi for R500, for value received, to *A K;* that on 27th March 1871 *M H* purchased this hundi from *A K*, promising to pay him R534 for it; that *M H* gave the hundi to his brother *I H* for the purpose of obtaining payment of the amount from *M R;* and that *I H* subsequently informed *A K* that the hundi had been lost. *A K* accordingly prayed that the defendants *M H* and *M R* might be decreed to pay him R534 with profit and interest. *M H* denied that he had purchased the hundi from *A K*, who, he alleged, had given the hundi to *I H* for the purpose of getting it cashed. *M R* admitted that he had executed the hundi and had given it to *A K* for R500. He further alleged that it had been presented to him for payment by *I H*, to whom he had paid the amount with interest on 31st March 1871, and he produced the hundi with a receipt, purporting to be by *I H* indorsed on it. The trying Judge, after settlement of the issues, on 25th June 1874, added *I H* as a party defendant. *I H* alleged that *A K* had given him the hundi for the purpose of getting it cashed, denied the payment by *M R*, alleged the indorsement on the hundi to be a forgery, and pleaded limitation. *Held*, with reference to s. 22 of Act IX of 1871, that the law of limitation applicable to the suit, so far as *I H* was concerned, was sch. II, art. 60 of that Act, and that therefore, if the payment by *M R* to *I H* were not proved to have been made within three years before 25th June 1874, the day on which *I H* was added as a defendant, the suit as against him was barred. *Dayal Jairaj* v. *Khatav Ladha, 12 Bom., 97*, and *Chinnasami Iyengar* v. *Gopalacharry, 7 Mad., 392*, dissented from. ABDUL KARIM *v.* MANJI HANSRAJ **I. L. R., 1 Bom., 295**

But *see* ISSUREPERSAUD *v.* UBJOON LALL **[2 Hyde, 248**

7. ———————— *Adding plaintiffs whose suit is barred.*—Where the original plaintiffs could only enforce their claim in conjunction with the added plaintiffs, and the added plaintiffs were barred by s. 22 of Act XV of 1877,—*Held* that the claim of the original plaintiffs was also barred. *Boydonath Bag* v. *Grish Chunder Roy, I. L. R., 3 Calc., 26*, dissented from. RAMSEBUK *v.* RAM LALL KOONDOO **[I. L. R., 6 Calc., 815: 8 C. L. R., 457**

8. ———————— *Parties—Civil Procedure Code, ss. 27 and 32—Institution of suits—Change of parties.*—The change of parties as plaintiffs in conformity with the provisions of s. 27 of the Civil Procedure Code does not give rise to such a question of limitation as arises upon the addition of a new person as a defendant under s. 32. SUBODINI DEBI *v.* CUMAR GANODA KANT ROY BAHADUR **[I. L. R., 14 Calc., 400**

9. ———————— *Joint purchase—Suit against one of the purchasers—Addition of other purchaser as defendant—Effect of suit as regards the latter being barred by limitation.*—*P*, on the 12th April 1880, instituted a suit against *Z* claiming to enforce a right of pre-emption in respect of the sale of a share of an undivided estate to the latter and his minor brother *A* jointly, under an instrument, dated the 12th April 1879. On the 3rd May 1880, *A* was made a defendant to such suit, *Z* being appointed guardian for the suit for him. *Held* that, inasmuch as such suit, as regards *A*, was beyond time, and as the only relief which could be granted therein to *P* was the invalidation of the joint sale to *Z* and *A*, such suit, even admitting it was within time as regards *Z*, was not maintainable. HABIB-UL-LAH *v.* ACHAIBAR PANDEY . **I. L. R., 4 All., 145**

10. ———————— *Adding defendant after suit barred.*—A suit for property in the possession of several persons was brought by the plaintiff against one of those persons only. After the institution of the suit, and after the period of limitation prescribed for a separate suit on the same cause of action against the other persons in possession had elapsed, these latter were added as defendants. *Held* that the suit must be dismissed as against the added defendants on the ground that it was barred by limitation. OBHOY CHURN NUNDI *v.* KRITARTHAMOYI DOSSEE . . **I. L. R., 7 Calc., 284**

11. ———————— *Suit for partnership accounts—Joint contract—Necessary parties, Omission of—Addition of new defendant—Time of joinder, how material.*—A suit was brought for partnership accounts. Upon the objection of the defendant it was found that a necessary party defendant had been omitted, and such party was afterwards added as a defendant at a time when the suit as against him was barred. *Held* that the whole suit was rightly dismissed. RAMDOYAL *v.* JUNMENJOY COONDOO . . **I. L. R., 14 Calc., 791**

12. ———————— *Parties defendants substituted as plaintiffs after suit by them is barred—Suit to set aside sale—Civil Procedure Code, s. 32.*—A mitta held by tenants-in-common was sold for arrears of revenue at a time when the owners of a moiety thereof were minors. In a suit brought by the mother of these minors on their behalf against the Collector to set aside the sale, the plaintiffs impleaded also the other previous owners, of whom one was the purchaser at the sale. Two others, in their written statement, pleaded that the purchase had been made in fraud of their rights, and claimed to be still entitled to their shares in the mitta on the ground that the purchaser must be held to have purchased for their benefit (Indian Trusts Act, II of 1882, s. 90). They further claimed that, should the sale be set aside so far as the plaintiffs' interests were concerned, the sale of their interests also should be held to be null and void. Before the suit came on for hearing, the District Judge *suo motu* ordered that these two defendants should be made plaintiffs in the suit under s. 32 of the Code of Civil Procedure. At the date when this order was made the claim of these defendants, had they sued to set aside the sale in their own interest, was barred by limitation. *Held* that the order was illegal KRISHNA *v.* MEKAMPERUMA. COLLECTOR OF SALEM *v.* MEKAMPERUMA **[I. L. R., 10 Mad., 44**

LIMITATION ACT, 1877—*continued.*

13. ——————— *Parties to suit—Transfer of defendants to category of plaintiff, Effect of—Land Registration Act (Beng. Act VII of 1876), s. 7.*—*A* and *B*, two joint zamindars, having brought a patni within their zamindari to sale for arrears of rent, purchased it themselves. During the existence of the patni a dar-patni had been created of which *C* was in possession. *A* instituted a suit against *C* to recover arrears of rent of the dar-patni for a period of three years, and joined *B* as a *pro formâ* defendant, alleging that he was away from home at the time of the institution of the suit, and could not therefore join as co-plaintiff. *A*'s proprietary interest was registered under the provisions of Bengal Act VII of 1876, the Land Registration Act, but *B*'s interest was not so registered. Prior to the suit coming on for hearing, but after the right to recover the rent for the first two out of the three years had become barred by limitation, assuming no suit to have been brought, *B* was transferred from the category of defendant in the suit into that of co-plaintiff. In answer to the suit, *C* pleaded limitation, and also contended that the non-registration of *B*'s interest precluded the plaintiffs from maintaining the suit at all (*A*'s share not being specified), having regard to the provision of s. 78 of the Land Registration Act. The lower Appellate Court having dismissed the suit on this latter ground, and also held that the right to recover the rent for the first two out of the three years as suit was barred by limitation, —*Held* that, when *B* was sued as a party-defendant, he was made a party in violation of the rule applied in *Dwarka Nath Mitter* v. *Tara Prasunna Roy, I. L. R., 17 Calc., 160,* and that the suit was not therefore in the first instance properly brought. *B* not being properly on the record at all, that the effect of making *B* co-plaintiff was practically to institute a new suit on the date when he was so changed into co-plaintiff, and that the suit had been rightly dismissed on the ground of limitation so far as the rent of the first two years was concerned, but that the plaintiffs were entitled to a decree for the rent in respect of the third year which was not barred by limitation at the time *B* was made co-plaintiff. JIBANTI NATH KHAN *v.* GOKOOL CHUNDER CHOWDRY . . . **I. L. R., 19 Calc., 760**

14. ——————— *Parties changed from defendants to plaintiffs.*—The plaintiff claiming to be entitled, together with two of the defendants, to the office of archaka of a temple, sued in 1889 for a declaration of his title, and for a declaration that an agreement entered into by them in 1886 with the other defendants was void as having been executed under coercion, and because part of the consideration was the withdrawal of a pending criminal charge of trespass and theft against them. These averments were proved. The first-named defendants were made plaintiffs in the suit more than three years after the execution of the agreement. *Held* that the first plaintiff was entitled to a declaration of the invalidity of the agreement, but not the others who had been joined as plaintiffs more than three years from its date. SRIRANGACHARIAR *v.* RAMASAMI AYYANGAR **I. L. R., 18 Mad., 189**

15. ——— ——— *Suit by heirs of deceased Mahomedan—Suit originally filed in time by one heir—Another heir subsequently made co-plaintiff beyond time of limitation—Letters of administration obtained only by second plaintiff—Parties, Joinder of.*—The plaintiff, as widow and heir of a Khoja Mahomedan, sued on a promissory note, dated the 2 st October 1892, passed by the defendant to her deceased husband. The suit was filed on the 9th October 1895. Disputes subsequently arose between her and her father-in-law as to the succession to her husband's property, and she applied to the High Court for letters of administration. On the 9th September 1896, the plaintiff's father-in-law, on his application, was made a co-plaintiff in the suit. Subsequently the plaintiffs came to terms, and the widow withdrew her application for letters of administration, and her father-in-law applied for and obtained letters of administration instead. On the 14th November 1896, the suit came on for hearing. The first plaintiff did not produce any letters of administration or certificate under the Succession Certificate Act (VII of 1889). The second plaintiff produced the letters of administration obtained by him. *Held* that the suit was barred by s. 22 of the Limitation Act (XV of 1877). When the second plaintiff was added as a party, the suit was barred as against him. If the letters of administration had been obtained by the first plaintiff, her suit would not have been barred, and the Court could have passed a decree in her favour. S. 22 of the Limitation Act in terms applies as well to plaintiffs suing in their representative capacity as in their personal capacity. *Held* also that the second plaintiff was properly joined as a party plaintiff. When one or more heirs sue, there is no objection to joining all to make the representation complete. FATMABAI *v.* PIRBHAI VIRJI . **I. L. R., 21 Bom., 580**

16. ——————— *Civil Procedure Code (Act XIV of 1882), s. 27—Suit by benami purchaser at sale in execution of decree—Addition of real purchaser as co-plaintiff.*—The plaintiff Ravji as owner of certain land brought this suit on the 31st January 1894 for damages for loss of crops and in respect of loss caused by the defendant's obstructing him in cultivating the land. The dates of the causes of action set forth in the plaint were, respectively, the 12th September 1891, the 12th March 1892, February 1892, and 12th October 1892. In the course of the proceedings, the defendant ascertained that Ravji was not the real owner of the land, but had purchased it and was holding it benami for his uncle. Ravji admitted that he had no interest in the land. On the 30th March 1895, Ravji's uncle applied to be made a party to the suit, and was thereupon added as second plaintiff. The Subordinate Judge on the merits passed a decree awarding damages to the second plaintiff. The defendant appealed, and in appeal for the first time objected that Ravji (plaintiff No. 1), being only a benamidar, could not bring the suit in his own name, and that the claim of the second plaintiff, or a large portion of it, was barred by limitation under s. 22 of the Limitation Act. The District Judge reversed the decree on the point

of limitation and dismissed the suit. On second appeal to the High Court,—*Held* that the lower Appellate Court was wrong in dismissing the suit, and that the appeal should be heard on the merits. *Per* PARSONS, *J.*—That any defect there might have been in the suit as originally filed by the first plaintiff, who was only benamidar, had been cured by the Court acting under s. 27 of the Civil Procedure Code. *Bhola Pershad* v. *Ram Lall, I. L. R.,* 24 *Calc.,* 34, and *Subodini Debi* v. *Cumar Ganoda, I. L. R.,* 14 *Calc.,* 400, followed. *Per* RANADE, *J.*—The first plaintiff as benami purchaser had full right to bring the suit. If the true owner holds back, a decree against a benamidar owner would bind him as *res judicata*. The present suit was therefore properly instituted. The addition of the second plaintiff's name made no difference in the character of the suit. The defendant was estopped by his conduct in the previous proceedings, carried on between him and the first plaintiff for over seven years, from questioning his right to sue. The rights of the parties must therefore be dealt with on the footing that the first plaintiff had a right to bring this suit, and that he fully represented in his own person all the rights of the second plaintiff, for whom he acted as agent all along. The joinder of plaintiff No. 2 on 30th March 1895 did not therefore deprive plaintiff No. 1 of his rights or create a new period of limitation as held by the lower Court of Appeal. RAYJI APPAJI KULKARNI *v.* MAHADEV BAPAJI KULKARNI

[I. L. R., 22 Bom., 672

17. ——————— *Suit for damages for illegal distraint—Joinder of parties—Party plaintiff joined beyond period of limitation.*—A suit for compensation for illegal distraint of crops was brought by one of two persons jointly entitled to the crops distrained. Objection being taken on the ground of non-joinder of a party, that party was on his own application added as a plaintiff, but his claim was then barred by limitation. *Held* that the whole suit was not barred by limitation in consequence of the provisions of s. 22 of the Limitation Act. JAGDEO SINGH *v.* PADARATH AHIR . **I. L. R., 25 Calc., 285**

18. ——————— *Joinder of persons as plaintiffs after period of limitation for suit has expired —Frame of suit—Parties.*—*A*, who with his three brothers composed a joint Hindu family, brought a suit in his own sole name to recover a joint debt. When the objection was taken to the form of the suit on the ground of the non-joinder of *A*'s three brothers, it was too late to add them as co-plaintiffs by reason of s. 22 of the Limitation Act (XV of 1877) —a suit on the debt being by that time time-barred. The three brothers at the hearing expressed their willingness that *A* should sue alone. *Held* that such assent did not obviate the necessity of joining all the proper parties as co-plaintiffs, and that the suit therefore, as framed, would not lie. *Held,* further, that *A* would have been in no better position had he joined his three brothers as co-plaintiffs after the suit was, as regards them, time-barred; since such a suit would have been virtually a suit by himself alone, and therefore bad. *Boydonath Bag* v. *Grish Chunder Roy, I. L. R.,* 3 *Calc.* 26, disapproved of. KALIDAS KEVAL DAS *v.* NATHU BHAGVAN

[I. L. R., 7 Bom., 217

19. ——————— *Necessary party added after period of limitation expired—Objection for want of parties not taken.*—Where objection for want of parties jointly interested in the subject-matter of the suit was not taken by the defendants at any stage of the proceedings, nor was an issue framed upon the point,—*Held* that the parties jointly interested with the plaintiff might be added, and that the suit should proceed, although the said parties were added after the period of limitation for bringing the suit had expired. *Kalidas Kevaldas* v. *Nathu Bhagvan, I. L. R.,* 7 *Bom.,* 217, distinguished. SHIREKULI TIMAPA HEGADE *v.* AJJIBAI NARASHINV HEGADE

[I. L. R., 15 Bom., 297

20. ——————— *Addition of parties on appeal—Civil Procedure Code, 1877, ss. 32, 582.*—*S* sued *N* and *R* jointly and severally for certain moneys. The Court of first instance gave *S* a decree for such moneys against *N*, and dismissed the suit against *R*. *N* appealed from the decree of the Court of first instance, but *S* did not appeal from it. The Appellate Court, at the first hearing of *N*'s appeal, made *R* a respondent, the period allowed by law for *S* to have preferred an appeal having then expired, and eventually reversed the decree of the Court of first instance, dismissing the suit as against *N* and giving *S* a decree against *R*. *Held* that, although the Appellate Court was competent to make *R* a party to the appeal under ss. 32 and 582 of Act X of 1877, yet it was not competent, with reference to s. 22 of Act XV of 1877, to give *S* a decree against *R*, the former not having appealed from the decree of the Court of first instance within the time allowed by law. RANJIT SINGH *v.* SHEO PRASAD RAM . . . . **I. L. R., 2 All., 487**

21. ——————— *Civil Procedure Code (1882), s. 32—Party to contract joined as defendant and subsequently made a plaintiff—Substitution of parties.*—Limitation Act, s. 22, is not applicable to cases where the Court of its own motion orders that a party to a contract originally joined as defendant be made a plaintiff under the Civil Procedure Code, s. 32. KHADIR MOIDEEN *v.* RAMA NAIK . . . . **I. L. R., 17 Mad., 12**

22. ——————— *Assignee of right of suit —Leave to carry on suit.*—S. 22 of Act XV of 1877 does not apply to a case in which the persons to whom a right of suit is assigned after the institution of the suit obtain leave to carry on the suit. SUPUT SINGH *v.* IMRIT TEWARI

[I. L. R., 5 Calc., 720 : 6 C. L. R., 62

23. ——————— *Names of partners inserted as defendants instead of name of company.*—In a suit against the Elgin Mills Company for recovery of the price of wood supplied up to 11th November 1879, the suit was instituted on 10th October 1882. In January 1883, the partners of the Elgin Mills Company were on their own application brought on the record as defendants. *Held* that s. 22 of

LIMITATION ACT, 1877—*continued.*

the Limitation Act refers to cases where a new defendant is substituted or added, and that, when the partners of the Elgin Mills Company were brought on the record as defendants in January 1883, there was no institution or addition of new defendants, the defendants having been comprised in the designation of Elgin Mills Company, and at most what was done was to correct a misdescription. PRAGI LAL *v.* MAXWELL . . . . **I. L. R., 7 All., 284**

24. ———— *Assignment pendente lite—Substitution of assignees as plaintiffs.*—In a suit instituted within the period prescribed by the law of limitation the plaintiff assigned over his interest, and the assignees were substituted on the record in the place of the original plaintiff after the said period had expired. *Held* that, under s. 22 of the Limitation Act (XV of 1877), the suit was barred by limitation. *Suput Singh* v. *Imrit Tewary, I. L. R., 5 Calc., 720,* distinguished. HARAK CHAND *v.* DENONATH SAHAY. BHAGBUT PROSAD SINGH *v.* DENONATH SAHAY . **I. L. R., 25 Calc., 409**

25. ———— *Partnership—Non-joinder of parties—Suit in name of a firm by its manager—Addition of name of other partner as co-plaintiff—Misdescription of plaintiff—Civil Procedure Code (Act XIV of 1882), s. 27—Amendment of plaint.*—This suit was brought to recover a debt due to the firm of *K S.* The plaintiff was described as "the firm of *K S* by its manager *S S.*" The defendants objected that one *M* was a partner in the firm and should be a party to the suit; he was joined as a co-plaintiff on the 27th January 1888. The defendants then contended that the suit was time-barred under s. 22 of the Limitation Act. *Held* that the case was one of misdescription, and not of non-joinder, for the action was brought in the name of the firm by its manager. The order of the words in the vernacular plaint showed that *S*, the manager, did not sue in his own name. The defendants were entitled to have the name of the other partner disclosed, but it being found as a fact that *S* was entitled to sue for the firm, the addition of *M*'s name on the record came within the provisions of s. 27 of the Civil Procedure Code. KASTURCHAND BAHIRAVDAS *v.* SAGARMAL SHRIRAM . . **I. L. R., 17 Bom., 413**

26. ———— *Suit by Official Liquidator—Description of plaintiff—Civil Procedure Code, s. 53—Amendment of plaint.*—In a suit to recover a debt to a company which had gone into liquidation, the plaintiff was described in the plaint as "The Official Liquidator, Himalaya Bank, Limited, in liquidation," and the plaint was signed and verified in the same terms. On objection taken by the defendant, the plaint was allowed to be amended, but after the period of limitation prescribed for the suit had expired, so as to read "The Himalaya Bank, Limited, in liquidation, plaintiff." *Held* by the Full Bench that the plaint, as originally filed, was in substantial compliance with the provisions of Act VI of 1882; and that, even if it might be considered that the amendment made was necessary, such amendment did not introduce a new plaintiff into the suit so as to lie in the operation of s. 22 of Act XV of 1877. *Ghulam Muhammad* v. *Himalaya Bank, I. L. R., 17 All., 292,* overruled. *In re Winterbottom, L. R., 18 Q. B. D., 446,* distinguished. MUHAMMAD YUSUF *v.* HIMALAYA BANK

[I. L. R., 18 All., 198

27. ———— *Defendant added by Court of its own motion—Civil Procedure Code (1882), s. 32.*—No question of limitation arises, and s. 22 of the Limitation Act does not apply when the Court of its own motion acts under s. 32 of the Code of Civil Procedure, and orders that the name of any person be added as a defendant. *Grish Chunder Sasmal* v. *Dwarka Nath Duida, I. L. R., 24 Calc., 640,* and *Oriental Bank Corporation* v. *Charriol, I. L. R., 12 Calc., 642,* followed. *Khadir Moideen* v. *Rama Naik, I. L. R., 17 Mad., 12,* referred to; and *Imamuddin* v. *Liladhar, I. L. R., 14 All., 524,* dissented from. FAKERA PASBAN *v.* AZIMUNNISSA

[I. L. R., 27 Calc., 540
4 C. W. N., 459

28. ———— *Municipalities Act, N.-W. P. and Oudh, s. 43—Suit against Secretary to Municipal Committee—Substitution of President as defendant.*—Where, after a notice required by s. 43 of Act XV of 1873 had been left at the office of a municipal committee, such committee were sued within three months of the accrual of the plaintiff's cause of action in the name of their secretary, instead of the name of their president, as required by s. 40 of Act XV of 1873, and the plaintiff applied to the Court more than three months after the accrual of his cause of action to substitute the name af the president for that of the secretary,—*Held* that, by reason of such substitution, such suit could not be deemed to have been instituted against such committee when such substitution was made, s. 22 of Act XV of 1877 applying to the case of a person personally made a party to a suit, and not to the case of a committee sued in the name of their officer, and that such substitution, when applied for, should have been made. MANNI KASAUNDHAN *v.* CROOKE

[I. L. R., 2 All., 296

29. ———— *Non-joinder of parties—Application to join necessary parties made within period of limitation refused by Court of first instance—Application granted by Court of Appeal, but after period of limitation—Order to add parties operating nunc pro tunc — Delay the act of the Court.*—The plaintiffs, as sharers in certain rent alleged to be due by the defendants, sued to recover their share. The defendants contended that all the co-sharers were necessary parties. At the hearing on the 24th January 1889, the plaintiffs' co-sharers applied to be made co-plaintiffs and to be allowed to adopt what the plaintiffs had done in the suit. The application was rejected, and the suit was dismissed for want of parties. On appeal, the District Court in July 1890, holding that the lower Court ought to have joined the co-sharers, passed an order making them co-plaintiffs, and then confirmed the lower Court's decree on the ground that at the time (3rd July 1890) the co-sharers were made plaintiffs, the suit was barred by limitation. On appeal to the High Court,—*Held*, remanding the case, that the order of the lower Appeal Court of the 3rd July 1890, allowing the co-sharers' application, which had been made on the 24th January 1889, but had been refused by the Court of first instance, should be treated as operating *nunc pro tunc*, and that the co-sharers should be regarded as having been made parties to the suit when their application was made. The delay was attributable to the act of the Court, and the plaintiffs should not suffer from it. RAMKRISHNA MORESHWAR *v.* RAMABAI . . **I. L. R., 17 Bom., 29**

30. ———— *Amendment of plaint—Defendant sued in different capacity from that originally stated.*—The creditor of a deceased trustee of a temple sued two persons as his successors in office to recover the amount of the debt. One of the defendants died; the other, who was the brother of the deceased, pleaded that other persons were joint trustees with him, and should have been impleaded with him; he also alleged that the debt in question was a private debt, and had not been incurred by the deceased as a trustee. The persons named were joined as defendants, and they repeated the above allegation. The plaintiff thereupon amended the plaint and prayed for a personal decree against the original surviving defendant, and the others were removed from the record. The amendment took place more than three years after the date when the debt was payable, but the suit had been instituted within that period. *Held* that the claim was not barred by limitation. SAMINATHA *v.* MUTHAYYA

[I. L. R., 15 Mad., 417

———— **s. 23 (1871, s. 23).**

See PRESCRIPTION—EASEMENTS—RIGHTS OF WATER . **I. L. R., 6 Bom., 20**
[1 C. W. N., 96

1. ———— *Consent decree for payment by instalments.*—A consent decree for payment by instalments is governed by s. 23, Act IX, and, on default in the payment of one instalment, the whole amount becomes due. RUGHOO NATH DASS *v.* SHIROMONEE PAT MOHADEBEE . **24 W. R., 20**

2. ———— *Breach of contract—"Continuing breach"—Act IX of 1871 (Limitation Act), s. 23.*—The purchasers of certain land agreed to pay the vendors certain fees annually in respect of such land, and that in default of payment the vendors should be entitled to the proprietary possession of a certain quantity of such land. The purchasers never paid such fees, and more than twelve years after the first default the vendors sued them for possession of such quantity of such land. *Held* that there had not been a "continuing breach of contract" within the meaning of s. 23 of Act XV of 1877, and therefore the provisions of that section were not applicable to the suit. BHOJRAJ *v.* GULSHAN ALI

[I. L. R., 4 All., 493

3. ———— *Breach of covenant for title—Continuing breach—Covenants for quiet possession and further assurance.*—*S L*, by a deed of gift of 16th February 1847, granted and assured to *S*, his daughter, certain immoveable property. By a subsequent unregistered deed of gift of 15th July 1865, *S L* purported, in consideration of natural love and affection, to grant and convey the same property, the value of which exceeded R100, to *B R*, the husband of *S*, his heirs, executors, administrators, and assigns. The last-mentioned deed contained covenants on the part of *S L*, his heirs, executors, and administrators, with *B R*, his heirs, executors, administrators, and assigns, for title to "the hereditaments and premises hereinbefore expressed to be hereby granted and assured unto and to the use of the said *B R*, his heirs, executors, administrators, and assigns." *S* died in the lifetime of *B R*, who in 1867 mortgaged the premises comprised in the deed of 15th July 1865 and died in 1868. In 1870 the mortgagee sold the premises by auction, under the power of sale contained in the mortgage-deed; the plaintiff became the purchaser; and the mortgagee, on 24th March 1871, executed to him a conveyance of the premises, which were then in the possession of the surviving members of the family of *B R* and *S*. The plaintiff having failed in a suit in ejectment against the parties in possession, who relied on the prior gift to *S*, sued the representatives of *S L* for damages for breach of the covenants for title contained in the unregistered deed of 15th July 1865. *Held* that the breach of the grantor's covenant, so far as related to his present right to convey, took place on the day the conveyance to the covenantee was executed, *viz.*, 15th July 1865, and consequently a suit in respect of such breach was barred; but the covenant for quiet possession, admitting of a continuing breach, was not barred so long as the breach continued, and that of the covenant for further assurance there had been no breach at all, as such covenant would be broken only by refusal on the part of the covenantor or his representatives to execute a further assurance when required so to do by the covenantee or his representatives. RAJU BALU *v.* KRISHNARAV RAMCHANDRA

[I. L. R., 2 Bom., 273

4. ———— *Bond—Interest post diem—Non-payment of principal and interest at agreed date—Continuing breach—Act XV of 1877, sch. II, arts. 115, 116.*—Upon failure to pay the principal and interest secured by a bond upon the day appointed for such payment, breach of the contract to pay is committed, and there is no "continuing breach" within the meaning of s. 23 nor "successive breaches" within the meaning of art. 115 of the Limitation Act (XV of 1877). MUNSAB ALI *v.* GULAB CHAND

[I. L. R., 10 All., 85

5. ———— *Suit for restitution of conjugal rights—Demand and refusal—Continuing cause of action—Husband and wife—Suit for possession of wife.*—Where a husband sued to recover possession of his wife, making the wife herself the defendant to the suit,—*Held* it was in substance a suit for the restitution of conjugal rights, and art. 35 of the Limitation Act (XV of 1877) applied. The demand and refusal, which form the starting point for limitation under art. 35, are a demand by the husband and refusal by the wife (or *vice versâ*) being of full age. A positive refusal on the part of the wife to return to her husband is not essential to the husband's cause of action. *Quære*—

LIMITATION ACT, 1877—*continued.*

Whether in case of a refusal by a wife of full age to a demand made by her husband, that she should return to him, a suit by him for her recovery is barred under art. 35 of sch. II of the Limitation Act, or falls within the purview of s. 23 as based on a continuing cause of action. FAKIRGAUDA *v.* GANGI

[I. L. R., 23 Bom., 307

6. ———————— *Disturbance of right of ferry—Nuisance—Continuing wrong—Cause of action.*—The disturbance of a right of ferry is in the nature of a nuisance (*Yard* v. *Ford, 2 Saunders, 172*), and the cause of action in the case of a violation of this right is a continuing wrong within s. 23 of the Limitation Act. NITYAHARI ROY *v.* DUNNE

[I. L. R., 18 Calc., 652

7. ———————— **and arts. 34, 35**—*Suit for restitution of conjugal rights—Wife's refusal to return to her husband—Husband and wife.*—The refusal of a wife to return to her husband and allow him the exercise of conjugal rights constitutes a continuing wrong giving rise to constantly recurring causes of action on demand and refusal. Suits for the recovery of a wife or for the restitution of conjugal rights, though governed by arts. 34 and 35 of sch. II of the Limitation Act (XV of 1877), are not thereby taken out of the operation of s. 23 of the Act. BAI SARI *v.* HIRACHAND . **I. L. R., 16 Bom., 714**

HEMCHAND *v.* SHIV

[I. L. R., 16 Bom., 715 note

See PINDA *v.* KAUNSILIA **I. L. R., 13 All., 126**

———— s. 25 (1871, s. 26).

1. ———————— *Computation of time—English calendar.*—In calculating time for the purpose of applying the law of limitation, the computation must be made according to the English calendar. In a suit brought on the 5th Assar 1273 (3rd July 1866) for recovery of a sum of money for goods sold and delivered, the debt for which the defendant acknowledged by a writing dated 8th Assar 1270 (9th June 1863),—*Held* that the suit was barred by lapse of time. JAY MANGAL SING *v.* LAL RUNG PAL SING

[4 B. L. R., Ap., 53

S. C. JOY MUNGAL SINGH *v.* LALL RUNG PAL SING

[13 W. R., 183

2. ———————— *Bond—Limitation Act, 1877, art. 66—Gregorian calendar.*—Where a bond, by its terms, stated that money advanced should be repaid on the 30th Pous 1283 B.S., and it so happened that in the year 1283 the month of Pous consisted only of twenty-nine days (the 29th Pous answering to the 12th January 1877),—*Held* that a suit brought on the 13th January 1880 was in time. ALMAS BANEE *v.* MAHOMED RUJA

[I. L. R., 6 Calc., 239 : 6 C. L. R., 553

3. ———————— *Native date—Gregorian calendar.*—Where a bond bears a native date only, and is made payable after a certain time, that time, whether denoted by the month or the year, is to be computed according to the Gregorian (British) calendar: s. 25 of Act XV of 1877. NILKANTH *v.* DATTATRAYA . . **I. L. R., 4 Bom., 103**

LIMITATION ACT, 1877—*continued.*

4. ———————— *Native date—Month.*—The plaintiff sued on a note, bearing a native date, Ashad Vadya 13th, Shake 1799 (7th August 1877), and containing a stipulation for payment of the money to this effect: "In the month of Kartik, Shake 1799,—that is to say, in four months,—we shall pay in full the principal and interest." The plaint was filed on the 6th December 1880 in the Court of Small Causes at Poona. The Judge was of opinion that the claim was barred. On his referring the case to the High Court for its decision, *Held* that the period of four months was, for the purpose of ascertaining whether the suit was barred by lapse of time, to be calculated according to the Gregorian calendar, under s. 25 of the Limitation Act (XV of 1877), and that the claim was not barred. RUNGO BUJAJI *v.* BABAJI . . . **I. L. R., 6 Bom., 83**

5. ———————— *Computation of time—Difference in calendars—Date from which time runs.*—A registered lease provided that the rent should be paid on 30th Masi Tharana. The month Masi in the year Tharana ended on the 29th day, which corresponded with the 11th March 1885. A suit to recover the rent was filed on the 12th March 1891. *Held* that the suit was not barred by limitation. GNANASAMMANDA PANDARAM *v.* PALANIYANDI PILLAI . . . . **I. L. R., 17 Mad., 61**

———— s. 26 (1871, s. 27).

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR . . **15 B. L. R., 361**
[I. L. R., 14 Calc., 839

See PRESCRIPTION—EASEMENTS—RIGHT OF WAY . **I. L. R., 1 Calc., 422**
[I. L. R., 8 Calc., 956

See PRESCRIPTION—EASEMENTS—RIGHTS OF WATER . **I. L. R., 5 Mad., 226**
[I. L. R., 6 Bom., 20
I. L. R., 6 Calc., 394

See RIGHT OF WAY.
[23 W. R., 290, 401
I. L. R., 10 Calc., 214

1. ———————— *Enjoyment "as of right"—User in assertion of right.*—The enjoyment described in Act IX of 1871, s. 27, by the words "as of right" does not mean user without trespass, but it means user in the assertion of a right. ALIMOODDEEN *v.* WUZEER ALI . . . . **23 W. R., 52**

2. ———————— *Easement—Presumption of a grant.*—In a suit to establish an easement when limitation is pleaded, the proper issues to frame under s. 26 of Act XV of 1877 are—(1) whether the easement in question was peaceably, openly, and as of right enjoyed by the plaintiff, or those through whom he claims, within two years of the institution of the suit; and (2) in the event of the above issue being found in the negative, whether there is evidence of enjoyment on the part of the plaintiff, or those through whom he claims, of such a character and duration as to justify the presumption of a grant or other legal origin of the plaintiff's right independent of the provisions of Act XV of 1877, s. 26. ACHUL MAHTA *v.* RAJUN MAHTA . **I. L. R., 6 Calc., 812**

LIMITATION ACT, 1877—*continued.*

3. ——— *Right of way—Easement—User as of right—Prescriptive right.*—For the purpose of acquiring a right of way or other easement under s. 26 of the Limitation Act, it is not necessary that the enjoyment of the easement should be known to the servient owner. In this respect there is a difference between the acquisition of such rights under that Act and their acquisition under the English Prescription Act. ARZAN *v.* RAKHAL CHUNDER ROY CHOWDHRY **I. L. R., 10 Calc., 214**

4. ——— *Easement—Light and air—Apertures—Enjoyment as of right.*—The enjoyment by the plaintiff of light and air through apertures in the wall of his house, when it is open and manifest, not furtive or invisible, and when it is not had in such wise as to involve the admission of any obstructive right in the owner of the servient tenement, is an enjoyment "as of right" within the meaning of s. 26 of Act XV of 1877. The phrase does not imply a right obtained by grant from the owner of the servient tenement. MATHURADAS NANDVALABH *v.* BAI AMTHI **I. L. R., 7 Bom., 522**

5. ——— *Prescription—Easement—Accrual of cause of action.*—At any time within twenty years, should injury accrue from the recurring use of an easement to the owner of the servient tenement, a new cause of action arises to the owner of the servient tenement, which he may put in suit within twelve years from its accrual. JOGAL KISHORE *v.* MULCHAND . . **7 N. W., 293**

6. ——— *Suit for easement based on continuous user.*—A suit to establish a claim to an easement, based upon a continuous user for twenty years, must, with reference to s. 27, be brought within two years from the end of such period. LUCHMEE PERSHAD NARAIN SINGH *v.* TILUCKDHAREE SINGH . . . . **24 W. R., 295**

7. ——— *Easement—Prescription—User—Fishery, Right to—Limitation Act, 1877, s. 3.*—The word "easement," as used in the Limitation Act, 1877, has by force of the interpretation clause (s. 3) a very much more extensive meaning than the word bears in the English law, for it includes any right not arising from contract by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing, or attached to, or subsisting upon the land of another. An easement, therefore, under the Indian law embraces what in English law is called a *profit à prendre,*—that is to say, a right to enjoy a profit out of the land of another. A prescriptive right of fishery is an "easement" as defined by s. 3 of the Act, and may be claimed by any one who can prove a "user" of it,—that is to say, that he has of right claimed and enjoyed it without interruption for a period of twenty years, although he does not allege, and cannot prove, that he is, or was, in the possession, enjoyment, or occupation of any dominant tenement. CHUNDEE CHURN ROY *v.* SHIB CHUNDER MUNDUL

[I. L. R., 5 Calc., 945 : 6 C. L. R., 269

8. ——— *Jalkar—Easement.*—A jalkar is not an easement within the meaning of s. 27 of Act IX of 1871, but is an interest in immoveable property within the meaning of sch. II, art. 145, of that Act. PARBUTTY NATH ROY CHOWDHRY *v.* MUDHO PAROE

[I. L. R., 3 Calc., 276 : 1 C. L. R., 592

9. ——— *Dispossession—Fishery—Custom—Suit to restrain fishing in certain bhils.*—In a suit to restrain the defendants from fishing in certain bhils, which admittedly belonged to the plaintiff's zamindari, it appeared that the plaintiff had let out some of the bhils to ijaradars who had sued the defendants for the price of fish taken by them from the bhils, and that the suit had been dismissed on the ground that the defendants, in common with other inhabitants of the villages in the zamindari, had acquired a prescriptive right to fish in the bhils. The defendants contended that they had been in possession of the bhils for more than twelve years, and that they had a prescriptive right to fish therein, under a custom according to which all the inhabitants of the zamindari had the right of fishing. *Held* that the mere fact that the defendants had trespassed and had misappropriated fish did not amount to a dispossession of the plaintiff, and that the suit was not barred by limitation. *Parbutty Nath Roy Chowdhry* v. *Mudho Paroe, I. L. R., 3 Calc., 276,* distinguished. *Held* also that no prescriptive right of fishery had been acquired under s. 26 of the Limitation Act, and that the custom alleged could not, on the ground that it was unreasonable, be treated as valid. *Lord Rivers* v. *Adams, L. R., 3 Ex. D., 361,* followed. LUTCHMEEPUT SINGH *v.* SADAULLAH NUSHYO

[I. L. R., 9 Calc., 698 : 12 C. L. R., 382

10. ——— *Easement—Right of way—Prescription—Effect of illustrations.*—On the 6th of April 1878, the plaintiffs sued for obstructing a right of way for boats in the rainy season. The defendants admitted the obstruction, but denied the right of way. The plaintiffs proved that the right was peaceably and openly enjoyed, and actually used by them, claiming title thereto as an easement and as of right, without interruption, from before 1855 down to November 1875, since when no actual user of the way by the plaintiffs had taken place. The lower Appellate Court dismissed the suit on the ground that the plaintiffs had made no actual use of the way within two years previous to the institution of the suit. *Held,* reversing the decision of the Court below, that, notwithstanding Act XV of 1877, s. 26, illus. (*b*), actual user within two years previous to the institution of the suit is not necessary, in order that the right claimed may be acquired under Act XV of 1877, s. 26. Illustrations in Acts of the Legislature ought never to be allowed to control the plain meaning of the section to which they are appended, especially when the effect would be to curtail a right which the section in its ordinary sense would confer. KOYLASH CHUNDER GHOSE *v.* SONATUN CHUNG BAROOIE

[I. L. R., 7 Calc., 132 : 8 C. L. R., 281

11. ——— *Easement—Prescription—Right of way—Continuance of enjoyment as o*

right—Cessation of user—Actual user.—No rule can be laid down as to what would or would not constitute a continuance of the enjoyment as of right of a right of way, when there has been no exercise of it for any given period; that must depend upon the circumstances of each case and the nature of the right claimed. For the plaintiff to succeed in a suit for the declaration of a right of way, as acquired under s. 26 of the Limitation Act, conceding that he need not prove an actual user of the way up till the end of the statutory period of twenty years, there must, when there is no user for a long time, be circumstances from which the Court can infer the continuance of enjoyment as of right over the whole statutory period, and the cessation of the user must be at least consistent with such continuance. The enjoyment required by the Act cannot be in abeyance, and at the same time continue so as to give the plaintiff the special right claimed. The question of continued enjoyment is an inference to be drawn from facts, rather than one of fact, and if there are no facts to sustain the inference, a decision in favour of such enjoyment cannot stand. The plaintiffs sued the defendant for the declaration of a right of way, as acquired under s. 26 of the Limitation Act, over a plot of land belonging to the defendant. It was alleged that in April 1892 the defendant dispossessed the plaintiffs from the dominant tenement; and that the plaintiffs sued the defendant for recovery of possession of it under s. 9 of the Specific Relief Act, and, having obtained a decree, got possession on the 19th June 1895. It was further alleged that thereupon the defendant, on the 21st June 1895, obstructed the disputed way by erecting sheds. The present suit was instituted on the 25th November 1895. *Held* that, the enjoyment of the right of way on the part of the plaintiffs not having continued until within two years of the institution of the suit, the suit must fail. *Koylash Chunder Ghose* v. *Sonatun Chung Barooie, I. L. R., 7 Calc., 132,* distinguished. JANHAVI CHOWDHURANI *v.* BINDU BASHINI CHOWDHURANI **I. L. R., 26 Calc., 593 [3 C. W. N., 610**

12. ——— *Suit to restrain co-sharer from appropriating portion of property to his own particular use.*—The Limitation Act, 1871, s. 27, does not apply to a suit to restrain one co-sharer in a joint property from appropriating to his own particular use a portion of such property without the consent of other co-sharers. BISSAMBHAR SHAHA *v.* SHIB CHUNDER SHAHA . . **22 W. R., 28**

13. ——— *Easement—Riparian proprietors—Obstruction to flow of drainage water—Prescription—Right of action—Special damage.*—*Held* that the right of a superior riparian proprietor to have the drainage water from his lands permitted to flow off in the usual course is not an easement within the meaning of Act IX of 1871. *Held* further that the defendants, lower riparian proprietors, who had obstructed such a right of the plaintiff by blocking up the stream, could only justify their act if they had acquired an easement to do it, that their act was actionable whether special damage had or had not accrued, and that, so long as the obstruction was continued, there was a continual cause of action from day to day. The English law of prescription and the provisions of s. 27, Act IX of 1871, considered. SUBRAMANIYA AYYAR *v.* RAMACHANDRA RAU . . . . **I. L. R., 1 Mad., 335**

14. ——— *Construction of statute—Act when applicable to Crown—Easement—Profit à prendre—Right of pasturage claimed by a village against Government—Prescription—Custom.*—The rule of construction according to which the Crown is not affected by a statute unless specially named in it applies to India. *Semble*—The provisions of s. 26 of the Limitation Act (XV of 1877) do not apply to the Crown. The mere mention of the Crown in an Act has not the effect of making all its provisions applicable to the Crown, and s. 26 does not relate to the limitation of suits, but to an entirely different matter, *viz.*, the creation of rights by the enjoyment of them, which is a branch of the substantive law. The section is clearly in prejudice of the Crown's rights, and the other provisions of the Act do not afford sufficient evidence of an intention that this section should apply to the Crown. The rule of English law, that a claim to a *profit à prendre* cannot be acquired by the inhabitants of a village, either by custom or prescription, does not apply to a right of pasturage claimed by a village in the Presidency of Bombay as against the Government. The right of free pasturage has always been recognized as a right belonging to certain villages, and must have been acquired by custom or prescription. The plaintiffs, who were the inhabitants of the village of Dani Limbda, sued for themselves and the other inhabitants to establish their right to graze their cattle on the banks and the dry part of the village tank Chandola, and for a perpetual injunction restraining the defendant from interfering with such right. The defendant contended (*inter alia*) that the tank was kharabo or waste land, that it had never been set apart under the Land Revenue Code, s. 38, for grazing purposes, and that the plaintiffs could not acquire, as against the Government, a right of grazing by prescription. The Court of first instance held the defendant not excluded from the operation of s. 26 of the Limitation Act (XV of 1877), but found that there was a break in the period of prescription, and therefore rejected the plaintiffs' claim. The lower Appellate Court held that there was no break, and awarded their claim. On appeal by the defendant to the High Court,—*Held*, restoring the decree of the Court of first instance, that the suit should be dismissed. Whether the plaintiffs' claim was considered with regard to s. 26 of the Limitation Act or to the general law of prescription, it was essential that the user should have been as "of right" to graze cattle on the tank in question. But the right of free pasturage which certain villages enjoy according to the recognized custom of the country, and which was admittedly enjoyed by the plaintiffs' village, does not necessarily confer the right of pasturage on any particular piece of land, although it may confer the right of having sufficient land set apart for the purposes of the village, and in the

LIMITATION ACT, 1877—*continued.*

absence of special circumstances pointing to the tank in question having been used for grazing by the villagers in exercise of a right other than and independent of the aforesaid right, the user by the plaintiffs could only be referred to that general right. SECRETARY OF STATE FOR INDIA *v.* MATHURABHAI
[I. L. R., 14 Bom., 213

15. ———— *Enjoyment as of right for twenty years—Right of ownership—Right of easement as distinguished from a right of ownership —Bombay Regulation V of 1827, s. 1—User.*—In order to acquire an easement under s. 26 of the Limitation Act (XV of 1877), the enjoyment must have been by a person claiming title thereto as an easement as of right for twenty years. Evidence of immemorial user adduced in support of a right founded on ownership does not, when that right is negatived, tend to establish an easement. *Quære* —Whether upon a correct construction of s. 1 of Regulation V of 1827, which applies to the acquisition of easements, the mere user would be sufficient to establish the right to the easement claimed. CHUNILAL FULCHAND *v.* MANGALDAS GOVARDHANDAS . . I. L. R., 16 Bom., 592

———— **s. 28 (1871, s. 29).**

See FOREIGN COURT, JUDGMENT OF.
[I. L. R., 2 Mad., 400

See MALABAR LAW—MORTGAGE.
[I. L. R., 13 Mad., 490

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.
[I. L. R., 14 All., 193

See POSSESSION—ADVERSE POSSESSION.
[I. L. R., 21 Bom., 509

See POSSESSION—EVIDENCE OF TITLE.
[I. L. R., 1 Bom., 592

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.
[I. L. R., 21 Bom., 91

1. ———— *Effect of Law of Limitation (Act XIV of 1859).*—The Indian Law of Limitation (Act XIV of 1859) as to realty was held to bar the remedy, but not to extinguish the right. DOE D. KULLAMMAL KUPPU *v.* PILLAI
[1 Mad., 85

VENKOPADHYAYA *v.* KAVARI HENGUSU
[2 Mad., 36

2. ———— *Extinction of right as well as remedy.*—The rule of law laid down by the Privy Council that a person entitled to an interest in immoveable property loses, not only all remedy, but his title, by being out of possession for more than twelve years, was held to apply to the case of a recusant proprietor claiming malikana. CHUMMUN *v.* OM KOOLSOOM . . . . . 13 W. R., 465

3. ———— *Limitation in relation to persons in undisturbed possession—Delay.*—The law of limitation operates against parties who have been guilty of delay and in favour of persons in possession. S. 28 of the Limitation Act has no application to persons who are in possession, and who have had no occasion to sue for recovery of possession. ORR *v.* SUNDRA PANDIA . . I. L. R., 17 Mad., 255

LIMITATION ACT, 1877—*continued.*

4. ———— *Regulation VI of 1831 (Madras), s. 3—Village service inam—Village blacksmith.*—The mortgagee of maniam land attached to the hereditary office of village blacksmith sued in the Court of a District Munsif for possession, to which he claimed to be entitled under his mortgage; and there was evidence that he had been in possession for many years up to a date not long prior to the suit. *Held* that, as the plaintiff could have sued only under Regulation VI of 1831 in a Revenue Court, he could not, under Limitation Act, 1877, s. 28, acquire a title by prescription to the land. PICHUVAYYAN *v.* VILAKKUDAYAM ASARI
[I. L. R., 21 Mad., 134

5. ———— **and Bom. Reg. V of 1827**—*Cause of action to establish title and obtain arrears founded on that title.*—Where there has been no recognition of title, nor any payment of dues within the period of limitation prescribed by law, there is a sufficient bar to the claimant's right to recover, if he ever had any. The cause of action to establish title and the cause of action to recover arrears which rest on such title are not distinct and independent of each other; so that, if the former be barred, even those arrears which may be within the law of limitation cannot be recovered. MADVALA BIN GINAPA *v.* BHAGVANTA BIN DEVJI
[9 Bom., 260

6. ———— *Trees—Land.*—Trees growing upon land are "land" within the meaning of s. 29, Act IX of 1871. Possession of land by a wrong-doer for twelve years not only extinguishes the title of the rightful owner of such land, but confers a good title on the wrong-doer. JAGRANI BIBI *v.* GANESHI . . I. L. R., 3 All., 435

7. ———— *Possession of land forming endowment.*—When the land in suit was alleged to have formed an endowment, it was held that the plaintiff by his twelve years' occupation had acquired a title, even though his vendor had not had power to aliene the property. NURSINGH DASS *v.* MOOSHAROO BHANDAREE . . . . 25 W. R., 282

8. ———— *Possessory title—Mortgage —Receipt of rent by co-owner of equity of redemption for fifteen years.*—Where the equity of redemption of a certain estate became, on the death of the mortgagor, the property of two divided branches of a Malabar tarwad, and the rents and profits of the land paid by the mortgagee were enjoyed exclusively by *K*, the representative of one branch, for fifteen years,—*Held* that *K* had not acquired thereby a title to the estate mortgaged. CHATHU *v.* AKU
[I. L. R., 7 Mad., 26

9. ———— *Suit for hereditary office and for account.*—Where the plaintiff's right of succession to an hereditary office accrued in 1847, when *A* took it under a will, and it was held his possession was adverse to the plaintiff,—*Held* that plaintiff was precluded from setting up a fresh right

LIMITATION ACT, 1877—*continued.*

as accruing to him on the death of *A* as the only male survivor of the founder's family, by the provisions of s. 29 of the Limitation Act, IX of 1871. MANALLY CHENNA KESAVARAYA *v.* MANGADU VAIDELINGA . . . **I. L. R., 1 Mad., 343**

10. ———— *Adverse possession—Bar of remedy and extinguishment of right—Debts.*—The 28th section of the Limitation Act of 1877 extends the doctrine that twelve years' adverse possession of land not only bars the remedy of the rightful owner, but extinguishes his right to property other than land; but *per* GARTH, *C.J.*—*Quære*—Whether this principle would apply to debts. RAM CHUNDER GHOSAUL *v.* JUGGUTMONMOHINEY DABEE **[I. L. R., 4 Calc., 283: 3 C. L. R., 336**

11. ———— *Operation of Limitation Act IX of 1871 and Act XV of 1877.*—The Limitation Acts (IX of 1871 and XV of 1877) merely bar the remedy, but do not extinguish the debt. NURSING DOYAL *v.* HURRYHUR SAHA **[I. L. R., 5 Calc., 897: 6 C. L. R., 489**

MOHESH LAL *v.* BUSUNT KUMAREE **[I. L. R., 6 Calc. 340: 7 C. L. R., 121**

Overruling the cases of KRISHNA MOHUN BOSE *v.* OKHILMONI DOSSEE . **I. L. R., 3 Calc., 331**

NOCOOR CHUNDER BOSE *v.* KALLY COOMAR GHOSE . . . **I. L. R., 1 Calc., 328**

and RAM CHUNDER GHOSAUL *v.* JUGGUTMONMOHINEY DABEE . . **I. L. R., 4 Calc., 283**

See also VALIA TAMBURATI *v.* VIRA RAYAN **[I. L. R., 1 Mad., 228**

and MADHAVAU *v.* ACHUDA **[I. L. R., 1 Mad., 301**

12. ———— **and arts. 91 and 95**—*Extinguishment of right and title—Plea of fraud—Fraudulent sale—Vendor's right to plead fraud after twelve years from the date of sale—Vendor and purchaser.*—In 1872 the plaintiffs induced the first defendant by fraud and misrepresentation to execute in their favour a deed of sale of the property in dispute. They did not pay the purchase-money nor obtain possession of the property. The defendant remained in possession, and in 1873 mortgaged the property with possession to defendants Nos. 2 and 3, and in 1880 sold it to defendant No. 2. In 1884 the plaintiffs sued for possession of the property, relying on their title under the sale-deed. The defendant impeached the deed as fraudulent and disputed the plaintiffs' title. The plaintiffs contended that, as the defendant had not sued to set aside the deed on the ground of fraud within three years, as provided by art. 91 or 95 of the Limitation Act (XV of 1877), or within twelve years from the date of sale, it was too late for him to set up the plea of fraud. *Held* (SCOTT, *J.*, doubting) that the defendant's right to raise the plea of fraud was not barred by the law of limitation. *Per* SCOTT, *J.*—There was another point of limitation which could be raised. The consideration-money was never paid by the plaintiffs, and possession was never given. There was no complete contract of sale passing the property. Therefore the plaintiffs' only right was to sue for specific performance of the contract. Such a suit, however, became barred in three years after the date of the contract. The plaintiffs therefore had lost their rights against defendant No. 1; and even if they had not, the present claim for possession as against defendants Nos. 2 and 3 must fail, as defendant No. 2 was mortgagee and defendant No. 3 was *bonâ fide* purchaser for value, and no satisfactory evidence was given by plaintiffs, on whom lay the onus that these defendants had notice of the deed of sale. *Per* JARDINE, *J.*—S. 28 of the Limitation Act (XV of 1877) does not apply to the case of defendants, who rely on an actual possession which has never been disturbed. HARGOVANDAS LAKHMIDAS *v.* BAJIBHAI JIJIBHAI . **I. L. R., 14 Bom., 222**

13. ———— *Civil Procedure Code (1882), s. 214—Right of pre-emption asserted by one in possession under an otti mortgage in Malabar—Limitation Act, sch. II, art. 10.*—Land in Malabar was in the possession of the defendants, and was held by them as otti mortgagees under instruments executed in August 1873 and January 1876. The plaintiff, having purchased the jenm right under instruments executed and registered in May and June 1877, now sued in 1893 for redemption. *Held* that the defendants' right of pre-emption was not extinguished under Limitation Act, s. 28, and that they were not precluded from asserting it by art. 10 owing to the lapse of time, and that the Civil Procedure Code, s. 214, was inapplicable to the case, because the persons asserting a right of pre-emption were in possession. KRISHNA MENON *v.* KESAVAN **[I. L. R., 20 Mad., 305**

———— **art. 3 (1871, art. 3; 1859, s. 15).**

S. 15 of Act XIV of 1859 was repealed by, and its provisions re-enacted in, the Specific Relief Act (I of 1877), s. 9 of which is in similar terms, with the addition of the modification made in s. 15 by s. 26 of Act XXIII of 1861, and an additional provision that no such suit shall be brought against the Government.

1. ———— *Suit to recover paramba after forcible dispossession.*—S. 15 did not abridge any rights possessed by a plaintiff, but was intended to give him the right, if dispossessed otherwise than by course of law, to have his possession restored without reference to the title on which he held. Where a plaintiff sued to recover a paramba of which he alleged that he was owner and that the defendant had forcibly dispossessed him,—*Held* that the suit was not barred by s. 15. KUNHI KOMAPEN KURUPU *v.* CHANGARACHAN KANDIL CHEMBATA AMBU **[2 Mad., 313**

See KUMUL DUTT *v.* MOHUN MOLLA **[15 W. R., 278**

2. ———— *Unlawful dispossession by Government officers.*—When a Deputy Collector, acting as agent for a minor, uses powers which belong to the Government alone for the resumption of invalid lakhiraj tenures, and by virtue of those powers resumes lands for the benefit of the minor and unlawfully dispossesses the previous holder,—*Quære*—

Whether such a dispossession is within the contemplation of s. 15, Act XIV of 1859, or not. That section does not confer on the person who unlawfully acquires possession of land the advantage of a short period of limitation, on the expiration of which the dispossessed person is bound to show an absolute title to recover. It gives to the dispossessed person who has been wrongfully deprived of possession a right to recover possession within six months without regard to any title, however clear, which may be set up against him. If he sues after six months have expired, the parties to the suit are left in the same condition as they would have been in under the former law with reference to the production of proof. PROTAB CHUNDER BUROOAH *v.* KANTAESWURREE DABEE . . . . . **2 W. R., 250**

3. ——————— *Proof of title—Possession.*—In a suit brought on the 11th March 1872, to recover certain plots of land (*a*) as re-formations after diluviation of lands which had belonged to the plaintiffs and as accretions thereto; (*b*) under a title by prescription; it appeared that the lands had formed in the bed of a river in 1859, and that the plaintiffs took possession thereof as of re-formed lands and had been maintained in possession under awards under Act IV of 1840, but that in 1868 they were ousted by the Collector who assessed the same under Regulation XI of 1825 and settled them with the co-defendants. *Held* that s. 15, Act XIV of 1859, barred the plaintiff's right to recover simply on the strength of their previous possession without entering into the question of title; the suit not having been brought within six months of dispossession. WISE *v.* AMEERUNNISSA KHATOON. WISE *v.* COLLECTOR OF BACKERGUNGE . **L. R., 7 I. A., 73**

——— art. 7 (1871, art. 7; 1859, s. 1, cl. 2).

1. ——————— *Suit for servant's wages.*—A suit for servant's wages was governed by the limitation prescribed by cl. 2, s. 1. NOBIN CHUNDER MOZOOMDAR *v.* KENNY **[5 W. R., S. C. C. Ref., 3**

2. ——————— *Household servant—Labourer—Temple servant.*—A person whose duties are to sweep and clean a temple, provide flowers for daily worship and garlands for the idol, is not a household servant within the meaning of art. 7 of sch. II of the Limitation Act. MUTTIRANGOT MANAKAL BHAVATHRADAN BHATTA THIRIPAD *v.* ERANGOT TRIKOVIL PISHARETH RAMA PISHAROTI **[I. L. R., 7 Mad., 99**

3. ——————— *Suit for arrears of monthly payment for instruction.*—A suit for arrears of a monthly payment agreed to be made for instruction in fencing and wrestling is not governed by the 7th clause of the Limitation Act, as that clause does not apply to the pay of a teacher or instructor. PYLWAN JARKAN SAHIB VASTHATH *v.* JENAKA RAJA TEVAR **[8 Mad., 87**

4. ——————— *Chowkidar—Servant.*—Under Act XIV of 1859, a chowkidar was held to be a servant within the meaning of s. 1, cl. 2, of that Act. GOLAMEE *v.* POSLAN . . **18 W. R., 28**

The following were held not to be servants:—

A manager of a company. IN THE MATTER OF THE GANGES STEAM NAVIGATION COMPANY **[2 Ind. Jur., N. S., 181**

A tahsildar or collector of rent. ARUN CHANDRA MANDAL *v.* RAMANATH RAKHIT **[1 B. L. R., S. N., 20**

S. C. OROON CHUNDER MONDUL *v.* ROMANATH RUKHIT . . . . **10 W. R., 260**

A mohurir under an amin for batwara purposes. ABHAYA CHARAN DUTT *v.* HARO CHANDRA DAS BUNIK . . . **4 B. L. R., Ap., 68**

S. C. OBHOY CHURN DUTT *v.* HURO CHUNDER DOSS BUYEE . . . **13 W. R., 150**

A mooktear. NITTO GOPAL GHOSE *v.* MACKINTOSH . . . . **6 W. R., Civ. Ref., 11**

5. ——————— *Employer and labourer.*—The plaintiff agreed with the defendant that in consideration of the possession and use of certain land and a third of the produce for the season he would provide seed and labour and carry on the cultivator's share of the produce. *Held* the parties were not in the position of employer and labourer. ANDI KONAN *v.* VENKATA SUBBAIYAD . **2 Mad., 387**

Under the present Limitation Act, the servant must be a household servant to come within art. 7.

6. ——————— *Suit by one servant against another.*—Cl. 2, s. 1, applies only to suits for wages brought by a servant against the person liable as the master in whose service he had been employed, and the section does not apply to a suit brought by one Government servant against another for the recovery of a sum of public money received by the defendant as a disbursement on account of the wages of the plaintiff, to whom the defendant was legally bound to pay it over. SIVA RAMA PILAI *v.* TURNBULL **[4 Mad., 43**

7. ——————— *Suit for servant's wages—Fixed monthly salary.*—Where a servant is appointed on a fixed monthly salary, and there is nothing to show that the salary is to be paid in advance, the limitation as to each month's salary commences from the time at which the salary became due, *i.e.,* the end of the month, and not from the date of the dismissal of the servant. KALI CHURN MITTER *v.* MAHOMED SOLEEM . **6 W. R., Civ. Ref., 33**

——— art. 10 (1871, art. 10; 1859, s. 1, cl. 1).

1. ——————— *Possession—Constructive and actual possession.*—Under the Act of 1859, the possession necessary under the corresponding clause was held to be not a mere constructive possession, but actual manual possession. GOSHAIN GOBIND PERSHAD *v.* FATIMA . . . **2 W. R., 5**

KUMAR ALI *v.* AZMUT ALI . **8 W. R., 383**

MAHOMED HOSSEIN *v.* MOHSUN ALI **[7 W. R., 195**

JAI KUAR *v.* HEERA LAL . . **7 N. W., 5**

And under the present Act the cause of action dates from the obtaining of physical possession in cases where it is practicable to obtain it.

2. ——— *Actual possession—Possession opposed by person without right.*—The purchaser cannot be said not to obtain actual possession where he is only opposed in taking possession by some one who has no right to oppose his possession, as a mere farmer who was tenant of the vendor. BECHUN *v.* MAHOMED YAKOOB KHAN . . **3 W. R., 225**

3. ——— *Suit for pre-emption.*—In pleading limitation as a bar to a suit for pre-emption the defendant must show that he was in possession more than a year before the plaint was filed. HOSSEINEE KHANUM *v.* LALLUN **[W. R., 1864, 117**

4. ——— *Pre-emption, Suit for—Conditional sale.*—Where a shareholder, if he desires to transfer his share, is bound to offer the transfer of it to his co-sharers before transferring it to a stranger, the right of pre-emption, in the case of a conditional sale, under which possession is not transferred, arises, not when such sale is made, but when the conditional sale becomes absolute. Under art. 10, sch. II of Act XV of 1877, the period of limitation runs from the date physical possession is taken of the whole of the property sold. JAIKARAN RAI *v.* GANGA DHARI RAI **[I. L. R., 3 All., 175**

JANKEE KOER *v.* LEKRANEE KOER **[W. R., 1864, 285**

5. ——— *Suit for pre-emption—Foreclosure by conditional vendee.*—The defendant, a conditional vendee, foreclosed the mortgage, and subsequently sued the auction-purchaser of the rights of the conditional vendor for possession, and obtained a decree, in execution of which he obtained possession. *Held* that the suit of the plaintiff who claimed pre-emption was not barred by limitation, as it was instituted within one year from the date on which the vendee, whose purchase was sought to be set aside, obtained actual possession of the property to which his title, originally conditional, had become absolute. RADHEY PANDEY *v.* NUND KOMAR PANDEY **[2 Agra, Pt. II, 164**

6. ——— *Pre-emption—Possession after sale in execution of decree of conditional sale.*—In 1861, *B* purchased conditionally certain immoveable property, which in 1865 was attached in execution of a decree. In 1874, the conditional sale having been foreclosed, *B* obtained a decree for possession of such property. In February 1875, he obtained mutation of names in respect of such property. In November 1875, arrangements having been made by him to satisfy the decree in execution of which such property had been attached, the attachment was removed. In December 1875, he acknowledged having received possession of such property in execution of his decree. *K* sued him in November 1876 to enforce his right of pre-emption in respect of such property. *Held* that limitation ran from the date when *B* obtained such possession of the status of his conditional vendor as entitled him to mutation of names and to the exercise of the rights of an owner, and that the suit was barred by limitation. The principle laid down in *Jageshar Singh* v. *Jawahir Singh, I. L. R., 1 All., 311,* followed. BIJAI RAM *v.* KALLU . . . **I. L. R., 1 All., 592**

7. ——— *Mortgage—Conditional sale—Time from which period begins to run.*—A conditional vendee, who was in possession, applied under Regulation XVII of 1806 to have the conditional sale made absolute. The year of grace expired in July 1878. In November 1871, the conditional vendee sued for possession of the property by virtue of the conditional sale having become absolute. He obtained a decree, in execution of which he obtained, on the 30th April 1879, formal possession of the property according to law. On the 23rd March 1880, a suit was brought against him to enforce a right of pre-emption in respect of the property. *Held* that the period of limitation for such suit ran, not from the expiration of the year of grace, but from the 30th April 1879, the date the conditional vendee obtained possession in execution of his decree. PRAG CHAUBEY *v.* BHAJAN CHAUDHRI . **I. L. R., 4 All., 291**

Contra, BUDDREE DOSS *v.* DOORGA PERSHAD **[2 N. W., 284**

8. ——— *Purchase by mortgagee—Claim for pre-emption—Cause of action.*—Where a mortgagee becomes a purchaser of the mortgaged property, limitation runs from the date of purchase, as against a claimant by right of pre-emption. BUDDREE DOSS *v.* DOORGA PERSHAD . **2 N. W., 284**

9. ——— *Suit for pre-emption—Purchase by mortgagee in possession.*—When a mortgagee in possession purchased the property mortgaged,—*Held* that his possession as proprietor commenced from the date of purchase, and limitation would run from the date of the purchase against a claimant by right of pre-emption, and not from the date he got his name recorded in the revenue record as proprietor. MAHOMED BANAZEER *v.* GUNGA RAM **3 Agra, 260**

10. ——— *Pre-emption, Suit for.*—*Held,* in a suit for pre-emption, where the property had been purchased by the mortgagee in possession, that the purchaser obtained physical possession of the property under the sale, not from the date of the sale-deed, but when the contract of sale became completed. *Held,* therefore, that the contract of sale having become completed on the payment of the purchase-money, the suit, being brought within one year from the date of such payment, was within time. LACHMI NARAIN LAL *v.* SHEOAMBAR LAL **[I. L. R., 2 All., 409**

11. ——— *Sale by mortgagor of usufructuary mortgage—Possession of vendee—Cause of action.*—When landed property sold by a mortgagor is at the time of sale in the usufructuary possession of the mortgagee, the vendee must be held to have taken possession in the sense of the limitation law at the time when he acquired possession of that which was the subject of sale, *viz.*, the rights of the vendor, and of these he acquired full possession as soon as they had been conveyed to him by a valid transfer. The limitation of one year provided by

cl. 1, s. 1 of Act XIV of 1859, should be computed from the date of such possession and not from the date of actual assumption of possession by the vendee after redemption of the property from the mortgagor. GANESHEE LALL *v.* TOOLA RAM
[3 Agra, 376 : S. C., Agra, F. B., Ed. 1874, 167

12. ———— *Suit for pre-emption—Cause of action.*—In a suit for pre-emption of a share it appeared that the share had been first mortgaged to certain persons and afterwards sold to the defendant, who brought a suit for redemption and obtained a decree. *Held* that the period of limitation of the suit should be calculated from the date of the sale, and not from the date of the redemption of mortgage. RUSTUM SINGH *v.* MAHURBAN SINGH
[5 N. W., 179

13. ———— *Pre-emption—Actual possession—Purchase of equity of redemption.*—*Held* (STUART, *C.J.*, dissenting) that the purchaser of the equity of redemption of immoveable property, which is at the time of the sale in the usufructuary possession of the mortgagee, takes "actual possession" of the property, within the meaning of that term in art. 10, sch. II of Act IX of 1871, when the equity of redemption is completely transferred to and vested in him. *Per* STUART, *C.J.*—That such a purchaser does not take "actual possession" of the property until he takes visible and tangible possession thereof or enjoys the rents and profits of the same, after redemption of mortgage. JAGESHAR SINGH *v.* JAWAHIR SINGH . . **I. L. R., 1 All., 311**

14. ———— *Suit for pre-emption—Cause of action—Mutation of names—Sale, Date of.*—In a suit to enforce the right of pre-emption on a sale of a share of a zamindari estate, the period of limitation should be computed from the date of the sale, not from the date of the mutation of names, the purchaser having acquired by his purchase such possession as the nature of the property sold admits of. Mutation of names, although it may be regarded as evidence that a transfer has been made, is not essential to give validity to the transfer. OMRAO KHAN *v.* IMDAD ALLEE KHAN. MAHOMED MASHOOK ALLEE KHAN *v.* IMDAD ALLEE KHAN
[1 N. W., 9 : Ed. 1873, 8

15. ———— *Suit for pre-emption—Possession.*—On the 19th December 1876, *A* gave *T* a mortgage of his share in a certain village. The terms of the mortgage were that *A* should remain in possession of his share and pay the interest on the mortgage money annually to the mortgagee, who, in the event of default in payment of the interest, was empowered to sue for actual possession of the share. On the 19th May 1877, *T*'s name was substituted for that of *A* in the proprietary registers in respect of the share. On the 8th February 1878, *G* sued *T* and *A* to enforce his right of pre-emption in respect of the share, alleging that his cause of action arose on the 19th May 1877, and that *A*, notwithstanding the mutation of names, was still in possession. *T* alleged that he had been in possession since the execution and registration of the deed of mortgage. *Held* that, whether *T* had been in plenary possession of the share since the date of the deed, or whether he had had only such constructive or partial possession of it as was involved in the receipt of interest on the mortgage money, the plaintiff was equally bound to have sued within a year from the date of the deed, and was not entitled to reckon the year from the date on which the possession by the mortgagee of the share was recognized by the revenue department, and the suit was therefore barred by art. 10, sch. II of Act XV of 1877. GULAB SINGH *v.* AMAR SINGH
[I. L. R., 2 All., 237

16. ———— *Suit to enforce pre-emption of share of undivided mehal—Physical possession.*—A share in an undivided zamindari mehal is not susceptible of "physicial possession" in the sense of art. 10, sch. II of Act XV of 1877. Limitation, therefore, in a suit to enforce a right of pre-emption in respect of such a share runs from the date of the registration of the instrument of sale. UNKAR DAS *v.* NARAIN . . . **I. L. R., 4 All., 24**

17. ———— **and art. 120**—*Mahomedan law—Pre-emption—Conditional sale—Right of pre-emption among co-parceners—Private partition of puttidari estate.*—*A* and *B* had certain proprietary rights in an 8 annas putti of a certain mehal. *C* and *D* had no rights in that putti, but *D* had a small share in the remaining 8 annas putti. A private partition between the puttis having taken place, *C* and *D*'s brother lent to *B* two sums of R200 and R199 by deeds of bai-bil-wufa, dated the 12th and 21st June 1876. *C* and *D* subsequently instituted foreclosure proceedings, and on the 5th May 1884 were put into possession of *B*'s share in the first mentioned putti in execution of a decree which they had obtained. On the 18th April 1885, *A* sued *C* and *D* to enforce his right of pre-emption. *Held* that the suit was not barred by limitation, it being governed by either art. 10, sch. II of the Limitation Act (XV of 1877), which gave the plaintiff a year from the 5th May 1884, the date on which the mortgagee obtained possession, or by art. 120, under which his right to sue accrued upon the expiry of the six months' grace allowed to the mortgagor after the decree for foreclosure, and there would be six years allowed from that time. DIGAMBUR MISSER *v.* RAM LAL ROY
[I. L. R., 14 Calc., 761

18. ———— *Joint sale of undivided mehal and other property.*—In a suit to enforce a right of pre-emption in respect of a sale of property consisting in part of a share of an undivided mehal, which does not admit of physical possession, limitation will run from the date of registration of the instrument of sale. BHOLI *v.* IMAM ALI
[I. L. R., 4 All., 179

19. ———— *Wajib-ul-urz—Co-sharers—Effect of perfect partition—"Physical possession"—Purchase of equity of redemption by mortgagee in possession.*—The wajib-ul-urz of three villages which originally formed a single mehal gave a right of pre-emption to co-sharers in case of transfers of shares to strangers. Afterwards the shares in these villages were made the subject of a perfec partition and divided into separate mehals. Subsequently, by two deeds of sale executed on the 13th January 1884, and registered on the 17th January 1884, some of the original co-sharers sold to strangers their shares in all three villages. At the time of the sale, the shares in two of the villages were in possession of the vendees under a possessory mortgage, the amount due upon which was set off against the purchase-money. The share in the third village was, at the time of the sale, in possession of another of the original co-sharers under a possessory mortgage. On the 17th January 1885, this last-mentioned co-sharer brought a suit against the vendors and the vendees to enforce his right of pre-emption under the wajib-ul-urz in respect of the shares sold in the three villages. *Held* that in the case of the sale of an equity of redemption by the mortgagor to the mortgagee in possession, which has the effect of extinguishing the right to redeem by a merger of the two estates in the mortgagee, it cannot properly be said that any property is sold which is capable of "physical possession" within the meaning of art. 10, sch. II of the Limitation Act. In a statute, such as the law of limitation, which contemplates notice, express or implied, to the party to be affected by some act done by another in respect of which a right accrues to him to impeach it, and as to which time begins to run against him *quoad* his remedy from a particular point, the word "physical" implies some corporeal or perceptible act done which of itself conveys or ought to convey to the mind of a person notice that his right has been prejudiced. An equity of redemption is not susceptible of possession of this description under a sale by which it is transferred, and a pre-emptor impeaching such a sale has one year from the date of registration of the instrument of sale within which to bring his suit. *Held*, therefore, that the period of limitation began to run from the date of the registration of the deed of sale, and that the suit was within time. SHIAM SUNDER *v.* AMANAT BEGAM

[I. L. R., 9 All., 234

20. ———— *Suit for pre-emption based on a mortgage by conditional sale—Limitation Act, art. 120—"Physical possession."*—*Held* (1) that the other conditions being present necessary to make art. 10 of the second schedule to Act XV of 1877 applicable, art. 10 would apply to a sale which in its inception was a mortgage by conditional sale, but which, either by the operation of Regulation XVII of 1806 or by the operation of Act IV of 1882, had become in effect an absolute sale with the right of redemption gone. (2) That in such a case as above limitation begins to run, where Regulation XVII of 1806 applies, from the expiry of the year of grace. (3) That a share in an undivided zamindari mehal is not susceptible of "physical possession" in the sense of art. 10 of the second schedule to Act XV of 1877. (4) That constructive possession, *e.g.*, by receipt of rent from tenants, is not "physical possession" within the meaning of the said article. *Ali Abbas* v. *Kalka Prasad, I. L. R., 14 All., 405; Nath Prasad* v. *Ram Paltan Ram, I. L. R., 4 All., 218; Goordhun* v. *Heera Singh, S. D. A., N.-W. P., 1866, 181; Ganeshee Lall* v. *Toola Ram, 3 Agra, 376; Jageshar Singh* v. *Jawahir Singh, I. L. R., 1 All., 311;* and *Unkar Das* v. *Narain, I. L. R., 4 All., 24,* referred to. BATUL BEGAM *v.* MANSUR ALI KHAN . . . **I. L. R., 20 All., 315**

See RAHAM ILAHI KHAN *v.* GHASITA

[I. L. R., 20 All., 375

and ANWAR-UL-HAQ *v.* JWALA PRASAD

[I. L. R., 20 All., 358

———— **art. 11.**

See CASES UNDER ART. 13.

1. ———— **and art. 146**—*Order rejecting claim under s. 246, Civil Procedure Code, 1859—Ss. 280, 281, 282 of Civil Procedure Code, 1882—Suit for possession.*—Where, in consequence of an adverse order passed under the provisions of Act VIII of 1859, s. 246, a suit is (since the Limitation Act, 1877, came into force) instituted to establish the plaintiff's right to certain property, and for possession, such suit is not governed by the provisions of art. 11, sch. II of Act XV of 1877, but by the general limitation of twelve years. *Koylash Chunder Paul Chowdhry* v. *Preonath Roy Chowdhry, I. L. R., 4 Calc., 610: 3 C. L. R., 25; Matonginy Dossee* v. *Chowdhry Junmunjoy Mullick, 25 W. R., 513; Joyram Loot* v. *Paniram Dhoba, 8 C. L. R., 54;* and *Raj Chunder Chatterjee* v. *Shama Churn Garai, 10 C. L. R., 435,* cited. GOPAL CHUNDER MITTER *v.* MOHESH CHUNDER BORAL

[I. L. R., 9 Calc., 230: 11 C. L. R., 363

BISSESSUR BHUGUT *v.* MURLI SAHU

[I. L. R., 9 Calc., 163: 11 C. L. R., 409

2. ———— *Civil Procedure Code, 1859, s. 246—Release of property from attachment on application of defendant.*—The plaintiff applied for the attachment of a property, and on the objection of the defendant the property was released from attachment. *Held* that the plaintiff was bound, under s. 246, Act VIII of 1859, to sue in the Civil Court to establish his right within a year from the order of release. JUGOO LAL UPADHYA *v.* EKBALOONISSA

[7 W. R., 456

3. ———— *Civil Procedure Code, 1859, s. 246—Date from which period of limitation runs.*—The effect of the last sentence of s. 246, Act VIII of 1859, is to exclude a party to an investigation under that section from any other remedy than that expressly provided for him by that section, *viz.*, a regular suit to be brought within one year from the date of the order made against him, and such party cannot wait till the sale of the attached property has taken place and been confirmed, and then bring his suit within one year from the last date. SETTIAPPAN *v.* SARAT SINGH . . . **3 Mad., 220**

4. ———— *Civil Procedure Code, 1859, s. 246—Money-debts.*—Act VIII of 1859, s. 246, applies only to immoveable property or to specific moveable property, not to a debt due. When a debt due to a judgment-debtor is attached in the hands of the person who owes it, he may pay it into Court voluntarily under s. 241, or under compulsion under s. 242 or be sued for it under s. 243. A person thus sued would not be barred because of the lapse of a year from setting up any ground of defence which he may have against the claim. RAMBUTTY KOOER *v.* KAMESSUR PERSHAD . . . **22 W. R., 36**

5. ——— *Goods illegally seized in execution of decree—Suit by owner.*—A person suing for goods which have been illegally sold in execution of a decree, or their value, must, under art. 11, sch. II, Act XV of 1877, bring his suit within one year from the time when the adverse order in the execution-proceedings was made. SHIBOO NARAIN SINGH *v.* MUDDEN ALLY

[I. L. R., 7 Calc., 608 : 9 C. L. R., 8

6. ——— *Civil Procedure Code, 1859, s. 246—Suit for possession by virtue of inheritance of portion of attached property.*—It was held that the mere fact that the plaintiff sued to recover possession, by virtue of inheritance, of one-fourth only of certain immoveable property, to which he had laid claim, when attached in execution of decree, on the ground that it belonged to the common ancestor of himself and the judgment-debtor, and there had been a partition of the ancestral estate, and the property attached had fallen by the partition to his lot, and was in his exclusive possession, did not relieve him from the necessity of bringing a suit within one year from the date of the order, passed by the Court executing the decree, under s. 246, Act VIII of 1859, to the effect that the partition had not been established, nor had he proved that he held exclusive possession of the property attached. TILOK CHAND *v.* SADA RAM . . . . . . **7 N. W., 113**

7. ——— *Suit to avoid sale in execution of decree of Small Cause Court passed without jurisdiction.*—*A* obtained a money-decree upon a bond in a Small Cause Court against *B*, by which it was declared that certain landed property hypothecated by the bond was to be primarily liable for the debt. The decree was transferred to the Court of the Sudder Ameen of the same district, the property was put up for sale, and it was purchased by *C*. Prior to sale, *B* alienated the property to *D*, who after sale preferred his claim to it under s. 246 of Act VIII of 1859, which was disallowed. More than a year after this *D* brought this suit against *C* to recover possession. In special appeal it was held that the decree of the Small Cause Court being on the face of it without jurisdiction, the suit was not barred, and the case was remanded, to be tried on the merits. LALA GANDAR LAL *v.* HABIBANNISSA

[7 B. L. R., 235 : 15 W. R., 311

8. ——— *Civil Procedure Code, 1859, s. 246.*—The period of limitation contained in s. 246, Act VIII of 1859, is applicable only to a case in which the procedure prescribed by that section has been adopted. VENKATANARU *v.* AKKAMMA

[3 Mad., 139

9. ——— *Claim to attached property.*—Property attached was, on the claim of a third party, released by the Court without proceeding under the provisions of s. 246, Act VIII of 1859. The attaching creditor sued more than a year afterwards for a declaration that the property belonged to the judgment-debtor. *Held* that the suit was not barred. JAGGABANDHU BOSE *v.* SACHYI BIBI

[8 B. L. R., Ap., 39 : 16 W. R., 22

10. ——— *Order passed in miscellaneous department.*—Where an order is passed in the miscellaneous department without enquiry in conformity with the provisions of s. 246, Act VIII of 1859, it is not to be regarded as an order within the terms of that section, and a suit to set aside such order would not necessarily be barred if not instituted within a year. BHOLA DUTT *v.* AHMED

[3 Agra, 397

11. ——— *Claim to attached property—Separate suit—Civil Procedure Code, 1882, ss. 281, 283.*—The order contemplated by s. 281 of the Code of Civil Procedure is an order made after investigation into the facts of the case, and it is only when the order is made after such investigation that the limitation of one year is applicable to a subsequent suit under s. 283 of the Civil Procedure Code. CHANDRA BHUSAN GANGOPADHYA *v.* RAM KANTH BANERJI . . . **I. L. R., 12 Calc., 108**

12. ——— *Limitation—Applicability of s. 246.*—Limitation under s. 246, Act VIII of 1859, is not applicable to an adjudication upon a petition disallowed on the ground that the section did not apply at all to the petitioner's case, and that the case was not a fit one for adjudication under that section. RADHA NATH BANERJEE *v.* JODOO NATH SINGH . . . . . . **7 W. R., 441**

13. ——— *Claim to attached property—Suit for possession.*—A claim to property about to be sold in execution of a decree was made under s. 246 of Act VIII of 1859, but the Court declined to entertain it, and passed an order under s. 247 disallowing the investigation. *Held* that the claimant in bringing a regular suit to prosecute his claim was not bound to institute his suit within one year from the date of the order disallowing the investigation. MAHOMED AFZUL *v.* KANHYA LAL

[2 W. R., 263

14. ——— *Civil Procedure Code, 1859, s. 246—Suit after order releasing property from attachment to establish right to bring property to sale.*—*N* caused certain property to be attached as the property of his judgment-debtor. *M* preferred a claim to the property and objected to its sale. The Munsif, without an investigation in conformity with the provisions of s. 246 of Act VIII of 1859, released the property from attachment, and directed *N* to bring a regular suit. *N* sued to establish his right to bring the property to sale, alleging that his cause of action arose on the day the order was passed releasing it from attachment. *Held* that the suit was not barred by limitation by reason of not having been instituted within one year from the date of the order. KAMRAN *v.* NEIT RAM **6 N. W., 185**

15. ——— *Limitation Act (IX of 1871), art. 15.*—A claimant against whom an order has been made under s. 246 of the Civil Procedure Code (Act VIII of 1859) must sue to establish his right within one year from the date of such order.

But when the Civil Court disallows an investigation under s. 247 of the Code, the claimant may bring his suit within the ordinary period of limitation applicable to his suit. VENKAPA *v.* CHENBASAPA [I. L. R., 4 Bom., 21

See JETTI *v.* HOSSAIN [I. L. R., 4 Bom., 23 note

16. ———— *Suit by purchaser at sale after rejection of claim in execution-proceedings.*—In execution of a decree upon a mortgage executed by *A*, the decree-holders purchased the tenure which was the subject of the mortgage. On an application for an order to be put into possession they were opposed by *B*, *A*'s son, who alleged that his father had relinquished the tenure, and that *C*, who had subsequently become the purchaser under a sale of arrears of Government revenue, had avoided the tenure with *A*'s consent. The Court to which the application was made thereupon refused to enter into evidence or make any enquiry, leaving the decree-holders to establish their right by a regular suit. The order was made under Act VIII of 1859. A suit having been brought,—*Held* that the one year's limitation provided by art. 11 of Act XV of 1877 did not apply. RASH BEHARY BYSACK *v.* BUDDUN CHUNDER SINGH . 12 C. L. R., 550

17. ———— *Refusal to stay sale in execution of decree.*—Certain lands having been attached in execution of a decree obtained by *A* against *B*, *C* intervended under s. 246, Act VIII of 1859, claiming their release on the ground that before the attachment they had been conveyed to him by *B* under a deed of sale; and he prayed that the execution sale might be stayed to enable him to put in the deed after having it registered. The Court, however, refused to stay the sale, and the lands were sold in execution. More than a year from the date of the Court's refusal to stay the sale, *C* sued to establish his right to the lands. *Held* that the suit was not barred by limitation under s. 246, Act VIII of 1859, since the refusal of the Court to postpone the sale was not an order under that section, but was a mere refusal to order a postponement under s. 247. MUKHUN LALL PANDAY *v.* KOONDUN LALL [15 B. L. R., 228: 24 W. R., 75: L. R., 2 I. A., 210

18. ———— *Civil Procedure Code, 1859, s. 246—Claim rejected otherwise than on the merits.*—S. 246, Act VIII of 1859, made no distinction in favour of cases not decided on the merits, but made it imperative on the party whose claim to attached property had been rejected, under any circumstances, to sue within one year. KHODA BUKSH *v.* PURMANUND DUTT . 5 W. R., 214

19. ———— *Rejection of claim on untrustworthy evidence.*—A claim under Act VIII of 1859, s. 246, rejected because the evidence produced was unworthy of credit, was on the same footing as if the claimant had failed to produce any evidence, and the order rejecting it was one on the merits and not on default. A suit therefore for the property must be brought within one year after the rejection of the claim. GOOROO DOSS ROY *v.* SONA MONEE DOSSIA [20 W. R., 345

SREEMUNTO HAJRAH *v.* TAJOODDEEN [21 W. R., 409

KAMINEE DABIA *v.* ISSUR CHUNDER ROY CHOWDHRY . . . . . . 22 W. R., 39

TRIPOORA SOONDUREE DEBIA *v.* IJJUTOONNISSA KHATOON . . . . 24 W. R., 411

20. ———— *Order rejecting claim to attached property—Dismissal of claim on failure to produce evidence.*—Certain property having been attached in execution of a decree, the plaintiff intervened claiming the property and was directed to adduce evidence, which, however, he failed to do, and the case was struck off. *Held* that the order striking off the case must be taken as an order disallowing the claim, and that the plaintiff was bound to bring his suit to establish his claim within one year from the date of the order. SADUT ALI *v.* RAM DHONE MISSER . . . 12 C. L. R., 43

21. ———— When a Court disallows a claim to attached property by reason of the claimant not having given any evidence in support of the claim, there cannot be said to have been any investigation under s. 278 of the Civil Procedure Code, and the order cannot be said to be one under s. 281: art. 11 of the Limitation Act does not therefore apply to such a case. *Gooroo Doss Roy* v. *Sona Monee Dassia, 20 W. R., 345; Sreemunto Hajra* v. *Tajooddeen, 21 W. R., 409; Tripoora Soonduree Debia* v. *Ijjutoonnissa Khatoon, 24 W. R., 411;* and *Sadut Ali* v. *Ram Dhone Misser, 12 C. L. R., 43,* dissented from. *Kallu Mal* v. *Brown, I. L. R., 3 All., 504;* and *Chundra Bhusan* v. *Ramkanth, I. L. R., 12 Calc., 108,* followed. *Sardhari Lal* v. *Ambika Prasad, I. L. R., 15 Calc., 521: L. R., 15 I. A., 123,* explained. KALLAR SINGH *v.* TORIL MAHTON . . . . 1 C. W. N., 24

22. ———— *Party refused admittance to proceedings.*—The law of limitation, under s. 246, Act VIII of 1859, could not apply to a person whom the Court had refused to make a party to the proceedings under that section because he came in too late to be made such a party. ROGHOONATH DOSS MOHAPATTUR *v.* BYDONATH DOSS MAHARATHA [14 W. R., 364

23. ———— *Judgment-debtor not a party to proceedings.*—When the judgment-debtor was not made a party to a proceeding under s. 246 of Act VIII of 1859, he was not bound by the law of limitation to sue to establish his right to the property within one year from an order under that section relasing it from attachment. IMBICHI KOYA *v.* KAKKUNNAT UPAKKI . I. L. R., 1 Mad., 391

24. ———— *Civil Procedure Code, 1859, s. 246—Party against whom order is "given"—Right of suit—Limitation.*—The plaintiff brought a suit to establish his right to certain property as against the claim which the defendant had successfully made under s. 246 of the Civil Procedure Code

in execution of a decree obtained against the plaintiff. The order of the Court directed the release of the property from attachment. The present suit was brought more than one year from the date of the order. *Held* per SCOTLAND, *C.J.*, BITTLESTON and COLLETT, *JJ.* (INNES, *J.*, doubting), that the plaintiff was a party against whom the order was "given" within the meaning of the section, and that the suit was barred by the section. NETTIETOM PERENGARYPROM *alias* PANISHERRY DAMODHEN NAMBUDRY *v.* TAYANBARRY PARAMESHWAREN NAMBUDRY

[4 Mad., 472

25. ——— *Civil Procedure Code, 1859, s. 246.*—Certain lands were attached under a decree against the ancestor of the plaintiffs; but on the intervention of the defendant under s. 246, Act VIII of 1859, they were released to him. *Held* that was not an order made between plaintiffs and defendant, such as to make it necessary for the former to sue for declaration of title within one year. NITTA KOLITA *v.* BISHUNRAM KOLITA

[2 B. L. R., Ap., 49

26. ——— *Civil Procedure Code, 1859, s. 246.*—On attachment of certain property, plaintiff and defendants preferred their respective claims thereto. The plaintiff's claim was disallowed, but the defendants' claim was allowed. The plaintiff, after the lapse of a year from the date of the order disallowing his claim, sued to recover possession of the said property. The defence was that the suit was barred by lapse of time under s. 246, Act VIII of 1859. *Held* s. 246 did not apply to such a suit. DURGARAM ROY *v.* NARSING DEB

[2 B. L. R., A. C., 254

S. C. DOORGARAM ROY *v.* NURO SINGH DEB

[11 W. R., 134

27. ——— *Suit to establish right—Attachment in execution of decree.*—*B* caused certain immoveable property to be attached in the execution of a decree. *M* objected to the attachment, claiming to be in possession of such property on his own account. The investigation of such claim which followed under s. 246 of Act VIII of 1859 took place as between *B*, the decree-holder, and *M*, *N*, the judgment-debtor, not being a party to it except in name. *M's* objection was allowed in May 1871, but no suit was brought either by *B* or *N* to establish *N's* right to such property. *H* subsequently obtained a decree against *N* in 1877, and in execution thereof caused such property to be attached. *M* objected to the attachment and his objection was allowed in April 1878. In March 1879 *H* sued *M* for a declaration that a moiety of such property belonged to *N*, and to have the order removing the attachment cancelled. *Held* that *N's* right to a moiety of such property was not extinguished because he had not sued to establish it within one year of the making of the order of May 1871 in the execution-proceedings of *B*, and *H* was competent to sue to establish such right. MANNU LAL *v.* HARSUKH DAS

[I. L. R., 3 All., 233

28. ——— *Claim by intervenors—Share of attached property.*—When intervenors claim a share of attached property, the Court should define the respective shares of the debtor and the intervenors, and sell the debtor's definite share only. If the Court omits to do so, and sells the undefined rights and interests, there is no decision under s. 246, Act VIII of 1859, of which the purchaser, by lying in wait without possession for one year, can take advantage. MONOHUR KHAN *v.* TROYLUCKHO NATH GHOSE . . . . . **4 W. R., 35**

29. ——— *Civil Procedure Code (Act XIV of 1882), ss. 280, 283—Mortgagee, Suit by, against mortgagor and third party who has intervened and obtained an order under s. 288, Civil Procedure Code—Execution of decree.*—Art. 11, sch. II of the Limitation Act (XV of 1877), refers only to suits contemplated by s. 283 of the Civil Procedure Code. Where, therefore, a mortgagee having obtained a decree on his mortgage, and caused the property to be attached, was successfully opposed by a third party who intervened in his attempt to have the property sold, and an order was passed under s. 280 of the Code of Civil Procedure releasing the property from attachment, and where the mortgagee, more than a year after the date of that order, instituted a suit against such third party and his mortgagor, to have his lien over the mortgaged property declared, and to bring it to sale in execution of his decree, alleging that the title set up by such third party was a fraudulent one, collusively created between the mortgagor and such third party with a view to deprive him of his rights, and asking to have the order passed under s. 280 set aside,—*Held* that the suit was not barred by limitation under the provisions of art. 11, sch. II of the Limitation Act. The right that was in litigation in the proceeding under s. 280 was the right to attach and sell the property in dispute in execution of the decree which the plaintiff had obtained against the mortgagor, and so far as that right was concerned the present suit was barred; but so far as the other relief claimed in the present suit went, that article did not apply, and the suit was not barred. BUKSHI RAM PERGASH LAL *v.* SHEO PERGASH TEWARI

[I. L. R., 12 Calc., 453

30. ——— *Suit to establish right as auction-purchaser to immoveable property sold in execution of decree—Adjudication of proprietary right—Res judicata—Possession.*—In a suit brought by plaintiff to establish his right as auction-purchaser to certain immoveable property sold in execution of a decree under the provisions of s. 246 of Act VIII of 1859, disallowing the claim of the objector—represented by the defendant—and adjudging the property attached to be that of the judgment-debtor, represented by the plaintiff—the said order not having been set aside in a regular suit by the defendant,—*Held* (by a majority of the Full Court) that an order passed under the provisions of s. 246 of Act VIII of 1859, unless overruled in a regular suit brought within the statutory period, is binding on all persons who are parties to it, and is conclusive. PEARSON, *J.*, *per contra.*—S. 246 of Act VIII of 1859 provides for an adjudication of proprietary right on the basis of possession, but the matter is not "*res judicata*" as to matters in dispute between decree-holder and claimant, unless the party against whom an order is passed under s. 246 of Act VIII of 1859 fails to bring a regular suit to establish his right. In the case mentioned in the order of reference as apparently conflicting with the above view there had been no adjudication on the basis of possession by the Court passing an order under s. 246 of Act VIII of 1859, and the defendant in possession was therefore at liberty to assert his proprietary title against the lien set up by plaintiff under the said order, passed without jurisdiction on the miscellaneous side. BADRI PRASAD *v.* MUHAMMAD YUSUF

[I. L. R., 1 All., 382

Distinguished in JOY PROKASH SINGH *v.* ABHOY KUMAR CHUND . . . . **1 C. W. N., 701**

31. ———— *Suit to establish right.*—*B* caused a certain dwelling-house to be attached in execution of a decree held by him against *M* as the property of *M*. *J* preferred a claim to the property which was disallowed by an order made under s. 246 of Act VIII of 1859. Two days after the date of such order *M* satisfied *B's* decree. More than a year after the date of such order *J* sued *B* and *M* to establish her proprietary right to the dwelling-house, alleging that *M* had fraudulently mortgaged it to *B*. *Held*, following the Full Bench ruling in *Badri Prasad* v. *Muhammad Yusuf, I. L. R., 1 All., 382*, that *J*, having failed to prove her right within the time allowed by law, was precluded from asserting it by the order made under s. 246 of Act VIII of 1859, and that, whether or not the decree was satisfied after the order was made, the effect of the order was the same. JEONI *v.* BHAGWAN SAHAI

[I. L. R., 1 All., 541

32. ———— *Suit for declaration of right and confirmation of possession.*—The limitation of one year in s. 246, Act VIII of 1859, did not apply to a suit for declaration of right and confirmation of possession. WUZEER JAMADAR *v.* NOOR ALI

[12 W. R., 33

33. ———— *Possession—Claim.*—In execution of a decree against *A*, certain property was sold in 1868. During the proceedings which led to that decree, *B*, the wife of *A*, had preferred a claim to the property under s. 246, on the ground that it was her stridhan, and that she had always been in possession of it. Her claim was rejected in 1866, but she remained in possession. *Held* a suit by *B* to establish her title to the land was not barred by the limitation provided by s. 246, though brought more than a year after her claim was refused, since she was at the time in possession and had remained afterwards in possession of the property. LAKHI PRYA DEBI *v.* KHYRULLA KAZI

[7 B. L. R., 238 note

S. C. LUCKHEE PREA DEBIA *v.* KHYROOLLAH KAZEE . . . . . **14 W. R., 367**

34. ———— *Claimant in possession where claim is rejected.*—If a person making a claim under Act VIII of 1859, s. 246, is in actual possession, his claim is only a declaration that his possession is without title. A suit to establish his right, *i.e.*, for confirmation of his possession, must be brought within one year. BROJO KISHORE NAG *v.* RAM DYAL BHUDRA . . . **21 W. R., 133**

35. ———— *Suit for declaration that property ostensibly held by one defendant belonged to another.*—A suit for a declaration that certain property which has been ostensibly held by one of the defendants was in fact the property of another of the defendants who was the judgment-debtor of the plaintiff, is governed by s. 246, Act VIII of 1859, and barred by the limitation of one year. ABDOOLAH *v.* SHOKOOR ALI . . . . **14 W. R., 192**

36. ———— *Order rejecting claim to attach property.*—Certain property having been attached in execution of a decree, the plaintiff preferred a claim to it as being his exclusive property; but the Court in which the claim was made was of opinion that the plaintiff and the judgment-debtor were in joint possession, and it made an order directing that on the plaintiff's claim being notified the sale should proceed. More than a year afterwards the plaintiff filed a suit to establish his title and alleged exclusive possession. *Held*, distinguishing the cases of *Brijo Kishore Nag* v. *Ram Dyal Bhudra, 21 W. R., 133; Kaminee Debia* v. *Issur Chunder Roy Chowdhury, 22 W. R., 39;* and *Jodoonath Chowdhury* v. *Radhamonee Dossee, 7 W. R., 256*, that the order not having been adverse to the plaintiff, the suit was not barred by reason of its not having been brought within a year from the date of the order. RASH BEHARI DASS *v.* GOPI NATH BARAPANDA MOHAPATU

[11 C. L. R., 352

37. ———— *Failure to establish claim—Suit for establishing title.*—A party failing to establish his claim to attached property under s. 246, Act VIII of 1859, on the point of possession, is not debarred from afterwards bringing a suit to establish title within the period allowed by law for bringing such suit. BISHENPERKASH NARAIN SINGH *v.* BABOOA MISSER . . . . **8 W. R., 73**

38. ———— *Right of one decree-holder against another—Suit for declaration of prior lien.*—Two several judgment-creditors attached certain property, which was released upon the claim of a third party, under s. 246 of Act VIII of 1859. One of them sued the successful claimant, and obtained a decree declaring the property in dispute to belong to the judgment-debtor, and thereupon caused the property to be sold, and became the purchaser thereof. Thereupon an assignee of the other judgment-creditor sued him, alleging an earlier lien, and praying a sale in satisfaction thereof. The defence set up was that, as the plaintiff did not come into Court to set aside the order under s. 246 with a year from the date thereof, he was barred from bringing the present suit. *Held* that the omission to bring a separate suit for that purpose did not bar him from obtaining a declaration of his prior lien. CHINTAMANI SEN *v.* ISWAR CHANDRA . . . . **3 B. L. R., Ap., 122**

S. S. CHINTAMONEE SEIN *v.* ISSUR CHUNDER CHUNDER . . . . . **12 W. R., 221**

LIMITATION ACT, 1877—*continued.*

39. ——— *Possession—Civil Procedure Code, 1859, s. 246.*—In a suit for redemption of an itti by an alleged purchaser of the same, and for recovery of land on which he had purchased a kanam, the defence was that the purchase was made by the father of the first defendant, and that the plaintiff was constructively a mere trustee. The Munsif decreed for the plaintiff, and the Principal Sudder Ameen reversed his decree because the suit was not brought within a year of a release of the property from attachment under a claim of the defendants, which attachment was made in execution of two decrees for money against the present plaintiff. It appeared that in the proceedings had for releasing the property from attachment, no notice was issued to the judgment-debtor (present plaintiff). *Held* that the decision of the Principal Sudder Ameen was wrong. In the present case, the claimants in possession were not so according to any of the modes of derivation which s. 246 enumerates as authorizing the continuance of the possession and the dismissal of the claim. The possession was in the claimants, and there was nothing in the rights of the judgment-debtor which could make such possession his possession. This being so, even assuming that he was a party to the order made, such order could not be said to be against him, because his claim was one which could not have been determined by any order made under s. 246. The order so made was perfectly consistent with his present condition. *Netietom Perengaryprom* v. *Tayanbarry Parameshwaren Nambudry, 4 Mad., 472,* distinguished. CHERIYARAKEL *alias* ARAKEL KUNHI KUTTIYALI *v.* VAYAKA PARAMBATH IMBICHI AMMAH **[6 Mad., 416**

40. ——— *Civil Procedure Code, 1859, s. 246.*—Certain property having been mortgaged by *B D* to *L*, the mortgagee obtained a decree for its sale, had it sold in execution, and purchased it himself, subject to any right which certain parties (*B* and *G*), who had objected under Act VIII of 1859, s. 246, might be able to establish. After this *L* sold the property to the plaintiff, who, not being able to get possession, brought a suit against the defendants in whose hands some or all of the property seemed to be and who sent up that they had purchased it from *B G* and *B D*. *Held* that the suit was not barred because it had not been instituted within twelve months of the date when the objections of *B* and *G* were allowed. KAMESSUR PERSHAD *v.* KADIR KHAN . . . . . **20 W. R., 393**

41. ——— *Suit to recover property sold in execution — Civil Procedure Codes (Act VIII of 1869, s. 246, and Act X of 1877, ss. 280, 281, and 282).*—Certain property, which the plaintiff alleged to belong to her, was sold in execution of a decree obtained by the purchaser of the property at the auction-sale, against a third party. The plaintiff put in a claim to the property under s. 246 of Act VIII of 1859, which claim was rejected on the 6th of September 1873. The plaintiff, on the 10th of January 1878, brought a suit to recover possession of the property sold. *Held* that the suit was not barred under art. 11 of sch. II of Act XV of 1877, which refers to the section in Act X of 1877, corresponding to s. 246 of Act VIII of 1859. LUCHMI NARAIN SINGH *v.* ASSRUP KOER . **I. L. R., 9 Calc., 43**

42. ——— *Suit after order rejecting claim to property attached in execution of decree.*—In execution of a decree against *M* the plaintiff attached and advertised for sale certain property in mouzah A. At that time there were pending proceedings in execution of two other decrees obtained against *M* by the first and second defendants respectively. These two decrees were obtained on a bond executed by *M*, by which an eight annas share of mouzah A was hypothecated as collateral security ; and in execution of those decrees the defendants brought to sale, and themselves purchased, not an eight annas share only but the whole of mouzah A, and were allowed by the Court to set off the purchase-money against the amounts due to them under their decrees. At the same time the plaintiff's execution case was struck off on 30th June 1880. In a suit brought by the plaintiff under s. 295 of the Civil Procedure Code for his share of the sale-proceeds of mouzah A, in which the plaintiff alleged fraud on the part of the defendants in selling the whole mouzah under their decrees, of which he only became aware in July 1882, from which time he dated his cause of action, the defendants denied the fraud and contended that the suit should have been brought within a year of the order of the 30th June 1880. *Held* that the existence of the order of the 30th June 1880 was not inconsistent with the plaintiff's right, and the suit was therefore not barred as not having been brought within one year of that order. TAPONIDI HORDANUND BHARATI *v.* MATHURA LALL BHAGAT **[I. L. R., 12 Calc., 499**

43. ——— *Suit for possession after rejection of claim.*—In a suit for possession after rejection of a claim under s. 246, Act VIII of 1859, there was nothing in that section to prevent a defendant from pleading that whatever title plaintiff might have had at some previous time it was extinguished by his having had no possession for twelve years preceding the suit. RAM SARUN SINGH *v.* MAHOMED AMEER **[13 W. R., 78**

44. ——— *Suit to set aside order removing attachment—Civil Procedure Code (1882), s. 283.*—A suit brought under s. 283 of the Civil Procedure Code (Act XIV of 1882) is a suit to set aside an order within the meaning of art. 11 of sch. II of the Limitation Act (XV of 1877). HARISHANKAR JEBHAI *v.* NARAN KARSAN **[I. L. R., 18 Bom., 260**

45. ——— *Code of Civil Procedure, ss. 278, 280, 283—Investigation of claim to attached property.*—A decree-holder, against whom the release of property, attached in execution of his decree, has been ordered, after investigation under s. 280 of the Code of Civil Procedure, is limited by art. 11 of sch. II of Act XV of 1877 (the Indian Limitation Act) to one year within which to institute a suit to establish that the property is that of his judgment-debtor. SARDHARI LAL *v.* AMBIKA PERSHAD **[I. L. R., 15 Calc., 521 : L. R., 15 I. A., 123**

46. —— —— *Civil Procedure Code (Act XIV of 1882), ss. 280-283—Judgment-debtor, Suit by, to establish title to property, the subject-matter of claim in execution-proceedings.* — A judgment-debtor is not necessarily a party against whom an order is made within the meaning of that term as used in s. 283 of the Code of Civil Procedure so as to preclude his instituting a suit after the lapse of one year from the date of such order, the period of limitation prescribed by art. 11, sch. II, Act XV of 1877, to establish his title to, and to recover possession of, the property which has been the subject-matter of a claim in execution-proceedings, and in respect of which an order has been made under s. 280 of the Code. *G* in execution of a decree attached certain immoveable property belonging to the plaintiff, whereupon *B* preferred a claim, and on the 10th March 1881 got the attachment removed. On the 20th July 1881, *B* sold the property to *K*. In 1882 *G* instituted a suit against *B* to set aside the order of the 10th March 1881, and to have it declared that the property was liable to attachment as belonging to the plaintiff. *K* was not made a party to that suit, and it was eventually compromised between *G* and *B*, the plaintiff's title being admitted. *G* thereupon again attached the property, and was met by a claim preferred by *K*, which was allowed on the 15th August 1883. *G* then brought another suit against *K* to obtain relief similar to that claimed in his suit against *B*, but his suit was dismissed on the 17th February 1885. On the 25th September 1885, the plaintiff instituted a suit against *G*, *B*, and *K* to obtain a declaration of his title to, and to recover possession of the property. It was contended that the suit was barred by limitation, being governed by art. 11, sch. II of Act XV of 1877, inasmuch as it was brought more than one year after the date of the order of the 15th August 1883. *Held* that the suit was not such a suit as was contemplated by s. 283 of the Code of Civil Procedure, not being one to establish any right which was the subject-matter of the litigation in the execution-proceedings, and that consequently the provision of art. 11 did not apply to it, and it was not barred by limitation. KEDAR NATH CHATTERJI *v.* RAKHAL DAS CHATTERJI . . **I. L. R., 15 Calc., 674**

47. —— —— *Claim to attached property—Order passed against claimant—Neglect of claimant to sue within a year after date of order—Civil Procedure Code (Act XIV of 1882), ss. 278, 279, 280, and 283.*—*V* mortgaged certain land to the defendant's father for a sum of R64 advanced by the latter at the date of the mortgage. The mortgage-deed stated that *V* owed the mortgagee another debt of R100, which was due on a separate bond, and it contained a clause in the following terms:—"The principal sum of huns (coins) due on that document, as also this document, I will pay at the same time and take back the land along with this document as well as that document. Till then you are to continue to enjoy the land * * *." The plaintiff, having obtained a decree against the mortgagor, attached the land in execution. The defendant (son of the original mortgagee) thereupon claimed that he held a mortgage upon it to the extent of R164. On the 9th March 1881, the Court executing the plaintiff's decree made an order allowing the defendant's claim only to the extent of R64, and directing that the land should be sold, subject to the defendant's lien for that sum. The plaintiffs bought the land at the execution-sale, and offered the defendant R64 in redemption of his mortgage, which the defendant refused. The plaintiffs then brought the present suit to recover possession. *Held* that the charge on the land did not include the old debt of R100. There were no words in the mortgage-deed expressly making that debt a charge on the property. The provisions in the deed only made the equity of redemption conditional on the payment of both the debts. *Quære*—Whether, under the circumstances of the case, the purchaser at the execution-sale would be bound by such a condition. *Held* also that the object of the defendant's application in March 1881 was virtually that the Court should allow his mortgage to the extent of R164, and the Court having allowed his claim only to the amount of R64 by its order, *pro tanto*, rejected his application. It was therefore an order passed against him, and having neglected to establish his right by suit within a year from the date of that order, he was now estopped from insisting on the condition. YASHVANT SHENVI *v.* VITHOBA SHETI

[I. L. R., 12 Bom., 231

48. —————— *Civil Procedure Code (1882), ss. 278 and 281—Disallowance of claim to property under attachment—Suit for property attached.*—In 1879, the plaintiff purchased at a Court-sale the first defendant's interest in certain land, but did not obtain possession. In 1888, the same property was purchased by the fourth defendant in execution of another decree against the same judgment-debtor. It appeared that the plaintiff raised an objection by petition in the course of the proceedings in execution of the last-mentioned decree, but his petition was dismissed on his vakil stating that he was not in possession. The plaintiff now sued in 1891 for the property purchased by him. *Held* that no order had been passed under the Civil Procedure Code, s. 281, and that the suit was not barred under Limitation Act, sch. II, art. 11. MUNISAMI REDDI *v.* ARUNACHALA REDDI

[I. L. R., 18 Mad., 265

49. —————— *Attachment of property of judgment-debtor—Application by third party to have attachment removed—Order refusing to remove attachment—Suit by claimant to establish his title to attached property.*—*A* obtained a decree against *B* and in execution attached certain property. The plaintiff objected, and applied to have the attachment removed. His application was rejected on the 14th January 1881, but on the 23rd March 1881 the judgment-debtor paid the amount of the decree into Court, and the attachment was thereupon removed. *A* subsequently again attached the same property in execution of another decree against *B*. The plaintiff again objected under s. 278 of the Code of Civil Procedure (Act XIV of 1882), and on the 9th June 1883 an application made by him to remove this second attachment was refused. Within one year from that date he filed the present suit to establish his title to the property attached. The defendant contended that the suit was barred, not having been filed within one year from the date (14th January 1881) of the order made against the plaintiff refusing his application to raise the first attachment. *Held* that the suit was not barred by limitation. No doubt an order had been made against the plaintiff on the 14th January 1881; but as the attachment in respect of which that order had been made was finally withdrawn on the 23rd March 1881, although not on the plaintiff's application, and as he continued in possession of the property, there was, after the 23rd March 1881, no right of action remaining to him in respect of the order of the 14th January 1881, disallowing his claim. The second attachment was a new and distinct act giving a new cause of action on which the plaintiff was entitled to a fresh inquiry and decision. IBRAHIMBHAI *v.* KABULABHAI

[I. L. R., 13 Bom., 72

50. ——————— *Civil Procedure Code, 1859, s. 246—Limitation Acts (IX of 1871), sch. II, art. 15; (XV of 1877) sch. II, art. 13—Suit after rejection of claim to attached property.*—A petition under s. 246 of the Code of Civil Procedure of 1859, objecting to the execution of the decree by the attachment of certain land on the ground that the land was the property of the petitioner, was heard and dismissed in July 1875. In July 1877, within twelve years from the dispossession of the objector he filed a suit against the decree-holder, who had purchased at the execution-sale, for the possession of the land held by him as purchaser at the execution-sale. *Held* that the suit was not barred by limitation. NARASIMMA *v.* APPALACHARLU . . **I. L. R., 12 Mad., 294**

51. ——————— *Civil Procedure Code (Act XIV of 1882), s. 281—Order disallowing claim to attached property.*—The effect of an order made under s. 281 of the Civil Procedure Code disallowing a claim to attached property is to give the auction-purchaser a title as against the claimant unless the order is set aside by a suit; and a suit for that purpose can only be brought within a year from the date of the order. *Sardhari Lal* v. *Ambika Pershad, I. L. R., 15 Calc., 521 : L. R., 15 I. A., 123,* referred to. KHUB LAL *v.* RAM LOCHUN KOER

[I. L. R., 17 Calc., 260

52. ——————— *Civil Procedure Code (1882), s. 283—Order on claim to property found not to be attached.*—Land having been granted to several perons jointly, disputes arose among them with reference to its allotment. The disputes having been settled by arbitration, one of the grantees sold his share to the plaintiff. Before the arbitration, another of the grantees mortgaged seven acres of the land to *A*, who did not become a party to the arbitration. *A* subsequently obtained a decree on his mortgage and proceeded to excute it by attachment. The plaintiff intervened in execution, but, on the 1st March 1884, the Court passed an order, stating that the plaintiff's land was not attached, and in fact his possession then remained undisturbed. *A* subsequently executed his decree, and purchased the land brought to sale by the Court. The plaintiff's possession was disturbed under colour of this purchase, and he now sued in 1889 to recover the land sold to him. *Held* that the order of the 1st March 1884 was not an order within the meaning of the Civil Procedure Code, s. 283, and accordingly that the suit was not barred by the one year's rule of limitation. PULLAMMA *v.* PRADOSHAM

[I. L. R., 18 Mad., 316

53. ——————— *Civil Procedure Code, s. 283—Order removing attachment—Party to execution-proceedings.*—*A* in execution of a decree against *B* attached a house. *C* intervened and the property was released from attachment. *A* then brought a suit against *B* and *C* to establish the title of *B* to the house and obtained a decree. As against *B*, the suit was *ex-parte* throughout. In an appeal by *C* a decree was passed by consent of *A* and *C* reversing the decree appealed against. *B* now sued *C* and another, more than a year from the date of the order removing the attachment, to obtain a declaration of title to the house. *Held* that, since there was nothing to show that the order releasing the attachment was an order against the plaintiff, the suit was not barred by limitation. GURUVA *v.* SUBBARAYUDU . . **I. L. R., 13 Mad., 366**

54. ——————— *Civil Procedure Code, 1882, s. 282—Order in attachment proceeding, Effect of—Judgment-debtor—Party against whom order in execution-proceedings was made.*—The plaintiff obtained a decree. The defendants appealed. At the hearing of the appeal in the District Court a question was raised as to whether the defendants were not barred by limitation from denying the genuineness and validity of the lease and mortgage, they having failed to do so in certain execution-proceedings which had taken place in 1890. It appeared that in execution of a decree against the father and the uncle of the defendants these lands had been attached. The plaintiff on that occasion had intervened, and set up his mortgage and lease which he produced. They were then held to be proved, and the lands were ordered to be sold subject to the plaintiff's mortgage. Upon these facts the District Judge held that by the attachment of their lands in these execution-proceedings, the defendants had been subrogated either to the cause of the decree-holder or to that of the plaintiff who intervened, and therefore they were parties "against whom the order was made." That order became conclusive against them within one year from its date, as they did not bring a suit to establish their right (art. 11, sch. II, Limitation Act, 1877). He therefore confirmed the decree of the Court of first instance. On second appeal to the High Court,—*Held*, reversing the lower Court's decree, that the defendants were not necessarily to be regarded as parties against whom the order in the execution-proceedings was made. Whether they were or not, depended on the facts of the case. The Court accordingly remanded the case that the District Judge might investigate the facts and pass a decree accordingly. AJIBAL NARASINHA HEGDE *v.* SHIREKOLI TIMAPA HEGDE . **I. L. R., 17 Bom., 629**

55. ———— *Civil Procedure Code (Act XIV of 1882), s. 283—Order passed in attachment proceedings not binding on judgment-debtor if not a party—Order passed without investigation—Suit to set aside the order.*—One *A* was in possession of certain land as plaintiff's tenant, and in his lifetime mortgaged it with possession to the first defendant. After *A*'s death, defendant No. 1 obtained a money-decree against *A*'s heirs, and in execution attached the land. Thereupon the plaintiff sought to raise the attachment on the ground that *A* was merely a tenant-at-will whose interest ceased at his death. Defendant No. 1 contended, on the other hand, that *A* was a permanent tenant, and that his interest, as such, had descended to his heirs and was liable to attachment. On the 20th February 1892, the Court ordered the attachment to be removed without deciding the question raised by the parties which it held could not be determined in such a proceeding. Defendant No. 1 did not bring any suit under s. 283 of the Code of Civil Procedure (Act XIV of 1882), to set aside the order and establish his right to the land. In 1894 the plaintiff filed the present suit against the first defendant and the heirs of *A* to recover possession of the land. The Subordinate Judge passed a decree in his favour against the first defendant, holding that the order in the attachment proceedings was conclusive against the latter, no suit having been filed by him within a year under s. 283 of the Civil Procedure Code. He, however, refused to pass any decree against the heirs of *A*, inasmuch as they had not been parties to the attachment proceedings, and, moreover, were not in possession of the land. On appeal, this decree was confirmed. The first defendant appealed to the High Court. *Held* (reversing the decree of both the lower Courts) that the case must be remanded and tried on the merits. BY PARSONS, *J.*, on the ground that, although the order in the attachment proceedings had become conclusive as against the first defendant, it did not affect *A*'s heirs, who had not been parties to it. As against them, therefore, the plaintiff had to prove his title, and if he failed to do so, he could not recover. The first defendant being in possession might set up this *jus tertii*, and might plead the title of the other defendants. BY RANADE, *J.*, on the ground that the order in the attachment proceedings having been passed without investigation of the question there raised by the parties it did not become conclusive against the first defendant notwithstanding his failure to bring a suit within twelve months to set it aside, and that he was not precluded from raising his defence in the present suit. KARSAN *v.* GANPATRAM . . **I. L. R., 22 Bom., 875**

56. ———— *Suit on title after summary order—Omission of judgment-debtor to set aside summary order—Right of purchaser from judgment-debtor to sue.*—On the 24th March 1879 a certain property was attached in execution of a money-decree against *S*, and was finally sold on the 22nd September 1879 and purchased by the plaintiffs' father. Subsequently to the attachment, the defendant caused the same property to be attached in execution of his decree against *R*. On the 15th August 1879, *S* intervened and claimed the property as his own, but his claim was disallowed, and the property was sold on the 4th August 1880 and purchased by the defendant himself. On proceeding to take possession, the plaintiffs obstructed him, but the obstruction was disallowed on the 28th July 1882, and they were dispossessed. The plaintiffs therefore brought a suit to recover possession. The Court of first instance rejected their claim, on the ground that the omission on the part of *S* to sue to set aside the summary order passed against him on the 15th August 1879 barred the plaintiffs. The lower Appellate Court reversed that decree. On appeal by the defendant to the High Court,—*Held*, confirming the decree of the lower Appellate Court, that the plaintiffs' suit was not barred: the plaintiffs' father having purchased under the attachment, dated 24th March 1879, and having then acquired by his purchase the interest of *S* as it stood at that date, that interest could not be affected by any subsequent act or omission of the judgment-debtor, *S*. PAYAPA *v.* PADMAPA

[I. L. R., 11 Bom., 45

57. ———— *Civil Procedure Code, 1882, ss. 278, 283—Suit by a judgment-creditor to establish his judgment-debtor's right to property so as to make it subject to attachment in execution of his decree—Dismissal of such suit—Judgment-debtor not represented by judgment-creditor in such suit—Subsequent suit by judgment-debtor to recover the same property—Second appeal, Point taken for the first time on.*—A judgment-creditor of the plaintiff, having obtained a decree against the plaintiff, attached the house in dispute. The defendant intervened in 1878, and set up a previous purchase of the house by himself from the plaintiff. The attachment was removed. The judgment-creditor brought a suit against the defendant for a declaration that the property belonged to the plaintiff, and as such was liable to be attached and sold in execution. At the hearing of this suit the judgment-creditor did not appear. The defendant appeared, and produced a sale-deed, which the Court found proved, and dismissed the judgment-creditor's suit. The plaintiff now brought the present suit against the defendant to recover possession of the house. It was contended for the defendant that the plaintiff, as the judgment-debtor, might at any rate be regarded as a party against whom the order in the execution-proceedings in 1878 was made, and that the present suit was therefore barred by limitation. *Held* that the plaintiff could not be regarded as a party to those proceedings. Whether a judgment-debtor is to be regarded as a party to an investigation under s. 278 of the Code, must depend upon the facts of each case. As the question of limitation was raised for the first time on second appeal, it could not be decided against the plaintiff. SHIVAPA *v.* DOD NAGAYA

[I. L. R., 11 Bom., 114

58. ———— *Execution of decree—Deceased judgment-debtor—Execution against a person not the legal representative.*—The defendants, along with one *N* and *C*, had brought a suit against one *A*, in the Civil Court at Peshawar in the Punjab, and obtained a decree, on the 23rd July 1878, for R30,545-12-0. In 1881 application for transfer of the decree to the Court at Moradabad for execution was made, and it was granted, but no steps were taken thereupon. On the 12th June 1883 *A* died. On the 30th April 1884, the defendants again applied to the Court at Peshawar treating their judgment-debtor as being then alive, for a fresh certificate to execute their decree in the Moradabad district and obtained it. On the 20th of August 1885, they made an application to the District Judge of Moradabad for execution of their decree, and in it it was stated that the application was "for execution against *A*, and after his death against *A L*, the own brother, and *D K*, widow, and *L P*, and others, sons of *A*, residents of Kundarki, and the said *A L* at present residing at Umballa and employed in the Commissariat-Transport Department, judgment-debtors." It was further stated that "the judgment-debtor was dead, and his heirs are living and in possession of his estate, and *A L* himself has realized R9,637-4-9 due to the deceased judgment-debtor from the Commissariat Department of Calcutta and appropriated the same, therefore to that extent the person of the said *A L* was liable." Notification of this application was issued to *A L*, as also to the other persons named therein. *A L* objected to the application as against him, stating that, although he was the brother of *A*, deceased, yet he always lived separate and carried on business separately; and that there was no connection or partnership between him and the deceased judgment-debtor, and that he had no property of the deceased in his possession. Further, that as *A* left issue, it was wrong to call him as heir to *A* and take out execution-process against him. In reply to these objections, the judgment-creditors (defendants) did not contend that *A L* was the legal representative of the deceased judgment-debtor, but treated him as a person in possession of a sum of money belonging to the deceased, and therefore liable to the extent of the sum so received by him. The Subordinate Judge, holding that *A L* was the brother of the deceased and had realized the amount from the Commissariat office, which he failed to prove that he paid to the deceased, ordered execution to proceed against him. *A L* then instituted this suit to set aside the order of the Subordinate Judge. It was contended that the suit was in effect a suit under s. 283 of the Code of Civil Procedure, and therefore barred as not having been brought within a year from the order of the Subordinate Judge. *Held* that the contention must fail, inasmuch as an essential condition precedent to a suit under s. 283 of the Code is the making of an attachment of some property; of objection being taken to such attachment; of investigation being made into such objection; and, lastly, of its being allowed or disallowed, and these did not exist in this case. ANGAN LAL *v.* GUDAR MAL **I. L. R., 10 All., 479**

59. ———— *Suit by reversioner for possession—Accrual of right to sue—Unsuccessful application in execution-proceedings against widow—Civil Procedure Code (1882), s. 283.*—Under art. 141, sch. II of the Limitation Act (XV of 1877), a reversioner's right to sue accrues on the death of the widow. The fact that the reversioner has made an unsuccessful application for possession in execution-proceedings against the widow, and has not sued under s. 283 of the Civil Procedure Code (Act XIV of 1882), does not debar him under art. 11 of the Limitation Act from filing a regular suit. TAI *v.* LADU . . . . **I. L. R., 20 Bom., 801**

60. ———— *Civil Procedure Code (Act XIV of 1882), ss. 278 to 283 and 12—Claim to attached property by holder of several mortgages—Order made on claim—Claim partly allowed and partly disallowed—Sale in execution—Suit for redemption by auction-purchaser within a year—Claim by defendant (mortgagee) in respect of mortgage disallowed by order.*—Certain property was attached in execution of a money-decree. *A* intervened, and applied to have the property sold, subject to the incumbrances created in his favour by the judgment-debtor under six mortgage-bonds. The Court, after investigating *A*'s claim, passed an order directing the property to be sold subject to the mortgage-debt due under five out of the six mortgage-bonds. This order was made on the 20th February 1893. In November 1893 (*i.e.*, within a year of the above order), *B*, who had purchased the property at the Court sale, filed a suit to redeem the five mortgages subject to which the property had been sold. *A* contended that the property was also liable to the debt due under the sixth mortgage-bond. The District Judge held that *A* was entitled to have his claim under the sixth bond investigated in this suit, inasmuch as the plaintiff had filed this suit before the expiration of the year allowed to *A* to establish his right by art. 11 of sch. II of the Limitation Act (XV of 1877), being of opinion that once the present suit had been filed, *A* could not have sued under s. 12 of the Civil Procedure Code (Act XIV of 1882). On appeal to the High Court,—*Held* that *A* could not claim in the present suit in respect of the sixth mortgage-bond which had been disallowed by the order in execution on the 20th February 1893. The rule is that an unsuccessful intervenor in execution-proceedings must establish his right by a regular suit within twelve months, at the expiration of which the order passed in execution becomes conclusive against him. The fact that the purchaser had filed the present suit before the year had expired, did not exempt the defendant from this rule. S. 12 of the Civil Procedure Code (Act XIV of 1882) did not affect the question. That section only provides that no suit shall be tried if the same issues are involved in a previously instituted suit. It does not dispense with the institution of a suit within the proper time when the law requires such institution. NEMAGAUDA *v.* PARESHA . . . **I. L. R., 22 Bom., 640**

61. ———— *Suit for possession of immoveable property on a declaration that a certain adoption was invalid—Effect of claim preferred on*

LIMITATION ACT, 1877—*continued.*

behalf of a minor by the manager without the sanction of the Court of Wards—Court of Wards Act (Beng. Act IX of 1879), s. 55.—An order which was passed during his minority is not binding upon a person whose estate is under the management of the Court of Wards, if the proceeding in which it was passed was not instituted by the manager with the sanction of the Court of Wards, *i.e.*, of the Commissioner to whom the Court of Wards delegated its authority to grant such sanction. In a suit brought by the plaintiff, as shebait of an idol, for recovery of possession of certain immoveable properties, or in the alternative in his own right as an heir to the last full owner, on a declaration that certain execution-proceedings which were taken against a person who was not the legally adopted son of the last full owner, and therefore the sales held therein were not binding upon him, the defence (*inter alia*) was that the suit was barred by limitation under art. 11, sch. II of the Limitation Act. *Held* that, inasmuch as the order under s. 281 of the Civil Procedure Code was passed during the plaintiff's minority, and as the proceeding in which the said order was passed was not instituted by the manager with the sanction of the Court of Wards, the suit was not barred under art. 11, sch. II of the Limitation Act, although it was brought more than one year after the claim was rejected. RAM CHANDRA MUKERJEE *v.* RANJIT SINGH

[I. L. R., 27 Calc., 242
4 C. W. N., 405

62. ———— *Civil Procedure Code (Act XIV of 1882), ss. 278, 281, and 283—Claim preferred by a defendant's predecessor in title—Claim disallowed, but no suit brought within one year to set aside the order—Effect of such an adverse order as against the defendant in a suit, and how far binding.*—In a suit brought by the plaintiff to recover possession of certain lands by virtue of a purchase by his father, at an execution-sale held by a Civil Court, it was found by the Court below that the vendor of the defendant had purchased the said lands at a sale held by a Deputy Collector for arrears of road-cess, and had preferred a claim to the disputed property in the execution-proceedings which led to the sale at which the plaintiff's father purchased but which was disallowed, and no suit was brought by him (the defendant's vendor) within one year to set aside the order disallowing the claim. *Held* that the vendor of the defendant not having brought a suit within one year to set aside the order disallowing the claim, the defendant was concluded by that order, even if she was not the plaintiff in the suit, to establish her right to the property in dispute. *Nemagauda* v. *Paresha, I. L. R., 22 Bom., 640,* referred to. SURNAMOYI DASI *v.* ASHUTOSH GOSWAMI . . . . I. L. R., 27 Calc., 714

63. ———— *Civil Procedure Code (1882), s. 280—Claim by a mokuraridar.*—Upon attachment of immoveable property in execution of decree, a claim was made on the ground that the judgment-debtor had granted a mokurari in respect of the property in favour of the claimant. The claim was allowed, and the property was ordered to be sold with a declaration of the mokurari. More than a year after this order, the decree-holder who purchased at an execution-sale brought a suit for a declaration that the mokurari was fraudulent and benami and for possession and mesne profits. *Held* that the order was a judicial determination under s. 280 of the Civil Procedure Code (1882), and that therefore the suit was barred under art. 11 of the second schedule of the Limitation Act (XV of 1877). RAJARAM PANDEY *v.* RAGHUBANSMAN TEWARY **I. L. R., 24 Calc., 563**

64. ———— and art. 13—*Civil Procedure Code, 1882, s. 332.*—Where an application was made under s. 332 of the Code of Civil Procedure for possession of property and rejected, and the applicant brought a suit to recover the property more than one year subsequent to the order rejecting the application,—*Held* that the suit was not barred either by art. 11 or art. 13 of sch. II of the Limitation Act, 1877. AYYASAMI *v.* SAMIYA . **I. L. R., 8 Mad., 82**

65. ———— *Civil Procedure Code, 1859, s. 269, Order rejecting application under—Suit brought after one year—Civil Procedure Code, 1877, s. 335.*—An order having been passed on the 10th August 1877 under s. 269 of the Code of Civil Procedure, 1859, cancelling delivery of possession of land brought to sale and purchased by a decree-holder, no suit was brought by the decree-holder to establish his rights to the land until 1883,—*Held* that the repeal of s. 269 of the said Code on 1st October 1877 did not deprive the order of the 10th August 1877 of the effect it possessed when passed, and therefore that the suit was barred by limitation under s. 269, and arts. 11 and 13 of Act XV of 1877 were not applicable. *Koylash Chunder Paul Chowdhry* v. *Preonath Roy Chowdhry, I. L. R., 4 Calc., 610,* and *Gopal Chunder Mitter* v. *Mohesh Chunder Boral, I. L. R., 9 Calc., 230,* distinguished. VENKATACHALA *v.* APPATHORAI . . . **I. L. R., 8 Mad., 134**

66. ———— *Civil Procedure Code, 1859, s. 269—Party not in possession.*—S. 269, Act VIII of 1859, does not contemplate that the party in actual possession must sue regularly to get possession within one year, but that the person who is not in actual possession shall do so. FIDAYE SHIKDAR *v.* OOZEEOODDEEN . . **7 W. R., 87**

67. ———— *Civil Procedure Code, 1859, s. 269—Claim by mortgagee.*—An attachment having been made in execution of a decree for rent, an intervenor claimed the land as mortgaged to himself, but his application was rejected, and he was directed by the Collector to bring his objection, if he had any, under s. 269, Act VIII of 1859. *Held* that he was not bound to do so, and his omission did not bar his right to bring a suit to establish the validity of the mortgages under which he claimed, provided it was brought within the period permitted by Act XIV of 1859. DEEN DYAL BURMO DOSS *v.* PORAN DOSS

[9 W. R., 474

68. ———— *Civil Procedure Code, 1859, s. 269—Obstruction in taking possession after sale in execution of decree—Order.*—A purchaser of immoveable property at a Court sale, having been obstructed by the defendant, made an application to the Court, under s. 268 of Act VIII of 1859, for the removal of the obstruction, but subsequently withdrew his application. The Court thereupon made an endorsement upon the application to the effect that, as the applicant did not wish to proceed further, no investigation was made. *Held* that no such order had been made as was contemplated by s. 269 of Act VIII of 1859, that section contemplating at least an order against one party or the other; and that, therefore, the provisions contained in the same section as to the time within which a suit may be brought, did not apply to the case of the plaintiff. BHIKHA *v.* SAKARLAL . . **I. L. R., 5 Bom., 440**

——— art. 12 (1871, art. 14; 1859, s. 1, cl. 3).

1. ——— *Suit to set aside fraudulent sale.*—Cl. 3, s. 1, applied only to suits to set aside sales on account of irregularity and the like, but not to suits to set aside fraudulent deeds under colour of which the sale was made. KISSEN BULLUB MAHATAB *v.* ROGHOONUNDUN THAKOOR

[6 W. R., 305

2. ——— *Suit to set aside sale in execution.*—The limitation of one year provided by s. 1, cl. 3, was not applicable to a suit brought by a judgment-debtor to set aside an execution-sale, on the ground that the decree-holder fraudulently got the property sold in execution of a previous satisfied decree. BUDREE *v.* LOKEMUN . **3 Agra, 89**

3. ——— *Suit by mortgagee to enforce lien.*—*Held* that the limitation of one year provided by cl. 3, s. 1, Act XIV of 1859, was not applicable to a mortgagee's suit seeking enforcement of his mortgage lien against the property. RAI PURDIMUN KISHEN *v.* ROUSHUN SINGH . **1 Agra, 111**

4. ——— *Suit to set aside sale in execution of decree—Civil Procedure Code, 1859, s. 264.*—*Quære*—Whether the one year's limitation (of suits to set aside sales in execution of decrees) under cl. 3, s. 1, applied to a suit brought against a person who had obtained possession of property by delivery under s. 264, Act VIII of 1859. SUBOORUN *v.* GOLAM NUJEE . . . . **2 W. R., 55**

5. ——— *Sale of moveable property in execution of decree—Irregularity in sale—Civil Procedure Code, 1859, s. 252.*—The law (s. 252, Act VIII of 1859) provides that no irregularity in the sale of moveable property under an execution shall vitiate the sale, but that any person injured thereby may recover damages by suit; but it does not follow that the right and interest of the judgment-debtor in such property may not be challenged and contested by any claimant within the period allowed by cl. 3, s. 1, Act XIV of 1859. HIRDEY BEBEE *v.* BESHESHUR PERSHAD . . . **2 Agra, Pt. II, 175**

KISHEN SOONDUR *v.* FUKEEROODEEN MAHOMED

[W. R., 1864, 61

6. ——— *Suit to set aside sale in execution of decree.*—*Per* INNES, *J.*—Art. 12 of the second schedule of the Limitation Act, 1877, which requires suits to set aside a sale in execution of a decree of a Civil Court to be brought within one year from the date the sale becomes final, does not apply to suits in which the plaintiff was not a party to, and not bound by, the sale sought to be set aside. SADAGOPA EDINTARA MAHA DESIKA SWAMIAV *v.* JAMUNA BAI AMMAL . **I. L. R., 5 Mad., 54**

7. ——— *Suit to set aside sale—Suit to recover land sold in execution of decree.*—*V* having bought lands from *A*, whose husband (deceased) acquired them at a Court sale, sued *S* in ejectment in 1879. *S* pleaded limitation on the ground that *B* (her deceased husband) had purchased the lands in question at a Court sale in 1876. *Held* that, as *A* was no party to the decree or the execution proceedings under which *B* purchased, it was not necessary for *V* to set aside the sale to *B* in this suit, and it was not barred by art. 12 of the Limitation Act, 1877. VENKATA NARASIAH *v.* SUBBAMMA . . . **I. L. R., 4 Mad., 178**

8. ——— *Sale of tarwad property in execution of decree against party not sued as karnavan.*—Where a suit was brought to recover money from the defendant, who was the karnavan of a Malabar tarwad, and it was not alleged in the plaint that the defendant was sued as karnavan or that the debt was binding on the tarwad,—*Held* that a sale of tarwad property in execution of the decree was not binding on the members of the tarwad, and therefore that art. 12 of sch. II of the Limitation Act, 1877, did not apply to a suit brought by other members of the tarwad to recover the land sold in execution of the decree. HAJI *v.* ATHARAMAN. MUSSA *v.* ATHARAMAN . . . . **I. L. R., 7 Mad., 512**

9. ——— *Suit to set aside sale—Purchase of decree by joint debtor.*—*M* sold to *S* her rights under a decree for mesne profits which she had obtained against *A* and two other persons, and *S* thereupon proceeded to execute the decree against *A's* property, and that property was sold in execution of the decree obtained by *S* and was purchased by *B*; but in a suit brought by *A* for a declaration that *S* was not the real purchaser, the Court found that *S* had in fact purchased the decree benami for *A's* two joint debtors, and that consequently he had no right to execute it against the property of *A*. In a suit brought by *A* against *B* in 1874 for the purpose of recovering the property,—*Held* that the purchase of the benefit of the decree by *A's* joint debtors, although it had the legal effect of satisfying the judgment-debt, did not affect the decree itself. The decree was not void, but only voidable, and the sale under it binding on *A*. The suit, therefore, was in effect a suit to set aside a sale under a decree within the meaning of cl. 14 of sch. II of Act IX of 1871, and, inasmuch as it was not brought within one year from the date of the sale, was barred. ABUL MUNSOOR *v.* ABDOOL HAMID *alias* SABHAN MIAH

[I. L. R., 2 Calc., 98

10. ——— *Suit to set aside sale in execution—Party to suit.*—After the death of the widow of *K*, the plaintiff sued as the heir of *K* to recover certain immoveable property alleged to have been granted to the widow for life by *K* for her maintenance. It appeared that in execution of a decree obtained against the plaintiff in a previous suit in which upon the widow's death he was sued as representing the estate of the widow, the property in question was sold notwithstanding objection taken by the present plaintiff that the property was that of *K.* The plaintiff's suit was filed more than a year after the execution-sale, and it was objected that it was therefore barred. *Held* that it was not necessary that the suit should have been filed within one year from the date of the execution-sale, because (1) the setting aside the execution-sale was only collateral to the main object of the suit; and (2) the present plaintiff was not a party in her own character to the suit in execution of the decree in which the property was sold. Kali Mohun Chuckerbutty *v.* Ananda Moni Dabee . . . . . **9 C. L. R., 18**

11. ———— *Suit to set aside sale of land in execution of decree.*—A suit to set aside a sale of land in execution of a decree against a third party was held not barred by limitation under cl. 5, s. 1, if brought within a year after the sale actually took place. Dossee *v.* Sheebanee Dabia **[5 W. R., 123**

See Mahomed Afzul *v.* Kanhya Lall **[2 W. R., 263**

Ram Gopal Roy *v.* Nundo Gopal Roy **[4 W. R., 42**

But these cases were overruled by Jodoonath Chowdhry *v.* Radhomonee Dossee **[B. L. R., Sup. Vol., 643 : 7 W. R., 256**

12. ———— *Suit for possession by setting aside sale.*—In a suit not only for reversal of sale but also for possession and delaration of title, the limitation of one year does not apply. Anooragee Kooer *v.* Bhugobutty Kooer. Sham Sunder Kooer *v.* Jumna Kooer . **25 W. R., 148**

13. ———— *Cause of action—Suit for possession after sale in execution.*—The plaintiffs sued to recover possession by declaration of right to certain chur lands as accretions to a patni talukh and for damages, alleging that they held possession under a mokurari lease granted by the defendant No. 3, but were ejected by the defendant No. 1, who had purchased at a sale in execution of an *ex-parte* decree for arrears of rent obtained by the defendant No. 2 against defendant No. 4 (who was the heir of No. 3's vendor), the ejectment having been effected under proceedings taken by the Deputy Magistrate under Act XXV of 1861, s. 318. *Held* that the plaintiffs' cause of action accrued from the date of their ejectment. It was not a suit to set aside the sale, but a suit for possession on declaration of title. Banee Madhub Bukshee *v.* Radha Madhub Mozoomdar . . . . . **22 W. R., 196**

14. ———— *Suit for possession and declaration of right by setting aside sale.*—The plaintiffs sued for possession of, and a declaration of their right to, a share of a zamindari, and to set aside a collusive decree which defendant No. 1 obtained on the 13th September 1867 against the defendants Nos. 2, 3, and 4, and to set aside the sale which was held on the 16th December 1868 in execution of that decree. There was a further prayer that the names of the plaintiffs might be substituted for that of the defendant No. 1 on the Collectorate towji. *Held* that the suit, although a portion of the prayer was for possession and declaration of right, was substantially to set aside the sale of 16th December 1868, in virtue of which, unless got rid of, the purchaser-defendant's title must prevail over that of the plaintiffs. Accordingly the suit came within the purview of Act XIV of 1859, s. 1, cl. 3, and, not having been brought within one year from the date of the sale, was barred. Ram Kanth Chowdhry *v.* Kalee Mohun Mookerjee . . **22 W. R., 84**

15. ———— *Sale subject to claimant's right.*—Where a person's claim to attached property was not rejected, but the sale took place subject to it,—*Held* that he could sue to establish his right to the property at any time within twelve years, cl. 3, s. 1, not applying to such a case. Rutnessur Koondoo *v.* Majeda Bibee . **7 W. R., 252**

16. ———— *Suit to recover immoveable property.*—Where the plaintiff asked in terms to have a sale in execution of her husband's right and interest in certain land set aside on the ground that those rights had previously to the sale been conveyed to herself,—*Held* that the suit was in effect one to recover immoveable property and not one to which cl. 3, s. 1, Act XIV of 1859, applied. Radha Koonwar *v.* Jankee Koonwar . **9 W. R., 199**

Kinoo Doss *v.* Rughoonath Doss **[4 W. R., 34**

17. ———— *Suit by claimant to recover property in which judgment-debtors have no interest.*—Where a claimant, without attempting to impeach either the proceedings in the suit or in the decree or in the subsequent sale, seeks to recover property belonging to himself in which the judgment-debtors had no right or interest, and upon which, therefore, the sale in execution could have no legal operation,—*Held* that a suit of this nature was not a suit to set aside the "sale of property sold under an execution" within the meaning of cl. 3, s. 1; and it was not incumbent on such a claimant to sue, as therein prescribed, within one year from the date of sale. The plaint might ask in terms to avoid the sale, but such an allegation cannot alter the real nature of the suit, if it is otherwise sufficiently disclosed. Mahomed Buksh *v.* Mahomed Hossein **[3 Agra, 171**
S. C. Agra, F. B., Ed. 1874, 145

See Sharafatunnissa *v.* Lachmi Narain **[7 N. W., 288**

18. ———— *Suit by prior purchaser for possession—Sale to second purchaser.*—The one year's limitation provided in s. 1, cl. 3, did not apply to a suit by a prior purchaser to assert his rights after an auction-sale of the right and interest of the judgment-debtor in the property to another purchaser subject to those rights. Mungroo Sahoo *v.* Jeydar Singh . . . . . . **2 Agra, 231**

Nor where he has become the representative by purchase of the other purchaser. Bithul Bhut *v.* Lalla Rajkishore . . . **2 Agra, 284**

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19. ———— *Suit to set aside sale in execution of decree—Suit to recover possession.*—*A* purchased immoveable property at an auction-sale. The same property was subsequently purchased by *B* at another auction-sale. *Held* that a suit brought by *A* against *B* to recover the property was virtually a suit to set aside the last sale, and that it should have been brought within one year from the date of that sale; and that cl. 5 (and not cl. 12) of s. 1 was applicable. Krishnaji Joshi *v.* Mukund Chimanshet . . . **2 Bom., 18: 2nd Ed., 19**

Contra, Lalchand Ambai Das *v.* Sakharam **[5 Bom., A. C., 139**

20. ———— *Suit to set aside execution-sale—Suit for possession of immoveable property.*—The plaintiff, alleging that certain immoveable property belonging to him had been sold in execution of a decree as the property of another, sued the purchaser to have the sale set aside, and to recover possession of the property. *Held* that the suit was one for possession of immoveable property to which the period of limitation of twelve years was applicable. Nathu *v.* Badri Das **[I. L. R., 5 All., 614**

21. ———— *Suit for possession after dispossession in sale proceedings in execution of decree.*—The rights and interests of plaintiff's co-sharer having been sold under a decree, the purchaser possessed himself of plaintiff's share as well as of his own. *Held* that, in a suit to recover, plaintiff was not bound to bring his action within one year from the date of dispossession, but had a right to the limitation of twelve years. Tonoo Ram Gossain *v.* Mohessur Gossain . . **24 W. R., 302**

22. ———— *Suit to recover property taken in excess of right of attachment.*—It is not incumbent on a person seeking, not to interfere with the sale in execution of a decree of the right, title, and interest of the judgment-debtor, but to recover what has been taken in excess under colour of sale, to sue within the period of limitation prescribed by law for a suit to set aside the sale. The mere circumstance that there is a specification of the subject of the sale at the time of sale is of no force. It is not the property specified, but the right of the judgment-debtor therein, that is offered for sale and conveyed. *Mahomed Buksh* v. *Mahomed Hossein, 3 Agra, 171: S. C., Agra, F. B., Ed. 1874, 145,* followed. Sharafatunnissa *v.* Lachmi Narain **[7 N. W., 288**

23. ———— *Sale of land in execution of decree—Suit by third party to recover—Burden of proof.*—In a suit to redeem certain land demised on kanam in 1850 by *A* to the predecessor of *B, C,* who was in possession of the land, was made a defendant. *A* proved his title to the land and possession up to 1850. *C* pleaded title to the land, and denied that *B* had ever been in possession. Both pleas were found to be false. It was found, however, that *C* had been in possession from 1869 to 1885, and that in 1876 the land had been sold in execution of a decree against *C* (to which *A* was not a party) and purchased by *D,* who re-sold to *C* in 1879. The lower Court held that *C's* possession must be taken to have been derived from *B,* till the contrary was proved; but that the suit was barred by art. 2 of sch. II of the Limitation Act, 1877, because it had not been brought within one year from the date of the sale in 1876. *Held* that the suit was not barred by limitation. Nilakandan *v.* Thandamma . . **I. L. R., 9 Mad., 460**

24. ———— *Decree—Sale in execution—Land described by boundaries in proclamation of sale—Land so described really comprising two separate lots—Suit by purchaser of one lot to set aside sale or for compensation.*—On the 17th November 1877, a certain piece of land described in the proclamation of sale as "Survey No. 294, Pot No. 3, measuring 24¾ gunthas," the boundaries of which were also set forth, was sold by auction in execution of a decree obtained by the first defendant against defendants Nos. 2, 3, and 4, and purchased by the plaintiff. The boundaries, as stated, really included another piece of land, Survey No. 294, Pot No. 4, which comprised 3 acres 2¼ gunthas. This latter piece of land was put up for sale on the following day, and was purchased by defendant No. 5. On 28th November 1877, the plaintiff applied to the Court to have the sale set aside and his money returned, unless he was put in possession of all the land included in the boundaries mentioned in the proclamation; but his application was refused, and the sale was confirmed on 20th July 1878. The plaintiff on the 3rd July 1881 brought the present suit, praying that he might be put into possession of the land as described in the certificate of sale, which was identical with the proclamation, and included Pot No. 4, or that the first defendant might be ordered to pay him the amount of his purchase-money with interest. Both the lower Courts rejected the plaintiff's claim. On appeal to the High Court, —*Held,* confirming the decree of the Court below, that the suit, regarded as one to set aside the sale, was barred by Act XV of 1877, sch. II, art. 12, cl. (*a*). Mahomed Sayad Phaki *v.* Navoji Balabhai **[I. L. R., 10 Bom., 214**

25. ———— *Suit to set aside sale in execution of decree—Suit for possession of immoveable property sold in execution of decree—Limitation Act, IX of 1871, sch. II, No. 14.*—*P* obtained a decree against *M* in April 1874 in execution of which property belonging to the latter was sold in 1874, 1875, and 1876. In March 1880, this decree was reversed by the Court of last appeal. In February 1881, *M* sued to set aside the sales of his property in execution of the decree and for possession of the property. *Held* that, both under No. 14, sch. II of the Limitation Act, 1871, and No. 12, sch. II of the Limitation Act, 1877, the suit was barred by limitation. Parshadi Lal *v.* Muhammed Zain-ul-abdin. Muhammed Ashgar Ali *v.* Muhammed Zain-ul-abdin . **I. L. R., 5 All., 573**

26. ———— *Suit to set aside sale held in execution of decree—Civil Procedure Code (Act XIV of 1882), ss. 311, 312.*—If on an application for execution the Court erroneously holds that the application is not barred and orders a sale, the order, though erroneous and liable to be set aside in the way presented by the procedure law, is not a nullity, but remains in full force until set aside, and a sale held in pursuance of such order is, until set aside, a valid sale: a suit to set aside such a sale is governed by art. 12, cl. (*a*), of sch. II of Act XV of 1877. The word "disallowed" in s. 312 of the Civil Procedure Code has no reference to an order passed on an appeal, but refers to the disallowance of the objection by the Court before which the proceedings under s. 311 are taken. On the 15th June 1878, a judgment-debtor filed a petition objecting to execution of a decree against him proceeding on the ground that the decree was barred. On the 18th November 1878, that objection was overruled and certain of his property sold. Against the order overruling his objection the judgment-debtor appealed, and ultimately, on the 13th January 1880, the order was set aside by the High Court, and the decree was held to have been barred. Pending these proceedings, the judgment-debtor also, on the 17th December 1878, applied, under the provisions of s. 311 of the Civil Procedure Code (Act XIV of 1882), to set aside the sale on the ground of material irregularity, but that application was ultimately rejected on the 17th May 1879, and the sale was confirmed on the 21st May 1879. On the 2nd April 1880, the judgment-debtor applied to set aside the sale on the ground that the decree, in execution of which it had taken place, had been held to be barred, and though an order setting aside the sale was made by the original Court, it was subsequently set aside by the High Court on the 13th April 1881, as having been made without jurisdiction. The judgment-debtor now brought a suit on the 4th January 1882 upon the same grounds to set aside the sale and recover possession. *Held* that the suit was barred. MAHOMED HOSSEIN *v.* PURUNDUR MAHTO

I. L. R., 11 Calc., 287

See GUNESSAR SINGH *v.* GONESH DAS

I. L. R., 25 Calc., 789

27. ———— *Endowment by Hindu—Execution-proceedings against manager, Suit to set aside.*—In 1866, *V* (the father of the plaintiff) sued his brother *H* and *G* (one of the two sons of *H* and defendant No. 1) to establish his right to a third share of the management of certain lands granted for the maintenance of a Hindu temple. In that suit *V* obtained a decree that he should have the exclusive management every third year, but was ordered to pay costs. To enforce payment of these costs, *H* in execution of the decree attached the third share of *V* in the management of the land. The share was accordingly sold by auction in January 1870 to a Marwadi, who afterwards, in May 1870, resold it to the appellant *T* (another son of *H* and defendant No. 2). *V* died in 1876. In 1879 the plaintiff sued *G* and the appellant (the two sons of *H*) for his share of the management. It was contended for the defence that, as the execution-sale of January 1870 was not set aside within a year, the right to treat it as void by the plaintiff was barred by art. 12 of sch. II of Act XV of 1877. *Quære*—Whether *V* could have got himself reinstated in the management without bringing a suit to set aside the sale within a year from the date of the order confirming it. TRIMBAK BAWA *v.* NARAYAN BAWA . . . **I. L. R., 7 Bom., 188**

28. ———— *Rights of purchasers at sales in execution of decree—Two judicial sales of the same property, each in execution of a separate decree—Conflicting claims thereunder—Purchase pendente lite—Limitation Act (XV of 1877), sch. II, art. 13.*—The same property having been sold in execution of two different decrees, the result was that the two purchasers at the respective sales afterwards contested title to the property. The sale to the first purchaser was confirmed in November 1882. The sale to the second, who obtained possession, took place in October 1881, the property having been attached under the second decree in March 1883. The first purchaser on the 28th July 1884 brought a suit, to which the second purchaser was not a party, to have that attachment declared invalid. By a decree of the 14th November to that effect the second purchaser was bound as a purchaser *pendente lite;* and his possession was of no avail to him. *Held* that the attachment of March 1883, although it had preceded the institution of the first purchaser's suit of 1884, afforded no support to the second purchaser's claim, attachment under Ch. XIX of the Civil Procedure Code merely preventing alienation, and not giving title. Moreover, after the first sale in 1882 there had been no interest left to be sold to another purchaser, so that, without there having been the decree of 1885, the second purchaser would still have had no title against the first. There was no occasion for the setting aside the second sale within the meaning of arts. 12 and 13 of sch. II of the Limitation Act (XV of 1877); nor was it set aside. That sale was held not to affect the right of the first purchaser, there being a wide difference between setting aside a sale and deciding that a plaintiff's right was not affected by it. MOTI LAL *v.* KARRABULDIN

I. L. R., 25 Calc., 179
L. R., 24 I. A., 170
1 C. W. N., 639

29. ———— *Minor, when bound by proceedings against him—Minors Act (XX of 1864), s. 2—Suit by a minor, one year after attaining majority, to recover property sold in execution of a decree obtained against him during minority.*—In 1870 a creditor of the plaintiff's father brought a suit (No. 573 of 1870) against the plaintiff and obtained a money-decree against him. The plaintiff was then a minor and his estate was administered by the Collector of Ratnagiri. In this suit he was represented by his mother and guardian. At the sale held in 1871, in execution of the decree, the property in question was purchased by the defendant, who obtained possession in 1876. In 1879 the plaintiff attained majority, and in 1882 he brought the present suit to recover the property from the defendant. The lower Courts, regarding the suit as one to set aside the sale to the defendant, held that it was barred by limitation under art. 12 of sch. II of the Limitation Act (XV of 1877). On appeal by the plaintiff to the High Court,—*Held* that art. 12 of the Limitation Act (XV of 1877) did not apply, and that the suit was not barred. That article applied only to cases in which

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the plaintiff would be bound by the sale if he did not succeed in getting it set aside, but in the present case the plaintiff was not bound by the proceeding in suit No. 573 of 1870, as he had not been properly represented as required by s. 2 of Act XI of 1864. VISHNU KESSHAV *v.* RAMCHANDRA BHASKAR [**I. L. R., 11 Bom., 130**

30. ———— and art. 7—*Guardian—Representative of minor in a suit against him—Certificate—Act XX of 1864—Joint family—Mortgage by father and eldest son—Death of father and eldest son—Decree obtained by mortgagee against minor son represented by the widow—Sale in execution—Subsequent suit by minor to set aside sale.*—In 1862 *R* and his son A mortgaged the property in dispute to *B*. In 1863 *R* died leaving a widow *S*, and two sons, *viz.*, *A* and *P*, a minor. In 1866, *A* and *S*, the latter of whom acted for herself and as guardian of her minor son *P*, settled the account with *B*, the mortgagee, obtained a fresh advance, and passed a fresh mortgage-bond to him. In 1868 *A* died. In 1869 *B*'s assignee filed a suit upon the mortgage, and obtained a decree against the mortgaged property against *S* both as guardian of the minor *P* and also against her in her individual capacity. At the Court sale held in execution of this decree, *D* purchased the property in dispute in 1870. In 1881 *P* filed the present suit to recover possession of the property, alleging that *D*'s purchase was invalid as against him, he having been a minor at the time of the Court sale. He subsequently assigned his interest to the respondent (second plaintiff). It was contended on behalf of the defendant *D* that the suit, not having been brought within one year after *P* had attained majority, was barred by limitation under art. 12, sch. II of Act XV of 1877. *Held* that the suit was not barred by limitation. *P* had not been properly represented by *S* in the suit of 1869, as she had not obtained a certificate under the Minors Act (XX of 1864). *P* was therefore not bound by the decree in that suit or by the sale in execution, and art. 12, sch. II of Act XV of 1877, did not apply. DAJI HIMAT *v.* DHIRAJRAM SADARAM . **I. L. R., 12 Bom., 18**

31. ———— *"Order" of Revenue officer—Judicial order.*—The "order" of a Collector or other officer of revenue, as the word is used in the latter portion of cl. 3 of s. 1 of Act XIV of 1859, means an order of the nature of a decree, or made by the Collector or other Revenue officer in his judicial capacity. Where a piece of land, embraced within the operations of the revenue survey, and subjected to a defined assessment, was put up for sale by the Collector in consequence of the occupant refusing to pay a fine to be allowed to continue in occupation of it, and was purchased by one of the defendants, and the occupant, asserting that he had been wrongly dispossessed, sued to set aside the sale and to be declared entitled to recover the land and retain possession of it, on condition of paying the assessment as settled upon it by the Revenue officers, but delayed bringing his suit until June 1869, the sale having taken place in January 1867, —it was held that, though more than one year had

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elapsed from the date of sale, the suit was not barred under the provisions of cl. 3 of s. 1 of Act XIV of 1859. SAKHARAM VITHAL ADHIKARI *v.* COLLECTOR OF RATNAGIRI . . **8 Bom., A. C., 288**

32. ———— and art. 14—*Suit to set aside an act or order of an officer of Government—Suit for possession—Dispossession under an order made by officer of Government.*—Arts. 12 and 14 of sch. II of the Limitation Act (XV of 1877) refer to orders and proceedings of a public functionary, to which by law is given a particular effect in favour of one person or against another, subject in the regular course to a further judicial proceeding having for its object to quash them or set them aside. When an order does not fall within the authority of an official who makes it, it is legally a nullity, and therefore need not be set aside. SHIVAJI YESJI CHAWN *v.* COLLECTOR OF RATNAGIRI . . **I. L. R., 11 Bom., 429**

33. ———— *Fraud—Suit to set aside sale in execution of decree—Beng. Reg. XLV of 1793.*—In a suit for the cancelment, on the ground of fraud, of an auction-sale made under the provisions of s. 12, Regulation XLV of 1793, and for the reversal of a Judge's order in appeal confirming the sale, the period of limitation was held (under s. 9, Act XIV of 1859) to run at the latest from the date of the Judge's order of confirmation, and to extend to one year under cl. 3, s. 1. ENAET ALI KHAN *v.* KUMOLA KOONWAR . **11 W. R., 261**

34. ———— *Suit to set aside sale.*—A sale having been effected by order of a Deputy Collector, an appeal was made to the Collector, who set aside the sale. The Commissioner, however, considering that the Collector had no jurisdiction, and that no injury had been made out, reversed the order of the Collector. *Held* that the sale did not become confirmed or otherwise final and conclusive before the date of the Commissioner's order, and therefore a suit within one year of that order was in time. PRANNATH ROY *v.* TROYLUCKONAUTH ROY [**14 W. R., 281**

35. ———— *Suit to set aside sale for arrears of Government revenue.*—A suit to set aside a sale for arrears of Government revenue must be brought within one year from the date when the sale becomes final and conclusive. RAJ CHUNDER CHUCKERBUTTY *v.* KINOO KHAN [**I. L. R., 8 Calc., 329**

36. ———— *Suit brought to set aside sale for arrears of revenue.*—Where lands had been sold for alleged arrears of revenue and bought in for Government, but the sale had not been registered under s. 38 of Madras Revenue Recovery Act (II of 1864).—*Held* that a suit brought to set aside the sale after one year from the date thereof against a *bonâ fide* purchaser for value from Government was barred by limitation. KARUPPA TEVAN *v.* VASUDEVA SASTRI . . **I. L. R., 6 Mad., 148**

37. ———— *Sale in execution of decree for arrears of revenue—Suit to recover land.*—The land of *D* was improperly sold, in execution of a decree of a Civil Court obtained against *S*, for arrears of revenue, by the assignee of the revenue of the lands of *D* and *S*. *Held*, in a suit brought by *D* to recover her land from the purchaser at the Court sale, that the suit, not having been brought within one year from the date of the confirmation of the sale, was barred by art. 12 of sch. II of the Limitation Act, 1877. SURYANNA *v.* DURGI

[I. L. R., 7 Mad., 258

38. ———— *Suit to set aside sale in execution of decree—Suit for land sold in execution as property of third parties.*—The plaintiffs sued in 1893 to recover possession of land of which their family had been in possession till 1884. The land had been sold to the defendant in 1881 in execution of a decree against the plaintiffs' cousins, but the sale had not been confirmed. A decree was passed as prayed in respect of a moiety of the land which represented the plaintiffs' share. *Held* that the decree was right. *Quære*—Whether the suit would have been barred under the one year's rule of limitation if the sale had been confirmed. *Suryanna* v. *Durgi, I. L. R., 7 Mad., 258,* doubted. *Parekh Ranchor* v. *Bai Vakhat, I. L. R., 11 Bom., 119,* referred to. NARASIMHA NAIDU *v.* RAMASAMI . . . I. L. R., 18 Mad., 478

39. ———— *Bonâ fide purchasers.*—Art. 12 of that schedule which prescribes a period of one year for suits to set aside sales for arrears of revenue is intended to protect *bonâ fide* purchasers only. VENKATAPATHI *v.* SUBRAMANYA

[I. L. R., 9 Mad., 457

40. ———— *Sale for arrears of revenue—Suit for possession of land—Fraud.*—The plaintiff's land was sold by the revenue authorities for arrears of assessment due to the inamdars. The plaintiff applied to the mamlatdar to have the sale set aside on the ground of fraud on the part of the inamdar, but his application was rejected; and the sale was confirmed in July 1879. The auction-purchaser was thereupon put in possession. In 1886 the plaintiff sued to recover possession of the land in question. *Held* that the suit, having been brought more than one year after the date of the sale, was barred by art. 12, cls. (*b*) and (*c*), of sch. II of the Limitation Act (XV of 1877). The sale was one in pursuance of an order of the Collector or other officer of revenue, and, if not for arrears of Government revenue, was at any rate a sale for arrears of rent recoverable as arrears of revenue. The plaintiff, as occupant of the land, was bound by the sale, unless and until it was reversed, and the title of the purchaser at the sale was a perfectly good title until the sale was set aside in due course of law. BALAJI KRISHNA *v.* PIRCHAND BUDHARAM

[I. L. R., 13 Bom., 221

41. ———— *Sale under Public Demands Recovery Act (Bengal Act VII of 1880) for arrears of cesses—Confirmation of sale.*—Where the Board of Revenue discharged an order of the Commissioner, dated the 25th January 1884, which had confirmed a sale by the Collector in 1882, but afterwards on the 21st August 1886 discharged its own order and revived that of the Commissioner,—*Held* that the confirmation of sale dated only from the 21st August 1886, and that a suit brought in July 1887 to set aside the sale was not barred by Act XV of 1877, art. 12. BAIJNATH SAHAI *v.* RAMGUT SINGH . . . I. L. R., 23 Calc., 775

[L. R., 23 I. A., 45

42. ———— *Madras Rent Recovery Act (Madras Act VIII of 1865), ss. 7, 38, 39 and 40—Suit to recover land sold, without setting aside sale.*—Where a plaintiff sued to recover land alleged to have been sold under the provisions of the Rent Recovery Act, alleging that the provisions of s. 7 of that Act had not been complied with, and that therefore the sale was illegal,—*Held* that the suit could not proceed without setting aside the sale, and that, the sale having taken place more than a year before the institution of the suit, the suit was barred. RAGAVENDRA AYYAR *v.* KARUPPA GOUNDAN

[I. L. R., 20 Mad., 33

43. ———— *Dispossession—Suit to recover land sold by mistake in execution of decree.*—Limitation Act, sch. II, art. 12 (*a*), is not applicable to a case in which dispossession is the cause of action, and in which the plaintiff was not a party to, or bound by, the sale. *Held* accordingly that a suit brought in 1892 to recover possession of the plaintiff's share of land sold by mistake in execution of a decree against his uncle in 1881 was not barred by limitation. KADAR HUSSAIN *v.* HUSSAIN SAHEB

[I. L. R., 20 Mad., 118

44. ———— *Suit to recover property sold in execution of a decree in excess of what was saleable under the decree.*—Art. 12, cl. (*b*), of the second schedule to the Limitation Act, 1877, does not apply to a suit to recover property sold ostensibly in execution of a decree, but the sale of which was in fact not authorized by the decree under which the said property purported to have been sold. *Ram Lall Moitra* v. *Bama Sundari Debia, I. L. R., 12 Calc., 307; Balwant Rao* v. *Muhammad Husain, I. L. R., 15 All., 324; Lala Mobaruk Lal* v. *The Secretary of State for India in Council, I. L. R., 11 Calc., 200; Dakhina Churn Chattopadhya* v. *Bilash Chunder Roy, I. L. R., 18 Calc., 526; Mahomed Hossein* v. *Purundur Mahto, I. L. R., 11 Calc., 287;* and *Sadagopa* v. *Jamuna Bhai Ammal, I. L. R., 5 Mad., 54,* referred to. *Suryanna* v. *Durgi, I. L. R., 7 Mad., 258,* dissented from. NAZAR ALI *v.* KEDAR NATH

[I. L. R., 19 All., 308

45. ———— *Suit by reversioner to establish his title to property sold in execution of decree obtained against a widow as representing estate—Collusion.*—A widow of a deceased Hindu represents the estate of the reversioner for some purposes; but it is her duty not only to represent the estate, but to protect it. When a suit is brought on the ground that the widow did not in a former suit protect the interests of the person who was to take after her death, but collusively suffered judgment against herself and sale of her husband's property in execution, then if such person on that ground treats the sale as inoperative, and seeks for a declaration that it is not binding on him, art. 12, cl. (*a*), of sch. II of the Limitation Act (XV of 1877), does not apply to the suit. PAREKH RANCHOR *v.* BAI VAKHAT . . **I. L. R., 11 Bom., 119**

———— art. 13 (1871, art. 15; 1859, s. 1, cl. 5).

1. ———— *Suit to set aside summary order.—Quære*—Whether, with reference to cl. 5, s. 1, a suit will lie to set aside a summary order after the expiration of one year. GOBIND NATH SANDYAL *v.* RAMCOOMAR GHOSE . . . **6 W. R., 21**

2. ———— *Final decision — Order dismissing appeal.*—The final decision, award, or order contemplated by cl. 5, s. 1, was a final decision of the Court which had competent jurisdiction to determine the case finally, and not the order of a Court superior to such Court dismissing an appeal from the decision of such Court for want of jurisdiction. OLEO-UNISSA *v.* BULDEO NARAIN SINGH **[7 W. R., 151**

3. ———— *Order under Act XIX of 1841—Official Trustees Act—Suit for possession—Limitation Act (XIV of 1859), s. 1, cl. 12.*—A summary order under Act XIX of 1841 for possession of property left by a deceased person is no bar to a regular suit to try the title to such property and to obtain possession under that title; it is therefore unnecessary to set aside the order before granting relief in the suit. Hence the period of limitation for such regular suit is that provided by cl. 12, s. 1, Act XIV of 1859, namely, twelve years, and not one year as provided by cl. 5 of the same section. LAKNARAIN SINGH *v.* MANKOER . **B. L. R., Sup. Vol., 633**

S. C. LOKNARAIN SINGH *v.* MYNA KOER **[2 Ind. Jur., N. S., 191 : 7 W. R., 199**

4. ———— *Civil Procedure Code, 1859, s. 246.*—The rights and interests of one of three brothers of a joint Hindu family having been sold in execution of a decree, a suit brought not to set aside such sale, but in right of inheritance of the judgment-debtor's brother's share in the family property, was held not barred by limitation under cl. 5, s. 1, and s. 246, Act VIII of 1859. LALLA BEHAREE LALL *v.* LALLA MODHO PERSAUD . . . **6 W. R., 69**

5. ———— *Summary decision—Certificate of administration under Act XXVII of 1860—Order made under Official Trustees Act (XIX of 1841).*—The period of limitation prescribed by Act XIV of 1859, s. 1, cl. 5, in the case of suits to alter or set aside summary decisions and orders of any of the Civil Courts not established by Royal Charter, when such suit is maintainable, namely, "the period of one year from the date of the final decision, award, or order in the case," applied to the grant of a certificate under Act XXVII of 1860. It also applied to an order made under Act XIX of 1841 (the Official Trustees Act), refusing to put the applicant in the possession of property as mohunt. GREEDHAREE DOSS *v.* NUNDKISHORE DUTT **[Marsh., 573 : 2 Hay, 633**

S. C. on appeal to Privy Council. GREEDHAREE DOSS *v.* NUNDKISHORE DOSS **[11 Moore's I. A., 405 : 8 W. R., P. C., 25**

Contra, BIPRO PERSHAD MYTEE *v.* KANYE DEYEE **[1 W. R., 341**

6. ———— *Suit to recover properties by the rightful heir of deceased more than one year after grant of certificate of heirship to the rival claimant—Effect of such a certificate—Practice.*—In 1877 the plaintiff applied for a certificate of heirship to one *T*, her husband's uncle, who had died in 1876. The defendant opposed the application, and alleged that *T* had left a will in her favour. On the 28th July 1877, the District Judge made an order rejecting the plaintiff's application and granting a certificate to the defendant. In 1879 the plaintiff brought the present suit, claiming to be entitled to the property left by *T*. It was contended (*inter aliâ*) for the defendant that the plaintiff's suit was barred, she having failed to apply to set aside the order granting the certificate to defendant within one year from the date of that order. The Court of first instance overruled the objection, and awarded plaintiff most of her claim. The defendant appealed, and the lower Appellate Court reversed the lower Court's decree, holding the suit barred. On appeal to the High Court,—*Held,* restoring the decree of the Court of first instance, that the plaintiff's suit was not barred. A certificate of heirship confers only the right of management of the property of the deceased, and is intended to give security to third persons in dealing with the person who claims to be the heir. Where the right of the person, to whom the certificate is granted to be the heir of the deceased, is in controversy, there is no necessity to have the order granting him the certificate set aside; and the question, whether the suit to determine the right claimed is in time, is to be determined by the sections of the Limitation Act relating to suits for the possession of property. BAI KASHI *v.* BAI JAMNA . **I. L. R., 10 Bom., 449**

7. ———— *Suit to set aside order under Act XXVII of 1860.*—A suit to set aside a summary order passed under Act XXVII of 1860 may be brought within a year from the date of the order; but such order is no bar to a suit upon title, though brought after the year. KALEE PROSUNNO MOOKERJEE *v.* KOYLASH MONEE DEBIA **[8 W. R., 126**

8. ———— *Order relating to landed property of intestate—Summary order.*—*Held* that the Judge's order relating to the landed property of a person dying intestate, being apparently an order made without jurisdiction, had no legal operation, and was not a summary order within the meaning of the 5th clause of s. 1, Act XIV of 1859. AUGUDH NATH *v.* DOORGA GIR . . . **1 Agra, 241**

9. ———— *Suit to eject representative of person put in possession by order of Civil Court—Summary decision.*—The plaintiff was, by an order of the Civil Court in execution of a decree, to which the plaintiff was no party, ejected from the possession of a muttah. He brought a suit more than three years afterwards to eject the legal representative of the person who was so put in possession. *Held* (reversing the decree of the Civil Court) that the order of the Civil Court was not a summary decision within the meaning of cl. 5, s. 1, and that the suit was not barred. That clause was only applicable to orders which the Civil Courts were empowered to pass deciding matters of disputed property raised for hearing and determination by a summary proceeding between the parties disputing. APPUNDY IBRAM SAHIB *v.* SAM . . . . **4 Mad., 297**

10. ——————— *Suit against order of Mamlatdar under Bom. Act V of 1864.*—Although a Mamlatdar's order under the last clause of s. 1 of Bombay Act V of 1864 is a summary decision, a suit in the Civil Court to establish a right against the operation of such order is not a suit to set aside the order itself, but for possession in opposition to that recognized by Mamlatdar's order, and is not therefore within the limitation of one year under cl. 5, s. 1, Act XIV of 1859. BABAJI *v.* ANNA . **10 Bom., 479**

11. ——————— *Suit for proceeds of sale in execution.*—A suit to recover the proceeds of sale in execution of a decree alleged to have been drawn out by defendant by virtue of an order of a Civil Court, under s. 270, Act VIII of 1859, is in reality a suit to alter or set aside a summary decision of a Civil Court, and is governed by the limitation of one year prescribed by cl. 5, s. 1, Act XIV of 1859. DWARKANATH BISWAS *v.* ROY DHUNPUT SINGH **[17 W. R., 227**

12. ——————— *Suit for money paid into Court by defendant, but recovered from third person in execution of decree.*—A suit to recover money paid by the defendant into Court which was payable to the plaintiff, and which was afterwards recovered by the defendant in the execution of a decree against a third person, under an order of the Court executing the decree, was held not barred by limitation, under the provisions of Act IX of 1871, second schedule, art. 15, by reason of not having been instituted within one year from the date of the order. DEBI DAS *v.* NUR AHMED . . . . . **7 N. W., 174**

13. ——————— *Suit for refund of sale-proceeds paid in accordance with order for distribution under s. 295, Civil Procedure Code, 1882 —Multifariousness.*—In execution of a decree against six persons the plaintiffs had certain property brought to sale, the proceeds of which were brought into Court. The defendants, who held five separate decrees against some of the persons against whom the plaintiffs' decree was obtained, applied to have the amount in Court rateably distributed; and in accordance with an order of the Court, dated 13th September 1880, this was done, the proceeds being distributed in proportion to the amounts of the decrees. In a suit brought on 24th August 1883 against the defendants, on the allegation that the plaintiffs were entitled to the whole of the proceeds, or in the alternative for distribution on a different principle,—*Held* the suit was one to set aside the order, and not having been brought within one year from the date of the order was barred by limitation under art. 13, sch. II of Act XV of 1877. *Ram Kishen* v. *Bhawani Das, I. L. R., 1 All., 333,* distinguished. GOWRI PROSAD KUNDU *v* RAM RATAN SIRCAR **[I. L. R., 13 Calc., 159**

14. ——————— **and art. 62**—*Civil Procedure Code (Act XIV of 1882), s. 295—Suit for a refund of assets paid to a wrong person under s. 295*—An order under s. 295 of the Code of Civil Procedure (Act XIV of 1882) refusing a decree-holder's application for a rateable distribution of the assets realized by a sale or otherwise in execution of a decree is not an order "in a proceeding other than a suit" within the meaning of art. 13 of the Limitation Act (XV of 1877). On the 21st August 1885 the defendant attached, in execution of a money-decree, certain immoveable property belonging to his judgment-debtor. On the 18th January 1886, plaintiff, who held another decree against the same judgment-debtor, applied, under s. 295 of the Code of Civil Procedure, for a rateable distribution of the assets to be realized by the sale of the property attached. On the 19th March 1886 the attached property was put up for sale in execution of the defendant's decree. The defendant was allowed to buy the property at the sale and set off the purchase-money against the amount due to him under the decree under s. 294, and no money was therefore paid into Court. On the 14th June 1886 the Court held that, as no money had been paid into Court on account of the sale, no further proceedings could be taken on the plaintiff's application for a rateable share of the assets, and his application was accordingly rejected. Thereupon the plaintiff sued the defendant to compel him to refund the assets wrongly paid to him. The Court of first instance decided in plaintiff's favour. The lower Appellate Court rejected the plaintiff's claim as barred by art. 13, sch. II of the Limitation Act, on the ground that the suit was not brought within one year from the date of the Court's order refusing the plaintiff's application under s. 295 of the Code of Civil Procedure. *Held* that the suit was not governed by art. 13 of the Limitation Act. The order made under s. 295 of the Civil Procedure Code was no bar to the suit, and a suit to set it aside was unnecessary. *Gowri Prosad Kundu* v. *Ram Ratan Sircar, I. L. R., 13 Calc., 159,* dissented from. VISHNU BHIKAJI PHADKE *v.* ACHUT JAGANNATH GHATE **[I. L. R., 15 Bom., 438**

15. ——————— *Mortgage—Sale by first mortgagee—Arrears of rent—Lien—Claim by puisne mortgagee on proceeds of sale.*—Certain land was mortgaged to *A* with possession to secure the repayment of a loan of R2,000 and interest. It was stipulated in the deed that the interest on the debt should be paid out of the profits, and the balance paid to the mortgagors. By an agreement subsequently made, it was arranged that the mortgagors should remain in possession and pay rent to *A*. *A* obtained a decree for R2,000 and arrears of rent and costs and for the sale of the land in satisfaction of the amount decreed. The land was sold for R2,855 in March 1881. In May 1881 *B*, a puisne mortgagee, applied to the Court for payment to him of R500 of this sum, alleging that *A* was entitled only to R2,000 and R280 costs, but not to arrears of rent, in preference to his claim as second mortgagee. The claim of *B* was rejected on the 27th May 1881 and the whole amount paid out to *A*. In February 1882 *B* (who had filed a suit on the 23rd March 1881) obtained a decree upon his mortgage. On the 23rd May 1884 *B* sued to recover R510 paid to *A* on account of rent on the 27th May 1881. *Held,* on second appeal, that the suit was not barred by art. 13 of the Limitation Act, neither that article nor art. 12 being applicable to the case, that *B* was entitled to recover the sum claimed. SIVARAMA *v.* SUBRAMANYA

[I. L. R., 9 Mad., 57

16. ———— *Suit to recover possession from a successful claimant under s. 246, Act VIII of 1859.*—A suit brought, not to set aside an order of release under s. 246 of Act VIII of 1859, but to recover possession from the successful claimant of the property released, was not governed by the limitation prescribed by cl. 5, s. 1. BHYRUBLALL BHUKUT *v.* ABDOOL HOSSEIN . **8 W. R., 93**

17. ———— *Order of Judge on claim to attached property—Summary decision.*—Property being attached under a decree obtained before Act VIII of 1859, a third party claimed to be entitled as against the judgment-creditor under a bill of sale. The Judge enquired into his claim, found that the assignment was fraudulent, and ordered that the property should be sold under the decree. *Held* that the order of the Judge was a summary decision of a Civil Court within s. 1, cl. 5, and that a suit by the claimant for the recovery of the property instituted after the expiration of a year from the date of the order was barred by that clause. KHYRUT ALLY *v.* KHURRUCK DHAREE SINGH . **Marsh., 520**

18. ———— *Suit to have property declared not liable to seizure in execution of a decree.*—The plaintiff sued to obtain a decree declaring that the ancestral land possessed by the family of the plaintiff was not liable to seizure and sale in satisfaction of an *ex-parte* decree obtained by the defendant in a suit against the yejaman of the plaintiff's family on the ground that the decree had been obtained collusively and fraudulently for a debt alleged to have been contracted for the benefit of the family. The decree against the yejaman was passed on the 22nd June 1857, and upon attachment of the family property the plaintiffs made a claim, under s. 246 of the Civil Procedure Code, alleging their independent right to the property and resisting a sale. The claim was disallowed on the 18th October 1861, and an appeal from that decision was dismissed on the 15th November 1861. The present suit was instituted on the 2nd February 1864. *Held* that this was not a suit to which the limitation provided by s. 246 of the Civil Code, or by cl. 5, s. 1 of Act XIV of 1859, was applicable, and that the suit was not barred. RAMANADA BUTT *v.* BITHEE . . . **4 Mad., 263**

19. ———— *Claim, Rejection of—Suit to recover possession of property sold.*—On attachment of certain property, the plaintiff and defendant preferred their respective claims thereto. The plaintiff's claim was disallowed, but the defendant's claim

was allowed. The plaintiff, after the lapse of a year from the date of the order disallowing his claim, sued to recover possession of the said property. The defence was, that the suit was barred by lapse of time under cl. 5, s. 1, Act XIV of 1859. *Held* that cl. 5, s. 1, Act XIV of 1859, did not apply to such a suit. DURGARAM ROY *v.* NARSING DEB

[2 B. L. R., A. C., 254

S. C. DOORGARAM ROY *v.* NURO SINGH DEB

[11 W. R., 134

20. ———— *Suit to set aside order releasing property from attachment—Irregular attachment—Deduction of time when appeal was pending.*—In 1852, *K* sued *A* and *M* to recover the amount with interest of a bond executed by *M* (who was *A*'s general agent) in the name of *H* on the permission of the plaintiff for the purpose of paying off the debts of *A*. The Principal Sudder Ameen decreed the case against *M* with costs, and released *A* from *K*'s claim. In appeal to the Sudder Court the plaintiff obtained a decree with interest and costs against *A* as well as against *M*. In execution *K* prayed on 2nd December 1858 for the attachment and sale of certain estates. A notice having been ordered to issue, *K* represented that the judgment-debtor was attempting to alienate her estates, and prayed that orders might be passed to prevent alienation of the estates mentioned in her application for execution. A process of attachment was issued accordingly on 28th March 1859, but without security being first demanded as prescribed in Regulation VIII of 1825, s. 7. In September 1861, one *B A*, who had objected to the attachment, petitioned the Judge and obtained an order, dated 14th September 1861, releasing the attached properties as being his in virtue of a hibbanama from *A*, and in his possession. From this order *K* appealed, but the appeal was struck off on 29th November 1862. On review the first order was upheld, but it was declared that this would not be a bar to a regular suit. She accordingly sued for a reversal of the Judge's order for the cancelment of the deed of gift as being collusive and for the sale of the property in question as that of her judgment-debtor *A*. The suit was decreed and an appeal preferred to the High Court. *Held* that the order of 28th March 1859 was wrong in ordering attachment without first requiring security; but the irregularity did not affect the jurisdiction of the Court or render the attachment void. *Held* also that the plaintiff had a right of appeal from the order of 14th September 1861, that the appeal was wrongly rejected on 29th November 1862, and it saved her from the operation of the law of limitation while it was pending, and as she brought her suit within a year from that time, she was within the period prescribed by Act XIV of 1859, s. 1, cl. 5. KHODAJAMNISSA *v.* STEVENS

[20 W. R., 433

21. ———— *Suit after release of property under s. 246, Civil Procedure Code, 1859.*—Where a property is released from attachment, and the person at whose instance attachment was made is not debarred by the order of release from proceeding with his execution, his suit is virtually a suit for a declaration of right, and not merely a suit for setting aside the order of release: and the rule of limitation applicable to his case is not in s. 246 of Civil Procedure Code, which would allow one year, but in cl. 15, sch. II of Act IX of 1871. MATONGINY DASSEE *v.* CHOWDHRY JUNMUNJOY MULLICK . **25 W. R., 513**

22. ———— *Suit to recover attached property to which claim has been disallowed.*—A person who has been unsuccessful in a proceeding under s. 246 of Act VIII of 1859, and who sues to recover the attached property from the purchaser at the Court sale, may be said to sue, not to set aside the sale, but to set aside the order of the Court under s. 246, and therefore the suit must be brought within one year as provided in art. 15 of the Limitation Act, 1871. The decision in *Jetti* v. *Hossain, I. L. R., 4 Bom., 23 note,* qualified. VENKAPA *v.* CHENBASAPA . . . . **I. L. R., 4 Bom., 21**

23. ———— *Suit to remove attachment—Adverse possession.*—In a suit for a partition of family property in the possession of the plaintiff and defendants, part of the property was attached at the instance of one of the defendants in 1852, and the remainder of the property in 1864. Nothing was done with regard to the first attachment, but in 1865 a petition was presented by the plaintiff praying for the removal of the attachments. The petition was rejected and the plaintiff brought this suit within one year from the date of the rejection of his petition. The plaintiff and defendants remained in possession notwithstanding the attachments. *Held* that the suit was not barred by lapse of time. MALRAJA *alias* KRISHNAMA RAJAH *v.* NARAYANASAMY RAJAH **[4 Mad., 281**

24. ———— *Suit to establish title to property ordered to be sold in execution—Suit to set aside summary order.*—The plaintiff's property was ordered to be sold in execution of a decree to which the plaintiff was not a party. The plaintiff appeared and asked the Court to release the property from attachment, but the Court refused his application, under s. 246, Act VIII of 1859, and ordered the property to be sold. *Held* that a suit to establish the plaintiff's right to such property was not a suit to set aside a summary order within Act IX of 1871, sch. II, cl. 15. KOYLASH CHUNDER PAUL CHOWDHRY *v.* PREONATH ROY CHOWDHRY **[I. L. R., 4 Calc., 610: 3 C. L. R., 25**

25. ———— *Civil Procedure Codes (Act VIII of 1859, s. 246, and Act X of 1877, ss. 280, 281, and 282).*—*V* (defendant No. 1) obtained a decree against *W* and, in execution thereof, attached certain immoveable property as belonging to his judgment-debtor. The plaintiffs, who were *W*'s five brothers, thereupon applied for the removal of the attachment under s. 246 of the Civil Procedure Code (VIII of 1859), but their application was rejected on the 24th July 1875, and the property was sold by the Court to *K* (defendant No. 2) on the 16th and 17th February 1876. The sale was confirmed on the 18th March 1876. The plaintiffs brought a suit on the 17th March 1877 against *V* and *K* (the judgment-creditor and auction-purchaser), alleging that the property was the joint ancestral property of themselves and their brother *W*, and was not liable to attachment and sale for his separate debt. They prayed that the sale should be set aside. The Subordinate Judge dismissed the suit as barred by art. 15, sch. II of the Limitation Act (IX of 1871). His order was reversed, on appeal, by the District Judge, who held that art. 14, sch. II of the Limitation Act, applied to the case. *K* thereupon appealed to the High Court. *Held* that art. 15, and not art. 14, of sch. II of Act IX of 1871, applied to the case, and that the suit was barred. The intention of the Legislature in passing s. 246 of the Civil Procedure Code (Act VIII of 1859) was that the order made under that section should be a final bar to the plaintiff's right, unless such a suit, as that section prescribed, was brought to re-try the question of that right; and if on such action being brought, the Court on the trial held that the plaintiff had established his right, its ruling would amount to a reversal of the order made under s. 246, and the suit would fall within art. 15 of sch. II of the Limitation Act (IX of 1871), which is substituted for the limitation provided by the twelve repealed words in s. 246 of Act VIII of 1859. *Settiappan* v. *Sarat Sing, 3 Mad., 220,* followed. *Koylash Chunder Paul Chowdhry* v. *Preonath Roy Chowdhry, I. L. R., 4 Calc., 610,* referred to and discussed. KRISHNAJI VITHAL *v.* BHASKAR RANGNATH . . . **I. L. R., 4 Bom., 611**

26. ———— *Order declaring that Court has no jurisdiction.*—The period of limitation prescribed by art. 15, sch. II, Act IX of 1871, for a suit to set aside an order of a Civil Court, does not apply where the order simply amounts to a declaration that the Court considers it has no jurisdiction to act in the proceeding before it. KRISTODASS KUNDOO *v.* RAMKANT ROY CHOWDHRY **[I. L. R., 6 Calc., 142: 7 C. L. R., 396**

27. ———— *Suit to recover property sold in execution—Civil Procedure Codes (Act VIII of 1859, s. 246, and Act X of 1877, ss. 280, 281, and 282).*—Certain property, which the plaintiff alleged to belong to her, was sold in execution of a decree obtained by the purchaser of the property at the auction-sale, against a third party. The plaintiff put in a claim to the property under s. 246 of Act VIII of 1859, which claim was rejected on the 6th of September 1873. The plaintiff, on the 10th of January 1878, brought a suit to recover possession of the property sold. *Held* that the suit was not barred by art. 15, sch. II of Act IX of 1871, the suit not being one to set aside a summary order within art. 15 of the schedule to that Act. *Koylash Chunder Paul Chowdhry* v. *Preonath Roy Chowdhry, I. L. R. 4 Calc., 610,* followed. LUCHMI NARAIN SINGH *v.* ASSRUP KOER . . . **I. L. R., 9 Calc., 4**

28. ———— *Execution of decree—Res judicata—Act VIII of 1859, s. 246—Civil Procedure Code (Act X of 1877), s. 278.*—In the course of certain execution proceedings in execution of a decree for arrears of rent, the decree-holder attached a tenure belonging to the judgment-debtor, who, pending the attachment, sold it to *A* on the 21st March 1869. *A* then applied, under s. 246

of Act VIII of 1859, for an order to release the tenure from attachment; but the application was dismissed, on the ground that the alienation had been made pending the attachment. In 1877 the heirs and successors in title of the decree-holder abovementioned obtained another decree for arrears of rent against the same defendant, and in execution thereof again attached the tenure. *A* applied under s. 278 of the Code of Civil Procedure to have the property released, but his application was rejected on the 3rd of May 1879. In a suit brought by *A* on the 6th of May 1879 to establish his right to, and confirm his possession of, the tenure, the lower Courts dismissed the suit, on the ground that it ought to have been brought within one year from the 24th of March 1869. On appeal to the High Court,—*Held* that the suit was not barred by limitation, nor as *res judicata.* UMESH CHUNDER ROY *v.* RAJ BULLUB SEN . . . **I. L. R., 8 Calc., 279**
[10 C. L. R., 204

29. ——— *Order substituting one judgment-debtor for another—Sale or transfer of dena-powna.*—*A*, the proprietor of an indigo concern, which comprised a patni talukh, after mortgaging the entire concern to *B*, allowed the patni talukh to be sold for arrears of rent under Regulation VIII of 1819; *C*, the dar-patnidar of the talukh, whose rights were thus extinguished, then sued and obtained a decree for damages against *A*. After *C* had obtained this decree against *A*, *A* sold his equity of redemption in the entire mortgaged concern to *B*, and by this sale, all the dena and powna, or liabilities and outstandings of the concern, were transferred from *A* to *B*. *C* then, after notice to *B*, obtained an order, by which *B* was made the judgment-debtor in the place of *A*. *B* took no proceedings within one year to set aside this order; but, after the lapse of three years, upon *C* attempting to execute his decree, instituted the present suit to set aside the order, and for an injunction to restrain *B* from executing the decree against him. *Held* that *B* was barred by limitation from suing to set aside that order, but he was entitled to an injunction restraining *C* personally from executing the decree against him. DHURONIDHUR SEN *v.* AGRA BANK
[I. L. R., 5 Calc., 86 : 4 C. L. R., 434

30. ——— *Civil Procedure Code (Act VIII of 1859), s. 269, Summary proceedings under—Neglect to set aside order passed in such proceedings within one year by purchaser at a Court sale—Suit to establish title to property by such purchaser.*—At a Court sale held on the 15th November 1871 in execution of a decree, the plaintiff's deceased husband purchased a house, but neglected to register his sale-certificate. In attempting to recover possession he was obstructed by the defendant, who claimed the property as her own. Summary proceedings under s. 269 of Act VIII of 1859 were thereupon instituted against the defendant, and the defendant's claim was upheld by an order passed on the 7th November 1872. In the meantime the plaintiff's husband having died, plaintiff filed, on the 31st March 1873, a regular suit to establish her title. On the 8th July 1873, she obtained a second certificate, and registered it. The Court of first instance awarded her claim, but on appeal by the defendant the lower Appellate Court reversed that decree, on the ground that, at the institution of the suit, plaintiff had not a registered certificate of sale. That decree was confirmed on the 17th November 1879, on second appeal, by the High Court. On the 30th April 1880, plaintiff brought this suit on the strength of her registered certificate. The Court of first instance allowed her claim. The defendant appealed, and the lower Appellate Court held her suit not maintainable. On appeal by plaintiff to the High Court,—*Held*, confirming the decree of the lower Appellate Court, that plaintiff's suit was barred. The Subordinate Judge having, by his order of the 7th November 1872, passed in the summary proceedings, disposed of the case on the ground that the property belonged to the defendant, the plaintiff was under an obligation to displace that order by a suit instituted within one year from its date. BAI JAMNA *v.* BAI ICHHA
[I. L. R., 10 Bom., 604

——— art. 14 (1871, art. 16).

See BOMBAY LAND REVENUE ACT, s. 135.
[I. L. R., 15 Bom., 424

1. ——— *Suit for land of which a pottah has been granted by Collector after demarcation—Suit to set aside official act.*—Plaintiff in 1877 claimed possession of land which had been demarcated as poramboke in 1860, and of which a pottah had been granted to defendant in 1875 by the Collector. *Held* that this suit was not governed by art. 16, sch. II of Act IX of 1871, as it was not necessarily a suit to set aside an official act. It was governed by the 12 years' period of limitation running from the date of the grant by the Collector. KRISHNAMMA *v.* ACHAYYA **I. L. R., 2 Mad., 306**

2. ——— *Suit for declaration of title—Suit to set aside an order of revenue authorities—Land Registration Act (VII of 1876), s. 89.*—The Civil Court has no power to set aside an order passed under the Land Registration Act, and when a prayer for such relief is contained in a plaint which also asks for a declaration of right and title to, and confirmation of possession in, property, such prayer may be treated as mere surplusage. When therefore a plaint was filed containing separate prayers for the above relief, and when the original Court held that the main object of the suit was to have certain orders made by the revenue authorities set aside, and that the suit was accordingly governed by art. 14, sch. II of the Limitation Act, and passed a decree dismissing the suit as having been brought more than a year after the date of such orders,—*Held* that such a decree was wrong; that the suit being one simply for the declaration of the plaintiffs' title in respect of the property in dispute, art. 14 had no application to the case. LUCHMON SAHAI CHOWDHRY *v.* KANCHUN OJHAIN
[I. L. R., 10 Calc., 525

3. ——— *Suit to set aside order of Commissioner directing payment of Government *revenue.*—A suit to set aside an order of a Commissioner directing the plaintiff to pay Government revenue at a certain rate was formerly held to be governed by cl. 16 of s. 1 of the Act of 1859; it would now probably be governed by this article. KEBUL RAM *v.* GOVERNMENT . . . **5 W. R., 47**

4. ———— *Suit to set aside order of Government officer—Order null and void.*—Art. 14 of sch. II of the Limitation Act with reference to suits to set aside orders of officers of Government does not apply to a case where the order is an absolute nullity. BEJOY CHAND MAHATAB BAHADUR *v.* KRISTO MOHINI DASI **I. L. R., 21 Calc., 626**

5. ———— *Khoti Settlement Act (Bom. Act I of 1880), ss. 20, 21, and 22—Act or order of Settlement officer—Dhara lands—Suit for a declaration that lands were khoti lands—Jurisdiction of Civil Court—Collector, Power of—Adverse possession—Cause of action.*—A Survey Settlement officer decided in the year 1882 that certain lands situate at the khoti village of Tadil, in the Ratnagiri District, were dhara lands of *S* and another, but the entry in the survey register that they were dhara lands was not made till 1889. In the meanwhile, *F* and others, who were the khots of the village, made an application to the special Survey officer to revise the decision of the Settlement officer of the year 1882, and the special Settlement officer having rejected this application in 1885, they brought the present suit in 1887 against *S* and others for a declaration that the lands were their khoti lands. The Judge dismissed the suit on the ground that the Settlement officer's decision being final under ss. 20 and 21 of the Khoti Settlement Act (Bombay Act I of 1880) and it having not been set aside within one year from its date, the suit was time-barred under art. 14, sch. II of the Limitation Act (XV of 1877). *Held*, reversing the decree, that the claim was not time-barred. Under ss. 20 and 21 of the Khoti Settlement Act, it is the "decision" on the rival claims of the parties which is open to reversal by the Civil Court, and not the consequences of that decision, which as provided by s. 22 are left to the Collector himself to undo or modify in accordance with the decision of the Civil Court. *Held*, further, that s. 21 does not contemplate any "order" being made by the Survey officer between the parties; and even if framing the register be regarded as an "act" of the Survey officer, s. 22 provides for its being amended by the Collector himself, in accordance with the decision of the Civil Court. *Held*, further, that although the defendants might have paid only the assessment before 1878-79, their adverse possession of the lands as dhara did not begin to run against the plaintiffs until 1878-79, when such a claim was actively advanced by the defendants. The plaintiffs' cause of action arose in 1882, when the Survey officer determined that the lands were dhara, and the present suit, which was brought within six years to reverse that decision, was therefore in time. FAKI GULAM MOHIDIN *v.* SAJNAK . **I. L. R., 18 Bom., 244**

6. ———— *Land Revenue Code (Bom. Act V of 1879), ss. 37, 39, 135—Land presumably the property of the plaintiff—Plaintiff in uninterrupted possession—Revenue survey—Entry of the land in the register as Government waste land—Order of the Revenue Commissioner directing land to be given to defendant No. 2—Plaintiff's dispossession—Suit against Secretary of State and defendant No. 2—Nature of the Revenue Commissioner's order—Setting aside of the order.*—A certain land which the plaintiff alleged was his property and was uninterruptedly in his possession till the 16th November 1895 was at the introduction of the revenue survey in 1882 entered in the register as Government waste land. On the 12th November 1895, the Revenue Commissioner, on appeal against the order of the Collector, ordered it to be given to defendant No. 2 on his paying the assessment due since the survey settlement. This order was communicated to the plaintiff on the 20th November 1895. On the 16th November 1895, the plaintiff was ousted by the order of the Collector, and defendant No. 2 was placed in possession. The plaintiff thereupon, on the 15th November 1896, filed the present suit in the District Court against the Secretary of State for India as defendant No. 1 and defendant No. 2 praying (1) to have set aside the order passed by the Revenue Commissioner, (2) to have his right to the land established, and (3) to obtain possession with mesne profits. Defendants contended that the suit was time-barred under art. 14, sch. II of the Limitation Act (XV of 1877), not having been brought within one year from the 12th November 1895, the date of the Revenue Commissioner's order. *Held* that the plaintiff could maintain a suit for the recovery of his land without having the order of the 12th November 1895, passed by the Revenue Commissioner, set aside. *Held*, further, that the order of the Revenue Commissioner was not such an order as is contemplated by art. 14, sch. II of the Limitation Act (XV of 1877), and that in itself it gave no cause of action, and needed no setting aside. The cause of action was given by the act of the Collector dispossessing the plaintiff on the 16th November 1895, and as the suit was brought within one year of that date, it was in time. SURANNANNA DEVAPPA HEDGE *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 24 Bom., 435

7. ———— *Estates Partition Act (Beng. Act VIII of 1876), ss. 116 and 150—Right of suit—Suit for possession.*—A suit for possession of land of which the owners have been dispossessed in pursuance of an order of the Collector under s. 116 of the Estates Partition Act (Bengal Act VIII of 1876), will lie even though no suit is brought to set aside the Collector's order under s. 150. Art. 14 of sch. II of the Limitation Act (XV of 1877) does not bar such a suit. LALOO SINGH *v.* PURNA CHANDER BANERJEE . **I. L. R., 24 Calc., 149**

———— art. 15 (1871, art. 17; 1859, s. 1, cl. 4).

1. ———— *Suit to set aside transfer of land made by revenue authorities.*—A suit to set aside a transfer of land made by the revenue authorities for arrears of Government revenue comes within the words of cl. 4, s. 1, Act XIV of 1859.

CHITRO NARAIN SINGH TEKAIT *v.* ASSISTANT COMMISSIONER OF THE SONTHAL PERGUNNAHS' [14 W. R., 203

2. ———— *Suit to establish right to hold land rent-free.*—Where a person claiming to hold land free of Government assessment was compelled by the Collector to pay the same,—*Held* that, though the 12 years' period of limitation applied to a suit to establish his right to hold the land free, yet the limitation of one year under s. 1, cl. 4, of Act XIV of 1859 was applicable to the suit so far as it sought to recover payments made. BHUJANG MAHADEV *v.* COLLECTOR OF BELGAUM . . . **11 Bom., 1**

———— **art. 16 (1871, art. 18; 1859, s. 1, cl. 4).**

———— *Act XIV of 1859, s. 1, cl. 4—Suit for revenue.*—Cl. 4 of s. 1 of Act XIV of 1859 is not applicable where the revenue, for recovery of a portion of which a suit is brought, was a payment made to the Government on account of a clear and admitted liability, the object being to save the estate from sale. Plaintiff may be entitled to recover from a co-sharer what he has paid to the Government beyond his just share, but his case is not governed by the 4th clause. Cl. 16 allowing six years appears rather to be applicable. SHADEE LALL *v.* BHAWANEE . . . . . **2 N. W., 52**

———— **art. 17 (1871, art. 19).**

———— *Suit for compensation for land—Cause of action.*—In a cause decided under Act XIV of 1859 the case of action in a suit for compensation for land taken for public purposes was held to arise from the time the plaintiff was dispossessed, and not from the date when his application for compensation was rejected. HILLS *v.* MAGISTRATE OF NUDDEA . . . . . **11 W. R., 1**

This would not now be law.

———— **art. 19 (1871, art. 21).**

See FALSE IMPRISONMENT.

[I. L. R., 9 Bom., 1

———— **art. 23 (1871, art. 25; 1859, s. 1, cl. 2).**

1. ———— *Suit for malicious prosecution.*—The limitation of one year prescribed by cl. 2, s. 1, for bringing a suit for damages for injury caused to reputation by malicious prosecution in a Criminal Court runs from the date on which the plaintiff was discharged from custody, and not from the date on which the criminal charge was preferred. OBEDUL HOSSEIN *v.* GOLUCK CHUNDER [8 W. R., 443

2. ———— *Suit for damages for malicious statement—Cause of action.*—In an action for damages for making a false and malicious statement in consequence of which the Magistrate took proceedings in the course of which the plaintiff's house was searched, and he alleged he was thereby injured in various ways, the alleged false statement was found to have been made more than one year previous to the suit, and there was nothing to show that any of the resulting damage which would constitute a cause of action occurred within a year before the suit. *Held* that the action was barred by s. 1, cl. 2, Act XIV of 1859. The cause of action did not arise from the date of the plaintiff's discharge. *Obedul Hossein* v. *Goluck Chunder*, *8 W. R., 443*, distinguished. HARINARAYAN MAITI *v.* AJODHYA RAM SHI **1 B. L. R., S. N., 17 : 10 W. R., 308**

3. ———— *Malicious prosecution—Termination of prosecution—Presentation of revision petition against acquittal—Commencement of period of limitation.*—A suit for damages for malicious prosecution was brought more than one year from the date of the plaintiff's acquittal, but within a year from the dismissal of a revision petition which had been filed against the acquittal. On its being contended that the period of limitation should be calculated from the date of the dismissal of the revision petition, as the prosecution was only then terminated within the meaning of art. 23 of sch. II of the Limitation Act. *Held* that time began to run from the date of the acquittal. Whether it would be so in a case in which an appeal is preferred by Government against an acquittal—*Quære.* NARAYYA *v.* SESHAYYA . . **I. L. R., 23 Mad., 24**

———— **art. 24 (1871, art. 24; 1859, s. 1, cl. 2).**

———— *Cause of action—Suit for defamation.*—*Held* that the cause of action in a suit for damages on account of defamation of character, arises on the date of the publication of the letter containing the defamatory matter, and that a suit not instituted within one year from that date is barred by cl. 2, s. 1, Act XIV of 1859. MAHOMED IMDADALLY *v.* AMEER ALY . . **2 Agra, 47**

———— **art. 29 (1871, art. 30; 1859, s. 1, cl. 2).**

1. ———— *Wrongful seizure of goods—Injury to personal property.*—Wrongful seizure of goods under process of law was held to be not an "injury to personal property" within the meaning of cl. 2, s. 1, Act XIV of 1859. INDERCHUND *v.* NUNDEERAM SING . . . . . **Cor., 3**

But was governed by cl. 16 of the same section. NUSEEUTOOLLAH *v.* ROOP SONA BIBEE [7 W. R., 499

2. ———— *Suit for damages for detention of bullocks.*—Plaintiff's bullocks having been seized in execution of a decree obtained by defendant against third parties, plaintiff put in a claim and the bullocks were released on 15th January 1874. On 15th January 1875 plaintiff instituted an action for damages caused by the detention of the bullocks. *Held* that the case fell under Act IX of 1871, sch II, art. 30, and that the suit was barred by limitation. RAM SINGH MOHAPATTUR *v.* BHOTTRO MANJEE SONTHAL . . **24 W. R., 298**

3. ———— *Suit for money taken in execution of a decree—Compensation—Damages for loss of gain or interest upon money.*—A suit to recover money wrongly taken under a decree is a suit for compensation to which the limitation of one

year under art. 29 of Act XV of 1877, sch. II, applies. The same limitation under the same provision applies if, to the above demand, a claim be added to recover damages for the loss of gain or interest upon the money. JAGJIVAN JAVHERDAS *v.* GULAM CHAUDHRI . **I. L. R., 8 Bom., 17**

4. ——— *Mortgage—Presumption that person paying off a mortgage intends to keep the security alive—Power of Court to order refund of money wrongfully paid out of Court in another suit.*—In 1861 *B* granted a lease of his zamindari to *A* for 30 years, *A* undertaking to pay off all debts then due by *B*. *B* died in 1882, and his successor sued *A* and obtained a decree that on payment of R1,20,000 *A* should give up possession of the zamindari. This sum having been paid into Court, *A* lost possession of the zamindari. On January 5th, 1875, *A* had mortgaged the whole zamindari, which consisted of 22 villages, to *M* to secure a loan of R1,00,000 borrowed by *A* to pay off the debts of *B* which *A* undertook to pay in 1861. On June 27th, 1879, *A* being indebted to *M* in the sum of R1,78,000 paid *M* R1,00,000 and undertook to pay the balance out of the income of the estate, *M* releasing the 22 villages from the mortgage of January 5th, 1875. On June 28th, 1879, *A* executed a mortgage of the 22 villages to *L* to secure repayment of R1,30,000. Of this sum, R1,00,000 was borrowed to pay *M*, and R30,000 was a prior debt due by *A* to *L*. Of the R1,00,000 paid to *M*, R27,000 was specially applied to discharge so much of the charge created by the mortgage of January 5th, 1875. On January 30th, 1875, *A* borrowed from *S* R43,000 and mortgaged to her 10 of the 22 villages of the zamindari. In the suit brought by *B*'s successor against *A* to recover the zamindari *L* was a party, but *S* was not. In that suit *L* obtained an order for payment of R1,00,000 of the sum paid into Court by the zamindar. In a suit brought in 1885 by *S* against *L* to have her debt declared a first charge on the money paid into Court by the zamindar it was contended by *L* that *S* could have no decree for repayment of this sum, and that, if the money was wrongly paid under the order of the Court to *L*, it was wrongfully seized within the meaning of art. 29 of sch. II of the Limitation Act *Held* that the Court had power to order a refund, and that art. 29 of sch. II of the Limitation Act was not applicable. RUPABHAI *v.* AUDIMULAM . . **I. L. R., 11 Mad., 345**

——— art. 30 (1871, art. 36).

1. ——— *Suit for compensation for value of goods short delivered—Suit for breach of contract.*—The defendants were owners of a fleet of steamships plying periodically along the coast of British India by which they undertook to convey for freight parcels of goods for all persons indifferently from and to specified ports. In a suit against the defendants for compensation for the value of goods short, delivered,—*Held* that cl. 30, sch. II of the Limitation Act, would apply to the defendants; but that, as this suit was for breaches of the contracts to deliver, it was governed by cl. 115. *Semble*—Cl. 30, sch. II of the Limitation Act, applies to suits for compensation for loss or damage to goods arising from malfeasance, misfeasance, or nonfeasance independent of contract. BRITISH INDIA STEAM NAVIGATION COMPANY *v.* MAHAMMED ESACK & Co.

[I. L. R., 3 Mad., 107

2. ——— *Action against railway company for loss of goods.*—An action against a railway company for loss of goods, when there is no contract, is governed by sch. II, cl. 30, of the Limitation Act. *B. I. S. N Co.* v. *Mahammed Esack, I. L. R., 3 Mad., 107,* followed. KALU RAM MAIGRAJ *v.* MADRAS RAILWAY COMPANY **I. L. R., 3 Mad., 240**

3. ——— *Suit for value of goods carried by railway company, and lost—Railways Act (IV of 1879), s. 11—Claim for compensation for loss of goods.*—In January 1890, a box containing rupees was delivered by the plaintiffs to the defendant company in Bombay to be carried to Saugor. From the evidence it appeared that the plaintiffs did not intend to insure the box. The box was taken to the booking office at the station, and the parcel clerk asked what it contained, and was told that it contained coin, and he learned casually that the amount was R6,000. The clerk charged R18-1-0 for the box, which was the "treasure rate" for carriage. This sum was paid, and the box was duly despatched, but was lost or stolen in the course of transit. The plaintiffs sued to recover the R6,000. The defendants contended that, having regard to the provisions of s. 11 of Act IV of 1879, they were not liable, inasmuch as (1) the contents of the box had not been duly disclosed, nor (2) had an increased charge been paid. The plaintiffs obtained a decree in the lower Court. On appeal, *held* (reversing the decree) that the defendant company was not liable. *Per* BAYLEY, *J.*—That the claim of the plaintiffs was one against the defendants for compensation for losing goods, and fell within art. 30, sch. II of the Limitation Act (XV of 1877), and that, as this suit was not brought until after the expiration of two years from the date of the loss, it was barred by limitation. GREAT INDIAN PENINSULA RAILWAY CO. *v.* RAISETT CHANDMULL . . **I. L. R., 19 Bom., 165**

Reversing on appeal RAISETT CHANDMULL *v.* GREAT INDIAN PENINSULA RAILWAY CO.

[I. L. R., 17 Bom., 723

4. ——— *Carrier by railway—Loss—Non-delivery of goods—Onus of proof.*—Five hundred and sixty-three bags of grain were made over to the defendants at Cawnpore and Nagpur for carriage to Sholapur. All that was proved was that the defendants delivered to the plaintiff, the owner of the grain, 512 bags only, having previously obtained from his agent receipts for the full number as arrived at Sholapur. In a suit by the plaintiff to recover the price of the bags not delivered, brought after more than two, but within three, years of the time when the rest of the goods were delivered, the defendants claimed that the suit was barred by the provisions of art. 30 of sch. II of Act XV of 1877, as not having been brought within two years of the time "when the loss occurred." *Held* that mere

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non-delivery of the bags was no proof of their loss, the onus of proving which as an affirmative fact lay on the defendants before they could claim the benefit of the special limitation of two years provided in art. 30 of sch. II of Act XV of 1877; and that the suit, therefore, was in time. MOHANSING CHAWAN *v.* CONDER . . **I. L. R., 7 Bom., 478**

5. ———— **and art. 115**—*Bill of lading—Contract, Breach of, for delivery of goods—Onus of proof of loss of goods.*—Where a plaintiff brings a suit for breach of contract for non-delivery of goods under a bill of lading, it is not open to the defendants, after having denied receipt of the goods, to set up, or for the Court, after finding that the goods had been shipped but not delivered, to assume, without evidence, that the goods were lost, in order to bring the case within art. 30, sch. II of the Limitation Act of 1877. *Per* GARTH, *C.J.*—*Semble*—Where a plaintiff sues for breach of contract and proves his case, the three years' limitation would be applicable, although the defendants were to prove that the breach occurred in consequence of some wrongful act of theirs, to which the shorter limitation would apply. *Mohansing Chawan* v. *Conder, I. L. R., 7 Bom., 478,* and *British India Steam Navigation Company* v. *Mahammed Esack, I. L. R., 3 Mad., 107,* approved. DANMULL *v.* BRITISH INDIA STEAM NAVIGATION COMPANY . . **I. L. R., 12 Calc., 477**

1. ———— **art. 32**—*Suit for the removal of trees—Civil and Revenue Courts—Act XII of 1881, s. 93 (b).*—*Held* that a suit by a landholder for the removal of certain trees planted by the defendants upon land held by them as the plaintiff's occupancy-tenants was governed by art. 32, sch. II of the Limitation Act (XV of 1877). *Raj Bahadur* v. *Birmha Singh, I. L. R., 3 All., 85; Amrit Lal* v. *Balbir, I. L. R., 6 All., 68;* and *Kedarnath Nag* v. *Khetterpaul Sritirutno, I. L. R., 6 Calc., 341,* referred to. GANGADHAR *v.* ZAHURRIYA

[I. L. R., 8 All., 446

2. ———— *Suit for removal of trees*—A suit by a zamindar for removal of trees planted in certain waste land of his village by persons who had no right to plant them, is governed by art. 120, sch. II of the Limitation Act, and not by art. 32, sch. II of the Act. Where a defendant having a right to use property for a specified purpose perverts it to other purposes, and a suit has to be instituted for any relief in respect of any injurious consequences arising from such perversion, such a suit will be governed by art. 32, sch. II of the Limitation Act. *Gangadhar* v. *Zahurriya, I. L. R., 8 All., 446,* distinguished. MUSHARAF ALI *v.* IFTKHAR HUSAIN . . . **I. L. R., 10 All., 634**

3. ———— *Bengal Tenancy Act (VIII of 1885), s. 25, cl. (a), and s. 155—Suit for ejectment and removal of trees—Limitation Act (XV of 1877), sch. II, art. 120.*—Art. 32 of sch. II of the Limitation Act (XV of 1877) applies to a suit brought under cl. (*a*) of s. 25 and s. 155 of the Bengal Tenancy Act (VIII of 1885) for the ejectment of a tenant and removal of trees planted by him on land leased out for agricultural purposes. Art. 120 does not apply to such a case. *Kedarnath Nag* v. *Khetturpaul Sritirutno, I. L. R., 6 Calc., 341,* and *Gunesh Dass* v. *Gondour Koormi, I. L. R., 9 Calc., 147,* distinguished. SOMAN GOPE *v.* RAGHUBIR OJHA

[I. L. R., 24 Calc., 160
1 C. W. N., 223

4. ———— *Suit for removal of trees from tenant's holding—N.-W. P. Rent Act (XII of 1881), s. 93.*—*Held* that a suit by zamindars for the removal of trees planted by a tenant on his cultivatory holding was governed by the limitation prescribed in art. 32 of sch. II of the Limitation Act, 1877. *Gangadhar* v. *Zahurriya, I. L. R., 8 All., 446,* and *Musharaf Ali* v. *Iftkhar Husain, I. L. R., 10 All., 634,* referred to. JAI KISHEN *v.* RAM LAL . . . **I. L. R., 20 All., 519**

5. ———— *Bengal Tenancy Act (VIII of 1885), ss. 25 and 155—Suit to compel the defendant to fill up a tank and to pay compensation, or in the alternative for khas possession—Limitation Act, sch. II, arts. 120 and 143.*—In a suit brought by a landlord against a tenant where the primary relief sought was a mandatory injunction directing the defendant to fill up a tank excavated by him in contravention of the terms of the tenancy and to pay damages to the plaintiff for his wrongful act, and where the secondary relief sought was ejectment, the defence (*inter alia*) was that the suit was barred by limitation, inasmuch as it was brought more than two years after the excavation of the tank. *Held* that art. 32 of sch. II of the Limitation Act (XV of 1877) applied to the case, and the suit was barred by limitation. *Soman Gope* v. *Raghubir Ojha, I. L. R., 24 Calc., 160,* and *Gangadhar* v. *Zahurriya, I. L. R., 8 All., 446,* approved. SHAROOP DASS MONDAL *v.* JOGGESSUR ROY CHOWDHRY . . . . **I. L. R., 26 Calc., 564**

SAROOP DAS MONDOL *v.* JOGESHUR PAL CHOWDHRY . . . . . . **3 C. W. N., 464**

———— art. 34 (1871, art. 41).

———— *Suit for recovery of person of wife—Suits under Act XIV of 1859.*—Suits for the recovery of a wife's person were, under the Act of 1859, held to be governed by cl. 16 of s. 1 of that Act. BHUGNA *v.* GUNGOOA . . **2 Agra, 170**

———— **art. 35**—*Suit for possession of wife making wife defendant—Restitution of conjugal rights—Demand and refusal—Continuing cause of action—Limitation Act (XV of 1877), s. 23.*—Where a husband sued to recover possession of his wife making the wife herself the defendant to the suit,—*Held* it was in substance a suit for the restitution of conjugal-rights, and art. 35 of the Limitation Act (XV of 1877) applied. The demand and refusal, which form the starting point for limitation under art. 35, are a demand by the husband and refusal by the wife (or *vice versâ*) being of full age. A positive refusal on the part of the wife to return to her husband is not essential to the husband's cause of action. *Quære*—Whether in case of a refusal by a wife of full age to a demand made by her husband, that she should return to him, a suit by him for her recovery is barred under art. 35 of

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sch. II of the Limitation Act or falls within the purview of s. 23 as based on a continuing cause of action. FAKIRGAUDA *v.* GANGI **[I. L. R., 23 Bom., 307**

——— art. 36 (1871, art. 40).

1. ——— **and art. 23**—*False complaint to Magistrate—Attachment and detention of goods—Action for damages.*—On the 26th of July 1878, *A* complained to the Magistrate that *B* committed theft of his grain. The Magistrate, of his own motion, attached the grain on the 10th of August 1878, pending inquiry into the complaint, then proceeded with the inquiry, and dismissed the complaint, but continued the attachment pending the decision of the Civil Court to which he referred the parties. *A* in 1879 brought a suit against *B* to establish his title to the grain, which was finally rejected on the 21st of June 1880, and *B* recovered his grain on the 30th of September 1880, but in a damaged condition. *B*, on the 13th of November 1881, sued *A* for damages for wrongful detention of his grain, and its consequent deterioration in quality and value. *Held* that the date of the complaint was the date of the wrong, and limitation ran from that date, or, at the latest, from the date of the attachment, and that *B's* suit was therefore barred, whether the period applicable was one year under art. 23, or two years under art. 36, of sch. II of Act XV of 1877. MUDVIRAPA KULKARNI *v.* FAKIRAPA KENARDI **[I. L. R., 7 Bom., 427**

2. ——— *Suit to recover money paid into Court, but afterwards recovered from third person in execution of decree.*—A suit to recover money paid by defendant into Court which was payable to the plaintiff and which was afterwards recovered by the defendant in the execution of a decree against a third person under an order of the Court executing the decree, was a suit substantially for damages to which art. 26, sch. II of Act IX of 1871, applied, and was barred, the cause of action having arisen at the date of the taking by the defendant of the money claimed. DEBI DAS *v.* NUR AHMAD . . . . . . **7 N. W., 174**

3. ——— *Suit to set aside sale or for compensation—Boundaries erroneously described in sale proclamation—"Falsa demonstratio."*—On the 17th November 1877, a certain piece of land was sold within the boundaries of which, as described in the proclamation, another piece of land was included. The land was sold in execution of a decree obtained by the first defendant against defendants 2, 3, and 4, and was purchased by the plaintiff. The second piece of land was sold on the following day and purchased by defendant No. 5. On 28th November, the plaintiff applied to have the sale set aside and his money refunded unless he was put in possession of all the land included in the boundaries mentioned in the proclamation, but his application was refused and the sale confirmed on 20th July 1878. In a suit for possession of all the land or for return of his purchase-money with interest, it was contended, in the Courts below and on second appeal, that the plaintiff was, at any rate, entitled to damages or compensation because of the land as defined by the survey number proving to be of less acreage than that included in the boundaries, and the lower Court had held such a claim as barred also under art. 36, sch. II of the Limitation Act (XV of 1877). *Held* that the suit, regarded as one for compensation, was not barred, as three years had not elapsed since the confirmation of the sale when the suit was brought—art. 36 applying only to suits for compensation for tortious acts independent of contract. But the claim for compensation was not maintainable, as the property offered for sale was sufficiently identified by the description as "Survey No. 294, Pot No. 3, containing 24¾ gunthas," and the statement of boundaries, so far as it was inaccurate, might be properly regarded as *"falsa demonstratio."* MAHOMED SAYAD PHAKI *v.* NAVROJI BALABHAI **[I. L. R., 10 Bom., 214**

4. ——— **and art. 115**—*Shipping—Collision—Suit for damages for loss of ship by collision—Limitation in action of tort.*—A suit to recover damages for the loss of a ship caused by collision at sea is an action of tort founded upon the negligence of the defendant or his servants in the management of his vessel, and must be brought within two years under the provisions of art. 36 of sch. II of the Limitation Act (XV of 1877). From the provisions of arts. 36 and 115 of sch. II of the Limitation Act (XV of 1877), the intention of the Act appears to be that not more than two years should be allowed for bringing a suit founded on tort, except in certain well-defined particular instances. ESSOO BHAYAJI *v.* STEAMSHIP "SAVITRI" **[I. L. R., 11 Bom., 133**

5. ——— *Suit for damages for misappropriation of crops—Limitation Act (XV of 1877), sch. II, arts. 39, 48, 49, and 109.*—In a suit for damages for misappropriation of paddy grown on plaintiffs' land, on the allegation that the defendant had wrongfully and forcibly reaped and misappropriated the crops, defendants pleaded limitation of two years under art. 36 of sch. II of the Limitation Act (XV of 1877). *Held* by NORRIS and GHOSE, *JJ.* (RAMPINI, *J.*, dissenting), that the suit was not barred by limitation under art. 36. *Held* by NORRIS, *J.* (without expressing any opinion on the applicability or otherwise of arts. 39, 49, and 109), that all the conditions existed in this case to bring it within art. 48 of sch. II of the Limitation Act. *Essoo Bhayaji* v. *Steamship "Savitri," I. L. R., 11 Bom., 133,* referred to. *Held* by GHOSE, *J.*—Regarding the suit as one for compensation for the wrongful act on the part of the defendants in cutting the crops on the plantiffs' ground, art. 39 would save a portion of the plantiffs' claim from being barred by limitation. If, however, it is regarded simply as a suit for damages for carrying away and misappropriating the crops, the case would fall under art. 49. *Pandah Gazi* v. *Jennuddi, I. L. R., 4 Calc., 665,* dissented from. *Puddolochan Pardan* v. *Baidyanath Maity,* Rule 381 of 1894, decided, 22nd August 1894, followed. *Held* by RAMPINI, *J.*—None of the arts. 39, 49, and 109 applied to this case, and the suit was barred by

the provision of art. 36. Surat Lall Mondal *v.* Umar Haji . . **I. L. R., 22 Calc., 877**

6. ———— *Suit for damages for cutting and carrying away crops—Act XV of 1877, sch. II, arts. 39, 48, 49, and 109.*—In a suit for damages for cutting and carrying away crops,—*Held* by the Full Bench (Rampini, *J.*, dissenting) such suit does not come within the terms of art. 36 of sch. II of the Limitation Act (XV of 1877). *Per* Maclean, *C.J.* (Trevelyan, *J.*, concurring)—Assuming that the case does not come within the terms of art. 39, the case is governed by art. 49. The crops, though immoveable in the first place, become specific moveable property when severed, and the fact that the severance was a wrongful act, does not make any difference. *Per* Macpherson, *J.*—The case is governed by art. 49 or 48, as the crops, after they had been cut, come under the description of specific moveable property. Possibly also the case might be brought under art. 109, if it is not brought under art. 39. *Per* Ghose, *J.*—Art. 49 applied to this case. *Surat Lall Mondal* v. *Umar Haji, I. L. R., 22 Calc., 877,* followed. *Per* Rampini, *J.* (*dissentiente*)—The suit as framed not being one for compensation for trespass, art. 39 does not apply. Art. 48 or 49 also does not apply, as they deal with property which is *ab initio* moveable and cannot be held applicable unless the first wrongful act, *viz.*, the conversion of the immoveable into moveable property, be disregarded. Art. 109 also does not apply, as it referred to a case in which possession of immoveable property was withheld. Art. 36 therefore applied to the case. *Essoo Bhayaji* v. *Steamship "Savitri," I. L. R., 11 Bom., 133,* referred to. *Pandah Gazi* v. *Jennudi, I. L. R., 4 Calc., 665,* dissented from by Trevelyan, *J.* Mangun Jha *v.* Dolhin Golab Koer . . . . **I. L. R., 25 Calc., 692**
[2 C. W. N., 265

7. ———— *Proceeding under Companies Act (VI of 1882), s. 214—Compensation against directors.*—The special proceeding provided for by s. 214 of Act VI of 1882 is not subject to the limitation prescribed by art. 36 of sch. II of the Limitation Act. Connell *v.* Himalaya Bank
[I. L. R., 18 All., 12

8. ———— *Application by liquidator for money improperly distributed to shareholders.*—An application was made in 1894 under the Companies Act of 1882, s. 214, by an official liquidator appointed in 1891, praying that the directors of the company in liquidation be ordered to pay over to him a sum of money which had been improperly distributed among the shareholders. *Held* that art. 36 of the Limitation Act was not applicable, and that the application was not barred by limitation. Ramasami *v.* Streeramulu Chetti
[I. L. R., 19 Mad., 149

9. ———— *Chairman of Municipal Council—Principal and agent—Liability for embezzlement by manager.*—During the tenure of his office by the Chairman of a Municipal Council, the manager embezzled sums of money. On the Council, within three years, but more than two years thereafter, suing its late chairman to recover the amount lost by reason of the embezzlement on the ground that he was liable as its agent,—*Held* that the relation of principal and agent did not exist, and that therefore arts. 89 and 90 of sch. II to the Limitation Act did not apply; that the case was governed by art. 36, and that the suit was therefore barred by limitation. Srinivasa Ayyangar *v.* Municipal Council of Karur . **I. L. R., 22 Mad., 342**

———— **art. 37 (1871, art. 31).**

See Prescription—Easements—Rights of Water . **I. L. R., 6 Calc., 394**

The period for a suit for obstructing a water-course is changed from two to three years by the Act of 1877.

———— *Suit for obstructing water-course.*—Under the Act of 1859, a suit for obstructing a water-course was held to be governed by the general limitation of six years under s. 1, cl. 16, of that Act, or if the plaintiff were out of possession, by the limitation of twelve years. Buddun Thakoor *v.* Sunker Doss . . . **W. R., 1864, 106**

Viswambhara Rajendra Deva Garu *v.* Saradhi Charana Samantaraya Garu . **3 Mad., 111**

———— **art. 39 (1871, art. 43).**

1. ———— *Suit for compensation for trespass to land—Right to declaratory decree.*—A person whose right to land has been disputed, and who has obtained an order, under Ch. 40 of the Code of Criminal Procedure, 1872, from a Magistrate, declaring him entitled to retain possession, is entitled to sue for a declaration of his right to the land. Plaintiff sued on the 9th February 1880 for compensation for loss of crops caused by the defendants' taking possession of his well in January 1877. The District Judge on appeal dismissed the suit on the ground that time began to run against the plaintiff from January 1877, and that the claim was barred by s. 36, 37, 39, or 40 of sch. II of the Limitation Act, 1877. *Held* that the plaintiff was entitled to sue for compensation for the trespass within three years from the date on which the defendants' possession ceased, and that the defendants were liable for any loss suffered within three years preceding the date of the suit. Narasimma Charya *v.* Ragupathi Charya
[I. L. R., 6 Mad., 176

2. ———— *Right of caste to exclusive worship—Infringement of right.*—Four persons of the Chitpavan caste brought a suit in 1876, alleging that they and the members of their caste, in common with certain other castes, possessed the exclusive right of entry and worship in the sanctuary of a temple, and that the defendants, members of the Palshe caste, not being of the privileged castes, infringed that right in 1871 and thereafter by entering the sanctuary and performing worship therein. They prayed for a declaration of their right and an injunction restraining the defendants from interfering with it. The defendants contended (*inter alid*) that the suit was barred by the law of limitation. *Held* that the suit was not

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barred by art. 43 of sch. II of Act IX of 1871, and that nothing in the law of limitation prevented the establishment of such a right as that denied, merely because the first act of interference with it was more than a stated number of years ago. Such acts are not continuous like possession, and their only operation is to create, where often and consistently repeated during a long period, a presumption of their lawful origin. ANANDRAV BHIKAJI PHADKE *v.* SHANKAR DAJI CHARYA . . **I. L. R., 7 Bom., 323**

3. ——— **and art. 143**—*Suit for damages for trespass—Suit to recover immoveable property from trespasser.*—The limitation of three years provided in cl. 43, sch. II of the Limitation Act (IX of 1871) applies only to suits for damages on account of trespass, and not to suits to recover immoveable property from a trespasser, for which the period of limitation is twelve years, as provided by cl. 143. JOHARMAL *v.* MUNICIPALITY OF AHMEDNAGAR . . . **I. L. R., 6 Bom., 580**

4. ——— *Suit to have drain closed —Cause of action.*—The cause of action in a suit in which the plaintiff claimed to have a drain closed on the ground that it passed through his land, was held to count from the last act of trespass, each act of trespass causing a fresh right of action, and that the suit was not barred by cl. 16, s. 1, Act XIV of 1859. RAMPHUL SAHOO *v.* MISREE LALL . **24 W. R., 97**

——— **art. 40 (1871, art. 11: 1859, s. 1, cl. 2).**

——— *Suit for account of profits—Infringement of patent—Copyright Act (XX of 1847), s. 16—Patent Act (XV of 1859), s. 22.*—In a suit for an account of profits obtained by the infringement of an exclusive privilege, the period of limitation, the taking of an account being only a mode of ascertaining the amount of damages, is the same as the period of limitation for an action for damages on the same ground, *viz.*, the period prescribed by art. 11, sch. II, Act IX of 1871. KINMOND *v.* JACKSON **[I. L. R., 3 Calc., 17**

——— **art. 42.**

There was no special provision under the former Acts, 1859 and 1871, for damages caused by a wrongful injunction.

——— *Suit for damages caused by wrongful injunction.*—It was under the Act of 1859 doubted whether such a suit was governed by cl. 2, s. 1 of that Act, the Court inclining to the opinion that it was not. NANDA KUMAR SHAHA *v.* GOUR SANKAR **[5 B. L. R., Ap., 4: 13 W. R., 305**

Under both the former Acts, therefore, the general limitation of six years would probably have been applicable: now under art. 42 of the present Act, the period is three years from the cessation of the injunction.

——— **art. 44**—*Suit for possession by a person on attaining majority of property sold by guardian.*—A suit by a person to recover possession of land sold by his guardian during his minority without legal necessity is governed by art. 44, sch. II of the Limitation Act, and must be brought within three years from the time when the minor attains majority. SATIS CHANDRA GUHA *v.* CHUNDER KANT PYNE **[3 C. W. N., 278**

——— **art. 45 (1871, art. 44; 1859, s. 1, cl. 6).**

1. ——— *Assessment for revenue or rent, Order for—Award.*—An assessment for revenue or rent by a Collector was not a judicial award within the meaning of cl. 6 of s. 1, Act XIV of 1859. The term "award" as used in that clause means an adjudication on rights as between rival claimants, made by a Revenue officer under the judicial powers conferred by the regulations mentioned in such clause. HUREE MOHUN GHOSAUL *v.* GOVERNMENT **[2 N. W., 226**

2. ——— *Judicial award—Proceeding of Settlement officer as to cess.*—*Held* that the proceeding of the Settlement officer representing a cess as a source of income to the zamindar was not a judicial award, and the limitation provided in cl. 6, s. 1, Act XIV of 1859, was not applicable to a suit to set aside that proceeding. RAM CHUND *v.* ZAHOOR ALI KHAN . . . . . **1 Agra, 134**

3. ——— *Order of Revenue authorities as to registration of names.*—*Held* that an order passed by Revenue authorities for entry of names in a proprietary register, not being passed after a trial in a suit of the nature referred to in cl. 2, s. 23, Regulation VII of 1822, was not an order in a suit to which the term of limitation mentioned in cl. 6, s. 1, Act XIV of 1859, applies. MADHO SINGH *v.* JEHANGEER **[2 Agra, 229**

4. ——— *Award of Revenue Court —Judicial award—Limitation Act, 1859, s. 1, cl. 6.*—Cl. 6 of s. 1 of Act XIV of 1859 applies only to a judicial award, and not to a determination by the Revenue Courts of a purely executive character. *Madho Singh* v. *Jehangeer, 2 Agra, 229; Hurree Mohan Ghosal* v. *Government, 2 N. W., 226;* and *Sukhai* v. *Daryai, I. L. R., 1 All., 374,* referred to. KRISTO MONI GUPTA *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL . . **3 C. W. N., 99**

5. ——— *Entry made by Settlement officer.*—An entry made by a Settlement officer in the report of a co-sharer and on the strength of the report of the patwari and canoongoe in the absence of the party against whom it is made, was not an award within the provisions of s. 1, cl. 6, of Act XIV of 1859. KINHAR DANSHA *v.* GOKURUN **3 Agra, 316**

6 ——— *Suit to contest adjudication of boundaries by Revenue Court under Act I of 1847.*—An adjudication of the boundaries by the Revenue authorities under Act I of 1847 is not final and conclusive, but is, like any other judicial award made under Regulation VII of 1822, open to question by regular suit in the Civil Court within three years (cl. 6, s. 1, Act XIV of 1859). SUJJAD *v.* SAHIT ALI . . . . . . **3 Agra, 140**

7. ——— *Order of Collector with reference to rights of parties already determined.*—Where the relative rights of the parties as landlord and tenants were determined by competent authority and the matter referred for decision of the Collector was to commute the rents paid in kind into money rents, and that officer in so doing decided the rights of the parties declaring the tenants sub-proprietors and directing them to pay at the revenue rates with an addition of 5 per cent. allowance to the landlord,—*Held* that the order of the Collector was not an award of the nature contemplated by cl. 6, s. 1, Act XIV of 1859. BUNSEE *v.* RAMSOOKH . **3 Agra, 384**

8. ——— *Suit to set aside partition.*—A suit to avoid a batwara division by the Collector may be brought within six years; s. 1, cl. 6, of Act XIV of 1859 does not apply to it. OODOY SINGH *v.* PALUCK SINGH . **16 W. R., 271**

9. ——— *Suit to vary boundaries in survey award.*—A suit substantially to vary the boundaries laid down in a survey award must be brought within three years from the date of the award. JANKEERAM MOHUNT *v.* HARADHAN BANERJEE

[W. R., 1864, 38

10. ——— *Act of 1871, art. 44—Proceedings by Settlement officer to decide possession—Award—Beng. Reg. VII of 1822.*—*D* died in 1860 leaving him surviving his first wife *G*, his second wife *B*, his mother *R*, and *M*, his son by a woman to whom he had been married by the "gandharp" form of marriage. On *D*'s death, *G*'s name was registered in the record of rights in respect of his proprietary rights in a certain village. In 1871 *G* died, and on her death *B*, *R*, and *M* preferred separate claims to have their names registered in respect of such rights. The Assistant Settlement officer before whom these claims came for decision, professing himself unable to decide which of the claimants was in possession, and observing that it was not shown that possession was joint, referred the case to the Settlement officer. The Settlement officer, without making any inquiry, disposed of the case on the evidence taken by the Assistant Settlement officer, and held that the claimants were in joint possession of such rights, and it was proper that the name of each should be registered in respect of a one-third share of such rights. He at the same time intimated to the parties that, unless they settled their claims in the Civil Court or by arbitration before the khewat was framed, it would be framed as he had directed. In 1873 *R* died, and on her death *M* procured the registration of his name in respect of her one-third share. In 1879 *B* sued *M* for possession of the one-third share which he had obtained under the proceeding of the Settlement officer, and of *R*'s one-third share, claiming as heir to her deceased husband *D*, and alleging that *M* was not the legitimate son of *D*, and was therefore not entitled to succeed to such rights. *M* set up as a defence that, as the proceeding of the Settlement officer was an award under Regulation VII of 1822, and the suit was one to contest such award, and it had not been brought within three years from the date of such award, the suit was barred by limitation. *Held* that the suit was not barred by limitation under No. 44, sch. II of Act IX of 1871, or No. 45, sch. II of Act XV of 1877, as the proceeding of the Settlement officer was not an award under Regulation VII of 1822. BHAONI *v.* MAHARAJ SINGH

[I. L. R., 3 All., 738

11. ——— *Application of section.*—Cl. 6, s. 1, Act XIV of 1859, provides that possessory titles by virtue of awards under the regulations there mentioned shall become final unless questioned within three years; but that will not enable a person to come in within three years after the date of such awards and recover possession of lands in respect of which his suit has been barred by the other provisions of the law of limitation. BEER CHUNDER JOOBRAJ *v.* RAMGUTTY DUTT . . . **8 W. R., 209**

12. ——— *Settlement award—Beng. Reg. VII of 1822.*—On a Collector proceeding to settle a mortgaged estate, both mortgagee and mortgagor appeared before him and contended for the right of settlement. His award under Regulation VII of 1822 was in favour of the mortgagee in possession on the ground that the period of redemption had expired, and he settled the estate with him. *Held* that, as the mortgagor allowed that award to remain unchallenged for three years, it became binding under cl. 6, s. 1, Act XIV of 1859. SREECHUND BABOO *v.* MULLICK CHOOLHUN . . . . . . **9 W. R., 564**

13. ——— *Act XIII of 1848—Suit to contest award—Suit to amend settlement—Cause of action.*—The limitation declared by Act XIII of 1848, and cl. 6, s. 1, Act XIV of 1859, applied only to suits for the purpose of contesting the justice of an award as between the contending parties, and not to those the object of which was to amend a settlement and establish the right of persons who were not before the Collector. *Held* that the cause of action to the plaintiff did not accrue from the date of the orders of Government directing to discontinue the payment of malikana, but from that of the Collector's by which it became known to the plaintiff that he would henceforth be deprived of his proprietary title. HIMMUT SINGH *v.* COLLECTOR OF BIJNOUR

[2 Agra, 258

14. ——— *Survey award, Appeal from—Co-sharers.*—*A* and *B* were similarly affected by a survey award. *A* appealed, but *B* did not. *Held*, in a suit by *B* and his co-sharers to set aside the award, that *B* could not compute the period of limitation from the date of the order on *A*'s appeal. *Held* also that *B*'s co-sharers, though they did not appear in the proceedings of award, were bound, if they sued at all, to sue within the three years prescribed by the law. TULSIRAM DAS *v.* MOHAMED AFZAL *alias* MIRZA

[1 B. L. R., A. C., 12: 10 W. R., 48

15. ——— *Survey award—Suit for reversal of, and for possession.*—Where *A* sued for reversal of a survey award, and for recovery of possession, alleging dispossession subsequent to the date of the award,—*Held* that his suit was not barred by reason of its being brought beyond three years from the date of the award. MOZAFFUR ALLY *v.* GIRISH CHANDRA DAS

[1 B. L. R., A. C., 25: 10 W. R., 71

16. ———————— *Order of Board of Revenue under Beng. Reg. VII of 1822—Suit for possession and declaration of title.*—An order of the Board of Revenue under Regulation VII of 1822, declaring a particular person entitled to a settlement of certain lands, is no ground for declaring a third person, who was no party to those settlement of proceedings in any stage, debarred under art. 44, sch. II of Act IX of 1871 (corresponding with art. 45, sch. II of Act XV of 1877), from bringing a suit to establish his title to, and to recover possession of, the lands after three years and within the general law of limitation. KANTO PROSAD HAZARI *v.* ASAD ALI KHAN

[5 C. L. R., 452

See SHIBO DOORGA CHOWDHRAIN *v.* HOSSEIN ALI CHOWDHRY . . . . 6 W. R., 218

17. ———————— *Cause of action, Date of.*—*A* appealed from the award of a Survey officer to the Commissioner, who summarily rejected the appeal. The order of the Commissioner was confirmed by the Board of Revenue without entering into the merits. *Held* that the period of limitation ran from the date of the order of the Board of Revenue. KRISHNA CHANDRA DAS *v.* MAHOMED AFZAL

[1 B. L. R., A. C., 11: 10 W. R., 51

——— art. 46 (1871, art. 45; 1859, s. 1, cl. 6).

1. ———————— *Order of Settlement officer —Award.*—An order of a Settlement officer upon an enquiry made at the instance of the zamindar, and for the purpose of the preparation of the record, in the course of which enquiry information was given both in support of and against the zamindar's claim to a cess, was not an award of the nature contemplated by cl. 6, s. 1, Act XIV of 1859, and the three years' period of limitation was inapplicable to a suit to assert such claim. MAHOMED ALI KHAN *v.* OMRAO SINGH . . . . . . 2 N. W., 425

2. ———————— *Suit for possession—Boundaries—Partition.*—In a suit by the purchaser of one estate to recover certain lands alleged to belong to his estate, which the defendants held as a part of another estate, the plaintiff needlessly prayed that a certain order passed in the cause of the batwara of the defendant's estate should be set aside. As the defendant failed to show that the Collector, in laying down the boundaries of the estate then under batwara, was proceeding under Regulation VII of 1822,—*Held* that the map made by him in carrying out the batwara of another estate was not an award binding on the defendant, and that the case therefore was not barred by limitation under cl. 6, s. 1, Act XIV of 1859. RUGHOOBUR SINGH *v.* HURREE PERSHAD . . . . 6 W. R., 75

3. ———————— *Survey award—Suit for possession—Res judicata.*—In a thakbust map land was demarcated as belonging to *A*. *B* claimed that it belonged to him jointly with *A*. On 18th November 1858, the map was rectified by demarcating the lands to *A* and *B* jointly. *B* afterwards brought a suit against *A* in the Munsif's Court to recover the value of some mangoes which grew on two plots of the land in question; and it was decided on 12th December 1864 in favour of *B* on the ground that the plots belonged to *A* and *B* jointly. On 11th December 1865, *A* brought his suit against *B* for a declaration of right and confirmation of possession, to set aside the survey award, and for amendment of the thakbust map. *A* alleged that he was no party to the thakbust proceedings, and that he had been in possession ever since. *Held* (overruling the decision of the Courts below) that the suit was barred, so far as it asked to have the thakbust map amended, under cl. 6 of s. 1, Act XIV of 1859; and that a suit by a person in possession to have his title confirmed was not a suit to recover property within cl. 6 of s. 1, and was not barred by reason of its not being brought within three years from the date of the award. MAHIMA CHANDRA CHUCKERBUTTY *v.* RAJKUMAR CHUCKERBUTTY

[1 B. L. R., A. C., 1: 10 W. R., 22

4. ———————— *Award of Settlement officer.*—Where a claim to the proprietary rights was preferred by the plaintiffs at the time of settlement, and the Settlement officer, on the objection of the defendants, ordered the plaintiffs to be recorded as hereditary cultivators, and referred them to the Civil Court to establish their right,—*Held* that the present suit, brought to establish that right not having been instituted within three years from the date of the award of the Settlement officer, was barred by limitation. SURDAR KHAN *v.* CHUNDOO . 1 Agra, 228

5. ———————— *Award of Settlement officer.*—*Held* that the plaintiffs' claim to lands awarded to defendant in settlement proceedings was not barred by the period of limitation provided in cl. 6, s. 1, Act XIV of 1859, as they were no parties to the settlement proceedings and no judicial award or order affecting them was passed by the Settlement officer. RAMAISHER SINGH *v.* SHAIVA ZALIM SINGH

[2 Agra, 8

6. ———————— *Settlement award—Beng. Reg. VII of 1822.*—A Settlement officer by a certain proceeding recognized the plaintiffs' right to the property in suit, and, declaring them not to be clearly shown to be out of possession of it, ordered their names to be recorded in the proprietary register. The plaintiffs subsequently brought a suit for establishment and declaration of right to partition and possession of the property. *Held* that the proceeding of the Settlement officer was undoubtedly an award under Regulation VII of 1822, and that, as the plaintiffs sued for possession, and did not allege that they had been dispossessed since the award, thus raising the presumption that they were not in possession at the time, and as their suit was in substance and effect a suit to recover property comprised in an award, the suit was barred by limitation, not having been instituted within three years. GUNESHEE LALL *v.* TEKAM KOER . . . . . . 5 N. W., 78

LIMITATION ACT, 1877—*continued.*

———— art. 47 (1871, art. 46; 1859, s. 1, cl. 7).

1. ———— *Suit for property respecting which no final award is made.*—A suit to recover property respecting which no final award has been passed under Act IV of 1840 was not barred by limitation, under cl. 7, s. 1, Act XIV of 1859, but might be brought within twelve years from the date of ouster. DYRAM SAHOO *v.* SOGRAH **3 W. R., 174**

2. ———— *Verbal order of Magistrate under Act IV of 1840.*—*Held* that a verbal order of the Magistrate under Act IV of 1840 cannot be regarded as an order or award within the meaning of the term of cl. 7, Act XIV of 1859. GUNGA PERSHAD *v.* MAHOMED KOOTOOB ALUM **2 Agra, 27**

3. ———— *Order in suit under Act IV of 1840—Benamidar.*—*N*, in 1852, purchased from *R* a patni talukh in the name of *H*. In 1854 *N* died, leaving two sons, one of whom was *K*, and a widow. The sons allowed the widow to remain in possession. In December 1854 *R* made a complaint before the Magistrate, under Act IV of 1840, against *H K* and others, stating that they had dispossessed him of the talukh on 27th December, and the Magistrate thereupon ordered *H* and the other defendants except *K* to put *R* in possession. On 12th January 1855, *R* obtained possession and sold the property. On 28th December 1866 *K* and his brother sued *H R* and the purchaser to recover possession. *Held* (reversing the decision of the Courts below) that the suit was not barred by s. 1, cl. 7, of Act XIV of 1859. The mere fact that the Act IV award was passed against *H*, a benamidar of the plaintiffs, was not sufficient to show that they were bound by that award unless evidence was given that they gave authority to *H*, express or implied, to act in the matter on their behalf. KHAGENDRONATH MALIK *v.* RAKHAL DAS SIRKAR **[2 B. L. R., S. N., 1**

4. ———— *Order of Magistrate for attachment.*—Where a Magistrate passed an order for attachment on the finding that neither of the parties then at issue was in possession,—*Held* that it was not an order respecting possession within the meaning of cl. 7, s. 1, Act XIV of 1859, and therefore the limitation provided by that clause was not applicable. CHUJ MULL *v.* KHYRATEE **[3 Agra, 65**

5. ———— *Order dismissing complaint under Act IV of 1840.*—A Magistrate's order dismissing a complaint under Act IV of 1840, on finding that complainant had not been forcibly dispossessed, was not a binding award to which cl. 7, s. 1, Act XIV of 1859, would apply. HURRONATH CHOWDHRY *v.* HUREE LALL SHAHA . . **11 W. R., 477**

6. ———— *Order to record letter settling proceedings.*—Where the result of certain proceedings under Act IV of 1840 was a letter from the Judge directing the Magistrate to leave certain maliks not in possession of a certain dearah in dispute to their civil remedy, and the Magistrate ordered the Judge's letter to be put with the record,—*Held* that such order was not an order in the sense of Act XIV of 1859, s. 1, cl. 7. MOSAHEB ALI *v.* NUND KISHORE . . . **20 W. R., 316**

7. ———— *Act XIV of 1859, s. 1, cl. 7—Order as to possession under Criminal Procedure Code, 1861, s. 318.*—It was held under s. 1, cl. 7, of the Act of 1859, that that clause did not apply to an order as to possession under the Criminal Procedure Code, s. 318. DOORJUN SINGH *v.* SHIBBA **[3 N. W., 171**

GOBIND CHUNDER SHAHA *v.* ASHRUF ALI MEAH. GREGORY *v.* GOURDOSS SHAHA . **8 W. R., 490**

UNDHOOB NARAIN *v.* CHUTTURDHAREE SINGH **[9 W. R., 480**

and the twelve years' limitation was held to apply to such cases, but the Acts of 1871 and 1877 make the articles corresponding to s. 1, cl. 7, specially applicable to the Criminal Court's order as to possession under the Criminal Procedure Codes.

8. ———— *Order under Criminal Procedure Code, 1861, s. 319—Order of attachment.*—The plaintiff sued for the establishment of his proprietary right to, and possession of, a certain ghat, or bathing place. The lower Courts held that the suit was barred by limitation under cl. 46, sch II, Act IX of 1871, the suit not having been brought within three years from the date on which the Magistrate, acting under Ch. XVIII of Act XXV of 1861, passed an order directing that the plaintiff and one of the defendants to the suit should put in personal recognizances of R500 each, and that the tehsildar should warn the parties not to go near the bathing place until a competent Court had settled the quarrel between them: the lower Courts being of opinion that the latter portion of the order amounted to an attachment of the property in dispute under s. 319 of Act XXV of 1861. It was held that the order to the tehsildar was not an attachment contemplated by that section. DURGA *v.* MANGAL **[7 N. W., 35**

9. ———— *Suit for possession of chur lands re-formed after diluvion—Order for possession in Criminal Court.*—Certain chur lands, which had been submerged, having re-formed, were claimed by a number of parties. In a proceeding under s. 318 of Act XXV of 1861, the Magistrate in January 1871 directed possession to be given to certain persons known as the Roys. In 1872 the present appellants instituted a suit against the Roys to set aside the order of the Magistrate, and on the 16th December 1873 obtained a decree in the High Court, under which possession was given on the 10th July 1874. In 1874, more than three years after the Magistrate's order, the plaintiffs instituted two suits against the Roys and the appellants for possession of the lands made over to the latter under the decree of 1873,—*Held* that these suits were not barred by limitation under art. 46, sch. II of the Limitation Act (IX of 1871) (*cf.* Act XV of 1877, sch. II, art. 47). That article can only apply between the parties whose possession has been confirmed by the Magistrate, and each one of the parties to that proceeding who claimed against them. It does not apply in favour of one of the parties who has subsequently succeeded by

regular suit in ousting the parties put in possession by the Magistrate. *Durgaram Roy* v. *Nursing Deb, 2 B. L. R., A. C., 254;* and *Chintamoni* v. *Iswar Chunder, 3 B. L. R., Ap., 122,* cited. AUKHIL CHUNDER CHOWDHRY *v.* DELAWAR HOSSEIN

[6 C. L. R., 93

10. ———— *Order of Criminal Court as to possession—Parties bound by order—Criminal Procedure Code (1882), s. 145.*—The limitation of three years prescribed by art. 47, sch. II of the Limitation Act (1877), applies to all persons bound by, or parties to, an order under s. 145 of the Criminal Procedure Code, and to any other persons who may claim the property through any such persons under a title derived subsequent to the order. *Aukhil Chunder Chowdhry* v. *Mirza Delawar Chowdhry, 6 C. L. R., 93,* distinguished. JOGENDRA KISHORE ROY CHOWDHRY *v.* BROJENDRA KISHORE ROY CHOWDHRY . **I. L. R., 23 Calc., 731**

11. ———— *Criminal Procedure Code, 1861, Ch. XXII, s. 320—Order of Criminal Court as to possession.*—A dispute having arisen between plaintiff and defendant as to the ownership of certain landed property, the Magistrate, being informed of the dispute, held an inquiry under the provisions of Ch. XXII, Act XXV of 1861, and, finding himself unable to "determine who was in actual possession of the lands," placed them in charge of the Sub-Magistrate. *Held* that this was not an order respecting "the possession of property," but an attachment proceeding recorded because the Magistrate was unable to determine which party was in possession. The limitation of three years prescribed by the 46th clause of sch. II of Act IX of 1871 was therefore inapplicable. AKILANDAMMAL *v.* PERIASAMI PILLAI

[I. L. R., 1 Mad., 309

12. ———— *Possession, Suit for—Order of Criminal Court for possession.*—In a dispute between *A* and *B* concerning the possession of a certain talukh, the Criminal Court made an order under s. 530 of the Code of Criminal Procedure retaining *B* in possession; and this order was, in a proceeding under ss. 295, 296 of the Code of Criminal Procedure, confirmed by the Court of Session. *Held* that a suit by *A* for the recovery of the land must be brought within three years from the date of the Magistrate's order, and not from the date of the order passed by the Court of Session. Art. 47 of sch. II, Act XV of 1877, refers to immoveable as well as moveable property. KANGALI CHURN SHA *v.* ZOMURRUDONNISSA KHATOON

[I. L. R., 6 Calc., 709 : 8 C. L. R., 154

See AKILANDAMMAL *v.* PERIASAMI PILLAI

[I. L. R., 1 Mad., 309

13. ———— *Criminal Procedure Code (Act X of 1882), s. 146—Suit for possession of property attached by a Magistrate under s. 146.*—Art. 47 of the second schedule to Act XV of 1877 does not apply to a suit brought by one of the two claimants against the other to recover possession of property which has been attached by a Magistrate under the provision of s. 146 of the Code of Criminal Procedure. *Chuj Mull* v. *Khyratee, 3 Agra, 65,* and *Akilandammal* v. *Periasami Pillai, I. L. R., 1 Mad., 309,* referred to. GOSWAMI RANCHOR LALJI *v.* GIRDHARIJI

[I. L. R., 20 All., 120

14. ———— and art. 144—*Ejectment, Right to sue in—Order made in proceeding where a dispute exists concerning the possession of land—Criminal Procedure Code (Act X of 1872), s. 530—Criminal Procedure Code (Act X of 1882), s. 145.*—A zamindar on the 3rd May 1876 agreed to let lands on lease to *A* and his co-sharers, who, on the zamindar's failure to carry out the terms of the agreement, brought a suit for specific performance and obtained a decree against him in 1879. The zamindar having neglected to perform the agreement, the Court in December 1881 made an order for the execution of a pottah, and directed that the pottah should take effect from the date of the original agreement. The pottah was executed on the 19th December 1881. In 1880 *A* instituted a proceding under s. 530 of the Criminal Procedure Code (X of 1872), which corresponds with s. 145 of Act X of 1882; but the application was dismissed in December 1880, *A* having failed to establish possession. *B,* having purchased the interests of two of the co-sharers, instituted a suit on the 11th May 1888 against certain persons who had been let into possession by the zamindar, the other co-sharers being added as plaintiffs. *Held* that art. 47, sch. II of the Limitation Act, did not apply, no right to sue in ejectment being in existence in December 1880, the right with which *A* was clothed under the decree not having been perfected till December 1881 when the pottah was executed. *Held* further that the suit was not barred under art. 144, as limitation did not commence to run until the pottah had actually been executed. Art. 47 of the Limitation Act contemplates a right to sue in ejectment being in existence at the time of the passing of an order under s. 145 of the Code of Criminal Procedure. BOLAI CHAND GHOSAL *v.* SAMIRUDDIN MANDAL . . . **I. L. R., 19 Calc., 646**

15. ———— *Khoti Act (Bom. Act I of 1880), ss. 20, 21, 22—Decision of Survey officer as to nature of tenure—Date of framing botkhat.*—The plaintiffs were khots and defendants were their yearly tenants in occupation of their khoti khasgi lands. In 1890 the Survey officer, purporting to act under s. 20 of the Bombay Khoti Act (Bombay Act I of 1880), decided that defendants were occupancy tenants, but the plaintiffs did not come to know of this decision till 1893, when the botkhat was prepared and signed. Shortly afterwards the plaintiffs took forcible possession of the lands. Thereupon the defendants filed a suit in the Mamlatdar's Court to recover possession, alleging that they were owners of the land, and that they had been illegally dispossessed. The Mamlatdar restored them to possession. In 1896 plaintiffs filed the present suit to eject defendants. Defendants pleaded (*inter alia*) that the suit was bad for want of notice to quit, and that the claim was time-barred. *Held* that the suit was within time, the cause of action having accrued in 1893, when the botkhat was prepared, and not in 1890, when the Survey officer passed his decision. MAHIPAT RANE *v.* LAKSHMAN

[I. L. R., 24 Bom., 426

16. ——— *Limitation Act (XIV of 1859), s. 1, cl. 7—Order of Mamlatdar's Court as to possession—Bom. Reg. V of 1827—Limitation Act (IX of 1871), s. 29; (XV of 1877) s. 28—Extinction of title—Bar of remedy—Statutes of limitation—Construction of statutes.*—In 1864 *A* sued his co-sharer *B* in the Mamlatdar's Court for possession of certain land and obtained a decree. In 1874 *B* got possession of the land by inducing the tenants to attorn to him. In 1880 *A* conveyed the land to *C* by a deed of sale, and in 1886 *C* filed a suit against *B* to obtain possession of the land so sold to him by *A*. He alleged that any claim which *B* had to the land as co-sharer was extinguished by limitation, inasmuch as he had brought no suit within three years from the date of the Mamlatdar's decree against him of July 1864 to get rid of the effects of that decision (*see* cl. 7 of s. 1 of Limitation Act (XIV of 1859). The lower Court disallowed this contention. It also held that the Mamlatdar's decision as to possession did not affect a co-sharer's claim for partition. It therefore awarded the plaintiff *C* only the share of his vendor *A* in the property. On appeal to the High Court,—*Held*, confirming the decision of the lower Court, that although under cl. 7 of s. 1 of the Limitation Act (XIV of 1859) *B* could not after July 1867 have sued to assert his title to the land comprised in the Mamlatdar's order of July 1864, nevertheless his title to the said land was not extinguished, and the possession which he obtained in 1874 could properly be referred, and ought to be referred, to his then subsisting title. Consequently, any one who after his re-entry in 1874 disputed his title would have to prove his own as against *B*'s title independently of any help from the statute of limitation. *Held* also that a suit for the partition of property comprised in a Mamlatdar's order is not a suit to recover such property, and therefore does not fall within cl. 7 of s. 1 of Act XIV of 1859; and whether that property is the only one of which a partition is claimed, or whether it is one of several such properties, is not material. In the Presidency of Bombay it is only in those cases in which the possession of property has been of such a duration and character as to come within Regulation V of 1827 that the Limitation Act (XIV of 1859) has been held to extinguish the original right to the property. *Quære*—Whether (assuming that the effect of the Limitation Act XIV of 1859 was similar to the effect of s. 29 of the Limitation Act of 1871 and s. 28 of the Act of 1877) cl. 7 of s. 1 of Act XIV of 1859, which in terms relates to "suits to recover the property comprised in the order" of the Mamlatdar, would have barred a suit by *B* not based on a claim to recover the property (which implies a claim to exclude the defendant therefrom altogether), but one merely for obtaining a share of such property on the footing that *A*, who had been successful in the Mamlatdar's Court, held it for himself and *B* jointly. Statutes of limitation being in limitation of common right are not to be extended by construction to cases not clearly included within their terms. PARASHRAM JETHMAL *v.* RAKHMA . . . . **I. L. R., 15 Bom., 299**

17. ——— *Order of Mamlatdar under Bom. Act V of 1864—Act XVI of 1838.*—An order of the Court of the Mamlatdar under the last clause of s. 1 of Bombay Act V of 1864, recognizing the possession of a party and enjoining others from disturbing that possession, was not an order under Act XVI of 1838; and the limitation of three years, prescribed in art. 7 of s. 1 of Act XIV of 1859, did not apply to a suit brought to establish a right against the operation of such an order in the regular Civil Court. BABAJI *v.* ANNA . . . . **10 Bom., 479**

18. ——— *Order of Mamlatdar under Bom. Act V of 1864.*—*A* brought a suit in a Mamlatdar's Court, under Bombay Act V of 1864, to recover possession of certain land from *B*. *C* joined in the proceedings *proprio motu*, and the Mamlatdar, on the 1st May 1865, made an order awarding possession of the land to *C*. In an action brought by *A* against *C* in the Civil Court on the 18th October 1869, *C* pleaded limitation under s. 1, cl. 7, Act XIV of 1859, as the action was not filed within three years of the Mamlatdar's order. *Held* that the action was not barred by limitation, as *C* was not properly a defendant in the Mamlatdar's Court, and that therefore the Mamlatdar had no power to make an order regarding him. VISHVANATHRAV KACHESVAR *v.* NARAYAN BIN GOPAL KHAPE . . . . **9 Bom., 424**

19. ——— *Right of possession claimed by tenant against landlord—Mortgage by landlord—Possessory suit in the Mamlatdar's Court by the tenant against the mortgagor—Decree in favour of the tenant—Assignment of mortgage by mortgagee—Purchase of the equity of redemption by the assignee—Merger—Suit brought by the assignee to recover possession—Assignee bound by Mamlatdar's order against mortgagor—Mamlatdars Act (Bom. Act V of 1864), s. 15—Mamlatdars Act (Bom. Act III of 1876), s. 18—Limitation Act (IX of 1871), sch. II, art. 46.*—One *R*, who was the owner of the land in dispute, mortgaged it to *P* in July 1870. In October 1876, *B*, a tenant of the land, obtained an injunction against *R* restraining him from interfering with his (*B*'s) possession in a possessory suit which was filed in the Mamlatdar's Court in May 1876. In July 1877, *P* obtained a decree on his mortgage, and in execution he got possession of the property from *R* (the mortgagor) in June 1879. The plaintiff, who was the assignee of both *P* and *R* (mortgagee and mortgagor), sued *B* in ejectment in September 1888. Both the lower Courts allowed the claim. On second appeal by *B*, the plaintiff (*inter alia*) contended that, having taken an assignment of the mortgage from the mortgagee, he was not bound by the proceedings in the Mamlatdar's Court in 1876 against the mortgagor. But held that, when the plaintiff, having previously taken an assignment of *P*'s mortgage, purchased the equity of redemption from *R*, the mortgage was extinguished, there being no circumstance from which an intention could be presumed to keep it alive. The plaintiff could not stand in a better position than *R*, and was bound by the proceedings in the Mamlatdar's Court, notwithstanding that he had taken an assignment of *P*'s mortgage. In those proceedings the defendant had claimed a right of permanent possession as against *R*, and the effect of the Mamlatdar's order was to continue him in possession until ejected by the decree of a Civil Court. It wa therefore incumbent upon *R* to bring a suit within three years from the Mamlatdar's order, as provided by art. 46, sch. II of the Limitation Act (IX of 1871), and that not having been done, the plaintiff, who derived his title from *R*, could not recover possession from the defendant. BAPU BIN MAHADAJI *v.* MAHADAJI VASUDEO . **I. L. R., 18 Bom., 348**

20. ———— *Finding by Mamlatdar as to possession—Subsequent contrary finding by Civil Court—Effect of Mamlatdar's order—Limitation Act, s. 28—Suit by party against whom Mamlatdar's order was made.*—The plaintiff brought this suit to recover possession of certain land which had belonged to her nephew, and of which, after his death in 1878, she had assumed the management. In 1881, she brought a possessory suit against the first defendant in the Mamlatdar's Court, which suit was dismissed in January 1885, the Mamlatdar holding that she had not been in possession. In a civil suit, however, which (pending the proceedings in the Mamlatdar's Court) she had filed against the first defendant in the Court of the Subordinate Judge of Haveri, the Judge found that she had been in possession since 1880, and awarded her damages against the first defendant (who was held to be her farm servant) for crops which had been taken away by him. In 1887, the second defendant as mortgagee from defendant No. 1 obtained a decree against plaintiff in the Mamlatdar's Court awarding him possession of the land, and in execution of that decree the plaintiff was dispossessed in December 1887. In 1890, the plaintiff filed this suit to recover possession and for mesne profits since 1887. The defendant pleaded that the plaintiff had no title to the land, and that the suit was barred by limitation, inasmuch as the plaintiff had not brought a suit to establish her right within three years after the Mamlatdar's order in 1885 dismissing her possessory suit. *Held* that the Mamlatdar's order of January 1885 had no conclusive effect, and was rendered ineffectual by the subsequent decree of the Civil Court; and as the plaintiff continued in possession, notwithstanding that order, down to 1887, the present suit was not barred by limitation, and neither her remedy nor her right to the land was extinguished. KRISHNACHARYA *v.* LINGAWA

[I. L. R., 20 Bom., 270

21. ———— *Non-payment of purchase-money—Suit for possession by vendee who has not paid the purchase-money—Remedy of vendor—Limitation—Limitation Act (XV of 1877), sch. II, art. 47—Vendor and purchaser.*—The plaintiffs owned certain land on which the defendant, with the plaintiffs' leave, built a house. Disputes arose between plaintiffs and defendant, and in February 1893, the defendant obtained an order from the Mamlatdar in a possessory suit against the plaintiffs directing the plaintiffs to give up possession of the property to him. In August 1893, an agreement was made between them, in pursuance of which the defendant executed a rent-note to the plaintiffs promising to give up the property to the plaintiffs at the end of four months on payment by the plaintiffs of R100. On the 25th November 1896, the plaintiffs brought his suit for possession, alleging that the defendant refused to give up the property. The District Judge dismissed the suit, as barred by limitation, under art. 47, sch. II of the Limitation Act, not having been brought within three years from the date of the Mamlatdar's order of 28th February 1893. *Held* also that the contract between the parties dissolved the order of the Mamlatdar in the possessory suit and rendered it unnecessary for the plaintiffs to sue to set it aside. The present suit, which was based on the contract of sale, was therefore not barred by art. 47 of the Limitation Act. SAGAJI *v.* NAMDEV

[I. L. R., 23 Bom., 525

22. ———— *Partition suit—Bom. Act V of 1864.*—Art. 46 of sch. II of the Limitation Act IX of 1871 is not applicable to a partition suit. SHIVRAM *v.* NARAYAN . **I. L. R., 5 Bom., 27**

23. ———— *Partition suit—Bom. Act V of 1864.*—Plaintiff in 1876 filed a suit to establish his right to, and to recover a fourth share of, certain property which he alleged to be ancestral. He stated his cause of action to have accrued on the 17th May 1871, on which day he had been dispossessed by an order of the Mamlatdar, made under Bombay Act V of 1864. The District Court held that the suit was barred by art. 46, sch. II of the Limitation Act (IX of 1871). *Held* by the High Court, on special appeal, that art. 46 did not apply, and that the suit was not barred. BHAGUJI *v.* ANIABA

[I. L. R., 5 Bom., 25

—— art. 48 (1871, art. 48).

1. ———— **and art. 36**—*Standing crops—Immoveable property.*—Standing crops are immoveable property within the meaning of the Limitation Act. PANDAH GAZI *v.* JENNUDDI

[I. L. R., 4 Calc., 665 : 2 C. L. R., 526

2. ———— *Suit for damages for injury to crops.*—Under Act XIV of 1859, it was held that a suit for damages for injury to standing crops was a suit for damages for injury to personal property within the meaning of s. 1, cl. 2. KASHIDAS GOVINDBHAI *v.* B., B. AND C. I. RAILWAY COMPANY

[6 Bom., A. C., 114

Where the crops were cut and stored, they were personal property. MUNNOO BEBEE *v.* JHANDAR KHAN . . . . . . **3 Agra, 389**

3. ———— *Suit for compensation for injury to land and crops.*—A suit for compensation for injury to land resulting in the loss of crops which the land might have produced, but for the illegal act of defendant, is not a suit with respect to personal property. RAJ CHUNDER GHOSE *v.* JOY KISHEN MOOKERJEE . . . . . . **4 W. R., 76**

4. ———— *Suit to recover money deposited for a certain purpose.*—*R* sued *M* for a certain sum of money on the ground that he had given such sum to *M* to deliver to his (*R*'s) family; that *M* had not delivered the money; and that, when this fact became known to *R* and he demanded the money, *M* denied having received the same. *Held* that the limitation law applicable to the suit was that provided by No. 48, sch. II of the Limitation Act, 1877, and the time from which the period of limitation began to run was when *B* first learnt that *M* had retained the money in his possession instead of paying it as directed. RAMESHAR CHAUBEY *v.* MATA BHIKH

[I. L. R., 5 All., 341

———— art. 49 (1871, art. 49).

1. ———— *Injury to personal property —Taking away personal property.*—Under the Act of 1859, taking away personal property was held to be not included in the words "injury to personal property" in s. 1, cl. 2. AMRITHAMAL *v.* RANGANADHA PILLAI . . . . . **3 Mad., 165**

ANONYMOUS CASE . . **W. R., F. B., 126**

AHMEDULLAH *v.* HUR CHURN PANDAH

[2 W. R., 235

RAMNATH ROY CHOWDRY *v.* HURRI CHUNDER ROY CHOWDHRY . . . **5 W. R., 50**

PRAHLAD MAHARUDRA *v.* WATT **10 Bom., 346**

and DHUNPUTTY KOER *v.* LLOYD . **17 W. R., 277**

Such cases were held to be governed by the general limitation of six years under cl. 16 of s. 1. Now, however, such suits would apparently be covered by this article or perhaps by art. 36.

2. ———— *Suit to recover ornaments taken with view of borrowing money on them.*—In a suit to recover certain ornaments (or their value) which had been obtained by the defendant from the plaintiff's ancestor with a view to borrowing money on them, the cause of action was held to arise when the defendant set up an adverse title to them. SHUMBOO CHUNDER MULLICK *v.* PRANKRISTO MULLICK

[14 W. R., 322

3. ———— *Sale of moveable and immoveable property—Refusal to execute conveyance—Suit for possession—"Unlawful possession."*—*A* entered into an agreement with *B* for the purchase of moveable and immoveable property and paid a deposit. Under such an agreement, by s. 85 of the Contract Act, the ownership of the moveable property would not pass before the transfer of the immoveable property. *B*, instead of conveying to *A* the property agreed to be conveyed to him, conveyed it to *C* and put him, *C*, in possession. *A* brought a suit against *C* and *B*, and obtained a decree setting aside the conveyance to *C*, and ordering *B* specifically to perform his contract and execute a conveyance of the property to himself, *A*. This decree was confirmed on appeal. *B* refusing to execute the conveyance to *A*, the conveyance was executed by the Court under the provisions of s. 202 of Act VIII of 1859, *C* still detaining possession of the moveable and immoveable property in question. *A* brought this suit against him to recover possession of the same. The suit was brought within three years of the final decree of the Court of appeal in the former suit, ordering a conveyance of the property to be executed to *A*, but not within three years of the date of the agreement to purchase, and it was contended that, as to the moveable property, the suit was time-barred. *Held* that the suit for the possession of the moveable property was not time-barred, as the right to possession of both the moveable and immoveable property accrued to *A*, at the earliest, on the date of the final decree for specific performance of the agreement of sale, and it was from that time that the "detainer's possession" first became unlawful under art. 49, sch. II of Act XV of 1877. DHONDIBA KRISHNAJI PATEL *v.* RAMCHANDRA BHAGVAT

[I. L. R., 5 Bom., 554

4. ———— *Suit for specific moveable property—Suit for a legacy.*—A testator bequeathed certain specific moveable property to *A*. *B* applied for and obtained a certificate under Act XXVII of 1860 on behalf of the testator's widow, and took possession of the property bequeathed. *A* appealed and the case was remanded for re-trial. On the 27th of March 1873, the former order was cancelled and a certificate was granted to *A*. On the 19th of August 1873, *B* was directed to deliver up the property to *C*, who had purchased it from *A*. On the 22nd of March 1878, *C* instituted a suit to recover the property. *Held* that the suit was barred under art. 49 of the Limitation Act. Art. 123 of the Limitation Act only applies to cases in which the property sought to be recovered is not only a legacy, but is also sought to be recovered as such from a person who is bound by law to pay such legacy, either because he is the executor of the will or otherwise represents the estate of the testator. ISSUR CHUNDER DOSS *v.* JUGGUT CHUNDER SHAHA

[I. L. R., 9 Calc., 79

5. ———— *Cause of action—Suit by Mahomedan lady to recover property from husband after divorce.*—In a suit by a Mahomedan lady against her husband after divorce for recovery of property belonging to her which her husband held before divorce, the cause of action to the wife arose at the time of the separation. ABDOOL ALI *alias* SHOAGEEA *v.* KURRUMNISSA . . **9 W. R., 153**

6. ———— *Suit for compensation for attachment before judgment—Limitation Act, sch. II, art. 36—Suit for damages.*—In a suit by *A* against *B*, the property of *B* was attached before judgment in November 1888. The suit was dismissed in October 1889, and an appeal by the plaintiff was dismissed in July 1890. *B* now sued *A* in September 1892 for damages occasioned by the attachment before judgment. *Held* that art. 49 was applicable, and the cause of action having arisen in 1888, the suit was barred. If the two years' limitation provided by art. 36 was applicable, as for a tort, the suit was still barred by limitation. MANAVIKRAMAN *v.* AVISILAN KOYA

[I. L. R., 19 Mad., 80

7. ———— *Suit for damage to property —Property in custody of person other than owner —Damage to ship by collision.*—Art. 49 of sch. II of the Limitation Act (XV of 1877) applies only to suits in respect of property in the hands of some other person, and not to suits in respect of property in the plaintiff's own possession, and the injury to property there mentioned is limited to cases of injury to property while in the custody of some person other than the owner. ESSOO BHAYAJI *v.* STEAMSHIP "SAVITRI" . . **I. L. R., 11 Bom., 13**

8. ———————— and art. 36—*Suit for damages for wrongful conversion—Injury to moveable property.*—Plaintiff was the owner of a house mortgaged to defendants. On the 22nd August 1885 defendants sold the house by auction under a power of sale contained in the mortgage and gave possession to the purchaser. On the 2nd September 1887, plaintiff sued the defendants to recover the value of certain timber which was stored in the house and not mortgaged, and which plaintiff alleged the defendants had taken possession of and converted to their own use. It was proved that the timber was in the house when defendants took possession from the plaintiff and defendants did not account for it. *Held* (1) that plaintiff was entitled to recover from the defendants the value of the timber; and (2) that the suit was not barred, art. 49 and not art. 36 of sch. II of Limitation Act being applicable to it. PASSANHA *v.* MADRAS DEPOSIT AND BENEFIT SOCIETY

[I. L. R., 11 Mad., 333

9. ———————— and art. 116—*Suit to recover title-deeds left with a mortgagee after redemption—Demand and refusal—Cause of action.*—After the redemption of a mortgage, the title-deeds of the mortgage premises were left with the mortgagee, who refused to return them on demand made by the mortgagor. The mortgagor now sued to recover possession of them. *Held* the Limitation Act, sch. II, art. 49, was applicable to the case, and that time began to run from the date of the mortgagee's refusal. SUBBAKKA *v.* MARUPPAKKALA

[I. L. R., 15 Mad., 157

10. ———————— *Suit for damages for cutting and carrying away crops—Act XV of 1877, sch. II, arts. 36, 39, 48, and 109.*—In a suit for damages for cutting and carrying away crops,—*Held* by the Full Bench (RAMPINI, *J.*, dissenting) such suit does not come within the terms of art. 36 of sch. II of the Limitation Act (XV of 1877). *Per* MACLEAN *C.J.* (TREVELYAN, *J.*, concurring).—Assuming that the case does not come within the terms of art. 39, the case is governed by art. 49. The crops, though immoveable in the first place, become specific moveable property when severed, and the fact that the severance was a wrongful act does not make any difference. *Per* MACPHERSON, *J.*—The case is governed by art. 49 or 48, as the crops, after they had been cut, come under the description of specific moveable property. Possibly also the case might be brought under art. 109, if it is not brought under art. 39. *Per* GHOSE, *J.*—Art. 49 applied to this case. *Surat Lal Mondal* v. *Umar Haji, I. L. R., 22 Calc., 877,* followed. *Per* RAMPINI, *J.* (*dissentiente*).—The suit as framed not being one for compensation for trespass, art. 39 does not apply. Art. 48 or 49 also does not apply, as they deal with property which is *ab initio* moveable, and cannot be held applicable unless the first wrongful act, *viz.*, the conversion of the immoveable into moveable property, be disregarded. Art. 109 also does not apply, as it referred to a case in which possession of immoveable property was withheld. Art. 36 therefore applied to the case. *Essoo Bhayaji* v. *Steamship "Savitri," I. L. R., 11 Bom., 133,* referred to. *Pandah Gazi* v. *Jennudi, I. L. R., 4 Calc., 665,* dissented from by TREVELYAN, *J.* MANGUN JHA *v.* DOLHIN GOLAB KOER . **I. L. R., 25 Calc., 692**

[2 C. W. N., 265

11. ———————— *Claim to recover goods in hands of third parties—Alternative claim for value as compensation.*—In execution of a decree obtained by the defendants against one *M* in the Court of Small Causes, certain goods were attached to which plaintiff preferred a claim. That claim being disallowed, plaintiff filed in the City Civil Court, Madras, a suit for, and obtained a declaration of, his title to the goods, but prior to the date of the decree, namely, in October 1895, the goods attached had been sold by the Court of Small Causes, and certain third parties had become purchasers thereof. On plaintiff, in December 1897, suing "for the recovery of the goods or their value as compensation,"—*Held* that the suit, being framed for the recovery of specific moveable property, was governed by art. 49 of sch. II of the Limitation Act, 1877, and was therefore not barred by limitation. The alternative prayer for the value of the goods as compensation must be read as ancillary to the main relief asked for with reference to s. 208 of the Code of Civil Procedure, and did not alter the character of the suit or bring it within any other category of the schedule. MURUGESA MUDALI *v.* JOTHARAM DAVAY

[I. L. R., 22 Mad., 478

———— art. 51 (1871, art. 50).

The suits referred to in this article were formerly governed by cl. 9 of s. 1 of the Act of 1859: and this article seems to be founded on the cases decided on that clause.

See BOIDONATH SHAH *v.* LAHENISSA BIBEE

[7 W. R., 164

TRIPP *v.* KUBEER MUNDUL . **9 W. R., 209**

———— art. 52 (1871, art. 51).

1. ———————— *Act XIV of 1859, s. 1, cl. 8—Goods sold by wholesale and retail.*—Under Act XIV of 1859, there was a distinction between goods sold by retail and those sold by wholesale, the former being specially mentioned in cl. 8 of s. 1, and it was a question under that Act whether three years or six years' limitation applied to a sale of goods wholesale; three years being finally held to be the proper period. LAL MOHUN HOLDAR *v.* MAHADEB KATEE

[B. L. R., Sup. Vol., 909
9 W. R., 193

CHUNDEE CHURN PAUL *v.* RAMNARAIN SEN

[Cor., 8

2. ———————— *Act XIV of 1859, s. 1, cl. 8—Articles sold by retail.*—Goods supplied to a dealer for the purpose of retail sale by him were held to be not "articles sold by retail" within the meaning of cl. 8, s. 1, Act XIV of 1859. MOTHOORA LALL PAUL *v.* CHRINEBASH DUTT

[3 W. R., S. C. C. Ref., 24

GOPAL CHUNDER SHAHA *v.* SINAES . **8 W. R., 4**

Cases of articles sold by retail are—

BULDEO DOSS JOHURRY *v.* SREENAUTH SEIN

[1 Ind. Jur., O. S., 114

LIMITATION ACT, 1877—*continued.*

SHAMA CHURN LALL *v* COLLECTOR OF TIRHOOT [1 W. R., 308

BUCHA GOPE *v.* COLLECTOR OF TIRHOOT [7 W. R., 102

There is no distinction made in the present Act between sales by wholesale and sales by retail.

3. ——— *Goods supplied on credit and payments made on account from time to time.*—When a tradesman supplies goods from time to time on credit to a customer who makes payments from time to time on account, no fixed period of credit being agreed upon, the cause of action for purpose of limitation must be taken to arise on the date when each item claimed was supplied. SATCOWREE SINGH *v.* KRISTO BANGAL . . . . 11 W. R., 529

4. ——— *Suit on contract for the supply of pictures at various times subject to approval of each picture.*—Where the plaintiff, a native artist, agreed to supply, and the defendant agreed to purchase, pictures as ordered from time to time, subject to the approval of each picture by the defendants, the prices to be fixed on delivery and acceptance,—*Held* that a distinct contract became complete in respect of the pictures as they were from time to time delivered and approved of, at the price then fixed, and that the case came within cl. 9, s. 1, Act XIV of 1859, and not within cl. 8 as being a sale of articles by retail. VIRASVAMI NAYAK *v.* SAYAMBABAY SAHIBA . . . . . 2 Mad., 6

——— **art. 53 (1871, art. 52).**

This article follows the case of SATCOWREE SINGH *v.* KRISTO BANGAL . . . 11 W. R., 529

——— **and art. 52**—*Suit for price of wood supplied under contract.*—A suit was brought by *P* against the Elgin Mills Company for recovery of the price of wood supplied under two contracts, each of which contained a clause by which the plaintiff contracted to indemnify the defendants for loss arising by reason of failure on his part to supply the wood as contracted for. No wood was supplied after the 11th November 1879. The suit was brought on the 10th October 1882. In January 1883, the partners of the Elgin Mills Company were, on their own application, brought upon the record as defendants. Defendants claimed a set-off as damages for loss incurred by the plaintiff's failure to supply all the wood contracted for, such loss having arisen on the 25th October 1879 and subsequently. *Held* that art. 53, and not art. 52, sch. II of the Limitation Act, was applicable to the plaintiff's claim, the intention of the parties having been that the price of wood was not claimable as of right on the date of its being supplied, but rather when the contract was completed by the whole wood being supplied, or when the contract came to an end. PRAGI LAL *v.* MAXWELL [I. L. R., 7 All., 284

——— **art. 56 (1871, art. 55).**

1. ——— *Suit for work and labour done—Cause of action.*—Where no law, special custom, or agreement is shown, making the remuneration on a joint contract for labour to be done payable in advance, the cause of action accrues from the time when the labour was performed. PERLADH SEN *v.* RUNJEET ROY . . W. R., 1864, 68

2. ——— *Suit to recover sums expended by zamindar for irrigation.*—In a suit to recover sums expended by the zamindar at the defendant's request for the repair of a tank for the irrigation of lands held by them in common with him, it was contended that the suit, whether viewed as one for contribution or upon a contract, was barred by limitation in respect of all payments made by the zamindar more than three years before the suit. *Held* that the suit, being for work and labour done at their request, was not barred by limitation under art. 56 of the Limitation Act, which applied to the suit. SUNDARAM *v.* SANKARA . . I. L. R., 9 Mad., 334

1. ——— **art. 57**—*Suit for money lent—Limitation for a suit to recover debt personally from the mortgagor where mortgage-deed contains no personal undertaking for repayment.*—By a registered mortgage-deed dated the 11th May 1876, the defendant mortgaged certain land with possession to the plaintiff for a term of five years, the mortgage-deed stipulating that the plaintiff was to enjoy the profits, pay the assessment for it, and restore it to the defendant on repayment of the debt. But no personal undertaking to pay was given by the defendant. The land was sold by the revenue authorities for arrears of assessment due from the defendant for certain other lands of the defendant. The plaintiff now sought to recover the debt personally from the defendant. The Court of first instance dismissed the plaintiff's claim, on the ground that the failure, on the part of the plaintiff, to pay the arrears of assessment disentitled him to recover the debt from the defendant personally. The plaintiff appealed to the District Judge, who referred the case to the High Court. *Held* that, the mortgage consideration for the debt having failed, the debt was recoverable within three years—the registered mortgage-deed containing no personal undertaking by the defendant (mortgagor) to pay the loan. SAWABA KHANDAPA *v.* ABAJI JOTIRAV [I. L. R., 11 Bom., 475

2. ——— **and art. 120**—*Suit on pledge of moveable property—Prayers in plaint both for personal decree and for right to enforce charge against property pledged.*—A suit on a pledge of certain moveable property, made in respect of a loan of money on the 10th February 1887, was instituted on the 14th December 1891. The plaint prayed for a decree for the money lent against the defendant personally, and also that the charge might be enforced against the article pledged. *Held* that, so far as the prayer for a personal decree was concerned, the suit was governed by art. 57 of sch. II of the Limitation Act, and was barred; but so far as the plaintiff sought to enforce his charge against the property pledged, the suit fell not within that article, but within art. 120 of the same schedule, and was therefore not barred. NIM CHAND BABOO *v.* JAGABUNDHU GHOSE . . . . I. L. R., 22 Calc., 21

3. ———— and art. 120—*Loan on security of moveable property—Suit to recover money by sale of property pledged and also from the defendant personally.*—Where a plaintiff who had lent money on the security of moveable property sued to recover the money both by sale of the property pledged, and also asked for a decree personally against the defendant, should the amount realized by the sale prove insufficient, it was held that, so far as the plaint prayed for a decree against the defendant personally, art. 57 of the second schedule of Act XV of 1877 was applicable; but, so far as the plaintiff sought to enforce his charge against the property pledged, the suit fell within art. 120. *Nim Chand Baboo* v. *Jagabundhu Ghose, I. L. R., 22 Calc., 21,* followed. MADAN MOHAN LAL *v.* KANHAI LAL
[I. L. R., 17 All., 284

———— **art. 59 (1871, art. 58).**

See DEKKAN AGRICULTURISTS' ACT, 1879, s. 72 . . **I. L. R., 5 Bom., 647**

Under Act XIV of 1859, cases of money lent or deposited to be repaid on demand were governed by cl. 9 or cl. 16 of s. 1 of that Act, and the decision as to whether the cause of action arose at the date of the loan or from the date of the demand were conflicting.

See BRAMMAMAYI DASI *v.* ABHAI CHARAN CHOWDHRY . . **7 B. L. R., 489 : 16 W. R., 164**

POORNO CHUNDER DUTT *v.* GOPAL CHUNDER DOSS . . . . **17 W. R., 87**

TARINI PRASAD GHOSE *v.* RAM KRISHNA BANERJEE
[6 B. L. R., 160 : 14 W. R., 224

NASIR BIN ABDUL HABIB FAZAL *v.* DAYABHAI ITCHACHAND . . . . **10 Bom., 300**

JAFFREE BEGUM *v.* MAHOMED ZAHOOR AHSUN KHAN . . . . . . **2 N. W., 409**

HEERUN *v.* MARIUN . . . **14 W. R., 87**

deciding that it arose on demand.

And PARBATI CHARAN MOOKERJEE *v.* RAMNARAYAN MATILAL
[5 B. L. R., 396 : 16 W. R., 164 note

ABDUL ALI *v.* TARACHAND GHOSE
[6 B. L. R., 292

S. C. on appeal. TARACHAND GHOSE *v.* ABDUL ALI . . **8 B. L. R., 24 : 16 W. R., O. C., 1**

HINGUN LALL *v.* DEBEE PERSHAD **24 W. R., 42**

deciding that it arose on the date of the loan or deposit.

Under art. 58 of the Act of 1871, the cause of action in cases of money lent on demand arose from the date of the demand, cases of money deposited on demand not being separately provided for. Under art. 59 of the present Act, the cause of action in cases of money lent on demand arises from the date of the loan; in the case of money deposited on demand, from the date of the demand (art. 60).

1. ———— **and arts. 60 and 132**—*Claim against insolvent estate subject to mortgage—Suit for money—Demand.*—On the 25th June 1874, *A*, the father of *B*, having mortgaged the factory X to *S & Co.* to secure repayment of R12,000 advanced, died on the 7th September 1874, leaving a will whereby he appointed his wife *C* sole executrix, and devised to her factory X. On the 16th September 1876, another mortgage was executed, whereby *C* further charged X with the repayment of further advances, and *B* mortgaged factory X as a further security, the mortgage containing a stipulation for repayment, within one month after notice, of the balance due in excess of R12,000. *B* became insolvent in July 1882. No demand was made. On the 5th January 1877, a balance of R27,552 remained due which with interest up to July 1882 was increased to R42,564. The liquidators of *S & Co.*, who had in the meantime dissolved partnership, sought to prove against *B*'s estate for R30,564 after deducting the R12,000 advanced to *A*. *Held* that the claim to prove against the estate was in the nature of a suit, not to enforce payment of money charged on immoveable property under art. 132, Act XV of 1877, nor was it within art. 60, but it was a suit for money, and was governed by art. 59 of the Act. IN THE MATTER OF AGABEG . . **12 C. L. R., 165**

2. ———— *Native banker and customer—Deposit—Loan—Suit to recover money lodged with a native banker more than three years after lodgment.*—The relationship between a native banker and the person depositing money with him in the ordinary way of business is that of borrower and lender, and the money lodged can be recovered as money lent. Art. 59 of the Limitation Act (XV of 1877) applies to such a transaction. The plaintiffs, who were members of the Dalvádi community, sued in 1883 to recover from the defendants the sum of R2,611-3-6 as found credited to their account in 1880 by the defendants' father, with whom the community had lodged a sum of R2,320 in 1874. They alleged that the sum was lodged on the condition that it was to be returned with interest on demand. It appeared that small sums were paid by *K* to the plaintiffs from time to time, and no demand had ever been made during the lifetime of *K* for repayment. The defendants denied the alleged condition, and contended that the suit was barred. The Court of first instance awarded the plaintiffs' claim. The defendants appealed to the Assistant Judge, who reversed the decree, being of opinion that the transaction was a loan and not a deposit, and that the suit was barred. On appeal by the plaintiffs to the High Court,—*Held*, confirming the decree of the lower Appellate Court, that the plaintiffs' suit was barred by art. 59 of the Limitation Act (XV of 1877). The plaintiffs contended that the money was lodged as a "deposit" and not as a loan, and that art. 60 of sch. II of the Limitation Act applied. They relied upon the following circumstances as showing the nature of the transaction, *viz.* (1) that it was arranged that the money should remain until a favourable opportunity should occur for applying it to the building of a dharmshala; (2) that interest was to be paid upon it; (3) that the account was to be annually settled; (4) that it was to be withdrawn in one sum. *Held* that these circumstances, if proved, did not necessarily deprive the transaction of the character of a loan by creating a fiduciary relationship between

the parties (which is essential to a deposit in its technical sense), and thus distinguishing it from the ordinary dealings between native bankers and their customers. ICHHA DHANJI *v.* NATHA

[I. L. R., 13 Bom., 338

——— **art. 60.**

See the Note and the cases referred to under article 59.

This article (60) is not in accordance with the cases of PARBATI CHARAN MOOKERJEE *v.* RAMNARAYAN MATILAL

[5 B. L. R., 396 : 16 W. R., 164 note

and HINGUN LAL *v.* DEBEE PERSHAD

[24 W. R., 42

which were decided under Act XIV of 1859.

1. ——— *Cause of action—Deposit—Demand.*—Where money has been deposited by *A* at interest with *B*, repayable on demand, and interest is paid accordingly, the cause of action arises not on the date of the deposit, but on the date of demand. TARINI PRASAD GHOSE *v.* RAM KRISHNA BANERJEE

[6 B. L. R., 160 : 14 W. R., 224

2. ——— *Banker and customer—Principal and agent—Cause of action—Demand.*—*A* deposited certain moneys with *B*, a banker, and drew against them, but not to the full extent; the residue was employed on *A*'s account by *B* according to an agreement between them. *Held* that, besides the ordinary relation of banker and customer, there subsisted also between them that of principal and agent; that therefore the right of action arose at the time of demand. NASIR BIN ABDUL HABIB FAZAL *v.* DAYABHAI ITCHACHAND

[10 Bom., 300

3. ——— *Money deposited—Demand—Cause of action.*—Where a mortgagor allows the amount of his loan to remain in the hands of the mortgagee, taking a receipt for it,—*Held* that the transaction should be regarded as a deposit of money with a banker or agent, repayable on demand without interest, and the suit is not barred if brought within three years after demand. A suit to recover the balance of such moneys is in the nature of a suit to recover the amount of deposit. JAFFREE BEGUM *v.* MAHOMED ZAHOOR AHSUN KHAN

[2 N. W., 409

4. ——— *Cause of action—Demand.*—Plaintiff, having received from her brothers a sum as an equivalent for her share in her father's estate, made over the money to one of the brothers (*E*), to be invested in the common stock for the purposes of trade, it being agreed that she was to receive her proportion of the profits. A few years after this *E* died, and then, a disagreement occurring in the family, resort was had to arbitration. The arbitrators found that certain sums were due to plaintiff and her sisters by the three brothers, but they were unable to settle how much. Plaintiff, being unable to recover her due, brought this suit for principal and profits. *Held* that plaintiff's cause of action arose when she made her demand for the money after the arbitration award, and that limitation would run from no earlier date. HEERUN *v.* MARIUN

[14 W. R., 87

5. ——— *Deposit—Loan repayable on demand.*—The word "deposit" in the Limitation Act (XV of 1877), as distinguished from a loan, refers to cases where money is lodged with another under an express trust, or under circumstances from which a trust can be implied. RAM SUKH BHUNJO *v.* BROHMOYI DASI . . . 6 C. L. R., 470

6. ——— *Money deposited—Banker and customer—Money lent—"Deposit"—"Trust"—Cause of action—Demand.*—The plaintiff deposited from time to time with the firm of the defendant, who carried on a banking business, various sums of money, the amounts deposited bearing interest, and at times certain sums being withdrawn by the plaintiff, and an account of the balance of principal and interest being struck at the end of each year and presented to the plaintiff. The date of the first deposit was not known, but it was some time previous to 1282 (1875). A demand was made for the whole amount of the principal and interest in Bhadro 1292 (August-September 1885), and the demand not having been complied with, a suit to recover the money was brought on the 8th March 1886. *Held* that art. 60 and not art. 59 of the Limitation Act was applicable to the case; the cause of action therefore arose at the date of the demand, and the suit was not barred. The dictum of WHITE, *J.*, in the case of *Ram Sukh Bhunjo* v. *Brohmoyi Dasi*, *6 C. L. R., 470*, that the "word 'deposit' in the Limitation Act as distinct from 'loan' points to cases where money is lodged with another under an express trust or under circumstances from which a trust may be implied," dissented from. ISHUR CHUNDER BHADURI *v.* JIBUN KUMARI BIBI . I. L. R., 16 Calc., 25

7. ——— **and art. 59**—*Money deposited—Banker and customer—Money lent—Deposit—Cause of action—Demand.*—*A* at the suggestion of *B*, a shopkeeper, deposited with him certain sums of money on the terms that the money should be repaid with interest on demand. It appeared that *B* was in the habit of receiving deposits from his customers on such terms. *A* having died, his widow and administratrix sued more than three years after the date of the deposit to recover the amount deposited, the money having been demanded within three years of the date of the suit. *Held* that the suit was governed by the Limitation Act, sch. II, art. 60, and not by art. 59, and accordingly was not barred by limitation. PERUNDEVITAYAR AMMAL *v.* NAMMALVAR CHETTI

[I. L. R., 18 Mad., 390

8. ——— *Deposit—Loan—Demand.*—The plaintiff claimed to recover from the defendant, who was his grandfather, the sum of R4,917, which was the amount standing to his credit in an account in the defendant's books. In November 1869, the plaintiff being then one year old, his mother (the defendant's daughter) paid over to the defendant the sum of R650, and at her request the money was credited in the books of the defendant's firm

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in the name of her son, the plaintiff. A further sum was similarly paid over by her in December 1871, and at her request was credited to the same account. The plaintiff alleged, and the Court found, that these sums were presents which had been made to him on his birthday and other auspicious occasions. The said sums had been carried over from year to year in the firm's books, the interest being added each year, but no payment had ever been made to the plaintiff, or on his behalf, out of the sum so standing to his credit. Compound interest had been allowed in the account, and, on the 9th November 1893, the amount standing to the credit of the plaintiff was R4,917. The plaintiff contended that the money had been paid to, and accepted by, the defendant as a deposit to be held in trust for him. The defendant alleged that the money in question had been lent to him by the plaintiff's mother, and contended that the plaintiff's claim was barred by limitation. *Held* that the plaintiff's claim was not barred. The defendant stood in a fiduciary position to the plaintiff, and therefore there was a deposit within the meaning of art. 60 of the Limitation Act (XV of 1877), and limitation did not commence to run until demand. DORABJI JEHANGIR RANDIVA *v.* MUNCHERJI BOMANJI PANTHAKI **[I. L. R., 19 Bom., 352**

Held in the same case on appeal, affirming the decision of the Court below, that the defendant had held the money not as a loan, but as a deposit; that art. 60 of the sch. II of the Limitation Act (XV of 1877) applied; and that the plaintiff's claim was not barred. MUNCHERJI BOMANJI PANTHAKI *v.* DORABJI JEHANGIR RANDIVA **[I. L. R., 19 Bom., 775**

——— art. 61 (1871, art. 59).

1. ——— *Money paid at defendant's request—Hindu family—Debts of manager.*—In the year 1867 the plaintiff, who was then living jointly with the defendant, who was his brother, executed a bond to secure the repayment of moneys advanced to him, which moneys were applied by him for the joint benefit of himself and the defendant. In the year 1868 the plaintiff executed another bond for the same purpose. In 1870 the plaintiff and defendant separated, and the lender thereupon sued the plaintiff upon the bond executed in 1867, and obtained a decree. In 1874 the plaintiff executed a fresh bond in favour of the decree-holder, in order to avoid execution of the decree and to retire the bond of 1868. In 1877 (within three years from the date of the fresh bond), the plaintiff sued his brother to recover a moiety of the sum secured thereby. *Held* that the date upon which money was paid by the plaintiff for the defendant must have been before 1870, and that therefore the suit was barred by limitation under Act IX of 1871, sch. II, art. 59. *Ramkristo Roy* v. *Muddun Gopal Roy, 12 W. R., 194,* followed. SUNKUR PERSHAD *v.* GOURY PERSHAD **[I. L. R., 5 Calc., 321**

2. ——— *Suit to recover balance of payments made on behalf of defendant—Appropriation of payments.*—In a suit to recover a balance with reference to payments made by plaintiff on account of defendant, where no mutual account or reciprocal demands existed,—*Held* that plaintiff could not recover any items due more than three years prior to the date on which the suit was instituted, but that he was entitled to apply all payments, even those subsequently made, in reduction of so much of his claim as was barred. THAKOOR PERSHAD SINGH *v.* MOHESH LALL . . . **24 W. R., 390**

3. ——— *Suit for money payable to the plaintiff for money paid for the defendant—Suit for account—Limitation Act, sch. II, art. 120.*—Under an award two persons were made liable each for the payment of a moiety of the expenses of certain temples which were held jointly. One of the persons so made liable, alleging that he had paid more than his share of the expenses, sued the other for the balance in excess of the moiety which he was bound to pay under the award. *Held* that the suit was governed by art. 61 of the second schedule to the Indian Limitation Act, 1877, and that, although the taking of accounts might be necessary, the suit was not a suit for an account to which art. 120 of the same schedule might apply. *Rohan* v. *Jwala Prasad, I. L. R., 16 All., 333,* referred to. RAMAN LALJI MAHARAJ *v.* GOPAL LALJI MAHARAJ **[I. L. R., 19 All., 244**

——— art. 62 (1871, art. 60).

Cases now provided for by this article were formerly held to be governed by the general period of limitation for suits not otherwise provided for, which period was six years under cl. 16 of s. 1 of the Act of 1859.

It was so held in the case of a servant to whom money had been entrusted for a particular purpose, and who did not make the payment he was directed to make. AMJUD ALI *v.* ALI BUKSH **2 W. R., 122**

AHMEDOOLLAH *v.* HUR CHURN PANDAH **[2 W. R., 235**

1. ——— *Suit for recovery of salary—Money had and received.*—The defendant, who was a batwara ameen employed by the Collector, drew from the public treasury at Backergunge a sum of money to pay the establishment, but failed to pay the plaintiff who was a mohurir under him. In a suit against the ameen for recovery of his salary after a lapse of three years from the time when the salary became due,—*Held* that the plaintiff's claim was for money had and received on his account, and therefore he might bring his suit within six years from the date of such receipt. ABHAYA CHARAN DUTT *v.* HARO CHANDRA DAS BANIK **4 B. L. R., Ap., 68**

S. C. OBHOY CHURN DUTT *v.* HURO CHUNDER DOSS BUXEE . . . . **13 W. R., 150**

2. ——— *Suit for share of money had and received.*—*A, B,* and *C* being joint creditors of *D, A* and *B* received in 1856 a payment on account in respect of their share in the debt. *D* having made default in payment of the balance, separate suits were brought against him by *A, B,* and *C.* The Court having held that the payment was a payment to all, *A* and *B* recovered more than

their share, and *C* recovered less. A family suit for partition between *A*, *B*, and *C* was in 1862 compromised, and it was agreed that all claims between the parties should be considered as settled; but it was agreed that, if *C* should, out of an appeal brought by him against *D*, have any claim against *A* and *B*, that should be reserved. *C*'s appeal was in 1863 unsuccessful, and in 1864 he brought an action against *A* and *B* for his share of the money paid in 1856. *Held* that he was entitled to recover the amount which *A* and *B* had recovered against *D* in excess of their claim, and that the suit was not barred by the law of limitation. LUTF ALI KHAN *v.* AFZALUNISSA BEGUM . . **9 B. L. R., 348**
[16 W. R., P. C., 20

reversing case in LOTF ALI KHAN *v.* AFZULOONISSA BEGUM . . . . . **3 W. R., 113**

3. ———— *Suit for money had and received by one of joint decree-holders.*—A decree obtainted by *A* and *B* was transferred by *B* to *C* without the knowledge of *A*. *C* executed the decree, and *A* subsequently sued *C* for his share of the proceeds. *Held* that, if *A* had any cause of action against *C*, it would be for money had and received to *A*'s use; and the suit would be governed, as to limitation, by Act IX of 1871, sch. II, cl. 60. But *held* *A* had no cause of action against *C*, but only against *B*. WEBOR ALI *v.* GADDAI BEHARI
[2 C. L. R., 165

4. ———— *Suit to recover money obtained by collusion and fraud.*—A suit for the recovery of money obtained by fraud and collusion is a suit for money received by a defendant for the plaintiff's use, and therefore, under art. 60 of the second schedule of Act IX of 1871, is barred unless brought within three years of the date when the money was received. RAGHUMONI AUDHICARY *v.* NILMONI SINGH DEO . . . **I. L. R., 2 Calc., 393**

5. ———— **and art. 147**—*Suit for over-payments under agreement—Deposit.*—Where there was a contract between plaintiff and defendant that defendant should purchase a dwelling-house benami on account of plaintiff, and reconvey it to plaintiff on his paying up in instalments a certain sum of money with interest; and plaintiff, seven years after his last payment, sued to recover some payments which he had made in excess of his agreement, and the first Court dismissed the suit as being barred by limitation; but the second Court decreed the suit on the plea that the plaintiff's payments were deposits, and fell within art. 147 of the schedule of the law of limitation,—*Held* by the High Court that art. 147 applies to deposits recoverable in specie; that plaintiff's payment in this case was a simple overpayment; and that the recovery of it was barred by limitation under art. 60. RADHA NATH BOSE *v.* BAMA CHURN MOOKERJEE . . . **25 W. R., 415**

6. ———— **and art. 118**—*Suit for money received by defendant to plaintiff's use.*—Certain immoveable property was attached in execution of a money-decree held by *A*, dated the 22nd August 1871, on the 1st April 1872. The same property was subsequently attached in execution of a decree held by *B*, dated the 19th August 1871, which directed the sale of the property in satisfaction of a charge declared thereby. The property was sold in execution of this decree. The Munsif directed that the proceeds of the sale should be paid to *B*. *A*, who claimed them on the ground that he had first attached the property, appealed against this order. The Judge, declaring that *A* was entitled to the proceeds, reversed the Munsif's order. *A* then obtained an order from the Munsif directing *B* to refund the money, which he did, and it was paid to *A*. *B* sued *A* to recover the money by establishment of his prior right to the same, and for the cancelment of the Judge's order, alleging that the same was made without jurisdiction. *Held* (by a majority of the Full Bench) that the suit was one for money received by the defendant for the plaintiff's use, and was therefore governed by cl. 60, sch. II of the Limitation Act. *Per* STUART, *C.J.*, and SPANKIE, *J.*—That the suit was not such a suit, but was one for which no period of limitation was provided elsewhere than in cl. 118 of the schedule, and that it was governed by that clause. RAMKISHAN *v.* BHAWANI DAS
[I. L. R., 1 All., 333

7. ———— *Suit for damages—Suit for money received to plaintiff's use.*—The holder of a decree for money, which had been sold in the execution of a decree against him, sued the auction-purchaser, the sale having been set aside, for the money he had recovered under the decree. *Held* that the suit was not one for damages, but for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use, to which the period of limitation applicable was three years. BHAWANI KUAR *v.* RIKHI RAM
[I. L. R., 2 All., 354

See also RAMKISHEN *v.* BHAWANI
[I. L. R., 1 All., 333

8. ———— **and art. 120**—*Suit for money received by the defendant for the plaintiff's use—Fraud.*—The plaintiff claimed as an heir to *N*, deceased, a moiety of moneys which at the time of *N*'s death were deposited with a banker and which the defendant, the other heir to *N*, had received from such banker. *Held* that the suit was one for money received by the defendant for the plaintiff's use, to which the limitation provided in art. 62, sch. II of Act XV of 1877, applied, and not one to which the limitation provided in art. 120 applied. KUNDUN LAL *v.* BANSI DHAR . **I. L. R., 3 All., 170**

9. ———— *Failure of consideration—Suit for money had and received for the plaintiff's use—Debt.*—Prior to September 1879, pecuniary dealings took place between *D* and *B*, resulting in a debt due by the former to the latter of R33,000, for money lent. Negotiations were carried on between the parties as to the mode in which the debt should be liquidated; and on the 1st September 1879 it was arranged that *D* should execute a sale-deed conveying to *B* certain immoveable property for R55,000, and that *B* should pay this amount by giving *D* credit to the extent of the debt, and paying the balance in cash. In August 1880, *D* sued *B* for specific performance of the contract, which, he alleged, had been settled and executed for the sale of the property. *B* in defence alleged that, although certain terms and conditions as to the sale had been definitely settled for embodiment in a formal sale-deed, it was only subject to these terms and conditions that he had been prepared to complete the transaction, and that, as they had been omitted from the document executed by *D* on the 1st September 1879, he had never accepted that document. In March 1884, the High Court on appeal dismissed the suit, holding that the parties had never been *ad idem* with reference to the contract alleged by *D*, and that the document of the 1st September 1879 had never been finally accepted so as to be binding and enforceable by law. In September 1884, *B* sued *D* for recovery of the sum of R33,000 with interest. He contended that, under the terms of the arrangement made on the 1st September 1879, the debt of R33,000 then owing to him changed its character; that it was no longer merely the old balance due by the defendant, but having been credited in the latter's books, should be treated as a payment by him (the plaintiff) as a deposit on account of the sale; that the suit was therefore one for money had and received by the defendant to the use of the plaintiff; and that the cause of action did not arise until the contract failed, by reason of the decree of the High Court on 14th March 1884, dismissing the suit for specific performance. *Held* that this contention must fail, and the debt must be treated as the old balance due by the defendant to the plaintiff, inasmuch as by the terms of the agreement itself which the plaintiff set up, no deposit was payable, and the price was not to be paid till the completion of the contract, and inasmuch as the plaintiff, in demanding payment, after the negotiations had failed, demanded it simply as for the balance of the old debt, and not as for the return of a deposit. *Held*, further, that the 1st September 1879, upon which the contract set up by the plaintiff was alleged to have been completed, was the latest possible date upon which the debt could be said to have become due, and that, inasmuch as the present suit was not brought until the 8th September 1884, it was barred by limitation. DHUM SINGH *v.* GANGA RAM **I. L. R., 8 All., 214**

10. ———— *Money paid—Money had and received—Goods paid for before delivery—Short delivery—Failure of consideration.*—Money paid as the price of goods to be delivered hereafter is money received for the use of the seller, and it is only upon failure of consideration that the money so paid becomes money received for the use of the buyer. When goods which have already been paid for are afterwards found to be short delivered, the failure of consideration takes place on the date of delivery, and limitation in respect of a suit to recover back the sum overpaid will be reckoned from that date. ATUL KRISTO BOSE *v.* LYON & CO.

[I. L. R., 14 Calc., 457

11. ———— *Suit to recover purchase-money—Failure of consideration—Cause of action, Accrual of.*—Purchase-money paid for a consideration which has wholly failed is money received for the use of the buyer, and a suit to recover back the money is thus governed by art. 62 of sch. II of the Limitation Act. *A* purchased a share of joint property from a member of a Mitakshara family, but his suit to recover possession of it was dismissed on the ground that the sale, having been made without the consent of the other co-parceners, was void under the law. *A* then brought a suit to recover back the purchase-money by reason of failure of consideration. *Held* that the failure of consideration, although it did not become apparent until the former suit was brought and failed, was a failure from the beginning, and time ran from the date when the purchase-money was paid. HANUMAN KAMUT *v.* HANUMAN MANDUR . . . **I. L. R., 15 Calc., 51**

12. ———— *Act XI of 1859, s. 31—Suit to recover surplus sale-proceeds of a sale for arrears of Government revenue.*—Where *A* instituted a suit in November 1889 to recover from the Secretary of State for India in Council the surplus sale-proceeds of three talukhs sold for arrears of Government revenue on the 3rd of October 1877 and which were in the hands of the Collector,—*Held* that the suit was governed by art. 62, sch. II of the Limitation Act, and was therefore barred. SECRETARY OF STATE FOR INDIA *v.* FAZAL ALI

[I. L. R., 18 Calc., 234

See SECRETARY OF STATE FOR INDIA *v.* GURU PROSHAD DHUR . **I. L. R., 20 Calc., 51**

13. ———— **and arts. 97, 120**—*Suit for money paid by a pre-emptor under a decree for pre-emption which has become void—Suit for money had and received for plaintiff's use—Suit for money paid upon an existing consideration which afterwards fails.*—Pending an appeal from a decree for pre-emption in respect of certain property conditional upon payment of R1,595, the pre-emptor decree-holder, in August 1880, applied for possession of the property in execution of the decree, alleging payment of the R1,595 to the judgment-debtors out of Court, and filing a receipt given by them for the money. This application was ultimately struck off. In April 1881, judgment was given in the appeal, increasing the amount to be paid by the decree-holder to R1,994, which was to be deposited in Court within a certain time. The decree-holder did not deposit the balance thus directed to be paid, and the decree for possession of the property accordingly became void. In 1882 the decree-holder assigned to *K* his right to recover from the judgment-debtors the sum of R1,595 which he had paid to them in August 1880. In December 1883, *K* sued the judgment-debtors for recovery of the R1,595 with interest. *Held* that art. 62 of the Limitation Act did not govern the suit, but that art. 97, and, if not, art. 120, would apply, and the suit was therefore not barred by limitation. KOJI RAM *v.* ISHAR DAS

[I. L. R., 8 All., 273

14. ———— **and art. 132**—*Suit to establish right to hereditary allowance.*—The parties, who were desais of Mohudha in addition to their "desaigiri" allowance, enjoyed an allowance, called "amin sukhdi." In 1847 the plaintiff sued the defendant's father and the Collector of Kaira for a share of the allowance; but as the whole of it had been reserved by the Collector to the defendant's father as the officiating desai, the suit was rejected under Act XI of 1843. In 1866 an arrangement was come to under which a sum of R40-2 was to be annually available over and above the remuneration of the officiator. On the 9th July 1867, the defendant received this sum for the first time. In 1873 a new arrangement was effected, under which the service was abolished, the Government resuming half of the allowance and giving up the other half freed from service unconditionally to the desais. On 4th October 1878, the plaintiff brought this suit to establish his right to a share of the moiety of the amin sukhdi allowance given to the desais by the Government, and to recover his share of the amount received by the defendant. *Held* that the plaintiff's cause of action in this suit arose on the day when the officiating desai received the surplus of the allowance freed from the condition of service and available for distribution amongst the desais as alleged by the plaintiff, and the suit, having been brought within twelve years of that day, was not time-barred. That the limitation of three years, under art. 62 of the Limitation Act (XV of 1877), sch. II, and not that of twelve years under art. 132, was applicable to a claim by one sharer against another to recover arrears of an allowance attached to a hereditary office, and not more than three years' arrears of the amin sukhdi allowance could therefore be awarded. DESAI MANEKLAL AMRATLAL *v.* DESAI SHIVLAL BROGILAL **[I. L. R., 8 Bom., 426**

15. ——————— *Suit by sharer of hak against another sharer—Desâigiri allowance.*—A suit by one sharer in a vatan against another sharer or alleged sharer who has improperly received the plaintiff's share of the "hak" is a suit for money received by the defendant for the plaintiff's use, and the period of limitation is three years as prescribed by art. 60 of the Limitation Act, 1871. HARMUKHGAURI *v.* HARISUKHPRASAD **I. L. R., 7 Bom., 191**

16. ——————— *Suit to recover arrears—Suit for money had and received—Deshpande vatan—Suit by one sharer against other.*—Where a person, having previously obtained a decree declaratory of his title, sues his co-sharer in a deshpande vatan, who is bound by the decree to recover arrears, his suit is a suit for money had and received by the defendant to the plaintiff's use; and the period of limitation is three years as prescribed by art. 62, sch. II of Act XV of 1877. Non-participation of profits by the plaintiff for more than twelve years from the date of the previous decree does not extinguish his title, and he can recover arrears for three years preceding the date of his suit to recover them. DULABH VAHUJI *v.* BANSIDHARRAI . . **I. L. R., 9 Bom., 111**

17. ——————— *Practice—Procedure—Vatan—Cash allowance—Suit for arrears of share.*—The plaintiff in this suit sought to recover eleven years' arrears of his share in a certain Government allowance received by the defendants and also prayed for an order directing the defendants to pay him and his heirs his proper share in future. The defendants contended that under the Limitation Act (XV of 1877) only three years' arrears could be recovered. In a previous suit brought by the plaintiff in 1874 against the same defendants it was decided by the High Court that twelve years' arrears could be recovered. The lower Court now held that this decision continued to bind the parties, and that therefore the present claim should be allowed. It accordingly passed a decree for the plaintiff for the amount claimed, and also directed that the defendants should pay to the plaintiff and his heirs for the future his share in the allowance. *Held* (varying the decree) that the plaintiff under the Limitation Act (XV of 1877) was only entitled to recover arrears for three years. CHAMANLAL *v.* BAPUBHAI **[I. L. R., 22 Bom., 669**

18. ——————— *Money received—Trust for specific purpose.*—*R* sued his father and brother *A* for partition of the family estate and obtained a decree by which he was entitled to recover, *inter aliâ*, one-third of a debt due to the family. In May 1878, the debtor, having received no notice of *R*'s claim, paid the debt to the father. The father died, and his estate came into the possession of *A*. *Held*, in a suit brought by *R* in July 1881 against *A* for one-third of the debt, that the money received by the father was not held in trust for a specific purpose, and that the suit was barred by art. 62 of sch. II of the Limitation Act. ARUNACHALA PILLAI *v.* RAMASAMYA PILLAI **[I. L. R., 6 Mad., 402**

19. ——————— *Separation in joint Hindu family—Suit for share in joint property—Limitation Act, sch. II, art. 127.*—At the separation of members of a joint family governed by the Benares school of Hindu law in 1885, the unrealized debts of the family were left undivided. The debts were subsequently realized by some of the members of the separated family. In a suit brought by the other members in 1893 (*inter aliâ*) to recover their shares in the debts so realized,—*Held* that the claim of the plaintiffs could only be treated as coming under art. 62, sch. II of the Indian Limitation Act (XV of 1877), and the claim in respect of such of the debts as were realized more than three years before the institution of the suit was barred by limitation. Art. 127 of the same schedule would not apply to such a case. *Thakur Prasad* v. *Partab, I. L. R., 6 All., 442*, referred to. BANOO TEWARY *v.* DOONA TEWARY **[I. L. R., 24 Calc., 309**

20. ——————— **and art. 127**—*Joint Hindu family—Separation—Joint property.*—After the separation of *P* and *T*, two members of a joint Hindu family, certain bonds continued to be held by them jointly. Four years after the separation, *P* obtained a decree in respect of one of these bonds (which had been obtained in his name alone), and realized the amount decreed in the same year. Eight years afterwards, *T* brought a suit against *P* claiming to be entitled to a share in the money realized. *Held* that art. 62, and not art. 127, of sch. II of the Limitation Act was applicable to the suit. THAKUR PRASAD *v.* PARTAB **I. L. R., 6 All., 442**

21. ——————— **and art. 109**—*Suit for money received by defendant to plaintiff's use—Vatandars Act, III of 1874, s. 8.*—Under s. 8

of the Vatandars (Bombay) Act, III of 1874, the Collector passed an order that a contribution should be paid by the holders of a part of the shetsandi vatan towards the annual emolument of the office-holder. As payment was not made, he caused the defaulters' moveable property to be sold on the 18th May 1881 as for an arrear of land revenue, and part of the sale-proceeds to be paid over to the office-holder. The defaulters had, in the meantime, appealed to the Revenue Commissioner, who eventually, on the 17th December 1881, amended the Collector's order by reducing very considerably the amount of contribution to be paid to the office-holder. Thereupon the defaulters filed a suit on the 9th April 1884 to recover from the office-holder the difference between what he had received under the Collector's order and what he ought to have received according to the Revenue Commissioner's order. *Held* that the suit was one for money had and received by the defendant to the plaintiff's use, and as such governed by art. 62 of sch. II of the Limitation Act (XV of 1877). LADJI NAIK *v.* MUSABI

[I. L. R., 10 Bom., 665

22. ———————— *Suit by deshmukh for deductions by Collector from watan.*—Where a Collector in the year 1854 employed certain karkuns to assist a deshmukh in the performance of his duty, deducting the amount of their pay from the desmukhi wātan, but failed to show that the employment of such karkuns was necessary, it was held that the deshmukh was entitled to recover the amount so deducted from his watan, as money received by the defendant to the use of the plaintiffs and not as an interest in immoveable property; that his cause of action was not barred in 1870, for that a new cause of action in respect of such deductions accrued each year in which the deduction was made, and that six years' arrears of such deduction could be recovered under s. 1, cl. 16, of Act XIV of 1859. RANGOBA NAIK *v.* COLLECTOR OF RATNAGIRI . **8 Bom., A. C., 107**

23. ———————— **and art. 132**—*Suit for money value of fixed quantities of grain payable by tenant to landlord—Nature of such claim for purposes of limitation—Suit to enforce payment of money charged on land—Immoveable property—Nibandha—Money value of goods.*—An inamdar, in a suit against his tenant, established his right to the money value of a fixed quantity of grain to be paid to him yearly by his tenant, and subsequently brought this suit to recover from his tenant the arrears of such payments for ten years at the market rate prevailing in the last month of each of those years. The defendants contended that arrears for only three years were recoverable under the Limitation Act (XV of 1877), and that the rates applicable to ascertain the amount were the Government auction rates. *Held* that the plaintiff's right would, under the Hindu law, be "nibandha," and would under the law rank for many purposes as immoveable property, but that a different principle applied to sums realized and become payable in the hands of him who realized them to the intended recipient. The interest or jural relation of right of such recipient was nibandha, but the particular sum due to him was either money received to his use, or payable on a contract, and money which would remain due, though the grant constituting the nibandha were cancelled and had ceased to exist after the realization of the money. It being thus distinguishable from the original right which produced it, the claim in this suit was barred by limitation after three years. Money value means the market value, that for which the grain would actually sell, not a merely arbitrary value called auction rates. MORBHAT PUROHIT *v.* GANGADHAR KARKARE

[I. L. R., 8 Bom., 234

24. ———————— *Money deposited for repayment on a contingency.*—The period of limitation for a suit to recover money deposited by the plaintiff with the defendant, upon the understanding that it will be returned in a certain event, should be calculated not under art. 115, but under art. 62 of sch. II of Act XV of 1877. Such period begins to run on the happening of the event. JOHURI MAHTON *v.* THAKOOR NATH LUKEE

[I. L. R., 5 Calc., 830 : 6 C. L. R., 355

———————— **art. 63 (1871, art. 61; 1859, s. 1, cl. 9).**

———————— *Suit for interest—Suit for money payable on demand—Suit for money deposited payable on demand.*—The plaintiff in this suit deposited certain money with the defendants, a firm of bankers, on the 30th August 1863. On the 2nd January 1867, an account was stated and a balance found to be due to the plaintiff consisting of the original deposit, and interest on the same calculated at six per cent. per annum. On the 11th February 1876, the defendants having proposed to pay the plaintiff such balance, together with interest on the original deposit, from the 2nd January 1867 to the 15th February 1876, calculated at four per cent. per annum, the plaintiff demanded that she should be paid such interest at the rate of six per cent. per annum. The defendants refused to accede to this demand on the 14th February 1876, and on the 17th of the same month they paid the plaintiff such balance with such interest calculated at the rate they proposed, *viz.*, four per cent. On the 11th February 1879, the plaintiff brought the present suit against the defendants in which she claimed the sum representing the difference between such interest calculated at four per cent. and six per cent., alleging that her cause of action arose on the 14th February 1876. *Held* that the suit could not be regarded as either one for money lent under an agreement that it should be payable on demand, or one for money deposited under an agreement that it should be payable on demand, but must be regarded as one for a balance of money payable for interest for money due, to which cl. 9, s. 1 of Act XIV of 1859, art. 61, sch. II of Act IX of 1871, and art. 63, sch. II of Act XV of 1877, had successively applied, and the suit was barred by limitation. MAKUNDI KUAR *v.* BALKISHEN DAS

[I. L. R., 3 All., 328

———————— **art. 64 (1871, art. 62).**

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS . . **13 C. L. R., 112**

1. ———— *Account stated, Signature to.*—An account stated, within the meaning of art. 62, sch. II of Act IX of 1871, need not be signed by the debtor. Tariney Churn Nundy *v.* Abdur Rohoman . . **2 C. L. R., 346**

2. ———— *Account stated—Simultaneous verbal agreement—Simultaneous written agreement.*—A simultaneous verbal agreement cannot extend the ordinary period of limitation for a suit on an account stated. An agreement to extend the period must be in writing and signed by the defendant or his agent. Dagdusa *v.* Shamad **[I. L. R., 8 Bom., 542**

3. ———— *Suit on account stated—Acknowledgment in writing.*—It is not necessary, in a suit on an account stated, to entitle the plaintiff to recover items of the debt which became due three years before suit, that the defendant should have acknowledged the accounts in writing. Nand Lal *v.* Nait Ram . . . . **7 N. W., 105**

4. ———— *Suit on accounts stated orally or in writing.*—The period of limitation for suits on accounts stated is the same, whether the accounts are stated verbally or in writing, and is governed by Act XV of 1877, sch. II, cl. 64. Akbar *v.* Khan **[I. L. R., 7 Calc., 256 : 8 C. L. R., 533**

Under Act XIV of 1859, it was held that, unless the original right had been kept alive by a written acknowledgment, or the transaction of adjustment of account amounted to a new and distinct contract, limitation ran from the date of the original debt for the balance of which the suit was brought. Kunhya Lall *v.* Bunsee **Agra, F. B., 94 : Ed. 1874, 71**

5. ———— *Verbal admission of correctness of account.*—A mere verbal admission of the correctness of an account, the items of which were barred by the Act, was not sufficient to create a new starting-point. Subbarama *v.* Eastulu Muttusami . . . . . **3 Mad., 378**

6. ———— *Signing and adjustment of account.*—*Semble*—That the adjustment and signing of an account by the defendant was held to be a sufficient contract in writing to satisfy the requirements of cl. 9 of s. 1 of the Act of 1859. Umedchand Hukamchand *v.* Bulakidas Lalchand . . . . . **5 Bom., O. C., 16**

See Brooke *v.* Gibbon . . **19 W. R., 244**

7. ———— *Settlement of accounts—Admission of balance—New contract.*—Where a settlement of accounts is made between a commission agent and his principal, and a sum found and admitted to be due by one to the other, the date on which this is done might be regarded as that of a new contract to pay within the meaning of Act XIV of 1859, s. 1, cl. 9, from which limitation could be counted. Bissessur Gir *v.* Sree Kishen Shaha Chowdhry . . . . . **24 W. R., 440**

Benarsee Doss *v.* Khooshal Chund. Khooshal Chund *v.* Palmer , **2 Agra, Pt. II, 170**

8. ———— *Suit for balance of account on allegation of account stated—Fresh contract to pay.*—To render an agreement, come to orally for the payment of the balance of an antecedent debt on a settlement of accounts, available in support of a suit brought after the expiration of the period of limitation applicable to such debt, it must be clearly shown to have amounted to a new valid contract to pay the balance, which extinguished the original cause of action. Hirada Karibasappah *v.* Gadigi Muddappa . . . . . **6 Mad., 197**

See Ramkristo Paul Chowdhry *v.* Hurry Dass Koondoo . . **Marsh., 219 : 1 Hay, 569**

Marimuthu *v.* Saminatha Pillai **[I. L. R., 21 Mad., 366**

9. ———— *Account settled and balance struck—New contract.*—Where an endorsement on a bond showed that an account was made up, a balance struck, and that it was agreed to be paid at a future day with interest,—*Held*, in a suit for the amount as due on an acknowledgment made on the bond, that it was not an acknowledgment, but a contract by which time was given for payment, and limitation ran from the date specified for payment. Bissumbhur Shi *v.* Bukto Bedarul Hossein . **17 W. R., 408**

10. ———— *Adjustment of accounts—Demand.*—In order that an unsigned adjustment and settlement of accounts may operate to give a fresh starting point from which limitation commences to run, there must be cross-demands, the striking of the balance between which constitutes a new consideration for the promise on the part of the person against whom the balance is found to pay the balance so settled. *Mulchand Gulabchand* v. *Girdhar Madhab, 8 Bom., A. C., 6*, followed. Hargopal Premsukhdas *v.* Abdul Khan Haji Muhammad **[9 Bom., 429**

In the case there followed it was held that, where there had been a running account between the plaintiff and the defendant consisting of advances made by the former, and part payments by the latter, the plaintiff was entitled to recover only in respect of advances made by him within three years preceding the institution of his suit, but he had a right to appropriate any payments made within that time to the reduction of the general balance, even though the recovery of such balance was barred by time. Mulchand Gulabchand *v.* Girdhar Madhav **[8 Bom., A. C., 6**

11. ———— *Account stated—Signed balance of account—Acknowledgment.*—A sum of money was deposited with the defendant's firm in 1857. Three years afterwards interest was paid by the firm, which was debited in the ledger to the creditor against a credit of a like amount. In 1875 a balance was struck, and carried to another account signed by the defendant, and acknowledging the same to be "due for balance of old account." In 1878 the account was again balanced, and the balance again transferred to a fresh account similarly signed. *Held* that the transaction did not amount to an account stated within the meaning of art. 62, sch. II of Act

LIMITATION ACT, 1877—*continued.*

IX of 1871, or art. 64 of sch. II of Act XV of 1877, and was no more than a mere acknowledgment, which, as the suit had then long been barred by limitation, was of no avail. An account stated, in the true sense of the term, and in the sense employed in the abovementioned sections of the Limitation Acts of 1871 and 1877, is where several items of claim are brought into account on either side, and being set against one another, a balance is struck, and the consideration for the payment of the balance is the discharge on each side, each party resigning his own rights on the sums he can claim, in consideration of a similar abandonment on the other side, and of an agreement to pay, and to receive in discharge, the balance found due. NAHANIBAI *v.* NATHU BHAU

[I. L. R., 7 Bom., 414

12. ———— *Account stated—Acknowledgment of debt.*—The striking of a balance in an account the items of which are all on one side does not amount to an "account stated" in the proper sense of the term. Hence the signature of the debtor to such balance amounts to no more than an acknowledgment of a debt, and, if the debt is barred at the time of signature, will not give rise to any fresh period of limitation in favour of the creditor. *Nahanibai* v. *Nathu Bhau, I. L. R., 7 Bom., 414,* followed. JAMUN *v.* NAND LAL . . **I. L. R., 15 All., 1**

13. ———— **and s. 19**—*Account settled, but not signed—Oral promise by debtor to pay balance—Commencement of limitation.*—The plaintiff and the defendant, who was his agent, examined the account between them on 13th July 1887 and a balance was found due by defendant, who orally promised to pay it in one month. The account was not signed. The plaintiff sued on 10th July 1890 to recover the amount, and it appeared that the last item in the account to the debit of the defendant was dated 28th May 1887. *Held* that the suit was barred by limitation. AMUTHU *v.* MUTHAYYA

[I. L. R., 16 Mad., 339

14. ———— *Khata, Suit on a—Limitation — Acknowledgment — Construction.*— A khata consisting of one item only on the debit side, and bearing the mark of the debtor, held to be a mere acknowledgment, and not an account stated. TRIBHOVAN GANGARAM *v.* AMINA

[I. L. R., 9 Bom., 516

15. ———— *Suit for money on account stated.*—On the 9th October 1875, the book containing the accounts between the plaintiff and the defendant, kept by the plaintiff, was examined by the parties, and a balance was struck in the plaintiff's favour, which was orally approved and admitted by the defendant. On the 2nd April 1877 the plaintiff sued the defendant for the amount of this balance "on the basis of the account book." *Held* that the suit was in effect one on accounts stated falling within art. 62, sch. II of Act IX of 1871, and could be brought within three years from the 9th October 1875 for the total balance struck, and being so brought was within time. NAND RAM *v.* RAM PRASAD

[I. L. R., 2 All., 641

LIMITATION ACT, 1877—*continued.*

16. ———— *Suit for money due on accounts stated—"Title" acquired under Act IX of 1871—Suit for money lent.*—The plaintiff sued the defendant for money due upon accounts stated between them in December 1874, when Act IX of 1871 was in force. Such accounts were not signed by the defendant. The suit was instituted after Act XV of 1877, which repealed Act IX of 1871, had come into force. *Held* that the plaintiff's right to sue upon such accounts within three years from the date the same were stated was not a "title" acquired under Act IX of 1871 within the meaning of s. 2 of Act XV of 1877, which, under the provisions of that section, was not affected by the repeal of Act IX of 1871, and the suit was not governed by the provisions of Act IX of 1871 but by those of Act XV of 1877, and that therefore, the accounts not being signed by the defendant, the plaintiff could not claim the benefit of art. 64 of sch. II of the latter Act, but must be regarded as suing merely for money lent. THAKURYAL *v.* SHEO SINGH RAI

[I. L. R., 2 All., 872

17. ———— *Statement of account unsigned—Cause of action.*—The plaintiffs claimed on a statement of account in writing, dated the 18th October 1877; this statement of account was not signed by the defendant. The date of the institution of the suit was the 30th September 1880. A Division Bench of the High Court held on the appeal, on the case coming up before them on the 18th October 1877, that the suit was not based upon any express contract made between the parties; and that the transaction which took place on that date did not constitute an implied contract, and that therefore these contentions were not open to the plaintiffs, but the Court referred the question whether the plaintiffs' claim, so far as it was based on the statement of account on the 18th October 1877, fell within art. 64 of sch. II of Act XV of 1877. *Held* by MITTER, PRINSEP, and MCDONELL, *JJ.*—That the question referred was a matter of limitation arising in the case which had not been decided in the order of reference, and without such a decision the case could not be disposed of, and as to that point, that the statement of account not being signed by the defendant did not fall within the terms of art. 64 of sch. II of Act XV of 1877. *Held* by GARTH, *C.J.,* and TOTTENHAM, *J.*—That the Division Bench, having held that the transaction afforded no basis for a suit, had disposed of the case, and the question referred was therefore immaterial. DUKHI SAHU *v.* MAHOMED BIKHU

[I. L. R., 10 Calc., 284 : 13 C. L. R., 445

18. ———— *Account stated—Agreement to pay debt by instalments—Suit for whole amount due.*—*A* being the holder of a decree against *B*, *B*, on the 7th July 1875, entered into a kistibandi and filed it in Court, setting out that he would pay off the debt due under the decree by certain instalments, and that, in default of payment of one instalment, the whole amount of the debt might be recovered by taking out execution of the decree. By the kistibandi certain immoveable property was pledged to secure the debt, but the kistibandi was not registered. *B* failed to pay the first instalment, which fell due on the 14th August 1875; and *A*, on the 19th June 1878, applied for execution of his decree, but the application was refused, and *A* referred to a regular suit. In a suit brought by *A* on the 29th January 1879 against *B* for the whole debt due under the decree,—*Held* that, inasmuch as no appeal had been preferred against the order disallowing execution, *A* was bound by that decision; but that the suit might be taken to be one for an account stated in writing with an agreement for payment at a certain stated period of time as regards the instalments due, which were not barred by limitation; the suit as regards the instalments which had not fallen due being premature, and those previous to the 29th January 1876 being barred by art. 64 of the Limitation Act. BHEKHAN DOBEY *v.* RAJROOP KOOER . . . **I. L. R., 8 Calc., 912**

19. ———— *Account stated—Evidence of existing debt—Fresh Contract Law in India—English law—Acknowledgment of debt—Limitation Act, 1877, s. 19.*—In June 1883, the plaintiff's father advanced a loan to the defendant at compound interest. The account of this debt with interest was adjusted and signed from time to time. In June 1893, it was adjusted and signed, the amount found due being R28-8-0. In February 1896, the plaintiff sued to recover this amount. *Held* that the account ruzukhata was merely an acknowledgment of the debt and of the correctness of the calculation of interest upon it. By English law an account stated could be sued on as implying a promise to pay. Formerly this was the rule also in Bombay (as shown by the earlier cases) where the account was signed. If, however, it was not signed, it could not be sued on as a new contract. The Indian Limitation Act required an acknowledgment or admission of a debt to be signed; and an admission not made in the manner prescribed by law (*i.e.*, signed) for the purpose of preventing a debt from becoming barred does not imply a promise to pay it if it should become barred. According, however, to the later authorities, an account stated or adjusted ruzukhata cannot be sued on as a fresh contract. The suit must be brought in respect of the orignal transaction, and the subsequent stated or adjusted accounts ruzukhata are only evidence of the debt arising from them, and serve to prevent the operation of the Act of Limitation. SHANKAR *v.* MUKTA . . . **I. L. R., 22 Bom., 513**

20. ———— *Suit on adjustment of account between landlord and tenant on default in payment of rent—Beng. Act VIII of 1869.*—Where, in consequence of default in the payment of rent, an adjustment of accounts was entered into between landlord and tenant, and a balance found to be due from the tenant,—*Held* that an action to recover such balance with interest was not a suit for arrears of rent under Bengal Act VIII of 1869, but a suit for the recovery of money on account governed by the provisions of the Limitation Law, 1871, sch. II, art. 62. DOLEE CHAND *v.* GOOR DYAL SINGH

[24 W. R., 218

21. ———— *Suit on account stated by guardian as agent of minor.*—A suit on an account stated against a minor cannot succeed unless it be shown that the act of the guardian acting as agent in the matter of the settlement of account is beneficial to the interests of the minor. AZUDDIN HOSSEIN *v.* LLOYD . . . . . **13 C. L. R., 112**

———— **art. 65 (1871, art. 63)**—*Surety on bond undertaking to pay "eventually."*—*A* verbally became surety upon a bond executed by *B* for repayment, in May 1872, to the plaintiff, of certain advances, promising, "if *B* does not pay eventually (shesh porjunto), I will." Default was made, and in April 1878 the plaintiff filed a suit against bth *B* and *A*, the suit being clearly barred as agains the latter. *Held* that the words "shesh porjunto" could not be taken as limited to the time specified in the bond, and that the lower Court, in order to determine whether the suit was barred against *A*, must find upon the evidence when a demand was made upon him for payment, and then apply art. 65 of Act XV of 1877, sch. II. BISHUMBER DEY PODDAR *v.* HUNGSHESHUR MOOKERJEE

[4 C. L. R., 34

———— **art. 66 (1871, art. 65).**

1. ———— *Claim not based on single bond.*—The limitation provided in art. 66 of Act XV of 1877 is not applicable to a suit in which the claim is not based on a single bond, *i.e.*, a bond or written engagement for the payment of money, without a penalty. LACHMAN SINGH *v.* KESRI

[I. L. R., 4 All., 3

2. ———— *Bond—Interest payable monthly—Payment at a specified date—Limitation Act, 1871, art. 75.*—The defendant executed a bond, which provided that interest should be payable monthly, and that the principal should become due within six months from the date of execution; the bond contained a clause to the effect that, if the interest should not be paid according to the terms of the bond, or if the creditor should feel any doubts as to his being able to realize the principal, he should not be bound to wait until the expiry of the six months in order to bring his suit, but should be at liberty to realize the principal and interest in any manner he might choose,—*Held* that a suit on the bond brought within three years from the date of the day specified therein for payment was not barred by limitation, as the case fell under art. 65 of sch. II of Act IX of 1871, and not under art. 75 of sch. II of that Act. NARAIN BABU *v.* GOURI PERSHAD BIAS

[I. L. R., 5 Calc., 21

3. ———— **and art. 116**—*Bond stipulating for recovery of loan from moveable and immoveable property.*—To a bond containing a stipulation that "if the principal and interest is not paid up at the stipulated period, then the obligee will be at liberty to recover the whole of his money, together with the interest fixed, by instituting a suit, from my moveable and immoveable property my own 'milk.'" Art. 66 of sch. II of the Limitation Act is applicable, such bond not creating a mortgage; but where the instrument is registered, art. 116 may be applied to a suit for failure to pay the bond debt. COLLECTOR OF ETAWAH *v.* BETI MAHARAM [I. L. R., 14 All., 162

——— **art. 67 (1871, art. 66).**

See DEKKAN AGRICULTURISTS' RELIEF ACT, 1879, s. 72 . **I. L. R., 9 Bom., 461**

——— **art. 69 (1871, art. 68)**—*Bill of exchange—Dishonour of bill—Suit against acceptor.*—*M*, on the 12th October 1855, drew a bill of exchange, payable three months after date, in favour of *B*, which was accepted by *J*. Before the bill became due, *B* endorsed it to *P*, who again endorsed it for full value to *M B & Co.*, of which firm *M L* was a partner. *M D & Co.* discounted the bill with *G*, who presented it at maturity to *J*, who dishonoured it. *G* thereupon sued *M L* and recovered a decree, which *M L* satisfied. *M L* thereupon brought the present suit, on the 18th February 1865, against *J* as the acceptor of the bill for the amount he paid under *G's* decree. *Held* (confirming the decision of NORMAN, *J.*) that the suit was barred by limitation, the plaintiff's cause of action having accrued when the bill became payable and the acceptor refused to pay. MOHENDRO LALL BOSE *v.* JADUB KISSEN SINGH . **14 W. R., O. C., 5**

S. C. in the Court below . **Bourke, O. C., 157**

——— **art. 72 (1871, art. 71)**—*Promissory note " after six months when demand was made"—Necessity of demand.*—Where a promissory note was made payable " after six months, whenever the payee should demand the same," with interest, it was held that the law of limitation began to run upon the expiration of six months from the date of the note. JEAUNISSA LADLI BEGAM SAHEB *v.* MANIKJI KHARSETJI [7 Bom., O. C., 36

See MADHAVBHAI SHIVBHAN *v.* FATTESING NUTHABHAI . . . . . **10 Bom., 487**

——— **art. 73 (1871, art. 72).**

1. ——— *Promissory note payable on demand.*—Under Act XIV of 1859, the period of limitation on a promissory note payable on demand commenced to run from the date of the note, and not from the date of demand. VINAYAK GOVIND *v.* BABAJI . . . **I. L. R., 4 Bom., 230**

HEMPANMAL *v.* HANUMAN . . **2 Mad., 472**

TARACHAND GHOSE *v.* ABDUL ALI [8 B. L. R., 24: 16 W. R., O. C., 1

S. C. in Court below. ABDUL ALI *v.* TARACHAND GHOSE . . . . . **6 B. L. R., 292**

The Act of 1871, however, altered the time from which the cause of action arose in such a case to the date when the demand was made; but under the present Act, the law was again altered and now remains as it was held to be under the Act of 1859.

2. ——— *Promissory note payable on demand—Cause of action.*—The defendant gave the plaintiff a promissory note on the 5th August 1869, payable on demand with interest at 5 per cent per annum. No sum either in respect of principal or interest was paid on the note, and payment was demanded for the first time in November 1875. Act XIV of 1859 contained no provision as to the date of the accrual of the cause of action in a suit on a promissory note payable on demand, but Act IX of 1871, which repealed Act XIV of 1859, and which applied to suits brought after the 1st April 1873, provided that the cause of action in such a suit shall be taken to arise on the date of the demand. In a suit brought on the note after the demand,—*Held* that the cause of action arose at the date of the note, and as a suit on it would have been barred under Act XIV of 1859 if brought before the 1st April 1873, the subsequent repeal of that Act would not revive the plaintiff's right to sue. NOCOOR CHUNDER BOSE *v.* KALLY KOOMAR GHOSE [I. L. R., 1 Calc., 328

See VENKATA CHELLA MUDALI *v.* SASHAGHERRY RAU . . . . **7 Mad., 283**

and MOLAKATALLA NAGANNA *v.* PEDDA NARAPPA [7 Mad., 288

3. ——— *Act XIV of 1859—Act IX of 1871—Promissory note payable on demand.*—On the 12th December 1864 the plaintiff sold seven bars of gold to the defendants, and deposited with them the value thereof, to run at interest and payable on demand. The defendants entered the amount in their own books, and furnished the plaintiff with a pass-book, which contained this entry: "The account of the amount deposited by *B* (the plaintiff) with *V* (the defendants), of the city of Poona. The details of it are as follows: We have debited the amount to ourselves, and will return it whenever you demand it. Shake 1786 (A.D. 1864)." The defendants adjusted the account in the plaintiff's pass-book in July 1865 in these words: " Balance this day, the 1st Jyest vadya, Shake 1787, R1,159-2-0. Interest on this sum will run from 1st Jyest vadya, Shake 1787 (A.D. 1865)." This entry was signed by the defendants. The plaintiff drew several times against this account within the first year, sometimes taking cash and sometimes gold. On the plaintiff's demanding the money in April 1877, the defendants refused to pay it. The plaintiff therefore filed a suit against them on the 25th June 1877. The defendants pleaded limitation. *Held* that, regarding the entry made by the defendants in the plaintiff's book as a promissory note, the suit was barred by the law of limitation. VINAYAK GOVIND *v.* BABAJI . . **I. L. R., 4 Bom., 230**

These are cases where the suit was, when Act IX of 1871 came into force, already barred under Act XIV of 1859. But in a Madras case the principle was held to be the same where the suit was not barred under that Act at the time Act IX of 1871 came into force.

4. ——— *Suit on promissory note executed while Act XIV of 1859 was in force, but not barred under that Act—Cause of action.*—In a suit brought after the 1st April 1873 on a promissory note for a sum payable on demand, executed while the old Limitation Act (XIV of 1859) was in force, but not barred under that Act at the time the new Limitation Act (IX of 1871) came into force, the period of limitation ought to be computed from the date of the note, and not from that of the demand. The new Act merely alters the point of time as to notes executed after its enactment, from which the period is to be reckoned, and does not make a demand a mode of extending the period of limitation. CHINNASAMI IYENGAR *alias* STREENIVASSA RAGHAVA CHARYAR *v.* GOPALACHARRY . . . . . . **7 Mad., 392**

5. ——— *Promissory note—Novation.*—The holder of a promissory note, payable on demand, dated 14th April 1870, demanded payment on 8th December 1872. The maker then paid interest in advance up to 1st April 1873, upon the condition that the holder should make no demand until that date. *Held* that this transaction amounted to the substitution of a new contract for that contained in the promissory note; that the period of limitation must be reckoned from 1st April 1873; and that consequently a suit to recover the balance due on the note, instituted on 27th March 1876, was not barred. NATA HIRA *v.* JANARDAN RAMACHANDRA **I. L. R., 1 Bom., 503**

The question was raised under the Act of 1871, whether the bringing of an action to recover the amount due on the note could be regarded as a sufficient demand, but was undecided.

See MADHAVBHAI SHIVBHAI *v.* FATTESING NATHUBHAI . . . . . . **10 Bom., 487**

6. ——— *Promissory note payable on demand—Cause of action.*—The suit was brought on an instrument in the nature of a promissory note payable on demand. The note was executed on 20th November 1871, and the suit was filed on the 17th November 1875. *Held* that the suit not having been brought until after the date at which s. 4 of Act IX of 1871 and its appendix, sch. II, came into operation, the question whether the suit was barred or not by the law of limitation must be determined by sch. II of that enactment, which gives three years from date of demand. *Held* also that the suit was not barred, there being no suggestion of any demand having been made before the suit was instituted. MADHAVAN *v.* ACHUDA . . . . **I. L. R., 1 Mad., 301**

——— **art. 74 (1871, art. 74).**

Under Act XIV of 1859, the decisions seem to have been in accordance with this article.

See MUNNA JHUNNA KOONWAR *v.* LALJEE ROY **[1 W. R., 121**

ULTAF ALI KHAN *v.* RAM LALL **[Agra, F. B., 83 : Ed. 1874, 63**

——— **art. 75 (1871, art. 75).**

See BOND . . . **I. L. R., 4 Bom., 96**
[I. L. R., 3 Mad., 61

1. ——— *Promissory note payable by instalments.*—A promissory note, dated 2nd April 1868, stipulated that the principal amount with interest was to be repaid by half-yearly instalments of R150 each, and that, in the event of any one of these instalments not being punctually paid, the whole amount was to become payable at once. Default was made in payment of the first instalment, which fell due on 2nd October 1868. In an action brought on 19th October 1871 for the recovery of the whole amount,—*Held* that the right to bring the suit under Act XIV of 1859, s. 1, cl. 10, accrued to the plaintiff on 2nd October 1868, and that, having omitted to bring it for more than three years, he was too late in instituting it on the 19th October 1871. *Held* also that the plaintiff's right to the immediate payment of the whole amount was not, under the note, subject to be defeated by any subsequent payment, and that no such subsequent payment (assuming it to have been made) could, in the absence of any fresh agreement, supersede or suspend such right. The proposition laid down in *Ramkrishna Mahadev* v. *Bayaji Santaji, 5 Bom., A. C., 35*,—that "although the instalments were not paid by the defendants at the times fixed for payment, yet the defendants having paid the money on account of them, and the plaintiff having accepted it, the payments must be considered, as regards both parties, as if made at the times fixed; and the plaintiff cannot take advantage of the stipulation that the sum should become due on failure to pay any instalment, or the defendants rely upon it as making the whole debt due, and fixing the period from which the time of limitation ran,"—overruled, as there was nothing in Act XIV of 1859 to give any such effect to an acceptance of part-payment after the whole debt has become due. GUMNA DAMBERSHET *v.* BHIKU HARIBA . . . . **I. L. R., 1 Bom., 125**

2. ——— *Money payable by instalments.*—In a suit for recovery of a certain sum of money, the present defendant intervened by a petition agreeing to pay the whole amount due on the bond if the first instalment was not paid by the debtor on the 16th of December 1863. In this suit, brought on the 11th of April 1867, for recovery of the whole amount,—*Held* that, under cl. 10, s. 1, Act XIV of 1859, the claim was barred. GAUR HARI DAS *v.* MADAN MOHAN BISWAS **[3 B. L. R., A. C., 16 : 11 W. R., 330**

3. ——— *Promissory note payable by instalments—Non-payment of instalment—Payment of subsequent instalments.*—In August 1856 *G H W*, *B B*, and *J W* (the two latter being sureties, and having been treated as such by the plaintiff) jointly and severally executed a promissory note to *M T B*, payable by instalments, which were irregularly paid till January 1860, when they ceased; the instalment payable on December 10th, 1857, not having been paid till January 5th, 1858, *M T B* instituted an action against *B B* for the balance then due, for which a decree was given. On *B B*'s moving for a new trial, the Judges differed on the questions of limitation and laches of the plaintiff, and the case was referred for the opinion of the High Court, which was in favour of the defendant on the point of limitation. *Held* that a cause of action at once arises on, and limitation runs from, the non-payment of an instalment; and that acceptance of subsequent instalments on a note so payable is not a waiver of the limitation which has so commenced to run against a surety. BREEN *v.* BALFOUR . . . . **Bourke, O. C., 120**

NARAYANAPPA *v.* BHASKAR PARMAYA **[7 Bom., A. C., 125**

RAM KRISHNA MAHADEV *v.* BAYAJI SANTAJI **[5 Bom., A. C., 35**

LIMITATION ACT, 1877—*continued.*

But *see* GUMNA DAMBERSHET *v.* BHIKU HARIBA [I. L. R., 1 Bom., 125

4. ———— *Bond payable by instalments—Stipulation to recover by execution—Cause of action.*—Where a certain amount of money was recoverable under an instalment bond by the sale of the property hypothecated in it, and it was one of the stipulations of the bond that the whole amount might be recovered by execution of decree, on default of payment occurring at any one of the stipulated periods for the payment of an instalment,—*Held* that, as a separate suit could not be brought for the whole amount on the occasion of any default which occurred before the termination of the last kist, the whole amount could not, for the purposes of the law of limitation, be held to be due on the occasion of any such default. JUGGUT MOHINEE DOSSEE *v.* MONOHUR KOONWAR . . . . **25 W. R., 278**

5. ———— *Act, 1871, art. 75—Bond payable by instalments—Waiver of default—Cause of action.*—A suit was brought upon an instalment bond conditioned upon default in payment of any one or more instalments that the whole sum should be exigible. Default was made in payment of several instalments, but subsequently payments were made and accepted by the plaintiff on account of the unpaid instalments. This suit was instituted more than three years after the first default in payment of an instalment, but within three years from the time when the last payment of an instalment had been made. The defendant pleaded limitation. *Held* that limitation ran from the date on which the first default was made in payment of an instalment, in respect of which default the benefit of the provision in the 75th clause of second schedule of Act IX of 1871 was not waived. UNCOVENANTED SERVICE BANK *v.* KHETTERMOHUN GHOSE . . . . . . **6 N. W., 88**

6. ———— *Bond payable by instalments—Waiver of default.*—A bond, dated the 23rd August 1870, stipulated payment of R39 for principal and R9-12-0 for interest, making in all R48-12, by monthly instalments of R1-8-0, with the conditions, first, that in default of payment of a monthly instalment, interest should be paid at 1½ per cent. per mensem till the whole amount was paid, and, second, that in default of payment of any two of the monthly instalments, the whole of the principal should become payable at once, exclusive of interest, from the date of the bond. Two instalments being overdue on the 24th October 1870, the whole principal became payable at once. In an action brought by the obligee on the 4th June 1874 for the recovery of the money,—*Held* that the claim was wholly barred, as the first condition amounted only to a proviso that the obligee might exercise a right of waiver and accept payment by instalments instead of suing for the whole, and there was nothing to show that he had exercised such right of waiver. NAVALMAL GAMBHIRMAL *v.* DHONDIBA BIN BHAGVANTRAM . . . **11 Bom., 155**

7. ———— *Bond payable by instalments—Waiver.*—On the 24th May 1866, *H* gave *A* a bond payable by instalments, which provided that, if default were made in the payment of one instalment, the whole should be due. The first default was made on the 28th June 1866. No payment was made after Act IX of 1871, sch. II, No. 75, came into force. *Held* in a suit upon such bond that limitation began to run when the first default was made, and no waiver, before Act IX of 1871 came into force, could affect it. AHMAD ALI *v.* HAFIZA BIBI **I. L. R., 3 All., 514**

See RADHA PRASAD SINGH *v.* BHAGWAN RAI [I. L. R., 5 All., 289

8. ———— *Waiver—Proof—Abstention from suit.*—Mere abstinence from suit is not sufficient to prove waiver of a right to enforce a condition whereby, upon default of payment of an instalment, the whole debt becomes due. SETHU *v.* NAYANA . . . **I. L. R., 7 Mad., 577**

9. ———— *Debt payable by instalments—Waiver—Proof.*—Where a bond for the payment of money by instalments contains a condition that the whole sum then remaining due shall become payable on failure to pay any one instalment, the creditor, who seeks to recover instalments which in due course would have been due subsequently to the date on which the recovery of the debt in full has become barred, must prove a waiver of his right to enforce the condition. Waiver is not to be inferred from mere abstinence to enforce the condition. GOPALA *v.* PARAMMA . **I. L. R., 7 Mad., 583**

10. ———— *Bond—Waiver—Cause of action.*—The mere acceptance of instalments after default, by the obligee of a bond payable by instalments, which provides that, in case of failure to pay one or more instalments, the whole amount of the bond due shall become payable, does not constitute a "waiver," within the meaning of art. 75, sch. II of Act IX of 1871, of the obligee's right to enforce such provision. In the case of such a bond, the cause of action arises on the first default, and limitation runs from the date of such default. MUMFORD *v.* PEAL . . . . **I. L. R., 2 All., 857**

11. ———— *Contract to pay by instalments—Default in paying an instalment of a debt payable by instalments.*—When a debt is made payable by instalments, with a proviso that, on default of payment of any one instalment, the whole debt, or so much of it as may then remain unpaid, shall become due, limitation runs, under Act IX of 1871, or Act XV of 1877, from the time of the first default. A subsequent acceptance of the instalment in arrear operates as a waiver, and suspends the operation of the law of limitation; but merely allowing the default to pass unnoticed does not. IN THE MATTER OF CHENI BASH SAHA *v.* KADUM MUNDUL . **I. L. R., 5 Calc., 97**

12. ———— *Decree payable by instalments—Default—Waiver—Estoppel—Application for execution as provided for in case of default—Application to recover instalments.*—A decree for the payment of money directed that an amount less than the amount sued for should be paid by instalments, and that, if default were made in payment of one instalment, the amount sued for should be payable. Default having been made, the decree-holder, on the 7th May 1877, applied for execution of the decree for the larger amount. It appeared that at this time, although the instalments had not been paid regularly, the decree-holder had received in full all the instalments which had fallen due excepting the instalment falling due in the previous September, that is, September 1876, of which he had received only a part. The application of the 7th May 1877 was struck off the file. The decree-holder subsequently accepted the remaining instalments, which were paid on due dates. On the 28th August 1878, the decree-holder applied for payment of an instalment which had been paid into Court. On the 8th September 1881 the decree-holder applied for execution of the decree for the larger amount payable thereunder in case of default, with reference to the default in respect of the instalment for September 1876. The Court refused to allow execution to issue for such amount, but allowed it to issue for the balance of the instalment for September 1876. *Per* OLDFIELD, *J.*—That the acceptance by the decree-holder of the instalments falling due after September 1876, notwithstanding default had been made in respect of the instalment for September 1876, amounted to a waiver of his right to execute the decree for the larger amount payable thereunder in case of default, and by such waiver he was estopped from recovering such larger amount in execution of the decree. *Mumford* v. *Peal, I. L. R., 2 All., 857,* and *Gyan Chund* v. *Jawahur, 2 N. W., 83,* referred to. RADHA PRASAD SINGH *v.* BHAGWAN RAI . . . . . **I. L. R., 5 All., 289**

13. ———————— *Construction of decree—Decree payable by instalments—Execution of decree.*—A consent decree for R350 directed payment of the money by fourteen half-yearly instalments of R25 each, in Cheyt and Assin of each year, the first instalment to be paid in the month of Cheyt 1283 (March-April 1877). The decree contained a provision that on default of payment of any one instalment, the execution-creditor should have the option of executing the decree for the whole amount remaining unpaid. Default was made in payment of the first instalment, but the judgment-debtor paid up (not on due date) the instalment which fell due up to and including Assin 1285 (October-November 1878), when he stopped making any payments. On the 26th of November 1881 the decree-holder applied for execution in respect of all sums then remaining unpaid under the decree. The District Judge allowed execution to issue for all sums which had fallen due within three years previously to date of the application for execution, but refused to allow execution to issue in respect of the instalments not then due. *Held* that the execution-creditor must be considered to have waived his right to execute the decree for the whole amount, but was entitled under the decree to realize any instalments which were still due. NIL MADHUB CHUCKERBUTTY *v.* RAMSODOY GHOSE

G.C. **[I. L. R., 9 Calc., 857**

14. ———————— *Verbal contract—Debt payable by instalments.*—*A* entered into a verbal agreement with *B* to pay a debt due in monthly instalments, *B* reserving to himself the right to claim payment of the whole sum due on default of three successive instalments. *A* failed to pay any instalment. Four years after the first instalment was due *B* sued *A* to recover the sum due on the various instalments not barred by limitation. *Held* that *B* was not bound to sue for the whole amount due directly on *A*'s failure to pay the three successive instalments. *Semble*—Art. 75, sch. II of Act XV of 1877, does not apply according to its strict terms to a suit brought upon a verbal contract. KOYLASH CHUNDER DASS *v.* BOYKOONTO NATH CHUNDRA

[I. L. R., 3 Calc., 619: 2 C. L. R., 167

15. ———————— *Cause of action—Bond—Payment by instalments—Liability for whole amount on failure of payment of instalment.*—On the 20th August 1879 the defendant, being indebted to the plaintiff, gave his bond for R8,000. The bond provided for the payment of monthly instalments of R80 each, the first of such instalments to become due on the 4th September 1879. The bond also contained the following clause: "If the said Arthur Bowles shall—in default of payment of any one of such instalments, or in the event of default being made by him in payment of the premium money when and as the same shall become due in respect of the said policy, if so required by the said Hamantram Sadhuram Pity, his executors, administrators or assigns—pay the whole amount which may then be due under and by virtue of these presents without deduction, then the above-written bond or obligation shall be of no effect; otherwise the same shall be and remain in full force and virtue." The defendant paid three of the said monthly instalments, the last of which was paid on the 2nd December 1879, being that which had fallen due on the 4th November 1879. No further instalments were paid, but no demand for payment of the entire sum secured by the bond was made by the plaintiff until the 30th January 1884. The plaintiff filed this suit on the 28th April 1884. The defendant contended that the plaintiff's cause of action arose on the 4th December 1879, when he (the defendant) failed to pay the instalment then due and pleaded limitation. The plaintiff contended that under the bond the cause of action did not arise until the date of his demand, *viz.*, on the 30th January 1884. *Held* that the suit was not barred. The language of the bond showed that it was the intention of the parties that, in case default being made in payment of one instalment, the whole amount should become due only if a demand for such amount were made. The cause of action did not arise against the defendant until the date of demand, *viz.*, the 30th January 1884. HANMANTRAM SADHURAM *v.* BOWLES . . . **I. L. R., 8 Bom., 561**

16. ———————— *Bond payable by instalments—Cause of action—Limitation Act, 1877, arts. 67, 68, and 80.*—*B* and *S* executed a bond, dated the 15th August 1874, in favour of plaintiff in consideration of a loan of R15,000, agreeing to repay the same within three years from the above date and covenanting to pay every half-year interest on the same, at the rate of 8 per cent. per annum; and also to pay the premia on certain policies of insurance made over to plaintiff by way of collateral security. In the event of failure in payment on due-date of interest and premia, the obligors made themselves liable to pay the full amount of the bond debt. The bond also contained the stipulation that it should be optional with the obligee to claim and, if necessary, to sue for the full amount of the bond on the failure of any one or more stipulated payment, or on the full expiry of the period of three years. *Held* that the bond was not an instalment bond, and therefore art. 75, sch. II of Act XV of 1877, was inapplicable. *Held* by STUART, *C.J.*, that limitation commenced after the expiration of the three years allowed by the bond for payment of the debt. *Held* by SPANKIE, *J.*, —Art. 80, schedule of Act XV of 1877, applies to the suit, and limitation would run from the date when the bond became due; that according to the stipulation in the bond it would become due on failure in payment on due date of both the interest and premia, and not on failure in payment of either of them only. *Held* further that arts. 67 and 68, sch. II of Act XV of 1877, were not applicable to the suit. BALL *v.* STOWELL . . **I. L. R., 2 All., 322**

17. ———— *Decree payable by instalments—Instalment, Failure of, whole sum decreed to fall due—Right of decree-holder to waive his right to execute the whole decree—Waiver.*—A proviso in a decree made payable by instalments, by which the whole amount of the decree is to become due upon default in payment of any instalment, is a proviso enuring for the benefit of the decree-holder alone, and he is at liberty to take advantage of it or to waive it as he thinks fit. In this case it was held that he did waive his right, and therefore his right to recover the amount by instalments subsequently was not barred, limitation not running against him from the original default. RAM CULPO BHATTACHARJI *v.* RAM CHUNDER SHOME

[I. L. R., 14 Calc., 352

18. ———— *Instalment bond—Default in one instalment, the whole amount to fall due—Waiver.*—The mere fact that a creditor has done nothing to enforce a condition in an instrument, under which the whole debt became due on failure in the payment of one instalment, is no evidence of waiver within the meaning of art. 75 of the Limitation Act. NOBODIP CHUNDER SHAHA *v.* RAM KRISHNA ROY CHOWDHRY

[I. L. R., 14 Calc., 397

19. ———— *Bond payable by instalments—Default in payment of an instalment—Waiver of a condition of forfeiture on default in payment of one instalment—Acceptance of an instalment overdue.*—A bond payable by instalments provided that, if default was made in paying one instalment, the whole debt should become due. The amount of the third instalment was paid five days after it became due. The lower Court found that this payment was accepted by the obligee as a payment made on account or in satisfaction of the third instalment, and not as a mere part payment on reduction of the whole debt, and that the circumstances indicated an intention to waive the forfeiture, though there was no express waiver. *Held* that the acceptance of the amount of the third instalment constituted a waiver within the meaning of art. 75 of sch. II of the Limitation Act, 1877. NAGAPPA *v.* ISMAIL . . . **I. L. R., 12 Mad., 192**

20. ———— *Execution of decree—Decree payable by instalments—Default—Waiver.*—A decree was made for payment of the decretal amount by monthly instalments running over a period of twelve years; and it was provided that on default the decree-holder might execute the decree as a whole for the balance then due. In 1883, a default was made, and in 1884 the decree-holder filed an application for execution in respect thereof, but did not proceed with it, and continued to receive the monthly instalments. In 1887, he made another application for execution, in which he relied on the same default. *Held* that the default, if it was one, had been waived by the decree-holder, and that such waiver was a good defence to the present application. *Munford* v. *Peal, I. L. R., 2 All., 857,* and *Asmutullah Dalal* v. *Kally Churn Mitter, I. L. R., 7 Calc., 56,* distinguished. BUDDHU LAL *v.* REKKHAB DAS

[I. L. R., 11 All., 482

21. ———— *Payment of bond debt by instalments—Right to sue for whole debt on default of payment of any instalment—Waiver of right to sue, Nature of proof of.*—On the 15th August 1891, the defendant executed a document admitting that he was indebted to the plaintiffs in the sum of R2,125, and agreeing to pay the amount in seven instalments, the first (R401) to be paid in August 1891, the second on the 28th April 1892, and the remainder at intervals of six months. The document contained the following clause: "If any of the instalments is not duly paid, I am to pay the whole amount with interest at eight annas per cent. per annum." The defendant failed to pay the first instalment, which the plaintiffs admitted was now barred, but on the 10th June 1895 the plaintiffs filed this suit to recover the remainder of the debt and interest. The defendant pleaded that under the above clause the whole sum became due on the failure to pay the first instalment; that the right to sue which then accrued was never waived, and that the suit was now barred by limitation. *Held* that the plaintiffs having failed to prove a waiver of the right of suit which accrued to them in August 1891; the suit was barred by limitation. The waiver contemplated by art. 75 of sch. II of the Limitation Act (XV of 1877) must be either an agreement between the parties, or such conduct as will itself afford clear evidence of a legal waiver. KANKUCHAND SHIVCHAND *v.* RUSTOMJI HORMUSJI

[I. L. R., 20 Bom., 109

———— **art. 80 (1871, art. 80)**—*Suit on unregistered bond pledging moveable property for repayment.*—In a suit on an unregistered bond, whereby certain moveable property in the debtor's possession was pledged as security for the repayment of principal and interest,—*Held* that the suit was governed by art. 80, sch. II of the Limitation Act, 1877. VITLA KAMTI *v.* KALEKARA **I. L. R., 11 Mad., 153**

———— **art. 81 (1871, art. 82)**—*Suit by surety of lessee for refund of rent paid to wrongful heir of deceased lessor.*—In a suit by the surety of a lessee for the refund of rent paid to the wrongful heir of the deceased lessor, the cause of action as against the wrong-doers dates from the time when they were declared by a competent Court to have paid to a party without title, and the cause of action as against the lessee dates from the time when the surety was made to pay the rent to the rightful heir on default of the lessee. ROY HUREE KISHEN *v.* ASMEDH KOONWAR . . **W. R., 1864, 57**

———— **art. 82 (1871, art. 83)**—*Suit for contribution—Cause of action.*—A surety who had discharged the amount of a bill guaranteed by him and another as co-surety sued his co-surety for contribution. *Held* that, the cause of action in the suit being the right to contribution, that right accrued, not when the bill in question was dishonoured, but when the surety took it up and paid it. CONSTANTINE *v.* DREW **1 N. W., Pt. II, p. 42: Ed. 1873, 100**

———— **art. 83 (1871, art. 84).**

1. ———— *Contract of indemnity.*—In 1864 a lease of a house was granted to *A* for a term of ten years. The lease contained a covenant to repair. *A* died, and *B*, his administrator, assigned the lease to another, and it ultimately became vested in the plaintiff. In 1872 the plaintiff assigned the lease to the defendants, "under and subject to the covenants" therein contained. The defendants failed to repair, and after the term had expired, *C*, the representative of the lessor, sued *B* for arrears of rent and damages for non-repair. *B* defended the suit, but *C* obtained a decree against him for R6,167-3 and costs, amounting in all to R8,328-3. His own costs amounted to R1,491-1. In 1876 *B* paid *C* the R8,328-6. In 1877 *B* sued the plaintiff for the amount which he had been compelled to pay *C* and for the amount of his own costs. The plaintiff gave notice to the defendants to intervene and defend if they desired; but they did not reply, and the plaintiff consented to a decree for R6,932-12-11 with costs. Thereupon the plaintiff instituted the present suit to recover from the defendants the sum recovered from him by *B* together with his own costs of defence. *Held* that the suit was not barred under Act XV of 1877, sch. II, art. 83—which provides a period of three years' limitation for a suit upon any contract of indemnity other than those specifically provided for from the time "when the plaintiff is actually damnified"—as the time when the plaintiff was actually damnified was when *B* recovered against him. PEPIN *v.* CHUNDER SEEKUR MOOKERJEE **[I. L. R., 5 Calc., 811: 6 C. L. R., 167**

2. ———— *Contract of indemnity—Set-off.*—A suit was brought by *P* against the Elgin Mills Company for recovery of the price of wood supplied under two contracts, each of which contained a clause by which the plaintiff contracted to indemnify the defendants for loss arising by reason of failure on his part to supply the wood as contracted for. No wood was supplied after the 11th November 1879. The suit was brought on the 10th October 1882. Defendants claimed a set-off as damages for loss incurred by the plaintiff's failure to supply all the wood contracted for, such loss having arisen on the 25th October 1879 and subsequently. *Held* that the law of limitation applicable to the set-off was art. 83, sch. II of the Limitation Act; that limitation would run from the time when the plaintiff was actually damnified, and should be reckoned to the date of the institution of the suit, and not to that of claiming the set-off, which was after the defendants' names were brought on the record; and that the set-off was therefore in time. *Walker* v. *Clements, 15 Q. B., 1046,* referred to. PRAGI LAL *v.* MAXWELL **[I. L. R., 7 All., 284**

———— **art. 84 (1871, art. 85).**

1. ———— *Act XIV of 1859, s. 1, cl. 9—Beng. Reg. XX of 1812, s. 5—Suit for fees due to pleader.*—A suit brought to recover fees due to plaintiff as pleader in three suits was held to be barred by limitation as instituted after three years, that being the period of limitation in one case in which the defendants had agreed to pay the fees according to law, such agreement being an obligation for the payment of money within the meaning of s. 5, Regulation XX of 1812, and that being also the limitation applicable under cl. 9, s. 1, Act XIV of 1859, in the other cases in which there was no written engagement to pay the fees. RASH MOHUN GOSWAMY *v.* ISSUR CHUNDER MOOKERJEE **[9 W. R., 113**

2. ———— *Suit for pleader's fees not under written contract.*—A suit for pleader's fees upon a vakalatnama which is in the form of a mere power of attorney, and is not a written contract, is barred by limitation if not brought within three years. In the absence of evidence of any express agreement as to when the fees are to be paid, the implied agreement must be taken to be for payment at the time when the case is decided. KASHINATH ROY CHOWDHRY *v.* ISSUR CHUNDER MOOKERJEE **[5 W. R., 297**

DWARKANATH MOITRO *v.* KENNY **[5 W. R., S. C. C. Ref., 1**

CARRUTHERS *v.* MENZIES . . . **Cor., 40**

3. ———— *Act XIV of 1859, s. 1, cls. 9 and 10—Suit by vakil for fees—Cause of action.*—The defendants retained the plaintiff as their pleader in original suit No. 2 of 1863 on the file of the Civil Court of Cuddapah, and executed a vakalatnama to him in July 1863, but no special agreement regarding fees was made. The plaintiff conducted that suit for the defendants as their vakil until decree, which was made in September 1864. The present suit was instituted in December 1866. *Held,* reversing the decree of the lower Appellate Court, that as there was no special agreement, the plaintiff's right of suit did not arise until he had completely discharged his duty in the conduct of the suit, which he had done in 1864. Consequently, the present suit, having been brought within three years from that date, was not barred. BUCKAPATNAM THATHACHARLU *v.* KAJAMIYA . **6 Mad., 265**

4. ———— *"Suit"—Attorney and client—Taxation of bill of costs—Application by* *attorney for payment or attachment—Rule 149, Com. Law Rules of Bombay Supreme Court.*—An application (under Rule 149 of the Common Law Rules of the Supreme Court of Bombay) by an attorney that his client should show cause why he should not pay the balance shown by the Taxing Master's *allocatur* to be due in respect of his bill of costs, and why, in default of such payment, attachment should not issue against the person and property of the client, is not a "suit" within the meaning of the Limitation Act (IX of 1871). Such an application as the above is not barred by any law of limitation now in force in British India. ABBA HAJI ISHMAIL *v.* ABBA THARA

[I. L. R., 1 Bom., 253

5. ——— *Attorney and client—Bill of costs—Civil Procedure Code, s. 206—Compromise of suit without knowledge of attorney.*—A solicitor was retained in July 1871 to execute a decree. In November 1871 a prohibitory order was made in the cause, after which the solicitor did nothing more in the matter. In June 1872 the decree-holder and judgment-debtor settled the matters in dispute between them without the knowledge of the solicitor; but this compromise was not made through, or certified to, the Court which passed the decree. In a suit brought in December 1875 by the solicitor against the decree-holder to recover the amount of his bill of costs,—*Held* that the plaintiff's claim was not barred by art. 85 of sch. II to Act IX of 1871. HEARN *v.* BAPU SAJU NAIKIN . . . . **I. L. R., 1 Bom., 505**

6. ——— *Suit by vakil—Termination of suit.*—The termination of the suit mentioned in art. 84 of sch. II of the Limitation Act (XV of 1877) means the date when judgment is given. BALKRISHNA PANDURANG *v.* GOVIND SAIVAJI

[I. L. R., 7 Bom., 578

7. ——— *Solicitor and client—Termination of suit—Decree—Taxation of costs.*—A solicitor for a party to an appeal received a notice after the date of the decree that the costs of the other side would be taxed on a certain date, and, having informed his client, received instructions not to appear on taxation. *Held* that, until the costs were taxed and inserted in the decree and the decree had issued, the suit had not terminated within the meaning of art. 84 of sch. II of the Limitation Act, 1877. NARAYANA CHETTI *v.* CHAMPION

[I. L. R., 7 Mad., 1

8. ——— *Taxed costs of an attorney, Suit for—Suit or particular business, Meaning of—Attorney and client.*—Subsequent proceedings taken in connection with the taxation of an opponent's costs are not part of the suit or application itself. Where a firm of attorneys brought a suit against their clients to recover the costs of an application to the High Court,—*Held* that limitation began to run from the date of the judgment in the application. *Balkrishna Pandurang* v. *Govind Shivaji, I. L. R., 7 Bom. 578*, and *Rothery* v. *Munnings, 1 B. & Ad., 5*, approved. Items of an attorney's bill for work done, subsequently to the judgment, in opposing the taxation of the opponent's costs, although done on his client's instructions, will not take the matter out of the Limitation Act. Such items do not form part of the costs of the original application. WATKINS *v.* FOX . . . . **I. L. R., 22 Calc., 943**

ADMINISTRATOR GENERAL OF BENGAL *v.* CHUNDER CANT MOOKERJEE **I. L. R., 22 Calc., 952 note**

——— **art. 85 (1871, art. 87; 1859, s. 8).**

Under s. 8 of Act XIV of 1859, it was necessary that the persons who had the mutual dealings mentioned in the section should be "merchants or traders." The following cases were held not to be within the section:—

Repaying a debt contractor. PEARY MOHUN BOSE *v.* GOBIND CHUNDER ADDY . **10 W. R., 56**

Acting as *del credere* agent, and as such receiving commission for effecting sales of cotton for the principal and guaranteeing payment by the purchasers. OKOOR PERSAUD BUSTOOREE *v.* FOOL COOMAREE DABEE

[10 B. L. R., 15: 16 W. R., P. C., 35
14 Moore's I. A., 134

Affirming the decision of the Court below in PHOOL KOOMAREE BEEBEE *v.* OONKURPERSHAD BOISTOBEE

[2 Ind. Jur., N. S., 50
7 W. R., 67

Suit for balance of arutdari account and for commission and interest. MEHER CHAND SAHOO *v.* MORCOLYRAM . . . **14 W. R., O. C., 7**

Suit for balance of accounts between raiyats and an indigo factory. DOYLE *v.* EDOO GAZEE

[3 W. R., S. C. C. Ref., 13

DOYLE *v.* KHOOSEEAL KHAN

[3 W. R., S. C. C. Ref., 1

DOYLE *v.* ALLUM BISWAS

[4 W. R., S. C. C. Ref., 1

NOBIN CHUNDER SHAHOO *v.* SUROOP CHUNDER DOSS . . . . **6 W. R., 328**

Suit for balance of account framed as if in the nature of a partnership demand. MCCORKINDALE *v.* YOUNG . . . . . **18 W. R., 466**

YOUNG *v.* MCCORKINDALE . **19 W. R., 159**

Suit by one co-sharer against another where the co-sharers collect their rents separately, for recovery of surplus collections realized by collecting more than his share. AHMED REZA *v.* ENAYET HOSSEIN

[W. R., 1864, 235

Suit by commission agent against his principal. BISSESSUR GIR *v.* SREEKRISHEN SHAHA CHOWDHRY

[24 W. R., 440

The following decisions were given under the Act of 1859:—

1. ——— *Mutual dealings—Balance of accounts.*—The test of whether dealings are mutual within s. 8 of Act XIV of 1859 or not seems to be were they such that the balance was sometimes in favour of one party and sometimes of the other. It

is not necessary that there should have been such a buying or selling by each of the parties, so as to constitute him a trader within the strict meaning of the term. GHASSEERAM *v.* MONOHUR DOSS

[2 Ind. Jur., N. S., 241

2. ——————— *Mutual dealings—Mutual payment and receipt of money.*—Where each party paid money to the other, and received from the other an equivalent in bills, they were held to have had mutual dealings. LUCHMEE NARAIN *v.* CHOOMUN MEAH . . . . **14 W. R., 184**

3. ——————— *Mutual dealings—Balance of account, Suit for.*—In a suit for the balance of an account with interest the Court was of opinion that the three years' limitation did not apply, but that the case was one of mutual dealings between the parties, and was governed by s. 8, Act XIV of 1859. FERNANDES *v.* VASUDEV SHANBOG

[3 Bom., A. C., 82

4. ——————— *Mutual dealings—Co-sharers accounting for rents.*—The rule that mutual accounts, if they contain some item or items within twelve years, will not be barred by limitation, though the rest of the items be beyond time, is confined to accounts between two parties which show a reciprocity of dealings; or, in other words, to transactions in which there is a mutual credit founded on a subsisting debt, or an express or implied agreement for a set-off of mutual debts. AHMED REZA *v.* ENAYET HOSSEIN . . . . **W. R., 1864, 235**

5. ——————— *Account between principal and agent—Mutual accounts.*—An agreement between a principal and his agent commenced with an admitted balance, and clearly contemplated the existence of an account current containing mutual items of credit and debit. The agreement contained a stipulation that on the adjustment of the accounts the principal should be bound to pay such balance as might be found due from him. The account was kept accordingly as a continuous account, and contained several items which brought down the mutual dealings to March 1868. The agent sued in February 1871 to recover the balance due to him on the account. *Held* that the case fell within s. 8 of Act XIV of 1859, and was not barred by limitation even as to the items which were dated more than three years before the institution of the suit. WATSON *v.* AGA MEHEDEE SHERAZEE

[L. R., 1 I. A., 346

6. ——————— *Mutual dealings—Item showing continuance of account.*—The effect of s. 8, Act XIV of 1859, is that nothing in an account of mutual dealings between merchants and traders is to be barred, provided that there is an item indicating the continuance of such dealings proved to have occurred within the period of limitation. HIRADA BASAPPA *v.* GADIGI MUDDAPA . **6 Mad., 142**

7. ——————— *Mutual accounts.*—To constitute a mutual account there must be transactions on each side creating independent obligations on the other and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations. Thus an account consisting of entries of payments made by one party in reduction of his debt to the other, and of payments made by the latter on behalf of the former party for the same purpose, is not a mutual account within the meaning of art. 85 of sch. II of the Limitation Act. *Hirada Basappa* v. *Gadigi Muddappa, 6 Mad., 142,* cited and followed. A shifting balance is a test of mutuality, but its absence is not conclusive proof against mutuality. VELU PILLAI *v.* GHOSE MAHOMED . **I. L. R., 17 Mad., 293**

8. ——————— *Mutual dealings—Year—Balance of account.*—The defendant, in 1865 and 1866, indented on the plaintiffs for large quantities of merchandise, which were shipped to Calcutta from time to time by the plaintiffs' agent in London, who drew bills on the defendant for each shipment, forwarding such bills and the shipping documents to the plaintiffs in Calcutta. The bills were presented to the defendant by the plaintiffs and accepted by him. In the course of the transactions several of the acceptances were dishonoured by the defendant, and the plaintiffs, at his request, allowed him to renew the bills. Some renewals took place in August and September 1866. In March, May, and July 1866, the defendant made purchases from the plaintiffs, and the plaintiffs made purchases from the defendant. The plaintiffs were in the habit of closing their accounts on 30th June in each year. In an action for balance of account brought on 24th February 1870,—*Held* that the parties were merchants and traders having mutual dealings under s. 8 of Act XIV of 1859. The year mentioned in s. 8 of Act XIV of 1859 is intended to be reckoned from the time when the balance of accounts is struck. In this case that was the 30th June 1867; the suit, therefore, was not barred. *Quære*—What would be the operation of the section in those cases in which the merchant or trader balances his accounts at the lapse of a period of less than one year? SRINATH DAS *v.* PARK PITTAR

[5 B. L. R., 550: 14 W. R., O. C., 41

9. ——————— *Mutual accounts—Suit for balance of account.*—Art. 85, sch. II of Act XV of 1877, is intended to apply to cases where an account has been going on between two parties, and balances have been struck from time to time, showing the amount due from one of such parties to the other; and the suit to which that article is intended to apply is a suit brought by one of those parties against the other for the balance found to be due on that account. LALJEE SAHOO *v.* ROGHOONUNDUN LALL . . . **I. L. R., 6 Calc., 447**

10. ——————— *Balance of account—Mutual dealings.*—Plaintiff had an account with a banking firm of which the defendant was a member. On the dissolution of this firm, plaintiff made up his accounts debiting the defendant with a share of the amount due to him from the firm, and afterwards he carried on business with the plaintiff separately. It did not appear that any settlement had been made between the parties from the time of the dissolution of the firm down to the filing of

the plaint, or that the defendant had assented to a portion of the firm's debt being carried to his separate account. *Held* that the plaintiff could not recover this sum with interest, as an item of a mutual, open, and current account, where there had been cross-demands between the parties. (*See* Limitation Act, XV of 1877, sch. II, cl. 85.) ROY DHUNPUT SING BAHADOOR *v.* LEKRAJ ROY **1 C. L. R., 525**

11. ——————— *Mutual accounts—Adjustment—Admitted item within period of limitation.*—A mutual, open, and current account, which was kept according to the Sumbut year, having been adjusted in Assin Sudi 1931 S., corresponding with October 25th, 1874, the date of the last admitted item, a suit was subsequently, on the 6th December 1877, filed for the balance due upon such adjustment. *Held* that, even assuming that on the date of adjustment the account ceased to be mutual, open, and current, art. 85 of sch. II of the Limitation Act (XV of 1877) was applicable, and that accordingly limitation ran from the close of the year 1931 S, *i.e.*, the 20th April 1875. GONESH LALL *v.* SHEO GOLAM SINGH . . **5 C. L. R., 211**

12. ——————— *Mutual current accounts—Limitation Act, 1871, art. 62.*—The manager of *A*, the proprietress of an indigo factory, on the 20th December 1869, paid into the kothi or bank of *B*, a banker, the sum of R1,200 to the credit of *A*, and from that time onwards sums of money were drawn by *A*'s manager out of *B*'s bank, and applied to the purposes of *A*'s factory; the balance, though generally against *A*, fluctuated, *A*'s account being usually overdrawn, but there being sometimes a balance in her favour, created by payments made on her account into *B*'s bank. The 2nd of July 1872 was the last occasion that any balance was due from *B* to *A*. Payments continued to be made on behalf of *A* into *B*'s bank up to the 12th of June 1873, when a sum of R1,083-8 was paid into her account; but, notwithstanding this payment, the balance of account was on that date against her. After the 12th of June 1873, *B* continued to make payments on behalf of *A*, and also to render monthly accounts in which he charged *A* with such payments, and also with the principal of, and interest upon, the balance due on previously-rendered accounts. This continued till the month of January 1874, when *B* for the last time rendered a monthly account to *A*, the last item in which was a payment made on the 6th January 1874. On the 23rd December 1876, *B* instituted a suit against *A* to recover the balance of principal and interest due to him on the footing of the last account rendered by him to *A*. *Held* that the account between *A* and B was not, and never had been, a mutual, open, and current account, and that the suit was therefore barred by limitation; and that the payments made by *B* on behalf of *A* within the period of limitation, even if authorized, did not have the effect of keeping alive his previous claim against her. *Held* also that, even if the dealings and transactions between *A* and *B* could be so construed as to show that there had been at any time a mutual, open, and current account between them, that mutual relation terminated on the 2nd July 1872, or if not, then on the 12th June 1873, when the last payment was made on *A*'s account into *B*'s bank. MAHOMED *v.* ASHRUFUNNISSA . **I. L. R., 5 Calc., 759**

S. C. ASKERY KHAN *v.* ASHRUFUNNISSA **6 C. L. R., 112**

13. ——————— *Mutual accounts—Reciprocal demands.*—From the month of September 1873 until the month of May 1874 the plaintiffs at Bombay and the defendant at Karachi had dealings with one another. It was the practice for the defendant at Karachi to draw hundis upon the plaintiffs at Bombay, which the plaintiffs duly accepted and paid at Bombay; and in order to put the plaintiffs in funds, the defendant was in the habit of drawing hundis upon other firms in Bombay in favour of the plaintiffs, the amount of which hundis the plaintiffs realized from time to time at Bombay. Until the 8th January 1874 the balance of the account was sometimes in favour of the plaintiffs and sometimes in favour of the defendant. After that date, the balance of the account was always in favour of the plaintiffs, who continued to make advances up to the 10th May 1874. The last payment made by the defendant was on the 27th April 1874. The last advance made by the plaintiffs was on the 10th May 1874. On the 10th May 1874 the total balance due by the defendant was R8,514-12-2. The plaintiffs calculated interest on this sum up to the 9th April 1877, and on the 19th April 1877 filed the plaint in this suit to recover the said amount. The defendant pleaded limitation. The plaintiffs contended that the account between them and the defendant was a mutual account, and that, under cl. 87 of sch. II of the Limitation Act (IX of 1871), the period of limitation dated from the day of the last advance made by them to the defendant,—*viz.*, 10th May 1874. *Held* on the authority of *Ghaseeram* v. *Munohur Doss, 2 Ind. Jur., N. S., 241*, that the account between the plaintiffs and the defendant was a mutual, current, and open account within the meaning of cl. 87, and that the suit was not barred. Literally construed, cl. 87 would apply only to those cases in which both parties have in the course of their dealings made actual demands on one another. The more reasonable and more probable intention of the framers of the clause appears to have been that it should apply to cases where the course of business has been of such a nature as to give rise to reciprocal demands between the parties; in other words, where the dealings between the parties are such that sometimes the balance may be in favour of one party and sometimes of the other. NARRANDAS HEMRAJ *v.* VISSANDAS HEMRAJ **I. L. R., 6 Bom., 134**

14. ——————— *Limitation Act, 1887, s. 19—Acknowledgment of debt contained in unregistered document—Admissibility of document as evidence of acknowledgment.*—The nature of the pecuniary transactions between *B* and *G* were such that sometimes a balance was due to the one and sometimes to the other. On the 1st October 1875 there was a balance due to *B*. During the ensuing year, as computed in the account, *G* made payments to *B* exceeding such balance. On the 19th November 1876 a balance of R3,500 was found to be due from *G* to *B*. On the 11th December 1876, *G* executed a conveyance of certain land to *B*, for which such debt was partly the consideration. In such conveyance *G* acknowledged his liability in respect of such debt. He died before such conveyance was registered and it did not operate. On the 18th November 1879, *B* sued *G*'s widow for such debt. *Held* that such conveyance was admissible as evidence of the acknowledgment by *G* of his liability for such debt, notwithstanding such conveyance was not registered; that applying art. 85, sch. II of Act XV of 1877, such debt was not barred by limitation when such acknowledgment was made; and that, if that article was not applicable, but the period of limitation began to run from the time each item composing such debt became a debt, still such debt would not have been barred when such acknowledgment was made, as the debt with which the year computed from the 1st October 1875 opened was extinguished by payments made by *G* in the course of that year. KHUSHALO *v.* BEHARI LAL

[I. L. R., 3 All., 523

15. ———— *Mutual current accounts—Reciprocal demands.*—*A* employed *B* as his agent. *B* alone kept written debit and credit accounts. *A* sued *B* for a balance due on the account between them. *Held* that the debit and credit account showed reciprocal demands between plaintiff and defendants, and that the account was a mutual, open and current account within the meaning of Limitation Act, 1877, sch. II, art. 85. LAKSHMAYYA *v.* JAGANNATHAM . **I. L. R., 10 Mad., 199**

16. ———— *Mutual, open and current accounts.*—*A* acted as commission agent for *B* and *C*. *A* furnished a debit and credit account in February 1878. The account was disputed, and the matter was referred to arbitration; for which purpose in March 1880 a "memorandum of items to be settled" was drawn up and signed by *B* and *C*, in which they denied that any balance would be found due to *A*, but acknowledged that accounts must be taken, and that they would be liable if any balance were found due to *A*. In June 1880 *B* signed and supplied to the arbitrator an account on behalf of himself and *C*. The arbitrator made an award which was set aside. *A* filed a suit against *B* and *C* in September 1882 for the balance due to him. *Held* that the accounts were mutual, open and current accounts, and that the suit was not barred by limitation. SITAYYA *v.* RANGAREDDI

[I. L. R., 10 Mad., 259

17. ———— *Mutual account—Test of mutuality—Shifting balance:*—The dealings between the plaintiff and defendant consisted of loans from one to the other. Interest was charged on such loans. The parties were, besides, partners in certain transactions, and the shares of profit and loss falling to each partner's share were debited and credited in their accounts. The dealings lasted from 1884 to 1890. In 1892 the plaintiff sued to recover the balance due to him in respect of all these dealings. The defendant pleaded (*inter alia*) that the suit was barred by limitation. *Held* that the account was a mutual, open and current account within the meaning of art. 85 of the Limitation Act (XV of 1877), and that the suit was not barred by limitation. The fact that in such an account the balance is a shifting balance, sometimes in favour of one party and sometimes in favour of the other, though valuable as an index of the nature of the dealings, is not always decisive as to the nature of the account. The dealings to be "mutual" must be transactions on each side creating independent obligations on the other, and not merely creating obligations on one side, and the other side being merely discharges of these obligations. GANESH *v.* GYANU . **I. L. R., 22 Bom., 606**

———— **art. 86 (1871, art. 88).**—*Suit to recover amount due on policy of insurance—Cause of action—Notice of loss.*—A suit for the recovery of the amount due on a policy of marine insurance fell under cl. 10 of s. 1 of Act XIV of 1859. In such cases the limitation (in the absence of a custom allowing a certain time of grace) begins to run from the date when the defendant has notice of the loss, and refuses or neglects to pay. NAROTAMDAS BHAGTANDAS *v.* DAYABHAI ICHHACHAND

[6 Bom., A. C., 34

———— **art. 89 (1871, art. 90).**

1. ———— *Cause of action—Balance of account.*—The representatives of a gomasta, who had, for the last four years of his life, taken the moneys of his employers in advance for the purpose of the business, were sued for the balance of account of such moneys after giving credit for the amount of the gomasta's annual salary. *Held* that the cause of action arose at the date of the gomasta's death, and the suit, having been brought within the period of limitation from that date, was not barred. KALIKRISHNA PAUL CHOWDHRY *v.* JAGATTARA

[2 B. L. R., A. C., 139: 11 W. R., 76

Reversing, on appeal, KALEE KISHEN PAUL CHOWDHRY *v.* JUGUT TARA . . **9 W. R., 334**

See RADHANATH DUTT *v.* GOBIND CHUNDER CHATTERJEE . **4 W. R., S. C. C. Ref., 19**

2. ———— *Suit against agent for an account—Mooktear.*—An account of his receipts and disbursements having been demanded from a mooktear, he, on the 3rd of August 1872, wrote a letter in which he promised to render full accounts during the ensuing vacation. This he neglected, though he did not refuse, to do. *Held* that the limitation for a suit to compel an adjustment of account ran from the time when the defendant's promise to render accounts was broken, and was governed by Act IX of 1871, sch. II, art. 90. (*See* Act XV of 1877, sch. II, art. 89.) HORI NARAIN GHOSE *v.* ADMINISTRATOR GENERAL OF BENGAL

[3 C. L. R., 446

3. ———— *Suit for an account between principal and agent.*—Where a plaint alleged a continued agency in the defendant and prayed for relief on the ground that there was a specific balance against him, and prayed for the recovery of such sum or any larger sum that might be proved to be payable,—*Held* that such suit was essentially one

LIMITATION ACT, 1877—*continued.*

for an account, and that limitation ran from the date on which the agency ceased. **Hurronath Roy v. Krishna Coomar Bukshi**

[I. R., 13 I. A., 123 : I. L. R., 14 Calc., 147

4. ——————— *Principal and agent—Suit by principal for an account—Object of a decree for an account, as distinguished from a decree made upon the hearing.*—A continued agency, or employment as dewan, for the purpose of drawing and expending the money of a principal, resulted in a suit by the latter, who alleged that more had been drawn than expended for him, and that a specific sum, or balance, stood against the defendant, having been misappropriated by him. The principal claimed also any further sum that might be proved to be payable. *Held* that in such a suit limitation, which was governed by art. 90 of Act IX of 1871, commenced from the date on which the agency ceased. **Hurrinath Rai v. Krishna Kumar Bakshi**

[I. L. R., 14 Calc., 147
L. R., 13 I. A., 123

5. ——————— *Suit by principal against agent to recover money received and not accounted for—Termination of agency—Act IX of 1872 (Contract Act), ss. 201, 218.*—Where an agent for the sale of goods receives the price thereof, the agency does not terminate, with reference to ss. 201 and 218 of the Contract Act (IX of 1872), until he has paid the price to the principal; and a demand made by the principal for an account of the price is made "during the continuance of the agency" within the meaning of sch. II, art. 89, of the Limitation Act (XV of 1877): and a suit by the principal to recover the price is therefore within time if brought within three years from the date of such demand. The agency does not terminate immediately on the sale of the goods. It does not terminate at the time when the plaintiff obtained knowledge of the defendant's breach of duty. **Babu Ram v. Ram Dayal**

[I. L. R., 12 All., 541

6. ——————— *Suit by principal against agent for money received and unaccounted for—Termination of agency.*—In a suit, brought in 1898, for the price of piece-goods sold for the plaintiff by the defendants as his agents, the defendants showed that the sale of the goods was completed in 1894, but the evidence showed their admission of an open account between the parties. *Held* that the defendants were liable to the plaintiff as agents until they had accounted to him, and therefore his claim as to the piece-goods was not barred. *Babu Ram* v. *Ram Dayal, I. L. R., 12 All., 541,* followed. **Fink v. Buldeo Dass . . I. L. R., 26 Calc., 715**

[3 C. W. N., 524

——————— **art. 90 (1871, art. 91)**—*Suits governed by.*—What suits are governed by art. 91 of the Limitation Act, 1871, pointed out. **Torab Ali v. Mahomed Ameer Hossein . 3 C. L. R., 105**

——————— **art. 91 (1871, art. 92).**

See Malabar Law—Joint Family

[I. L. R., 15 Mad., 6

LIMITATION ACT, 1877—*continued.*

1. ——————— *Suit to set aside sale-deed.*—A suit of the kind mentioned in this article was under Act XIV of 1859 governed by the six years' limitation. **Thakoor Pattuck v. Ram Soomrun Lal . . . . . . 2 N. W., 433**

2. ——————— *Application of art. 91.*—Art. 91, sch. II of the Limitation Act (XV of 1877), only applies to suits in which the documents sought to be set aside were intended to be operative against the plaintiff or his predecessor in title and would remain operative if not set aside. *Jagadamba Chaodhrani* v. *Dakhina Mohun Roy Chaodhri, I. L. R., 13 Calc., 308 : L. R., 13 I. A., 84 ; Janki Kunwar* v. *Ajit Singh, I. L. R., 15 Calc., 58 : L. R., 14 I. A., 148 ; Raghubar Dyal Sahu* v. *Bhikya Lal Misser, I. L. R., 12 Calc., 69*; and *Mahabir Pershad Singh* v. *Hurihur Pershad Narain Singh, I. L. R., 19 Calc., 629,* distinguished. **Sham Lall Mitra v. Amarendro Nath Bose I. L. R., 23 Calc., 460**

3. ——————— *Grant by zamindar of estate for maintenance—Lease by grantee in excess of his estate—Suit for possession after death of grantee.*—A grant of a village for maintenance was made by a zamindar to his nephew operating only for life. The grantee survived the grantor, and by ikrarnama acknowledged the preceding zamindar to be entitled to the village. The grantee had, however, already executed a pottah described therein as permanent to a lessee. The latter obtained possession, and from him after the death of the original grantee for life the zamindars who succeeded the grantor accepted rent at the rate stipulated in the pottah and did not disturb his possession. In a suit after the death of the lessee claiming the village as part of the inherited zamindari the defence was that the lease was perpetual, but it was held that it was void as against the successor of the grantor and not merely voidable after the grantee's death. *Held* that the suit for possession was not barred under art. 91 of the Limitation Act (XV of 1877) on the ground that a decree declaratory of title to have the pottah cancelled might have been sued for in the lessee's lifetime under s. 39 of the Specific Relief Act, 1877. **Beni Pershad Koeri v. Dudnath Roy**

[I. L. R., 27 Calc., 156
L. R., 26 I. A., 216
4 C. W. N., 274

4. ——————— *Suit to cancel instrument.*—*K*, to whom *B* had given a usufructuary mortgage of certain land, promising to put him in possession, sued *B* for the mortgagee-money, *B* having failed to put him in possession. This suit was instituted on the 22nd November 1875. On the 25th of the same month, *K*, learning that *B* was about to dispose of his property, caused a notice to issue to him directing him not to transfer any of his property. This notice was served on *B* on the 29th November. On the 1st December 1875 *B* transferred certain land to *T* by way of sale. *K*'s suit was dismissed by the lower Courts, but the High Court, on the 7th August 1876, gave him a decree. Certain property belonging to *B* was sold in execution of this decree, but the sale-proceeds were not sufficient

to satisfy the amount due on the decree. *K* thereupon, on the 1st July 1879, sued *T* to cancel the conveyance to him by *B* on the ground that it was fraudulent and without consideration. *Held* that the words in art. 91, sch. II, Act XV of 1877, "when the facts entitling the plaintiff to have the instrument cancelled or set aside became known to him," must be construed to mean "when, having knowledge of such facts, a cause of action has accrued to him, and he is in a position to maintain a suit," and consequently the period of limitation for *K*'s suit began to run, not merely when he had knowledge of the fraudulent character of the conveyance to *T*, but when, having such knowledge, it had become apparent to him that there was no other property than that conveyed to *T* available for the realization of the unsatisfied balance of his decree, and the suit was within time. TAWANGAR ALI *v.* KURA MAL . . . . **I. L. R., 3 All., 394**

5. ———— **and art. 114**—*Suit to cancel instrument—Suit for the rescission of a contract—Time from which limitation runs—Equitable estoppel.*—*B, P,* and *G* sued to cancel a lease of certain land on the ground that the lessor was not competent to grant the same, the defendants being the lessor and the lessee. The lessee's defence to the suit was that the lease had been executed with *B*'s knowledge, who caused it to be attested and registered; that it was recognized and adopted by *P* and *G*, who allowed the lessee to take possession of such land and accepted rent from him in respect thereof; that under these circumstances the plaintiffs were estopped from denying the lessor's competency to grant the lease; and that the suit was barred by limitation, as more than three years had elapsed from the date of the lease. The lower Appellate Court affirmed the decree of the Court of first instance in favour of the plaintiffs on the ground that the lessee was aware that the lessor was not competent to grant the lease. *Held,* on second appeal by the lessee, that the limitation applicable to the suit was to be found in No. 91, sch. II of Act XV of 1877, and not No. 114, that last article referring to the rescission of contracts as between promisors and promisees, and not to suits by third parties to have an instrument cancelled or set aside; and that, as regards *B,* inasmuch as the existence of the lease became known to him at the time of its execution, and three years from that time had expired, the suit was barred by limitation. The proper issues as between *P* and *G* and the lessee were framed and remitted for trial. BHAWANI PRASAD SINGH *v.* BISHESHAR PRASAD MISR **I. L. R., 3 All., 846**

6. ———— *Suit for cancellation of instrument—Mahomedan law—Gift—Suit for possession of immoveable property.*—One of the heirs of a deceased Mahomedan sued for her share under the Mahomedan law of the estate of the deceased, and to set aside a gift of his estate by the deceased as invalid under that law, by reason that possession of the property transferred by the gift had not been delivered by the donor to the donee. *Held* that, because the suit was not brought within three years from the date of the gift, it did not necessarily follow that the suit was barred by art. 91 of the Limitation Act, 1877, inasmuch as the plaintiff's title to impeach the gift could only accrue from the moment when, by receipt of possession, the gift had become operative by law. MEDA BIBI *v.* IMAMAN BIBI . . **I. L. R., 6 All., 207**

7. ———— *Suit for cancellation of instrument—Specific Relief Act (I of 1877), s. 39—Suit for declaratory decree.*—The plaintiff, alleging that he was the proprietor of certain land, that defendant No. 2 had wrongfully and fraudulently mortgaged it to defendant No. 1, and that defendant No. 1 had applied for foreclosure of the mortgage, and notice of foreclosure had issued, claimed "that the mortgage deed being set aside, the land be protected from the illegal foreclosure by cancelment of the foreclosure proceedings." *Held* that the suit was not strictly one for the cancelment or setting aside of an instrument to which the limitation in No. 91, sch. II of the Limitation Act, 1877, would apply (which relates to suits of the nature of those referred to in s. 39 of the Specific Relief Act), but rather one for a declaratory decree. SOBHA PANDEY *v.* SAHODRA BIBI . . **I. L. R., 5 All., 322**

8. ———— **and art. 144**—*Suit to cancel instrument—Champerty.*—The plaintiff sued for possession of certain immoveable property "by avoidance of a spurious deed of gift" executed by one *N*, deceased, in favour of the defendant. *Per* STRAIGHT, *J.*—That the suit was governed by art. 144, and not art. 91, sch. II of the Limitation Act, 1877. *Per* STUART, *C.J.*—That the suit was governed by art. 91, and not art. 144, sch. II of that Act. *Sikher Chand* v. *Dulputty Singh, I. L. R., 5 Calc., 363,* distinguished. HAZARI LAL *v.* JADAUN SINGH . . . . **I. L. R., 5 All., 76**

9. ———— *Suit to set aside fraudulent deed—Minority—Fraud.*—Where a deed of sale is found to be a forgery executed in fraud of a person during his minority, the date from which to compute his knowledge of the fraud practised on him, in the absence of proof that he had before majority the knowledge required is the date on which he attained majority. KULYAN CHURN MOOKERJEE *v.* BIPRO CHURN PURAIL . . **6 W. R., 321**

10. ———— **and art. 95**—*Suit to set aside deed of partition on ground of fraud—Suit by minor on attaining majority—Limitation Act (XV of 1877), s. 7.*—A suit to set aside a deed of partition on the ground of fraud is governed by art. 91 or art. 95, sch. II of the Limitation Act (XV of 1887), and must be brought within three years after the minor plaintiff has attained majority according to s. 7 of the Act. CHANVIRAPA *v.* DANAVA
[I. L. R., 19 Bom., 593

11. ———— *Suit to set aside an instrument creating a charge on immoveable property and to recover possession.*—Art. 92, sch. II of Act IX of 1871, has no application to a suit to set aside a mortgage-bond on the ground of fraud, and to recover possession of the immoveable property therein referred to. The article in question applies only where a bare declaration is sought regarding the

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cancellation of a bond or other instrument. *Sikher Chund* v. *Dulputty Singh, I. L. R., 5 Calc., 363,* followed. BOO JINATBOO *v.* SHANAGARVALAB KANJI **[I. L. R., 11 Bom., 78**

12. ——— *Suit to set aside deed—Fraud.*—In a suit instituted in 1884 by a husband and wife to have a deed, granting land, which was executed by the husband in 1872, set aside on the ground that it had been obtained from the latter by fraud and undue influence, the facts relied upon were known to the husband from the date of the deed. Although in another suit a sale by the husband effected in 1879 was set aside in 1882 on the ground of his having been unduly influenced, he was not at the time of the previous transaction, nor for some years after it, mentally incompetent or unable to allow that knowledge to operate on his mind. *Held* that therefore the suit falling within s. 91 of sch. II of Act XV of 1877 was not maintainable by either of the plaintiffs. JANKI KUNWAR *v.* AJIT SINGH . **I. L. R., 15 Calc., 58 [L. R., 14 I. A., 148**

13. ——— *Mahomedan law—Gift—Suit by heir for share of donor's property by declaration of invalidity of gift.*—A Mahomedan, who in October 1875 executed a deed of gift of his property, under which possession was taken by the donees, died in June 1885, never having taken any steps to have the deed of gift set aside. In February 1886, a suit was brought by his nephew claiming a share in the donor's estate by right of inheritance, and by having it declared that the deed was procured from the donor by fraud and undue influence. It was found that the plaintiff was aware of the existence of the deed soon after its execution, and that, if there were any facts entitling him to have it cancelled, those facts were known to him more than three years before the institution of the suit. *Held* that the plaintiff had, during the donor's lifetime, no reversionary or vested interest in the estate, but a mere possibility of inheritance, and consequently the donor, when he executed the deed, had full disposing power over his property, and the right which at his death accrued to the plaintiff came to the latter affected by the donor's acts and dispositions; and that as a suit by the donor to set aside the deed would at the time of his death be barred by art. 91 of the Limitation Act (XV of 1877), such a suit was also barred against the plaintiff, who obtained through him the cancelment of the deed, being a substantial and necessary incident of the claim, and the necessity which rested upon the plaintiff for obtaining such cancelment before he could dislodge the donees, not being obviated by his choosing to call the suit one for possession of immoveable property. *Abdul Wahib Khan* v. *Nuran Bibee, L. R., 12 I. A., 91,* and *Jagadamba Chaodhrain* v. *Dakhina Mohun, L. R., 13 I. A., 84,* referred to. HASAN ALI *v.* NAZO **[I. L. R., 11 All., 456**

14. ——— **and art. 120**—*Suit for declaration of title—Incidental relief—Setting aside instrument.*—The period of limitation for suits to declare title is six years from the date when the right accrued, under the Limitation Act, 1877, sch. II, art. 120; and this period is not affected by art. 91, though the effect of the declaration is to set aside an instrument as against the plaintiff. PACHAMUTHA *v.* CHINNAPPAN . **I. L. R., 10 Mad., 213**

15. ——— *Will—Suit to contest validity of will.*—Art. 91 of sch. II of the Limitation Act of 1877 is not applicable to wills. SAJID ALI *v.* IBAD ALI . . . **I. L. R., 23 Calc., 1 [L. R., 22 I. A., 171**

16. ——— *Suit to declare document of no effect.*—A suit for a declaration that a document "was executed for nominal purposes and was not intended to take effect" is not a suit to cancel a document within the meaning of art. 91 of sch. II of the Limitation Act. NAGATHAL *v.* PONNUSAMI **[I. L. R., 13 Mad., 44**

17. ——— **and arts. 92, 93**—*Suit where the cancellation of a fraudulent instrument is ancillary to the main relief.*—Arts. 91, 92, and 93 of sch. II of the Limitation Act (XV of 1877) apply only to suits brought expressly to cancel, set aside, or declare the forgery of an instrument; but they do not apply to suits where substantial relief is prayed, and where the cancellation or declaration is merely ancillary and not necessary to the granting of such relief. ABDUL RAHIM *v.* KIRPARAM DAJI **[I. L. R., 16 Bom., 186**

18. ——— **and arts. 92, 93, 144**—*Instrument, Suit to set aside or declare the forgery of—Immoveable property, Suit for possession of.*—One *D* died in 1849 leaving an ikrarnamah or will. His widows entered into possession of his property and the survivor died on the 23rd April 1886. The predecessors in estate of the plaintiffs brought a suit to set aside the ikrarnamah, which suit was dismissed in 1864 on the ground that they had no cause of action during the lifetime of the surviving widow. On the 29th June 1889, the plaintiffs, as the heirs of *D* after the death of the surviving widow, instituted a suit to recover possession of the property of *D* from the defendants, who claimed to have come into possession thereof under the ikrarnamah upon the death of the widow. *Held* that the suit was governed by the limitation of three years for a suit to set aside an instrument, and not by the general limitation prescribed for suits to recover immoveable property, as after the widow's death the parties in possession were those claiming under the ikrarnamah, who could not be displaced except by setting it aside. *Raghubar Dyal Sahu* v. *Bhikya Lal Misser, I. L. R., 12 Calc., 69,* approved. *Jagadamba Chaodhrani* v. *Dakhina Mohun Roy Chaodhri, I. L. R., 13 Calc., 308 : L. R., 13 I. A., 84,* and *Janki Kunwar* v. *Ajit Singh, I. L. R., 15 Calc., 58 : L. R., 14 I. A., 148,* referred to. MAHABIR PERSHAD SINGH *v.* HURRIHUR PERSHAD NARAIN SINGH **I. L. R., 19 Calc., 629**

19. ——— **and art. 144**—*Cancellation of instrument.*—A suit was filed in 1888 on behalf of a Malabar tarwad by two of its members to recover property improperly alienated in 1879 under a kanom instrument by the karnavan, who had since been removed from office. *Held* that since

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a prayer for the cancellation of the kanom instrument was not an essential part of the plaintiffs' relief, the suit was not barred by the three years' rule in Limitation Act, 1877, sch. II, art. 91. UNNI *v.* KUNCHI AMMAL . . **I. L. R., 14 Mad., 26**

20. ———— *Suit to set aside alienation by de facto manager of Hindu endowment.*—The possession of the manager of a Hindu endowment cannot be treated as adverse to the endowment. *Semble*—Art. 91 of sch. II of the Limitation Act (XV of 1877) has no application to a suit to set aside an alienation of property by the *de facto* manager of a Hindu endowment. *Unni* v. *Kunchi Ammal, I. L. R., 14 Mad., 26,* and *Sikher Chund* v. *Dulputty Singh, I. L. R., 5 Calc., 363,* cited. SHEO SHANKAR GIR *v.* RAM SHEWAK CHOWDHRI

[I. L. R., 24 Calc., 77

21. ———— **and art. 144**—*Suit by junior members of a tarwad—Suit for declaration of invalidity of kanom and for possession of property.*—The junior members of a Malabar tarward brought a suit against their karnavan and senior anandravan and certain persons claiming under a kanom granted by the former for a declaration that the kanom was invalid and for possession of the land demised with mesne profits. The suit was filed nearly twelve years after the execution of the kanom. *Held* (1) that the suit was maintainable by the plaintiffs; (2) that the suit was not barred by limitation. ANANTAN *v.* SANKARAN

[I. L. R., 14 Mad., 101

22. ———— **and art. 144**—*Suit for land—Cancellation of instrument affecting the land by plaintiff.*—In a suit brought in 1889 to recover land, it appeared that the defendant had been in possession since 1885, having obtained in 1883 a conveyance of the land from one of the plaintiffs. It was found on the evidence that that conveyance had been obtained by fraud and was supported by no consideration. The other plaintiff claimed under an instrument of 1884, which recited that of 1883 and was executed by the same person. The plaint contained no prayer for the cancellation of the conveyance of 1883. *Held* that the suit was not barred by limitation. SUNDARAM *v.* SITHAMMAL

[I. L. R., 16 Mad., 311

23. ———— **and art. 144**—*Suit to recover lands of which defendant had been in possession as manager during plaintiff's minority—Defendant setting up deed of sale—Adverse possession.*—The plaintiffs sued to recover lands which they claimed as their own, and of which they alleged the defendant to have had the management during their minority, he having been appointed a manager of all their (the plaintiffs') property by their mother and grandmother, who were dead at the date of suit. The defendant alleged that the land in question had been sold to him, and produced a deed of sale, dated 3rd October 1876, purporting to have been executed by the deceased ladies and by the plaintiffs. The plaintiffs denied all knowledge of the deed, and prayed that it might be cancelled. The defendant contended (*inter alia*) that the suit was barred by limitation, and pleaded adverse possession. *Held* that the suit was not barred, and that the plaintiffs were entitled to recover—(1) supposing the deed not to have been executed at all, the possession of the manager would not become adverse until he distinctly repudiated the management; (2) if the deed were executed by the ladies only, then art. 144, and not art. 91, of the Limitation Act would apply; (3) even if the minors whose names appeared in the deed did actually execute it, nevertheless, as the defendant did not get into possession under it, but only used it to defend his position, art. 91 would not apply. *Boo Jinatboo* v. *Sha Nagar, I. L. R., 11 Bom., 78.* ALAMKHAN *v.* YASINKHAN **I. L. R., 17 Bom., 755**

———— **art. 92 (1871, art. 93).**

1. ———— *Suit to set aside will—Fraud—Cause of action.*—Where no fraud is alleged, the three years' limitation in cl. 93 of the second schedule to the Limitation Act of 1871 will run from any attempt to enforce the instrument, although that attempt might not have been known to the person who brings the suit to declare it a forgery. Plaintiff and defendant were the widows of two joint uterine brothers. Defendant alleged that plaintiff's husband had left his share by will to the husband of defendant. Plaintiff alleged that the will was a forgery, and brought a suit for a declaration of her right to her husband's share after setting aside the will. *Held* that the substance of the claim being for a declaration of right, and not to set aside the will, the suit was not governed by the three years' limitation provided by cl. 93, sch. II, Act IX of 1871. NISTARINY DASSEE *v.* ANUNDMOYE DASSEE

[2 C. L. R., 561

2. ———— *Attempt to enforce deed.*—In a suit in which the plaintiff had obtained a decree, and the defendant had appealed to Her Majesty in Council, a third party applied to be added as a respondent, on the ground that, by registered deed, the plaintiff had conveyed to him a share of the property decreed. The defendant objected that the deed was a forgery; but an order was made that the applicant should be joined as a respondent, without deciding whether the deed was or was not genuine, and "without prejudice," in the words of the order, "to any action or proceeding by the defendant." *Held* that the setting up the deed and insisting upon it for this purpose constituted "an attempt to enforce" it, and that a suit brought more than three years after the making of that order, by the appellant against the party so joined as a respondent, to have the deed set aside as being false and fabricated, was barred by limitation under Act IX of 1871, sch. II, cl. 93. FAKHARUDDIN MAHOMED AHSAN *v.* OFFICIAL TRUSTEE OF BENGAL

[I. L. R., 8 Calc., 178
10 C. L. R., 176
L. R., 8 I. A., 197

Affirming on appeal the decision of the High Court, where it was held that a suit to declare the forgery of an instrument issued or registered or attempted to be enforced is required by art. 93 of sch. II, Act IX of 1871, to be brought within

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three years of the date of the issue, registration, or attempted enforcement of the document, whichever may first happen; and if a document has once been used, or attempted to be used, a party having notice of such use or attempted use cannot, after the expiration of three years from such use or attempted use, bring a suit to have it declared a forgery by reason of any further attempt to make use of it. FAKHAROODDEEN MAHOMED AHSAN *v.* POGOSE

[I. L. R., 4 Calc., 209
2 C. L. R., 573

3. ———————— **and arts. 93 and 118**—*Suit to set aside adoption—Deed of permission to adopt.*—The merits of a claim depended upon the authenticity of an anumati-patro (deed of permission to adopt) alleged to have been given to a widow by her husband, who died in 1832. She first adopted in 1884 a boy who soon after died. She then, in 1887, adopted the defendant, whose adoption the reversionary heirs of her husband brought this suit, in 1888, to have set aside. *Held* that neither art. 92, nor art. 93, of sch. II of the Limitation Act (XV of 1877) was applicable to bar the suit. There had been no "issue" of the instrument, the anumati-patro, within the meaning of the former article, the term "issue" having no application to such a document. There had not, within the meaning of art. 93, before this suit, been any attempt to enforce the instrument against the plaintiffs. Art. 118, as the suit had been brought within due time after the adoption, did not bar it. HURRI BHUSAN MUKERJI *v.* UPENDRA LAL MUKERJI

[I. L. R., 24 Calc., 1
L. R., 23 I. A., 97

———— **art. 93.**

See FRAUD—EFFECT OF FRAUD.

[I. L. R., 11 Bom., 708

———— **art. 95 (1871, art. 95; 1859, s. 10).**

See DEBTOR AND CREDITOR.

[I. L. R., 16 Bom., 1

Suits to set aside decrees obtained by fraud were, under Act XIV of 1859, governed by cl. 16 of s. 1. AMEEN CHAND *v.* OOMEID SINGH . **1 Agra, 114**

1. ———————— *Fraud.*—*A* sold a decree obtained by him under Regulation VII of 1799 to *B*, but after the sale realized the decree from the judgment-debtor. On application by *B* for execution, on 2nd January 1862, the fraud was discovered, and *B* was referred by the Collector to the Civil Court. On 2nd October 1866 *B* brought his suit for recovery of the purchase-money from *A*. *Held* that the period of limitation ran from the discovery of the fraud. The suit was not barred. GOPAL CHANDRA DEY *v.* PEMU BIBI

[1 B. L. R., A. C., 77: 10 W. R., 104

See RADHANATH DAS *v.* ELLIOTT

[6 B. L. R., 530
14 Moore's I. A., 1

S. C. RADHANATH DOSS *v.* GISBORNE & Co.

[15 W. R., P. C., 24

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2. ———————— *Fraud—Suit to recover purchase-money and costs.*—In a suit to recover from the defendant the amount of purchase-money paid by the plaintiff upon a sale to him of certain lands by the defendant's father and the costs incurred by the plaintiff in defending his title to the property against a prior purchaser for the same land from the defendant's father,—*Held* that the cause of action arose on the discovery of the fraud upon the plaintiff, and that there was knowledge of the fraud at all events in October 1859, the date of the judgment of the Civil Court affirming the title of the prior purchaser, notwithstanding the presentation of an appeal from that decision, and notwithstanding that the plaintiff remained in possession of the land until 1861. The present suit, having been brought more than six years after the judgment of the Civil Court, was held to be barred. RAMASWAMY MUDALI *v.* VALAYUDA MUDALI *alias* AIYATHORAY MUDALI

[4 Mad., 266

3. ———————— *Act XIV of 1859, s. 10*—*Fraud by failure to pay share of revenue*— S. 10 of the Act of 1859 was held not to apply to a case where one of two co-owners of a patni fraudulently failed to pay his share of the rent and permitted the patni to be sold by the zamindar for arrears, but the cause of action in a suit against him by the other sharer was held to have accrued at the date of the sale. BHUGWAN CHUNDER ROY *v.* RAJ CHUNDER ROY . . . **9 W. R., 553**

4. ———————— *Extension of time on account of fraud.*—Art. 95, sch. II of the Limitation Law, provides a period of limitation in extension of the period which, in the absence of fraudulent concealment, would, under some other article, apply to a suit, and not a period less than that which under ordinary circumstances would be allowed for a suit of the same nature. OPENDER NARAIN MOOKERJEE *v.* GUDADHUR DEY . . . **25 W. R., 473**

5. ———————— *Fraud—Suit for possession of immoveable property.*—Art. 95 of the second schedule to Act IX of 1871 was not intended to apply to suits for possession of immoveable property when fraud is merely a part of the machinery by which the defendant has kept the plaintiff out of possession. That article has reference to cases where a party has been fraudulently induced to enter into some transaction, execute some deed, or do some other act, and desires to be relieved from the consequence of such act. CHUNDER NATH CHOWDHRY *v.* TIRTHANUND THAKOOR

[I. L. R., 3 Calc., 504: 2 C. L. R., 147

6. ———————— *Suit to set aside decree obtained by fraud—Suit against express trustee.*—Certain of the grantees of lands, granted for the maintenance of the grantees and the support of a mosque and other religious purposes, sued for the removal of the superintendent of the property from his office. The parties to this suit entered into a compromise, which made certain arrangements for the management of the property, and a decree was made in accordance with the compromise. The grantees who were not parties to this suit then sued

the grantees who were to set aside the compromise and decree on the ground of fraud. *Held* that the suit fell within the terms of No. 95, sch. II of the Limitation Act, 1877, and there was nothing about it which made the exemption of s. 10 of that Act applicable to it. MUHAMMAD BAKHSH *v.* MUHAMMAD ALI
[I. L. R., 5 All., 294

7. ———— *Suit to set aside sale on the ground of fraud.*—A suit to set aside an execution-sale on the ground that the decree was obtained by fraud is maintainable and is governed by art. 95 of the Limitation Act. MOTI LAL CHAKERBUTTY *v.* RUSSICK CHANDRA BAIRAGI
[I. L. R., 26 Calc., 326 note
3 C. W. N., 395

See BHOBON MOHUN PAL *v.* NUNDA LAL DEY
[I. L. R., 26 Calc., 324: 3 C. W. N., 399

which places such an application under art. 178 of the Limitation Act.

8. ———— **and arts. 12 and 144**—*Suit for relief on the ground of fraud—Suit to set aside execution-sale—Suit for possession of immoveable property.*—*Z* and his three minor sons were joint owners of a village. This *Z* hypothecated by deed of simple mortgage to *J*. Subsequently *Z* executed another deed of mortgage to *J*, part of the consideration whereof was the cancellation of the former bond, which was paid off and extinguished accordingly. *J*, however, fraudulently caused it to appear from the novating document that the former mortgage was still alive, and after the death of *Z* put the bond in suit against *Z's* widow, who, being ignorant of the fraud, confessed judgment as guardian of her minor sons. The entire rights and interest of *Z's* heirs were sold in execution of the decree so obtained by *J*. Subsequently the fraud was discovered, and *Z's* sons brought a suit to set aside the execution sale and to recover possession of the property first mortgaged. In regard to three-fourths of this property, they prayed that "possession might be awarded to them by establishment of their right and share, by amendment of the revenue papers." In regard to the remaining one-fourth, they prayed for possession "by right of inheritance to *Z*," by cancelment of the execution-sale and of the fraudulent decree. They further alleged that they had first become aware of the fraud upon the day when they obtained from the registration office a copy of the novating instrument in which the fraudulent entries were contained. *Held* that the law of limitation applicable to the case was not that contained in art. 12, nor in art. 144, but that contained in art. 95 of sch. II of the Limitation Act, inasmuch as fraud vitiates all things, and prevents the application of any other law of limitation than that specially provided for relief from its consequences. *Held* further that the knowledge predicated by the terms of art. 95 of sch. II of the Limitation Act is not mere suspicion, but such definite knowledge as enables the person defrauded to seek his remedy in Court. *Held* under the circumstances of the present case that the burden of proving such knowledge on the part of the plaintiffs, prior to the date alleged by them, lay upon the defendants. NATHA SINGH *v.* JODHA SINGH . **I. L. R., 6 All., 406**

9. ———— **and art. 12** — *Suit by reversioner to establish his title to property sold in execution of decree obtained against a widow as representative of her deceased husband's estate—Fraud—Collusion.*—The plaintiff as the nearest heir of one *O T*, who died intestate in 1873, sued to set aside a sale of certain immoveable property belonging to the estate of the deceased, which had been sold on the 3rd November 1875, in execution of a money-decree obtained by the defendant *J* against *B V*, the widow of *O T*. *B V* had married a second time in 1876, and her second husband was the brother of the purchaser at the execution-sale. The plaintiff alleged that the decree had been fraudulently and collusively obtained on a bond in *O T's* name, which had been forged by *J*. The suit was brought on the 28th January 1878, and the plaintiff prayed that the sale might be cancelled, having been made in order to defeat his rights; that he might be declared the heir of *O T*, and that possession of the property with mesne profits might be awarded to him. The lower Courts dismissed the suit, holding that it was barred by art. 12, cl. (*a*), of sch. II of the Limitation Act (XV of 1877). On appeal to the High Court,—*Held* that art. 12 did not apply; for, although the plaintiff sued to set aside a sale held in execution of a decree, he did so, not as one who would have been bound by the sale if the suit had not been brought, but in order to obtain a declaration that he was not bound by it, the decree under which the sale was held having been fraudulent and collusive; so that the cause of action could only have arisen when he became aware of the fraud. Art. 95 of sch. II of Act XV of 1877 applied to the present suit, which was therefore in time. PAREKH RANCHOR *v.* BAI VAHKAT
[I. L. R., 11 Bom., 119

10. ———— **and arts. 63 and 84**—*Suit on indemnity bond—Fraud—Cause of action.*—On the 27th July 1868, plaintiff received from defendant an indemnity bond, promising to indemnify plaintiff against the misbehaviour of a third person. On the 4th June 1870, the third person committed an act of embezzlement. In an action brought by plaintiff on the 28th June 1873 on the indemnity bond, the first Court held the claim barred under cls. 63 and 84 of sch. II, Act IX of 1871. On appeal that decree was reversed, and the claim allowed under cl. 95 of the same schedule. The High Court, on special appeal, held that cls. 63 and 84, and not cl. 95, applied to the case, as the suit was one not for relief on the ground of fraud, but for breach of a contract to indemnify against fraud. SHAPURJI JAHANGIRJI *v.* SUPERINTENDENT OF THE POONA CITY JAIL . **12 Bom., 238**

11. ———— *Fraud — Sale for arrears of revenue—Act XI of 1859, s. 33—Act IX of 1871, sch. II, art. 14.*—When one of several co-sharers fraudulently contrived to have an estate brought to sale for arrears under Act XI of 1859, and purchased it in the benami of his son,—*Held* that another co-sharer aggrieved by the sale could maintain a suit to have the property reconveyed, though the period

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limited by s. 33 of Act XI of 1859 and art. 14 of the second schedule to Act IX of 1871 for a suit to set aside the sale had expired. The article which applies to such a suit is art. 95 of the latter Act. Bhoobun Chunder Sen *v.* Ram Soonder Surma Mozoomdar . . . **I. L. R., 3 Calc., 300**

12. ———————— *Suit to set aside fraudulent revenue sale.*—Suit to set aside a sale of land, sold as if for arrears of revenue under Act II of 1864 (Madras) on the ground of fraud, and to recover possession of the land from the purchaser, who was alleged to be party to the fraud. *Held* that the suit was governed by art. 95 of sch. II of the Limitation Act, 1877. Venkatapathi *v.* Subramanya . . . . **I. L. R., 9 Mad., 457**

13. ———————— *Revenue Recovery Act (Madras)—Mad. Act II of 1864, s. 59—Suit to set aside a sale for arrears of revenue—Fraud.*—In a suit, in July 1885, to set aside a sale of land of the plaintiff, made in July 1884 as if for arrears of revenue under Act II of 1864 (Madras), on the ground that the sale had been brought about by fraud and collusion between the purchaser and the village officers, it was found the plaintiff had knowledge of the alleged fraud more than six months before suit. *Held* that the law of limitation applicable to the case was s. 59 of Act II of 1864, and not s. 95 of the Limitation Act, and that the suit was therefore barred. *Venkatapathi* v. *Subramanya, I. L. R., 9 Mad., 457,* explained. *Baij Nath Sahu* v. *Lala Sital Prasad, 2 B. L. R., F. B., 1,* and *Lala Mobaruk Lal* v. *Secretary of State for India, I. L. R., 11 Calc., 200,* considered. Venkata *v.* Chengadu

[I. L. R., 12 Mad., 168

14. ———————— **and arts. 12 and 144**—*Sale for arrears of revenue—Suit for possession of land—Fraud.*—The plaintiff's land was sold by the Revenue authorities for arrears of assessment due to the inamdar. The plaintiff applied to the Mamlatdar to have the sale set aside on the ground of fraud on the part of the inamdar, but his application was rejected; and the sale was confirmed in July 1879. The auction-purchaser was thereupon put in possession. In 1886 the plaintiff sued to recover possession of the land in question. *Held* that the suit, having been brought more than one year after the date of the sale, was barred by art. 12, cls. (*b*) and (*c*), of sch. II of the Limitation Act (XV of 1877). The sale was one in pursuance of an order of the Collector or other officer of revenue, and, if not for arrears of Government revenue, was at any rate a sale for arrears of rent recoverable as arrears of revenue. The plaintiff as occupant of the land was bound by the sale, unless and until it was reversed, and the title of the purchaser at the sale was a perfectly good title until the sale was set aside in due course of law. *Held* also that the plaintiff's allegation, that the sale took place in consequence of the fraud of the inamdar, would make not art. 144, but art. 95, applicable to the case. Balaji Krishna *v.* Pirchand Budharam

[I. L. R., 13 Bom., 221

15. ———————— **and art. 96**—*Suit for money paid under Land Acquisition Act—Fraud or mistake, Knowledge of.*—In 1876 *K* sued *M* on a bond, dated 25th December 1869, for R5,000, by which certain land in the district of South Tanjore was hypothecated as security for the debt, and obtained a decree on the 6th of April 1876 for the sale of the lands, which he purchased on the 17th August 1876 for R6,000. *K* then discovered that part of the land hypothecated, situated within the jurisdiction of the subordinate Court at Kumbakonam, had been acquired by a railway company under the Land Acquisition Act in 1874, and that the compensation, R460 (claimed by *M*'s mother, who sold the land to the company), was lodged in the treasury of Kumbakonam in the name of *M*'s mother. *K* having applied to the subordinate Court for an order for payment out of this sum, the Court, by order dated 28th February 1880, directed that the question of title to the money should be decided by suit. *K* then sued *M* as the sole heir of his deceased mother in the District Munsif's Court of Tiruvadi (where *M* resided) for a declaration of right to, and to recover, the said sum of R460. The suit was filed on the 4th September 1880. On the 16th April 1880, *M* assigned his interest in the money sued for to *V*, who was made defendant in the suit on his own application and pleaded that the suit was barred by limitation, inasmuch as more than three years had elapsed since the money was paid by the railway company. *Held* that the suit was not barred by limitation, as the compensation was awarded to *M*'s mother either through fraud on her part or mistake on the part of the Collector, and *K* did not become aware of the fraud or mistake until within six years of the suit (arts. 95, 96 of sch. II of the Limitation Act). Venkata Viraragavayyangar *v.* Krishnasami Ayyangar

[I. L. R., 6 Mad., 344

16. ———————— **and art. 96**—*Partition to detriment of minor—Suit by minor on attaining majority to recover his full share—Mistake in making partition.*—Certain members of a joint Hindu family partitioned the family property among them in such a way as to give one member of the family, who at the time of the partition was a minor, less than the share to which he was entitled. The minor was represented in the partition by his uncle, though the uncle was not the natural guardian of the minor, nor in any other way entitled to deal with the minor's property. The minor on attaining majority brought a suit for recovery of the full share to which he was entitled. *Held* that this was not a suit for relief on the ground of fraud or mistake, inasmuch as the partition could not under the circumstances affect in any way the rights of the minor. The suit was therefore not subject to the limitation of three years prescribed by arts. 95 and 96 of the sch. II of Act XV of 1877. Lal Bahadur Singh *v.* Sispal Singh

[I. L. R., 14 All., 498

———————— **art. 96 (1871, art. 97)**—*Beng. Act VIII of 1869, s. 27—Suit for money paid in excess of road cess.*—In a suit to recover money alleged to have been paid by the plaintiffs to the defendants in excess of the sum demandable by the latter from the former on account of road cess,—*Held* (reversing the decisions of the Courts below) that the suit was governed not by the special law of limitation contained in

s. 27, Bengal Act VIII of 1869, but by art. 96, sch. II of the Limitation Act (XV of 1877). MATHURA NATH KUNDU *v.* STEEL . . **I. L. R., 12 Calc., 533**

——— art. 97 (1871, art. 98).

1. ——— *Accrual of cause of action.*—In a suit brought on the 29th July 1867 to recover back a deposit of purchase-money paid in September 1863, it appeared that the vendor had re-sold the estate, and that the plaintiff thereupon sued for and obtained a decree for specific performance against the vendor and the purchaser at the re-sale. On appeal by the purchaser at the re-sale, this decree was reversed on the 29th August 1865. *Held* that the suit to recover back the deposit was not barred, since the cause of action for its recovery did not accrue till 29th August 1865. RAMJAY DEY *v.* SRINATH SINGH . **2 B. L. R., A. C., 170 : 11 W. R., 24**

2. ——— *Suit to recover money paid on consideration which has failed.*—*R* had entered into a contract with *S* to grant him a "zur-i-peshgi" lease, and in consideration of an advance of R400 agreed to execute the same within one month from the date of the agreement, the 30th of April 1869. *S* sued to enforce the agreement on the 22nd of July 1870, but the suit was dismissed on the ground that *S* had committed a breach of contract in failing to pay the consideration for the lease. On the 30th of July 1874, *S* instituted a suit to recover the R400 advanced to *R*. It was held that the suit was barred by limitation under the provisions of Act IX of 1871, second schedule, 98. RAMPHAL LAL *v.* JAFIR ALI . . . . . . **7 N. W., 199**

3. ——— **and art. 62**—*Suit to recover purchase-money where purchaser was unable to obtain possession—Failure of consideration-money paid—Money had and received.*—A sale which a member of a joint family (Mithila) had attempted to make went off upon the objection made by other co-sharers, but not before the purchase-money had been paid. It might have been that the agreement for sale was not void from the beginning, but was only void upon objection being made; and if it was only voidable, the consideration did not fail at once at the time of the receipt of the purchase-money, so as to render it money had and received to the use of the payer within the meaning of art. 62 of sch. II of Act XV of 1877. But it failed at all events, when the purchaser being opposed found himself unable to obtain possession. He would have had a right to sue at that time to recover his purchase-money upon a failure of consideration. And, therefore, the case appeared to fall within art. 97. It must fall either within that article or within art. 62. HANUMAN KAMAT *v.* HANUMAN MANDUR
[**I. L. R., 19 Calc., 123**
L. R., 18 I. A., 158

4. ——— **and art. 62**—*Suit to recover purchase-money paid on a void sale—Failure of consideration—Money had and received.*—In 1885 the plaintiff obtained from the defendant a sale-deed of certain land and paid part of the purchase-money. Subsequently a judgment-creditor of the defendant's husband sought to execute his decree against the land in question, and eventually, in October 1889, obtained a decree in the High Court, under which the plaintiff was ejected. The plaintiff now sued in 1892, less than three years from the date of the last-mentioned decree, to recover the sum paid by him to the defendant as above mentioned. *Held* that the suit was not barred by limitation. VENKATANARASIMHULU *v.* PERAMMA . **I. L. R., 18 Mad., 173**

5. ——— **and art. 64**—*Retention of debt by debtor as part of consideration of another contract.*—Money due on an account stated which would as such have been barred in three years from the statement, under Act XV of 1877, sch. II, art. 64, becomes, for purposes of limitation, a debt of another character, when, it having been the subject of an arrangement whereby it was to be retained by the debtor as part of the consideration upon a proposed sale of land, that arrangement failed, the sale not being specifically enforceable, and so declared by decree. In contemplation of a sale of land by the debtor to the creditor, it was agreed that the book-debt should be retained by the former in satisfaction of part of the price, but the parties failing to agree as to certain other terms, a suit, brought by the intending vendor for specific performance, was dismissed on the ground that no effectual agreement had been made. *Held* that this decree brought about a new state of things, and imposed a new obligation on the debtor, who could no longer allege that he was absolved by the creditor's being entitled to the land instead of the money. He became bound to pay that which he had retained in payment of his land, the date of the decree giving the date of the failure of an existing consideration, within the meaning of art. 97. BASSU KUAR *v.* DHUM SINGH **I. L. R., 11 All., 47**

——— art. 98 (1871, art. 99)—*Suit to recover money paid for tenure cancelled by sale for arrears of rent.*—A suit to recover consideration-money paid for a dar-patni cancelled by the sale of the patni for arrears of rent was governed by the general rules of limitation under Act XIV of 1859. JUDOONATH BHUTTACHARJEE *v.* NOBO KRISTO MOOKERJEE . . **3 W. R., S. C. C. Ref., 2**

——— art. 99 (1871, art. 100).

Under Act XIV of 1859, the period of limitation was six years for the suits mentioned in the first part of this article,—*viz.*, suits by one who had paid the whole amount of a joint decree. JUMEELUN *v.* WALLEE AHMED . . . **10 W. R., 31**

DOORGAMONEE DOSSEE *v.* DOORGA BHUNJ
[**2 W. R., 266**

NOBO KRISTO BHUNJ *v.* RAJBULLUB BHUNJ
[**3 W. R., 134**

1. ——— *Suit for contribution—Cause of action.*—Under art. 100 in sch. II of Act IX of 1871, when a person has paid more than his own share of a joint decree, limitation runs against a suit for contribution from the time that the excess

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payment is actually made to the decree-holder. RADHA KRISTO BALO *v.* RUP CHUNDER NUNDY **[3 C. L. R., 480**

2. ———— *Suit for contribution—Joint liability under decree.—Quære*—Whether, in a suit for contribution on the ground that the plaintiff and defendants were jointly liable under a decree, in execution of which the plaintiff's property alone was sold, the limitation prescribed by art. 100, sch. II of Act IX of 1871, is applicable, or that prescribed by art. 118, sch. II of the same Act. FUCKORUDDEEN MAHOMED AHSAN *v.* MOHIMA CHUNDER CHOWDHRY . . **I. L. R., 4 Calc., 529**

The period of limitation for suits mentioned in the second part of this article,—*viz.*, suit by a sharer in a joint estate who has paid the whole revenue,—was also six years under the Act of 1859. SHADEE LAL *v.* BHAWANEE . . . . . **2 N. W., 52**

CHOHAGUR *v.* THAKOOREE SINGH . **1 Agra, 123**

And the cause of action in such a suit was held to arise from the same time as is now expressly enacted. BUNWAREE MOHUN SAHA *v.* PRANNATH SAHA **[2 W. R., 159**

KALLY SUNKUR SUNDYAL *v.* HURO SUNKUR SUNDYAL **[7 W. R., 29**

3. ———— **and art. 132**—*Payment of entire rent by a co-tenant—Suit for contribution.*—One of two persons having a joint holding from a mittadar paid the whole of the mittadar's dues for one year, and more than three years after the date of payment he sued the other for contribution. *Held* the payment did not create a charge on the land, and art. 132 of the Limitation Act was therefore not applicable, and the suit was consequently barred by limitation under art. 99. THANIKACHELLA *v.* SHUDACHELLA . . . . **I. L. R., 15 Mad., 258**

4. ———— **and art. 132**— *Suit to recover assessment paid by a co-owner of property from other co-owners—Charge on share of co-sharer.*—In 1868, the uncle of the plaintiff brought a suit (No. 176 of 1868) against five members of the undivided family, to which the defendants in the present suit belonged, and obtained a money-decree. In execution of that decree, he attached and sold certain land, in which all the members of the defendants' family were interested. At the sale he purchased the land himself, and was put into possession. In 1873, he began to pay the assessment upon the whole property. Subsequent litigation took place between him and the defendants' family, pending which the plaintiff separated from his uncle, and obtained the property in question as his share. The result of that litigation was a decree by the High Court, on the 23rd September 1879, declaring that the plaintiffs' uncle was only entitled to the interest of the five members of the family who had been defendant in his suit (No. 176 of 1868) in execution of the decree in which the property had been sold. The plaintiff brought the present suit, in 1883, against the other members of the family to recover their proportionate share of the assessment for the years 1875—1878, during which period he had paid the whole assessment. He prayed for a sale of their interest in the land. Both the lower Courts held that the payment of assessment did not create a charge on the property, and that the plaintiff having omitted to sue within three years from the date of the payments made by him, the present suit was barred. On appeal by the plaintiff to the High Court,—*Held*, confirming the lower Court's decree, that the suit was barred. The plaintiff paid the assessment as full owner of the property, and it was entirely by his own action that the defendants had been excluded from the property, and did not pay their quotas of the assessment. Under those circumstances, the payments could not be regarded as salvage payments so as to make them a charge, according to equity, justice, and good conscience, upon the shares of the other co-owners ACHUT RAMCHANDRA PAI *v.* HARI KAMTI . . **I. L. R., 11 Bom., 313**

5. ———— **and art. 132**—*Government revenue, Suit to recover money paid on account of—Charge on immoveable property—Co-sharer, Payment of arrears of revenue by.*—The plaintiffs and defendants were the proprietors of two separate plots of lands, separately assessed with Government revenue, but covered by the same towzi number. Plaintiffs paid the Government revenue due from the defendants in respect of their plot from September 1873 to June 1885 in order to prevent the two plots being brought to sale, and on the 28th September 1885 instituted a suit to recover the amount. It was contended on behalf of the plaintiff that art. 132 of sch. II of Act XV of 1877 applied to the facts of the case, and that the plaintiffs were therefore entitled to recover all amounts so paid within twelve years of date of suit. *Held* that, as on the authority of *Kinu Ram Doss* v. *Muzaffer Hosain Shaha, I. L. R., 14 Calc. 809,* the plaintiffs had no charge upon the property in respect of which the payment had been made, and as on the authority of *Ramdin* v. *Kalka Pershad, L. R., 12 I. A. 12 ; I. L. R., 7 All., 502,* art. 132 only applied to cases where the money sought to be recovered is a charge upon the property, the limitation applicable to the case was that provided by art. 99, and the plaintiffs' claim in respect of all payments made more than three years before suit was barred. KHUB LAL SAHU *v.* PUDMANUND SINGH **[I. L. R., 15 Calc., 542**

———— **art. 102.**

Suits for wages other than those specified in cl. 2 of s. 1 of Act XIV of 1859 were governed by cl. 9 or 10 of that Act. JUMNA PERSHAD *v.* BHEEM SEIN . **[1 Agra, Mis., 8**

NITTO GOPAL GHOSE *v.* MACKINTOSH **[6 W. R., Civ. Ref., 11**

———— *Suit for wages—Cause of action, Accrual of.*—Wages due to an employé leaving his employer's service would be due on the date when he left the service, and any suit for those wages must, in the absence of any subsequent account stated and settled between the parties, be brought within three years from such date. YOUNG *v.* MACCORKINDALE **[19 W. R., 159**

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Upholding on review, MacCorkindale *v.* Young **[18 W. R., 466**

——— **arts. 103, 104 (1871, arts. 103, 104).**

These articles give the result of, and adopt the decisions under, the Act of 1859. As to prompt dower (art. 103). Khajarannissa *v.* Risannissa Begum **[5 B. L. R., 84: 13 W. R., 371**

Mulleeka *v.* Jumeela . . **11 B. L. R., 375 [L. R., I. A., Sup. Vol., 135**

Khajurannissa *v.* Saifoolla Khan **[15 B. L. R., 306**

Nathu *v.* Daud **2 Bom., 309: 2nd Ed., 292**

S. C. Daud *v.* Nathu . **1 Ind. Jur., N. S., 113**

1. ——— *Demand of portion of dower—Cause of action.*—Where a wife demanded only a portion of her denmohr or dower from her husband, limitation as to her claim to the remainder will count from the date of her husband's death, and not from the date of her former demand. Begoo Jaun *v.* Gashee Bebee . . **6 W. R., Civ. Ref., 19**

As to deferred dower (art. 104). Mahar Ali *v.* Amani . . . . . **2 B. L. R., A. C., 306**

Mehran *v.* Kubiran . **6 B. L. R., 60 note**

Khajarannissa *v.* Risannissa Begum **[5 B. L. R., 84: 13 W. R., 371**

Mulleeka *v.* Jumeela . **11 B. L. R., 375 [L. R., I. A., Sup. Vol., 135**

2. ——— *Suit for dower—Wrongful possession.*—In a suit to recover the balance of dower-money, it appeared that the plaintiff's husband died in 1845, and the suit was instituted in 1867; and that the plaintiff had been in possession of her husband's estate in lieu of dower up to 1861, and had continued in possession, under a compromise with the heirs, till 1866. It appeared, however, that in another suit she had been declared not entitled to possession. *Held* her suit was barred. Kalsumnissa *v.* Wahidunnissa . . . **3 B. L. R., A. C., 176 note**

Mahomed Faez *v.* Oomdah Begum **6 W. R., 111**

Under the Act of 1859, the six and not the twelve years' period of limitation was held to apply to suits for dower, as the right was held not to constitute an interest in immoveable property. Mahabu Bibi *v.* Amnia . . . . . . **10 Bom., 430**

Wafeah *v.* Saheeba . . **8 W. R., 307**

Unless it was sought to charge it on immoveable property by establishing a lien thereon. Janee Khanum *v.* Amatool Fatima Khatoon **[8 W. R., 51**

S. C. on appeal, Woomatool Fatima Begum *v.* Meerunmunnissa Khanum . . **9 W. R., 318**

Wafeah *v.* Saheeba . . **8 W. R., 307**

In the latter case,—that is, where it is sought to make the dower a charge on immoveable property,—the suit would now probably come under art. 132 of the Limitation Act.

3. ——— *Contract to hold money on loan—Repayment to be made by husband in case of divorce—Dower.*—In the case of an advance of money on a contract that it should be held on loan by the husband (a Mopla following the Mahomedan law) without liability to interest, the repayment to be made by the husband in the event of a divorce taking place, or out of his effects at his death,—*Held* that the Mahomedan law of dower was not applicable to the suit, and that the period of limitation was three years from the date of the divorce or the death of the husband. Anonymous Case . . **5 Mad., 280**

——— **art. 105 (1871, art. 105).**

Under the Act of 1859, the six years' period of limitation was applicable to suits of the nature described in this article (suits by a mortgagor after a mortgage is satisfied for surplus collections received by the mortgagee).

See Lall Doss *v.* Jamal Ali **[B. L. R., Sup. Vol., 901: 9 W. R., 187**

——— **art. 106 (1871, art. 106).**

See Cases under art. 120. **[I. L. R., 4 All., 437**

To suits of the nature described in art. 106 (suits for an account and share of the profits of a dissolved partnership), the six years' period of limitation applied under the Act of 1859. Jwala Pershad *v.* Kedar Nath . . . . **3 Agra, 175**

Nursingh Doss *v.* Narain Doss . **3 N. W., 217**

Bhutoo Ram *v.* Puhul Chowdhry **7 W. R., 36**

Kalee Kristo Chowdhry *v.* Haran Chunder Dey . . . . . . **19 W. R., 217**

——— *Suit in nature of partnership demand.*—Plaintiff was in the service of the principal defendant (*C*), who was carrying on a partnership business with another as founders and engineers. During such service, plaintiff, *C*, and a third party entered into a joint adventure or partnership, with respect to the purchase, employment, and sale of a steam tug, the profit or loss to be shared equally,—it being arranged that *C* should retain in his hands plaintiff's monthly salary and appropriate so much as might be necessary to plaintiff's share of the expenses. After sale of the tug, the account was made up, showing a separate loss to each partner of R2,341, and was allowed and approved by each some time prior to 29th July 1868. On the date last mentioned plaintiff signed an account between himself and *C*, in which a balance was struck in plaintiff's favour, and immediately reduced by payment of a part to R4,054. On the same date, *C* instructed his clerk to write to plaintiff claiming to deduct board and lodging expenses, and on 30th July 1868 plaintiff replied refusing to allow the deduction. A further portion of the balance was afterwards paid by *C*. On the 31st July 1871, plaintiff instituted a suit against *C* and the third partner, framing his claim as if it were in the nature of a partnership demand. *Held* that, on the 29th July 1868, when plaintiff signed the account, and a balance had been struck, all partnership transactions had ceased between the parties, and that he was entitled to sue *C* for the balance of all salary and moneys in *C*'s hands; but that his

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claim was not a partnership demand. MACCORKINDALE *v.* YOUNG . . . . . **18 W. R., 466**

S. C. affirmed on review. YOUNG *v.* MACCORKINDALE . . . . . . **19 W. R., 159**

——— **art. 107 (1871, art. 107).**

Under Act XIV of 1859, six years was the period of limitation for the suits mentioned in this article (suits by the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate). As to the cause of action, the decisions were in accordance with this article.

See RAM KRISHNA ROY *v.* MADAN GOPAL ROY **[6 B. L. R., Ap., 103 : 12 W. R., 194**

BIMALA DEBI *v.* TARASUNDARI DEBI **[6 B. L. R., Ap., 101 : 14 W. R., 480**

——— *Joint Hindu family—Debts of manager—Contribution, limitation in respect of, Suit for.*—Where money is borrowed by the manager of a joint Hindu family on his personal security for purposes of necessity, his right to contribution arises when he expends the money, and limitation runs against his claim from that date and not from the date on which he repays the loan and releases his security. *Sunkur Pershad* v. *Goury Pershad, I. L. R., 5 Calc., 321; Ram Krishna Roy* v. *Madan Gopal Roy, 6 B. L. R., Ap., 103 : 12 W. R., 194,* followed. AGHORE NATH MUKHOPADHYA *v.* GRISH CHUNDER MUKHOPADHYA **I. L. R., 20 Calc., 18**

——— **art. 109 (1871, art. 109).**

1. ——— *Act XIV of 1859, s. 1, cl. 16—Suits for mesne profits.*—Six years was the period of limitation for suits for mesne profits under cl. 16, s. 1 of Act XIV of 1859. LALLA GOBIND SUHAYE *v.* MUNOHUR MISSER . . **1 W. R., 65**

RAM SURUN SINGH *v.* GOOROO DYAL SINGH **[1 W. R., 83**

PRATAP CHANDRA BURUA *v.* SWARNAMAYI **[3 B. L. R., Ap., 81**

ISSUREENUND DUTT JHA *v.* PARBUTTY CHURN JHA . . . . **3 W. R., 13**

RAMAPUT SINGH *v.* FURLONG . **3 W. R., 38**

LUCHMUN SINGH *v.* MIRIAM . . **5 W. R., 219**

MUNEERAM ACHARJEE *v.* TURUNGO **[7 W. R., 173**

BALUM BHUTT *alias* RAM BHUTH *v.* BHOOBUN LALL . . . . . . **6 W. R., 78**

NAWAB NAZIM OF BENGAL *v.* RAJ COOMAREE DEBEE . . . . . . **6 W. R., 113**

KATTAMA NACHIAR *v.* SUBBARAMA AIYAN. ZAMINDAR OF SHIVAGUNGA *v.* SUBBARAMA AIYAN **[4 Mad., 302**

HUREEHUR MOOKERJEE *v.* MOLLAH ABDOOLBUR **[17 W. R., 209**

JUGGUT CHUNDER BHADOORY *v.* SHIB CHUNDER BHADOORY . . . . **22 W. R., 255**

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See also MODHOOSOODUN SANDYAL *v.* SUROOP CHUNDER SIRCAR CHOWDHRY **[7 W. R., P. C., 73 : 4 Moore's I. A., 431**

2. ——— *Cause of action—Suit for mesne profits.*—In calculating the six years' mesne profits which the decree-holder was entitled to recover in this case, the cause of action was held to have arisen at the end of the year in which the ouster took place. THAKOOR DOSS ACHARJEE CHUCKERBUTTY *v.* SHOSHEE BHOOSUN CHATTERJEE **17 W. R., 208**

RAM CHUNDRA ROY *v.* AMBICA DOSSEA **[7 W. R., 161**

3. ——— *Cause of action—Date of ascertainment of amount.*—Where the amount of mesne profits cannot be ascertained till after the end of the year, the cause of action was held not to arise until the end of the year. BYJNATH PERSHAD *v.* BADHOO SINGH . . . . **10 W. R., 486**

THAKOOR DASS ROY CHOWDHRY *v.* NOBIN KRISTO GHOSE . . . . . . **22 W. R., 126**

Or in cases of dispossession, the date of dispossession is the date when the cause of action arises in suits for mesne profits. EKBAL ALI KHAN *v.* KALEE PERSHAD . . . . . . **3 W. R., 68**

4. ——— *Mesne profits—Wrongdoers independent of the defendant—Civil Procedure Code (1882), s. 211.*—In a suit brought on the 26th September 1893 for mesne profits of land, for the possession of which a decree had been previously obtained against the defendant, the plaintiff claimed damages in respect of the Fusli years 1297-1300—the year 1297 F. ending on the 28th September 1890. The defendant objected (*inter alia*) that the claim in respect of the period beyond three years before the date of suit was barred by limitation, and that she was not liable for profits of the lands from which she had been dispossessed by others. *Held* (1) under art. 109, sch. II of the Limitation Act, the defendant was liable for the mesne profits received by her or which she might have with due diligence received during the three years before the date of suit, and not before. The period of three years fixed has no reference to the time when rents fall due. *Byjnath Persad* v. *Badhoo Singh, 10 W. R., 486; Thakoor Dass Acharjee Chuckerbutty* v. *Shoshee Bhoosun Chatterjee, 17 W. R., 208;* and *Thakoor Dass Roy Chowdhry* v. *Nobin Kristo Ghose, 22 W. R., 126,* distinguished. (2) In the case of every wrong the liability of the defendant is limited to damages for the wrong which he has himself done. With reference to the definition of mesne profits in s. 211 of the Civil Procedure Code, if the defendant was excluded from possession, she could not be said to have actually or even impliedly received the profits, nor could she with ordinary or extraordinary diligence have received them; the case was remanded to determine what mesne profits were payable between the 26th September 1890 and the date, if any, when dispossession was proved. ABBAS *v.* FASSIHUDDIN **[I. L. R., 24 Calc., 413**

5. ——— *Dispossession under decree subsequently reversed by Privy Council.*—Where

plaintiff had been dispossessed of lands under a decree of the Sudder Court, subsequently reversed by the Privy Council on appeal, limitation as to his right to mesne profits during his dispossession ran from the date of the decree of the Privy Council. MASHOOK ALI KHAN *v.* JOWALA BUKSH . **2 N. W., 290**

JOYKURUN LALL *v.* ASMUDH KOOER **[5 W. R., 125**

6. ——— *Cause of action—Dispossession.*—The cause of action in respect to mesne profits accrues on the date on which, but for the fact of dispossession, the plaintiff would have been entitled to receive them. LAKHI KANT DAS CHOWDHRY *v.* RAM DYAL DAS . . . **5 B. L. R., Ap., 61**

S. C. LUCKHEE KANT DOSS *v.* DEEN DYAL DOSS **[14 W. R., 82**

7. ——— *Default caused by act of another party—Assam—Suit for partition.*—Where a purchaser of a four-anna share was kept out of possession of a portion of the property sold, and having recovered judgment in a suit brought for possession and mesne profits against the vendor, an arrangement was come to pending appeal, that within a year the parties should appoint an arbitrator to fix on the shares and make a division, and in default of such appointment an application should be made to the Hakim; but that if no such application was made within the year, and a suit should be subsequently brought, the party suing should lose his right to mesne profits,—*Held* that, under the circumstances, the defendant having prevented the plaintiff from making the necessary application within the year, and proceedings having gone on for years to carry out the partition, the plaintiff was, on the termination of these proceedings, entitled to sue for mesne profits. Where proceedings were going on to effect a partition, the right to particular properties being in dispute,—*Held* that the right to mesne profits accrued at the termination of those proceedings, and that the party improperly kept out of possession was entitled to sue for all mesne profits during the period of his non-possession, subject to any grounds which the defendant could show which would entitle a Court of equity to deprive the plaintiff of his rights. In a suit brought in January 1862, respecting property situated in Assam, mesne profits for twenty-eight years prior to 1854 were decreed, subject to any equitable claims for deducting any portion, Act XIV of 1859 not applying to Assam previous to July 1862. NILKAMAL LAHURI *v.* GUNOMANI DEBI **[7 B. L. R., 113 : 15 W. R., P. C., 38**

8. ——— *Period when due—Time for making up accounts.*—Where the accounts of an estate are made up at the end of the ordinary year, mesne profits are rightly treated as due at the end of each year, and interest may be added by way of damages. CHOWDHRY WAHED ALI *v.* JUMAYE **[19 W. R., 87**

9. ——— *Suit for, by person restored to possession under decree of Privy Council.*—The right of action to a person who is restored to possession under a decree of the Privy Council does not accrue before the decision of the Privy Council; and he is entitled to interest on mesne profits from the time of his ejectment up to one year after the decision of the Privy Council, that being held to be a reasonable time to be allowed to him for commencing his suit. ASMUDH KOOER *v.* JOYKURUN LALL. JOYKURUN LALL *v.* ASMUDH KOOER **5 W. R., 125**

10. ——— *Suit for possession.*—In a suit instituted after Act XIV of 1859 came into force, mesne profits can only be recovered for the six years next preceding the institution of the suit. A regular suit for mesne profits will lie after a suit for possession, if in the latter suit no question of mesne profits was raised or decided. PRATAP CHANDRA BURUA *v.* SWARNAMAYI **[3 B. L. R., Ap., 81 : 12 W. R., 5**

11. ——— *Suit for mesne profits.*—A claim for mesne profits during a period preceding the three years next before the filing of the plaint is barred by Act XV of 1877, sch. II, art. 109. KRISHNANAND *v.* PARTAB NARAIN SINGH **[I. L. R., 10 Calc., 792 : L. R., 11 I. A., 88**

12. ——— **and art. 40**—*Mesne profits misappropriated—Suit for value of crops.*—The defendant obtained a decree in a suit brought against the plaintiff for arrears of rent and for ejectment, in execution of which he evicted the plaintiff from his holding, and, after getting possession thereof, carried away certain crops which were then standing on the land. The plaintiff appealed from the decree obtained by the defendant, and on appeal it was set aside on the plaintiff depositing the rent due, and the plaintiff recovered possession of his tenure. *Held* that such a suit was a suit "for profits of immoveable property belonging to the plaintiff wrongfully received by the defendant" within the meaning of Act IX of 1871, s. 109, and not a suit for "compensation for any wrong, malfeasance, nonfeasance, or misfeasance, independent of contract," within the meaning of art. 36 of the same Act. SHURNOMOYEE *v.* PATTARRI SIRKAR **[I. L. R., 4 Calc., 625**

13. ——— *Suit for damages to personal property.*—Plaintiff brought a suit to establish his right to a fishery, which was finally decided in his favour. After the final determination of the suit in which his title to the fishery was tried, he brought the present suit to recover damages, and the Small Cause Court decided that the suit being for damages to personal property ought to have been brought within a year from the time of the injury having been committed. *Held* that the suit was not one for damages for injury to personal property, but for mesne profits, and that the six years' limitation was applicable to it. ELAHEE BUKSH *v.* SHEO NARAIN SINGH . . . . . . **17 W. R., 360**

——— **art. 110 (1871, art. 110; 1859, s. 1, cl. 8).**

1. ——— *Suits for arrears of rent.*—Suits for arrears of rent were under Act XIV of 1859 to be instituted within three years from the last day of the Bengal (or other) year in which the arrears claimed shall have become due. GOBIND KUMAR CHOWDHRY *v.* HARGOPAL NAG [3 B. L. R., Ap., 72: 11 W. R., 537

2. ——— *Suit for arrears of rent.*—Where a part-proprietor of a certain talukh, who was also a co-sharer in a fractional portion thereof, brought suits against his co-talukhdars in the Revenue Court for arrears of rent without allowing any deduction on account of his share, which suits were dismissed for want of jurisdiction, and afterwards brought a suit for the rent for the same period in the Civil Court,—*Held* that the suit was not one for the recovery of arrears of rent within the meaning of s. 29, Bengal Act VIII of 1869, but was governed by the provisions of Act XIV of 1859. The suit was one for rent of land, and fell within the scope of cl. 8, s. 1 of that Act. GOBINDO COOMAR CHOWDHRY *v.* MANSON .. 10 B. L. R., 56: 23 W. R., 152

3. ——— *Suit for compensation in shape of rent for land.*—A suit to make the defendant liable for compensation in the shape of rent for the land which he held in the name of his servant was held to be not a suit for rent under Bengal Act VIII of 1869, and was subject to the six years' limitation prescribed by cl. 16, s. 1, Act XIV of 1859. KISHENBUTTY MISRAIN *v.* ROBERTS [16 W. R., 287

4. ——— *Suit for compensation for use and occupation of land.*—Where a contract of lease was found to be a benami transaction, and the lessor, though he had all along received the rent from the ostensible lessees, was held to be entitled, when the tenure passed by sale in execution to a third party, to claim the rent due from the beneficial lessees,—*Held* it was not a suit for rent, but for compensation for use and occupation of the lands demised, and cl. 16 of s. 1 of Act XIV of 1859 was applicable to it. DEBNATH ROY CHOWDHRY *v.* GUDADHUR DEY. PITAMBUR SEN *v.* DEBNATH ROY CHOWDHRY . . . . . 18 W. R., 132

As to s. 1, cl. 8, of the Act of 1859, *see* POULSON *v.* CHOWDHRY . . . . 2 W. R., 21

UNNODA PERSAUD MOOKERJEE *v.* KRISTO COOMAR MOITRO . 15 B. L. R., 60 note: 19 W. R., 5

and HUREE KISHORE ROY *v.* HUR KISHORE ADHIKAREE . . . . 23 W. R., 134

5. ——— *Act XIV of 1859, s. 1, cl. 8—Suit for rent under benami lease—Use and occupation.*—Plaintiff, who was the zamindar, having obtained a decree against the auction-purchaser of a patni tenure held under his zamindari for the rents of the years 1279, 1280, and 1281, and being unable to realize the whole amount due under the same, subsequently learned that *A*, who had purchased a share in the patni from *B*, who derived his title from the original defendant, had been in possession during these years. He then sued *A* for the balance due under the first decree. This suit was filed on the 21st Baisack 1285. *Held* that the second suit, whether it was governed by Bengal Act VIII of 1869 or by the general law of limitation, was barred, inasmuch as it was a suit for rent and brought more than three years after the arrears became due. *Pitambur Sen* v. *Debnath Roy Chowdhry, 18 W. R., 132,* cited and distinguished. RAM RUNJUN CHUCKERBUTTY *v.* RAM LALL MUKHOPADHYA [5 C. L. R., 62

6. ——— *Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10—Suit for arrears of rent—Date from which limitation runs.*—In a suit for arrears of rent due under a decree given under s. 10 of the Rent Recovery Act (Madras Act VIII of 1865) the period of limitation in art. 110, sch. II of the Limitation Act, commences from the date when the plaintiff was in a position to sue for rent, *i.e.*, the date of the decree. SOBHANADRI APPA RAU *v.* CHALAMANNA . I. L. R., 17 Mad., 225

7. ——— *Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10—Suit to recover arrears of rent—Proceedings in Revenue Court to enforce acceptance of pottah tendered—Time from which period of limitation is computed.*—In a suit for rent for a period which had expired more than three years before the date of the plaint, it appeared that proceedings had taken place in a Revenue Court under the Rent Recovery Act (Madras), 1865, to enforce acceptance by the defendant of the pottah tendered by the landlord. These proceedings had terminated on appeal in favour of the landlord less than three years before the institution of his suit *Held* that the period of limitation applicable to the suit was not computable from the date of the termination of the proceedings under the Rent Recovery Act, and that the suit was barred by limitation. *Sobhanadri Appa Rau* v. *Chalamanna, I. L. R., 17 Mad., 225,* overruled. SRIRAMULU *v.* SOBHANADRI APPA RAU . I. L. R., 19 Mad., 21

8. ——— *Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10—Suit to recover arrears of rent—Suit to enforce acceptance of pottah pending—Time from which period of limitation is computed.*—The cause of action, with reference to limitation, in a suit for rent, accrues on the date on which the rent is payable by custom or contract, irrespective of whether pottah has been tendered or a suit to enforce acceptance of pottah under the Rent Recovery Act (Madras), 1865, is pending. KUMARASAMI PILLAI *v.* PRESIDENT, DISTRICT BOARD OF TANJORE [I. L. R., 22 Mad., 248

RANGAYYA APPA RAU *v.* VENKATA REDDI [I. L. R., 22 Mad., 249 note

PARAMASIVA GOUNDAN *v.* KANDAPPA GOUNDAN [I. L. R., 22 Mad., 250 note

9. ——— *Suit for arrears of rent by assignee of landlord—Bengal Tenancy Act, sch. III, art. 2.*—Art. 2 of Part I of sch. III of the Bengal Tenancy Act does not apply to a suit brought by an assignee of the arrears from the landlord, but art. 110 of the second schedule to the Limitation Act is applicable to such a case. MOHENDRA NATH KALAMAREE *v.* KOILASH CHANDRA DOGRA [4 C. W. N., 605

LIMITATION ACT, 1877—*continued.*

10. ——— *Enforcement of vendor's lien.*—In 1887 the plaintiff sold land to defendant No. 1, who, in 1894, while part of the purchase-money remained unpaid, sold it to the defendants Nos. 2 to 4, who had notice of this fact. The plaintiff now in 1895 sued to enforce his vendor's lien. *Held* that the suit was barred by Limitation Act, 1877, sch. II, art. 111. NATESAN CHETTI *v.* SOUNDARARAJA AYYANGAR

[I. L. R., 21 Mad., 141

See CHUNILAL *v.* BAI JETEH

[I. L. R., 22 Bom., 846

——— **art. 113 (1871, art. 113).**

See SPECIFIC PERFORMANCE—SPECIAL CASES . . **I. L. R., 3 Mad., 87**

1. ——— *Sale at fair valuation.—Ascertainment of price.*—In a suit for the specific performance of an agreement entered into in 1858 to grant a pottah when required, it appeared that the plaintiffs applied to the defendants for a pottah in 1874, and in March 1875 the defendants finally refused to make the grant, and the plaintiffs thereupon instituted their suit for specific performance. *Held* that they were not barred by limitation, as under Act IX of 1871, sch. II, art. 113, they had three years within which to bring their suit from the time when they had notice that their right was denied. NEW BEERBHOOM COAL COMPANY *v.* BULORAM MAHATA

[I. L. R., 5 Calc., 175 : 2 C. L. R., 268

S. C. on appeal to Privy Council, where, however, this point was not dealt with.

[I. L. R., 5 Calc., 932 : L. R., 7 I. A., 107

2. ——— *Specific performance—Trust—Laches.*—In 1860 certain shares in a company then formed were allotted to *S* on the understanding, as the plaintiffs alleged, that 120 of such shares should, on the amount thereof being paid to *S*, be transferred to and registered in the books of the company in the names of the plaintiffs. In 1862 the plaintiffs completed the payment to *S* in respect of the shares, and during his lifetime received dividends in respect of the said shares. *S* died in 1870, leaving a will, probate of which was granted to the defendant as his executor. In a suit brought by the plaintiffs after demand of the shares from the defendant, and refusal by him to deliver them, to compel the defendant to transfer the shares to the plaintiffs, and register the same in their names, the plaintiffs' case was that the shares had been held in trust for them, and that consequently their suit was not barred by lapse of time. *Held* that the transaction between *S* and the plaintiffs did not amount to "a trust for any specific purpose" within the meaning of s. 10 of the Limitation Act, or to a trust at all, but to an agreement of which the plaintiffs were entitled to specific performance; and the limitation applicable was that provided by cl. 113 of sch. II, Act IX of 1871, and therefore the suit was not barred. Nor were the plaintiffs disentitled to relief by reason of any laches or delay in bringing the suit. AHMED MAHOMED PATTEL *v.* ADJEIN DOOPLY

[I. L. R., 2 Calc., 323

LIMITATION ACT, 1877—*continued.*

3. ——— **and art. 144**—*Suit on an award—Meaning of "contract" in art. 113—Specific Relief Act (I of 1877), s. 30.*—By an award bearing date 7th July 1893 plaintiffs were held to be entitled to certain immoveable property. On 15th November 1897, they filed a suit to enforce the award. On its being contended that the suit was barred by limitation under art. 113 of the Limitation Act, it being in fact for the specific performance of a contract,—*Held* that the suit was not barred, the article applicable being art. 144. A suit to enforce an award cannot be treated as a suit to enforce a contract within the meaning of art. 113, the word "contract" in that article being used in its ordinary sense. *Sukho Bibi* v. *Ram Sukh Das, I. L. R., 5 All., 263,* and *Raghubar Dial* v. *Madan Mohan Lal, I. L. R., 16 All., 3,* referred to. SORNAVALLI AMMAL *v.* MUTHAYYA SASTRIGAL

[I. L. R., 23 Mad., 593

4. ——— *Suit for specific performance of contract—Suit on award—Act I of 1877 (Specific Relief Act), s. 30.*—A suit for money based on an award, which directs its payment by the defendant to the plaintiff, is virtually a suit to have the award specifically enforced; and as by s. 30 of the Specific Relief Act, 1877, awards are placed on the same footing as contracts, No. 113, sch. II of the Limitation Act, 1877, is applicable to such a suit. SUKHO BIBI *v.* RAM SUKH DAS

[I. L. R., 5 All., 263

5. ——— *Specific Relief Act (I of 1877), s. 30—Suit for balance due under an award.*—A suit for the recovery of a balance of money due under the terms of an award, being virtually a suit for the specific enforcement of the award, is, by reason of s. 30 of the Specific Relief Act, 1877, subject to the limitation prescribed by art. 113 of sch. II of the Limitation Act, 1877. *Sukho Bibi* v. *Ram Sukh Das, I. L. R., 5 All., 263,* followed. RAGHUBAR DIAL *v.* MADAN MOHAN LAL

[I. L. R., 16 All., 3

6. ——— **and art. 144**—*Vendor and purchaser—Contract of sale—Suit for specific performance of contract—Suit for possession of immoveable property.*—A contract was made for the sale of certain immoveable property, in the event of the vendor obtaining a decree establishing his title to the property, in a suit which had been brought for that purpose. The vendor obtained such decree in that suit. The purchaser subsequently brought a suit "to have a sale-deed executed and completed," and for possession of the property. It was contended that the limitation applicable to the suit was that provided by art. 144 of the Limitation Act, 1877, and not art. 113. *Held* that the suit was essentially one for specific performance of contract, and the limitation applicable was art. 113. The contention that, so far as the suit was for possession of immoveable property, it should be governed by art. 144, was invalid. The right to possession sprang out of the contract of sale, and the relief by giving possession was comprised in the relief by specific performance of the contract of sale, and could not be governed in this suit by any but art. 113. But

assuming the suit might, so far as limitation was concerned, be entertained, still, as the right to possession was dependent on the contract of sale, if the suit could not be maintained for specific performance of the contract, it could not be maintained for possession of the property sold under the contract. MUHI-UD-DIN AHMAD KHAN *v.* MAJLIS RAI . **[I. L. R., 6 All., 213**

7. ———— *Breach of contract—Suit for specific performance.*—In a suit to enforce the performance of an agreement alleged to have been entered into between the plaintiffs and the principal defendants whereby the latter, in consideration of an undertaking subsequently carried out, was to admit the former, who were his uterine brothers, to a share of the property of his adopting father, which included an interest in land,—*Held* that the defendant was in a position to fulfil that contract on the deaths of his adoptive parents respectively, and that plaintiff's suit, not having been brought within three years of the dates of those deaths, was barred by limitation. MOHADEO LALL *v.* NUNDUN LALL . **12 W. R., 22**

8. ———— *Exchange—Agreement that if either party were deprived of land received he should receive other land.*—In 1871 the plaintiffs and the defendants executed a deed whereby they effected an exchange of certain lands, and each party agreed to resist by legal process or by bringing an action any claim or interference with the other in respect of the property exchanged, and to bear the costs which might be incurred in such legal proceedings in certain proportions, and that, if as a result of such proceedings either of the parties were deprived of the lands exchanged or any part of them, the other should make it up out of certain of his own land. In 1881 the plaintiffs brought an action against a third party who claimed title to some of the exchanged lands, and joined the defendants as defendants, the latter admitting the plaintiffs' title. The plaintiffs were defeated in that suit in 1882. In 1885 (within three years from the time the defendants refused to give them other land) they sued on the deed of 1871 to have the exchange therein provided for carried out. *Held* by the Full Bench that the cause of action arose in 1882, when there was a loss to the plaintiffs in the sense contemplated in the deed, and the defendants were called upon specifically to perform their covenant, and that the present suit, having been brought within three years after their refusal to perform it, was within the time fixed by art. 113, sch. II of the Limitation Act (XV of 1877). HORI TIWARI *v.* RAGHUNATH TIWARI **[I. L. R., 10 All., 27**

———— **art. 114 (1871, art. 114)**—*Suit by company for price of shares allotted—Right of defendant to rescind contract—Laches of defendant.*— In a suit by a company for the price of shares allotted to the defendant in which the defence was that there had been misstatements and misrepresentations which entitled him to rescind the contract, *Quære*—Whether, if art. 114 of sch. II of the Limitation Act was applicable to the case and the defendant was entitled to bring an action for the rescission of the contract within three years from the time when the facts entitling him to rescind the contract first became known to him, the principle laid down in *Peel's case, L. R., 2 Ch., Ap., 674,* and *Lawrence's case, L. R., 2 Ch., Ap., 412,* under which the defendant would be barred by his laches from rescinding the contract, applies to the case. *Tennent v. City of Glasgow Bank, L. R., 4 Ap. Cas., 615,* referred to. MOHUN LALL *v.* SRI GANGAJI COTTON MILLS CO. . . . **4 C. W. N., 369**

———— **art. 115 (1871, art. 115).**

1. ———— *Suit for breach of contract.*—In a suit to recover a sum of money (principal and interest) on account of rent paid for a certain mouzah which had been farmed out to the plaintiff by defendant No. 1, but of which the plaintiff could not get possession,—*Held* that the cause of action, as laid in the plaint, was a breach of contract on the part of the principal defendant, and the action was one for damages falling under s. 1 of Act XIV of 1859 within the meaning of cl. 9 if the contract of lease was verbal, and within cl. 10 if it was in writing. The case was not that of a suit for breach of an implied contract as distinguished from a contract of actual agreement, and the obligation of the defendant to make good the loss caused to the plaintiff was not one merely which the law raises upon a state of circumstances independently of any actual agreement. BROOKE *v.* GIBBON . . **19 W. R., 244**

Upheld on review . . . **21 W. R., 47**

2. ———— *Implied contract—Contract to do repairs.*—Where the defendant employed the plaintiff to repair a bungalow, but no express agreement was come to as to the payment for the repairs, it was held that on the performance of the repairs an implied contract to pay their fair value arose, for which the period of limitation was six years, as ruled in *Umedchand Hukamchand* v. *Bulakidas Lalchand, 5 Bom., O. C., 16.* NARO GANESH DATAR *v.* MUHAMMAD KHAN . . . **9 Bom., 280**

3. ———— *Contract between doctor and patient as to fees.*—Where a doctor is engaged to treat a patient without any arrangement being made at the time as to his fees, there is an implied contract, an action for breach of which was governed by the three years' limitation under s. 1, cl. 9, of Act XIV of 1859. HURISH CHUNDER SURMAH *v.* BROJONATH CHUCKERBUTTY **[13 W. R., 96**

4. ———— *Suit for money received by vakil and paid to agents of client—Cause of action.*—A vakil received money for his clients and gave it to their agent for delivery to them; the agent did not deliver it accordingly, and the vakil was compelled by the Civil Court to pay it over again. The vakil thereupon sued the agent for the money. *Held* that the case fell under s. 1, cl. 16, of the Act of Limitation, 1859. *Held* also that, treating the case as one of implied contract, the cause of action arose when the plaintiff was compelled to pay money which the defendant was legally bound to pay; and, thirdly, that, if the defendant was in truth the plaintiff's agent, but had induced the plaintiff to make him so by the fraudulent representation that he was the agent of the clients, the cause of action would have arisen at the discovery of the fraud. **Penuballi Subharamareddi** *v.* **Bhimaraju Ramaya**

[2 Mad., 21

5. ——— *Contract to supply goods—Suit for balance due.*—In a suit to recover a balance due for articles supplied to defendant on account current between the parties, where an oral contract existed to the effect that, on defendant's giving chittis as security, articles of food for daily consumption would be supplied to him from plaintiff's shop, the chittis to be returned to defendant at intervals after payment on presentation, it was found that plaintiff last, on the 1st Assar 1276, returned to defendant the unpaid chittis then on hand, but defendant did not pay their amount. Subsequently, on different dates, he paid a portion. In a suit for what remained due,—*Held* that the breach of contract on which the suit was brought occurred when the defendant failed to pay, on presentation of the chittis, the amount then due and payable. **Ram Doyal Koondoo** *v.* **Gooroo Dass Sen**

[18 W. R., 450

6. ——— *Breach of contract in not satisfying decree—Cause of action.*—Where *S*, for a valuable consideration, promised *K* to satisfy a decree outstanding against him, and, instead of carrying out his agreement, purchased the decree, applied for its execution, and brought *K*'s property to sale, *K*'s right of action accrued from the date of the application, not from the date of the sale. **Mahomed Hadee** *v.* **Sheo Sevuk Doobay** . **6 N. W., 95**

7. ——— *Suit for trees on land after ejectment—Cause of action.*—*A*, having been in possession of garden land from 1850 as tenant of *B* under a two years' lease, continued to occupy as yearly tenant till 1860, when he was ejected in a suit brought against him by *B*. In 1864 *A* sued on a clause in the lease which he contended gave him a right to remove certain trees planted on the land. *Held* that the breach of contract (if any) took place when *B* took possession of the land together with the trees in execution of his decree in the ejectment suit, and that *A*'s claim was barred by cl. 10, s. 1 of Act XIV of 1859. **Sayaji** *v.* **Umaji**

[3 Bom., A. C., 27

8. ——— *Suit on agreement to pay rent to creditor—Cause of action.*—Plaintiff executed a zur-i-peshgi lease to defendant for a term of years, and arranged with him contemporaneously that he (the lessee) was to make an annual payment (out of the rents payable to plaintiff) to a creditor of the plaintiff, with a view to clear off a debt. These payments, though made punctually for a time, were withheld while a balance of the debt still remained due, to recover which the creditor sued the lessor (plaintiff) and obtained a decree. *Held* that plaintiff's (lessor's) cause of action against the defendant (lessee) arose from the date of the latter's breach of contract,—*i.e.*, the date on which he failed to pay. **Zoolfee Begum** *v.* **Ram Surun Roy 10 W. R., 80**

9. ——— *Suit for abatement of rent founded on agreement for measurement—Payment of same rent—Abandonment.*—In a suit for abatement of rent founded on an agreement that at a certain time the land should be measured, and if found less than the quantity named in the agreement, there should be an abatement of the rent, it was found that the plaintiff had never required abatement, but had continued to pay the rent six years. *Held* that the suit was barred by limitation, the cause of action having arisen when the zamindar continued to take rent according to the quantity of land named in the agreement. *Semble*—There might be ground for saying that the agreement was abandoned by the parties. **Prosunno Moyee Dossee** *v.* **Doya Moyee Dossee** . . . . . **22 W. R., 275**

10. ——— *Sale of goods on credit—Breach of contract.*—Where there was a clause in a partnership agreement by which the defendants, the working partners, undertook to be liable for any outstandings in respect of goods sold on credit, the sale of goods on credit was held not to be any breach of contract, and not to bring the suit under cl. 9 of s. 1 of Act XIV of 1859. **Kallee Kristo Roy Chowdhry** *v.* **Haran Chunder Dey** . **19 W. R., 277**

11. ——— *Contract for manufactured indigo—Breach of contract.*—Certain factories, already sown with indigo, were given in lease by the Court of Wards; and the lessees agreed to take over all contracts and pay all expenses which had been incurred for that season's cultivation, depositing the amount of outlay incurred. The lease having been set aside by superior authority, the lessees agreed to give up the factories and all the indigo manufactured by them while in possession, on condition of being repaid the amount deposited by them. In a suit to recover the value of the indigo not delivered,—*Held* the suit was one for breach of contract and governed by cl. 9, s. 1, Act XIV of 1859. **Bama Soondury Debia** *v.* **Jardine, Skinner & Co. 9 W. R., 367**

12. ——— *Suit for breach of contract to deliver goods.*—The defendants were owners of a fleet of steamers plying periodically along the coast of British India, by which they undertook to convey for freight parcels of goods indifferently from and to specified ports. In a suit for compensation for value of goods short delivered,—*Held* that the suit was one for breach of contract to deliver, and was governed by art. 115 of the Limitation Act, 1877. **British India Steam Navigation Co.** *v.* **Mahomed Esack & Co.** . . . **I. L. R., 3 Mad., 107**

13. ——— **and s. 61**—*Agent for purchase of stores for Government, Suit by—Cause of action—Suit against Secretary of State—Acknowledgment—Act XV of 1877, ss. 19 and 20.*—The plaintiff, a purchasing agent, sued the Secretary of State for India in Council to recover certain sums of money alleged to be due to him for the purchase of stores, etc., for the second Cabul Campaign. This suit was brought more than three years after the termination of the plaintiff's agency and more than three years after the last supply made by him as purchasing agent, but within a few months after the final refusal of the Commissariat Department to pay him the amount claimed. *Held* that it was doubtful if art. 61 of the second schedule of Limitation Act would apply, as against the Secretary of State for India in Council, but even if not, the suit was barred by art. 115. DOYA NARAIN TEWARY *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 14 Calc., 256

14. ———— **and art. 120**—*Re-marriage of Hindu widow—Custom—Breach of contract.*—The plaintiff sued the defendant, who had married the plaintiff's deceased brother's widow, to recover, by way of compensation, the money expended by his deceased brother's family on his marriage, founding his claim upon a custom prevailing among the Jats of Ajmere, whereby a member of that community marrying a widow was bound to recoup the expenses incurred by her deceased husband's family on his marriage. *Held* that the suit was one of the character described in No. 115, sch. II of Act XV of 1877, and not in No. 120 of that schedule, and the period of limitation was therefore three and not six years. MADDA *v.* SHEO BAKSH

[I. L. R., 3 All., 385

15. ———— **and art. 30**—*Suit by consignee against railway company for non-delivery.*—Where a suit is brought against a railway company by the consignee of goods (not sent on sample or for approval) for compensation for non-delivery, the period of limitation is not two years (art. 30), but three years (art. 115, sch. II of the Limitation Act, 1877), inasmuch as the consignor contracts with the company as agent for the consignee, and the property in the goods passes to the consignee on delivery to the company. HASSAJI *v.* EAST INDIAN RAILWAY COMPANY

[I. L. R., 5 Mad., 388

16. ———— **and art. 30**—*Bill of lading—Contract, Breach of, for delivery of goods—Onus of proof of loss of goods.*—Where a plaintiff brings a suit for breach of contract for non-delivery of goods under a bill of lading, it is not open to the defendant, after having denied receipt of the goods, to set up, or for the Court, after finding that the goods had been shipped, but not delivered, to assume, without evidence, that the goods were lost, in order to bring the case within art. 30, sch. II of the Limitation Act of 1877. *Per* GARTH, *C.J.*—*Semble*—Where a plaintiff sues for breach of contract and proves his case, the three years' limitation would be applicable, although the defendants were to prove that the breach occurred in consequence of some wrongful act of theirs, to which the shorter limitation would apply. *Mohansing Chawan* v. *Conder, I. L. R., 7 Bom., 478,* and *British India Steam Navigation Company* v. *Mahomed Esack, I. L. R., 3 Mad., 107,* approved. DANMULL *v.* BRITISH INDIA STEAM NAVIGATION COMPANY . **I. L. R., 12 Calc., 477**

17. ———— *Loan on verbal agreement to repay at a specified date.*—A suit to recover money lent with interest upon a verbal agreement that the loan should be repaid with interest one year from the date of the loan, is governed by art. 115 of ch. II of Act XV of 1877, which virtually provides for all contracts, which are not in writing, registered, and not otherwise specifically provided for. RAMESHWAR MANDAL *v.* RAM CHAND ROY

[I. L. R., 10 Calc., 1033

18. ———— **and art. 57**—*Debt contracted to be payable at a future date.*—In a suit against the legal representative of a deceased debtor to recover the amount of the debt it appeared that the debt was contracted on 30th September 1885, and was to be repayable a month after that date. In a suit brought on 24th October 1888,—*Held per* MUTTUSAMI AYYAR and PARKER *JJ.*, that the period of limitation should be computed from the date when the debt was due, and the suit was not barred. Such a suit is governed by art. 115, and not by art. 57 of the Limitation Act. *Rameshwar Mandal* v. *Ram Chand Roy, I. L. R., 10 Calc., 1033,* followed. RAMASAMI *v.* MUTTUSAMI **I. L. R., 15 Mad., 380**

19. ———— *Suit on contract unregistered—Money due under unregistered contract payable on demand—Money to be paid for particular purpose—Construction of agreement.*—The plaintiffs were husband and wife, and they were married on the 14th March 1888. On the day of their marriage the defendant, who was the father of the first plaintiff, gave him a note addressed to his (the defendant's) firm as follows: "Do you be pleased to pay R7,000, namely, seven thousand, for ornaments in respect thereof, together with interest thereon, at the rate of R4, namely four, per one centum per one annum, within a period of 3, namely three, years from this day." The first plaintiff took this note to the defendant's firm, and in return received the following document addressed to himself; "You sent one chithi (note) for R7,000, namely seven thousand, on me. The sum which your father caused to be paid to you in respect of the ornaments appertaining to your marriage has been credited to your account, bearing interest at 4, namely four, per cent. For the same this 'receipt' has been given in writing." No money was actually paid by the defendant to the plaintiffs, and none was lodged with the defendant's firm by the plaintiffs, but subsequently to the above transaction an account was kept in the defendant's books, in which the first plaintiff was duly credited with interest every year. In March 1894, the first plaintiff demanded from the defendant the amount standing to his credit out of his account. The defendant pleaded limitation. *Held* that the purpose for which the money was to be paid, *viz.*, the purchase of ornaments for the wife, indicated that it was the intention of the parties that payment should not be made until the plaintiffs were prepared to purchase ornaments, and that until then the money should remain with the defendant's firm. The intention was that the money should not be paid until the plaintiffs required it for the purpose for which it was destined, and demanded it. The contract was not broken until the plaintiffs demanded the money, which they did in March 1894. Art. 115 of sch. II of the Limitation Act (XV of 1877) applied to the case, and the suit was not barred. MANCHERJI BOMANJI *v.* NUSSERWANJI MANCHERJI

[I. L. R., 20 Bom., 8

LIMITATION ACT, 1877—*continued.*

20. ——— *Breach of contract—Cause of action—Damages.*—In a suit for breach of a contract to be performed at different times, the period of limitation must be calculated from each breach of contract as it arises. Where there is a contract for performing certain duties in each of several years, each breach of the contract is a complete cause of action, and damages are recoverable for each breach separately. MATI SAHU *v.* FORBES
[B. L. R., Sup. Vol., 500 : 6 W. R., Act X, 61

See the decision of the case by the Division Bench after the ruling of the Full Bench. MOTEE SAHOO *v.* FORBES . . . . . **6 W. R., 278**

On this clause *see* also LUKHINARAIN MITTER *v.* KHETTRO PAL SING ROY
[13 B. L. R., P. C., 146 : 20 W. R., 380

21. ——— *Continuing breach—Contract.*—*A* agreed with *B* to refund to *N* the price of certain property sold by *A* to *N*, and of which a share belonged to *B*. *A* having died without fulfilling the agreement, *N* obtained against *B* a decree for possession of part of the property. Five years subsequent to *N*'s suit, *B*'s heirs sued *A*'s heirs for damages for breach of the agreement. *Held* that such breach of the agreement was a continuing breach, and had not even yet ceased, and that therefore the present suit was not barred by art. 115, sch. II of the Limitation Act. IMDAD ALI *v.* NIJABAT ALI . . . . . **I. L. R., 6 All., 457**

22. ——— **and s. 23**—*Bond—Interest post diem—Non-payment of principal and interest at agreed date—Continuing breach—Successive breaches.*—Upon failure to pay the principal and interest secured by a bond upon the day appointed for such payment, breach of the contract to pay is committed, and there is no "continuing breach" within the meaning of s. 23 nor "successive breaches" within the meaning of art. 115 of the Limitation Act (XV of 1877). MANSAB ALI *v.* GULAB CHAND
[I. L. R., 10 All., 85

23. ——— *Breach of contract—Refusal to perform contract of sale—Cause of action—Suit for refund of money—Continuing breach.*—*T*, who was the uncle of the first defendant and the father of the second defendant, agreed with *C* to sell certain land to him for consideration received, and to cause the land, then standing in the name of a third party, to be registered in *C*'s name. It was further agreed that, if *T* failed to convey and cause the change of the revenue registry, *T* should return the purchase-money. *C* was put in possession, but in 1890 the second defendant conveyed the land to one *M* who rejected *C*. *Held* that the breach did not occur prior to November 1890, and that the suit was not barred. CHINNATAMBI GOUNDEN *v.* CHINNANA GOUNDEN . . . **I. L. R., 19 Mad., 391**

——— **art. 116.**

See DEKKAN AGRICULTURISTS' RELIEF ACT, 1879, s. 72 **I. L. R., 9 Bom., 320**

1. ——— *Contract or engagement in writing.*—Where a writing signed by the defendant was in these terms: "*S* (defendant) holds R475, which sum is the property of *L* (the plaintiff),"—*Held* that the document could not be considered a written contract or engagement. LAKSHMANAIYAN *v.* SIVASAMY ROW . . . . **4 Mad., 216**

2. ——— *Contract or engagement in writing—Suit on promissory note by endorsee against payee.*—The defendant, the payee of a promissory note, endorsed it to the plaintiff. The endorsement was, "Pay to *K M* (plaintiff) or his order." The promissory note had been registered previous to the endorsement to plaintiff. A suit was brought by the plaintiff three years after the date of the endorsement to recover the amount of the note from the defendant. *Held* that the suit was barred by the law of limitation. KYLASANADA MOODELLY *v.* ARMUGUM MOODELLY . . . . **4 Mad., 366**

See SHUMBO CHUNDER SHAHA *v.* BARODA SOONDUREE DEBIA . . . . . **5 W. R., 45**

3. ——— *Mode of registration—Registration before cazee.*—The registration must be under one of the Registration Acts or Regulations. Attestation before a cazee was held not to be registration within cl. 10, s. 1 of Act XIV of 1859. DOYAMOYEE DABEE *v.* NOBONEE DABEE . **1 W. R., 89**

4. ——— *Registered bond.*—*Held* that art. 116, sch. II of Act XV of 1877, is applicable to a suit on a registered bond for the payment of money. HUSAIN ALI KHAN *v.* HAFIZ ALI KHAN
[I. L. R., 3 All., 600

5. ——— *Registered instalment bond, Suit on—Contract in writing registered.*—Art. 116 of the Limitation Act is applicable to a suit on a registered instalment bond, notwithstanding the express provisions of art. 74. That article (116) is intended to apply to all contracts in writing registered, whether there is or is not an express provision in the Limitation Act for similar contracts not registered. DIN DOYAL SINGH *v.* GOPAL SARUN NARAIN SINGH
[I. L. R., 18 Calc., 506

6. ——— *Registered bond—Compensation for breach of contract.*—A suit to recover a specific sum of money due upon a registered bond or other written contract is a suit for compensation for breach of contract in writing registered, within the meaning of art. 116 of sch. II of Act XV of 1877, and may be brought within six years from the time when the period of limitation would begin to run against a suit brought on a similar contract which is not registered. GANESH KRISHNA *v.* MADHAVRAO RAVJI . . . . **I. L. R., 6 Bom., 75**

7. ——— *Registered bond for the payment of money—Suit for compensation for the breach of a contract in writing registered.*—The defendant, having borrowed money from the plaintiff, gave him a bond, dated 4th July 1872, for the payment of such money, with interest, within two years, or on certain contingencies contemplated and defined in such bond. Such bond did not specify a day for payment. It was duly registered. On the 30th June 1880, the plaintiff sued the defendant, stating in his plaint that he had lent the defendant such money; that it was payable on the 4th July 1874;

that on that day he had demanded payment; that the cause of action arose on that day, as the defendant did not pay; and that he claimed such money accordingly. The plaint did not make any mention of such bond. *Held* that the suit was not one which fell within the scope of art. 66 of sch. II of Act XV of 1877, but one to which art. 116 of that schedule was applicable, and it might proceed on the plaint without any amendment thereof. GAURI SHANKAR *v.* SURJU . . **I. L. R., 3 All., 276**

8. ——————— *Suit to recover money due on registered bond—Compensation for breach of contract.*—A suit to recover money due upon a registered bond is a suit for compensation for breach of contract in writing registered within the meaning of art. 116 of sch. II to Act XV of 1877, and must be brought within six years from the time when the period of limitation would begin to run against a suit brought on a similar contract not registered. NOBOCOOMAR MOOKHOPADHAYA *v.* SIRU MULLICK **[I. L. R., 6 Calc., 94**

9. ——————— *Registered bond for the payment of money.*—*Held*, following *Husain Ali Khan* v. *Hafiz Ali Khan, I. L. R., 3 All., 600,* that a suit on a registered bond for the payment of money, which has not been paid on the due date, is a suit for compensation for the breach of a contract in writing registered, and therefore the limitation applicable to such a suit is that provided by art. 116, sch. II of the Limitation Act. The principle on which the ruling that a suit on a bond which has not been paid on the due date is a suit for compensation explained by STUART, *C.J.*, and *Nobocoomar Mookhopadhaya* v. *Siru Mullick, I. L. R., 6 Calc., 94,* referred to. KHUNNI *v.* NASIR-UD-DIN AHMAD **[I. L. R., 4 All., 255**

10. ——————— *Suit for money due on registered bond.*—A suit to recover money due upon a registered bond is a suit for compensation for breach of contract within the meaning of art. 116, sch. II of Act XV of 1877. *Nobo Coomar Mookopadhaya* v. *Siru Mullick, I. L. R., 6 Calc., 94: 6 C. L. R., 579. See Gauri Sunkur* v. *Surju, I. L. R., 3 All., 276; Ganesh Krishna* v. *Madhavrav, I. L. R., 6 Bom., 75; Vythilinga Pillai* v. *Thetchanamurti Pillai, I. L. R., 3 Mad., 76.* KALUT RAM *v.* LALA DHANUKDHARI SAHAI . **11 C. L. R., 361**

11. ——————— *Registered bond executed by minor.*—A sum of money was advanced by the plaintiff to a minor who gave a bond for the amount and duly registered the same. In a suit on the bond it was urged on behalf of the minor, who had not attained majority at the time the suit was filed, that he was not liable under the bond, and that the fact of its being registered could not help the plaintiff, and consequently the suit was barred by limitation, being brought more than three years after the advance was made,—*Held* that in such a case the bond could not be ignored and treated as non-existent, being the basis of the suit, and that, on its being proved to have been executed by the minor in respect of money advanced for necessaries, effect must be given to the fact of registration, and the suit having been brought within six years from the date of the bond was not barred by limitation, and the plaintiff was entitled to a decree. SHAM CHARAN MAL *v.* CHOWDHRY DEBYA SINGH PAHRAJ . . . **I. L. R., 21 Calc., 872**

12. ——————— *Suit on a registered bond, and for misappropriation by executor de son tort.*—In a suit on a registered bond payable in eleven yearly instalments to recover instalments 5 to 10 from the representatives of two deceased co-debtors (who as managing members of an undivided Hindu family had contracted the debt for family purposes), the plaintiff added as defendants *G*, the son-in-law of one of the deceased co-debtors, and his two brothers, on the ground that they, in collusion with the widow of such deceased, co-debtor, had as volunteers intermeddled with and possessed themselves of substantially the whole property of the family of the deceased co-debtor. The bond was dated 26th March 1870. The earliest instalment sued for fell due on 13th March 1874. *Held* that, as the bond was a registered bond and the property had been misappropriated within three years of the date of the suit, the suit was not barred by limitation. MAGALURI GURUDIAH *v.* NARYANA RUNGIAH . **I. L. R., 3 Mad., 359**

13. ——————— *Suit to recover arrears of rent on registered contract—Compensation—Contract Act, s. 73.*—A suit to recover arrears of rent upon a registered contract is governed by art. 116, sch. II, Act XV of 1877. Compensation is used in the same sense in that article as is the Contract Act, s. 73. VYTHILINGA PILLAI *v.* THETCHANAMURTI PILLAI . . . . **I. L. R., 3 Mad., 76**

14. ——————— **and art. 113**—*Suit by mortgagor to recover money due on a registered mortgage-deed.*—A suit by a mortgagor to recover money due on a registered mortgage-deed, together with damages for non-payment, is not a suit to which the period of limitation prescribed by the Limitation Act (XV of 1877), sch. II, art. 113 (for specific performance of a contract) is applicable. The period of limitation applicable to such a suit is that prescribed by art. 116 of sch. II of the said Act (for compensation for the breach of a contract in writing registered); and the time from which limitation will run against the mortgagor is, in the absence of any specific provision to the contrary, the date of the execution of the mortgage-deed. *Gauri Shankar* v. *Surju, I. L. R., 3 All., 276; Husain Ali Khan* v. *Hafiz Ali Khan, I. L. R., 3 All., 600; Nobocoomar Mookhopadhaya* v. *Siru Mullick, I. L. R., 6 Calc., 94; Vithilinga Pillai* v. *Thetchanamurti Pillai, I. L. R., 3 Mad., 76;* and *Ganesh Krishna* v. *Madhavrav Ravji, I. L. R., 6 Bom., 75,* referred to. NAUBAT SINGH *v.* INDAR SINGH **[I. L. R., 13 All., 200**

15. ——————— **and art. 65**—*Vendor and purchaser—Agreement by purchaser to refund purchase-money in case land sold proved deficient in quantity—Suit for refund—Suit for compensation for breach of contract.*—The vendor of certain land agreed in the conveyance, which was registered, that in case the land actually conveyed proved to be less than that purporting to be conveyed, he should make a refund to the purchaser of the purchase-money in proportion to the value of the quantity of land deficient. The land actually conveyed having proved to be less than that purporting to be conveyed, and the vendor having failed to make a refund of the purchase-money in proportion to the value of the quantity of land deficient, the purchaser sued the vendor for the value of the quantity of land deficient. *Held* by SPANKIE, *J.*, that the suit was one of the nature described in art. 65, sch. II of Act XV of 1877, to which, the agreement being in writing registered, the limitation provided by art. 116, sch. II of that Act, was applicable. *Held* by OLDFIELD, *J.*, that art. 116, sch. II of Act XV of 1877, was applicable to the suit. KISHEN LAL *v.* KINLOCK [I. L. R., 3 All., 712

16. ———— *Suit for breach of contract in writing registered—Stipulation as to amount of profits of property sold.*—The plaintiffs purchased certain immoveable property from the defendants by a registered sale-deed on the 20th of June 1888. It was stipulated in the sale-deed that, if the profits of the property should be below R300, the vendors would make good the deficiency. The vendees sued upon this contract on the 19th of September 1892, alleging that the profits amounted to only R177-1-0. *Held* that the suit as regards limitation was governed by art. 116 of the second schedule of Act XV of 1877, and not by art. 65. *Kishen Lal* v. *Kinlock, I. L. R., 3 All., 712,* referred to. AMANAT BIBI *v.* AJUDHIA . . . I. L. R., 18 All., 160

17. ———— *Suit for arrears of maintenance—Suit on ekrar executed by priest of Hindu idol creating charge on offerings to idol—Right of priest to charao (offerings to idol).*—In a suit upon an ekrar executed by the priest of an idol for recovery of arrears of maintenance, and for a declaration that the money due was realizable from the surplus of the charao (offerings to the idol) and recoverable from the defendant's successors in office,—*Held* that the limitation applicable to the case was that prescribed by art. 116, sch. II of the Limitation Act (XV of 1877). Arts. 128 and 129 do not govern the case, as they relate to cases in which the right of maintenance is based on the Hindu law. *Nobocoomar Mookhopadhaya* v. *Siru Mullick, I. L. R., 6 Calc., 94,* referred to. GIRIJANUND DATTA JHA *v.* SAILAJANUND DATTA JHA . . I. L. R., 23 Calc., 645

18. ———— *Suit for rent—Registered contract signed by lessee only.*—In a suit for rent accrued due more than three years before the date of the plaint, it appeared that the contract between the landlord and tenant was comprised in a registered document which was signed only by the latter. *Held* that the suit was not barred by limitation. AMBALAVANA PANDARAM *v.* VAGURAN . I. L. R., 19 Mad., 52

19. ———— *Covenant implied in registered sale-deed—Transfer of Property Act (IV of 1882), s. 55—Implied covenant for title—Suit for damages for breach.*—On 8th February 1889 the defendant sold to the plaintiff, under a registered conveyance containing no express covenant for title, land of which he was not in possession, and the purchase-money was paid. The plaintiff and the defendant sued to recover possession, but failed on the ground that the vendor had no title. The plaintiff now sued on 7th February 1895 to recover with interest the purchase-money and the amount of costs incurred by him in the previous litigation. *Held* that, the contract of sale being in writing and registered, the covenant which, under s. 55 of the Transfer of Property Act, the law implied, must be regarded as part of the registered writing, and therefore the suit was not barred by limitation, but the plaintiff was entitled to the relief sought by him. KRISHNAN NAMBIAR *v.* KANNAN . I. L. R., 21 Mad., 8

20. ———— **and art. 120**—*Transfer of Property Act (IV of 1882), s. 68—Suit for mortgage money by mortgagee on disturbance of possession.*—The defendants demised certain land to the plaintiff under a registered kanom deed in 1888. The plaintiff was evicted in February 1893. He now sued in 1896 to recover the amount of the kanom. *Held* that the period of limitation applicable to the suit was six years, and that the suit was not barred by limitation. UNICHAMAN *v.* AHMED KUTTI KAYI [I. L. R., 21 Mad., 242

21. ———— **and arts. 89 and 90**—*Principal and agent—Breach of contract—Account—Registered agreement—Contract Act, s. 73—Compensation.*—A suit to recover from the representatives of a deceased agent certain sums of money which had been received by such agent in the course of his duties and misappropriated by him, will be governed by the limitation prescribed by art. 116, sch. II, Act XV of 1877, when the contract under which the agent was employed is contained in a duly registered instrument. In a suit for compensation for breach of a contract in writing and registered, whether such compensation be for a liquidated or unliquidated sum, the limitation applicable is six years as prescribed by art. 116, sch. II, Act XV of 1877. In art. 116, sch. II of Act XV of 1877, the word "compensation" seems to be used in the sense in which it appears in s. 73 of the Contract Act (IX of 1872). In April 1875, *A* entered into an agreement in writing with *B*, whereby he agreed to act as the manager of *B*'s zamindaris and other landed properties for three years, on certain terms therein mentioned. The agreement was duly registered. On the 15th of June 1882, *B* sued the Administrator General of Bengal, as administrator of *A*'s estate, to recover certain sums of money, set forth in detail in the plaint, as having been received by *A*, and not accounted for, stating that they had been misappropriated by *A*. *Held* that in respect of such sums as were received by *A*, in virtue of his position as manager under the registered agreement, the limitation of six years applied; but that in respect of the sums received by him in the course of transactions which did not come within the scope of the registered agreement, the limitation of three years applied. HARENDER KISHORE SINGH *v.* ADMINISTRATOR-GENERAL OF BENGAL . I. L. R., 12 Calc., 357

22. ———— *Suit for arrears of rent—Registered contract.*—A suit to recover arrears of rent upon a registered contract is governed by sch. II, art. 116, of the Limitation Act. UMESH CHUNDER MUNDUL *v.* ADARMONI DASI

[I. L. R., 15 Calc., 221

23. ———— *Suit on bond.*—*A* sued as assignee of bond (payable in 1872), hypothecating land in the mofussil. *B*, *A*'s assignor, was a vakil practising in the High Court. *B* had obtained an assignment of the obligee's interest in the bond sued on, and also another bond for R3,000 between the same parties after the 1st July 1882, for R4,500. *B* had previously purchased the two bonds at a sale in execution of the decree of a mofussil Court for R5 each. *A*'s assignment from *B* purported to be made to *A* in payment of certain debts owed to him by *B*. No interest had been paid on the bond, and no tender had been made to the plaintiff. *Held* in a suit brought in 1884 that the creditor's personal remedy was barred by art. 116 of the Limitation Act. RATHNASAMI *v.* SUBRAMANYA

[I. L. R., 11 Mad., 56

24. ———— *Damages for non-payment on due date—Charge on hypothecated property—Successive or continuing breaches of contract.*—Damages given after the due date of a mortgage for non-payment of the principal money upon the due date, are damages for breach of contract, and not interest payable in performance of a contract; and under art. 116, sch. II of the Limitation Act (XV of 1877), a suit to recover such damages must be brought within six years from the time when the contract for the breach of which they are claimed was broken. It cannot be said that such damages are, from the date when the contract was broken, and even before they have been ascertained or decreed, a charge upon the property hypothecated, so as to make art. 116 inapplicable. *Price* v. *Great Western Railway Co., 16 L. J. Exch., 87; Morgan* v. *Jones, 22 L. J. Exch., 232; Cordillo* v. *Weguelin, I. L. R., 5 Ch. D., 287; In re Kerr's Policy, L. R., 8 Eq., 331; Lippard* v. *Ricketts, I. L. R., 14 Eq., 291; Cook* v. *Fowler, L. R., 7 E. and I. Ap., 27;* and *Bishen Dyal* v. *Udit Narayan, I. L. R., 8 All., 486,* distinguished. In such cases there is one breach of the contract, namely, the non-payment on the date agreed upon, and there is no question of continuing or successive breaches. *Mansab Ali* v. *Gulab Chand, I. L. R., 10 All., 85,* referred to. BHAGWANT SINGH *v.* DARYAO SINGH

[I. L. R., 11 All., 416

25. ———— *Interest on deed of conditional sale—Interest after date fixed for payment of principal and interest—Absence of agreement to pay such interest—Compensation for breach of contract.*—Where there is no stipulation in a deed of conditional sale to pay interest after the day fixed for the repayment of principal and interest, a claim for interest after due date is a claim for compensation for breach of contract, and a suit for the recovery of such compensation must be brought within six years from the date of the breach. *Juggomohun Ghose* v. *Manick Chand, 7 Moore's I. A., 279,* referred to. *Mansab Ali* v. *Gulab Chand, I. L. R., 10 All., 85,* and *Bhagwant Singh* v. *Daryao Singh, I. L. R., 11 All., 416,* approved of. *Bhugwan Lal* v. *Mohip Narain Singh, unreported,* and *Golam Abas* v. *Mohamed Jaffer, I. L. R., 19 Calc., 23 note,* followed. GUDRI KOER *v.* BHUBANESWARI COOMAR SINGH . . . . **I. L. R., 19 Calc., 19**

GOLAM ABAS *v.* MAHOMED JAFFER

[I. L. R., 19 Calc., 23 note

26. ———— *Mortgage by conditional sale—Interest after due date—Interest Act (XXXII of 1839)—Limitation Act, art. 132—Transfer of Property Act, s. 86.*—*Held* by a majority of the Full Bench (MACLEAN, *C.J.*, O'KINEALY, *J.*, and MACPHERSON, *J.*) that, when a mortgage-bond contains no stipulation for the payment of interest after the due date, interest is payable by virtue of the Interest Act (XXXII of 1839). Art. 116 of sch. II to the Limitation Act prescribes the period of limitation in such a case; and therefore only six years' interest after the due date at 6 per cent. per annum is recoverable. The mortgagor cannot redeem until he has repaid the principal sum with such interest and costs. *Gudri Koer* v. *Bhubaneswari Coomar Singh, I. L. R., 19 Calc., 19,* approved. *Mathura Das* v. *Narindar Bahadur Pal, I. L. R., 19 All., 39: L. R., 23 I. A., 138; Cook* v. *Fowler, L. R., 7 H. L., 27;* and *Bikramjit Tewari* v. *Durga Dyal Tewari, I. L. R., 21 Calc., 274,* referred to. *Held* (by TREVELYAN and BANERJEE, *JJ.*) that the interest after due date should be regarded as interest due on the mortgage within the meaning of s. 86 of the Transfer of Property Act (IV of 1882); and that being so, that it becomes a charge on the mortgaged property, and the period of limitation applicable to the claim for such interest is twelve years under art. 132 of sch. II to the Limitation Act (XV of 1877). MOTI SINGH *v.* RAMOHARI SINGH . . . **I. L. R., 24 Calc., 699**

[1 C. W. N., 437

27. ———— *Suit on mortgage—Claim for interest post diem in absence of covenant—Claim in nature of damages.*—The defendants hypothecated to the plaintiff, to secure repayment of a debt, their interest in certain lands. The hypothecation-deed was executed in 1875 and registered, and it contained the following terms with regard to interest and the repayment of the debt: "We (the obligors) shall pay interest at 7 per cent. per annum before the 30th October of each year; we shall pay in full the principal amount on the 30th October 1878, after clearing off the interest, and redeem this deed; should we fail to pay the interest regularly according to the instalments, we shall at once pay the principal together with the amount of interest." Default was made in the payment of interest in 1876. The plaintiff in 1888 sued the executants of the above instrument and their heirs and representatives to recover the principal together with interest up to date. The Court of first instance held that the claim for a personal decree was barred by limitation, but passed a decree directing the sale of the hypothecated land in default of payment of the principal together with interest up to date. On appeal,—*Held* that, since the instrument did not provide for interest *post diem*, any claim in the nature of a claim for such interest could be allowed by way of damages, only, and was not a charge on the land; and treating the claim as one for damages for failure to pay the principal on the 30th October 1878, such claim was barred by limitation under art. 116, sch. II of the Limitation Act. BADI BIBI SAHIBAL *v.* SAMI PILLAI

[I. L. R., 18 Mad., 257

But *see* RAMA REDDI *v.* APPAJI REDDI

[I. L. R., 18 Mad., 248

where interest *post diem* was allowed, though barred.

28. ———— *Suit for interest post diem in absence of covenant—Suit on mortgage.*—The plaintiff sued in 1893 to recover principal together with interest due up to date on a mortgage which provided for the repayment of principal and interest in December 1882, but contained no covenant for the payment of interest *post diem. Held* that the claim for interest *post diem* was barred by limitation. THAYAR AMMAL *v.* LAKSHMI AMMAL

[I. L. R., 18 Mad., 331

29. ———— *Claim for interest on money due under registered mortgage-deed—Interest Act (XXXII of 1839).*—Art. 116 of sch. II of Act XV of 1877 applies to a claim to have interest allowed under Act XXXII of 1839, in respect of the non-payment on the due date of the money due under a registered mortgage-deed, if the suit is not brought within six years of the breach of contract. NARINDRA BAHADUR PAL *v.* KHADIM HUSAIN

[I. L. R., 17 All., 581

But *see* MATHURA DAS *v.* NARINDAR BAHADUR

[I. L. R., 19 All., 39
L. R., 23 I. A., 138
1 C. W. N., 52

in which this decision was not approved of by the Privy Council.

30. ———— *Building lease—Coal depôt, Lease for, not agricultural or horticultural lease—Bengal Tenancy Act (VIII of 1885), sch. III, art. 2.*—A registered lease granted for building purposes and for establishing a coal depôt does not come within the purview of the Bengal Tenancy Act, not being a lease for agricultural or horticultural purposes. The limitation applicable to a suit for the rent reserved in such a lease is that prescribed by art. 116 of the Limitation Act, and not that provided by sch. III, art. 2, of the Bengal Tenancy Act. RANIGANJ COAL ASSOCIATION *v.* JUDOONATH GHOSE

[I. L. R., 19 Calc., 489

31. ———— *Suit between partners—Registered partnership deed.*—The plaintiffs and the defendants entered into a partnership agreement, which was registered, whereby it was, among other things, provided expressly that each partner should bear the loss, if any, incurred in the business in proportion to his share. The plaintiffs, alleging that loss had been incurred and borne by them, sued to recover the defendants' share of the loss. *Held* that, since the partnership agreement was registered, the suit was governed by Limitation Act, sch. II, art. 116. RANGA REDDI *v.* CHINNA REDDI

[I. L. R., 14 Mad., 465

32. ———— **and s. 106**—*Suit for an account of a dissolved partnership—Registered partnership deed.*—A suit for an account of a partnership dissolved more than three years before the filing of the plaint is barred by limitation, even if the instrument of partnership was registered, art. 116 not being applicable to such a suit. VAIRAVAN ASARI *v.* PONNAYYA . . . **I. L. R., 22 Mad., 14**

———— **arts. 118, 119 (1871, art. 129).**

See DECLARATORY DECREE, SUIT FOR—ADOPTIONS . **I. L. R., 1 Bom., 248**

Under the Act of 1859, a suit simply to set aside an adoption was governed by cl. 16 of s. 1, and in some cases the cause of action was held to arise at the date of the adoption.

See MRINMOYEE DABEE *v.* BHOOBUNMOYEE DABEE

[15 B. L. R., 1: 23 W. R., 43

and KALOVA KOM BHUJANGRAV *v.* PADAPA WALAD BHUJANGRAV . . **I. L. R., 1 Bom., 248**

In another case, the cause of action was held to accrue on the death of the adoptive mother, and not at the date of the adoption. TARINI CHURN CHOWDHRY *v.* SARODA SUNDARI DASI

[3 B. L. R., A. C., 145: 11 W. R., 468

Where the suit was combined with one for possession of property, the suit was governed by cl. 12 of s. 1, and a period of twelve years' limitation was allowed. TARINI CHARAN CHOWDHRY *v.* SARODA SUNDARI DASI . **3 B. L. R., A. C., 145: 11 W. R., 468**

ISWAR CHANDRA MITTER *v.* SHAMA SUNDARI DASI

[3 B. L. R., A. C., 150 note

RADHA KISSOREE DOSSEE *v.* GUTHEE KISSEN SIRCAR . . . . **W. R., 1864, 272**

In HURONATH CHOWDHRY *v.* HURRE LALL SHAHA . . . . . **11 W. R., 477**

it was held that a mere notice that an adoption has taken place is not of itself a cause of action from which limitation would run to bar a reversioner,—a ruling which seems to be set aside by the present Act.

1. ———— *Suit to set aside adoption—Ignorance of adoption or its validity—Cause of action.*—In a suit to set aside an adoption, the period of limitation is not to be reckoned from the date of the adoption if the members of the family who seek to set it aside have by their declaration or conduct subsequently shown that they did not know of the adoption or did not regard it as valid: it should be reckoned from the time when there was distinct knowledge of the validity of the adoption. SOOBURNOMONEE DABEA *v.* PETUMBER DOBEY

[Marsh., 221: 1 Hay, 497

See contra, RADHAKISSEN MAHAPATTER *v.* SREEKISSEN MAHAPATTER . . . **1 W. R., 62**

2. ———— *Act IX of 1871, sch. II, art. 129—Suit to establish or set aside adoption.*—The provision in the schedule to the Limitation Act, 1871, wherein it is enacted that with respect to a suit to establish or set aside an adoption the time when the period of limitation begins to run is "the date of the adoption, or (at the option of the plaintiff) the date of the death of the adoptive father," does not interfere with the right which, but for it, a plaintiff has of bringing a suit to recover possession of real property within twelve years from the time when the right accrued. RAJ BAHADUR SINGH *v.* ACHUMBIT LAL . . **L. R., 6 I. A., 110 : 6 C. L. R., 12**

3. ———— *Suit to set aside adoption.*—Plaintiff sued in 1877 to set aside an adoption which was alleged to have taken place twenty years before, and, as heir of the husband of the last Adhikar, who died in 1282, to obtain possession of a certain temple and properties attached thereto which the defendant claimed under the said adoption. *Held*, on the authority of *Raj Bahadur Singh* v. *Achumbit Lal, L. R., 6 I. A., 110 : 6 Calc., L. R., 12,* that the suit was not barred by art. 129, sch. II of Act IX of 1871. PURNA NARAIN AUDHIKAR *v.* HEMOKANT AUDHIKAR **[6 C. L. R., 46**

4. ———— *Suit to obtain a declaration that an alleged adoption is invalid or never took place—Suit for possession of immoveable property—Act XV of 1877, sch. II, art. 141.*—Art. 118 of the Limitation Act applies only to suits where the relief claimed is purely for a declaration that an alleged adoption is invalid or never in fact took place. Such a suit is distinct from a suit for possession of property, and the latter kind of suit cannot be held to be barred as a suit brought under art. 118, merely by reason of its raising a question of the validity of an adoption, but is separately provided for by art. 141. It is discretionary in a Court to grant relief by a declaration of a right, and consequently the fact that a person has not sued for a declaration should not be a bar to a suit for possession of property on any ground of limitation prescribed for the former. BASDEO *v.* GOPAL . . . . **I. L. R., 8 All., 644**

5. ———— *Act IX of 1871, art. 129—Meaning of "suit to set aside adoption."*—Art. 129 of sch. II of Act IX of 1871, the Indian Limitation Act of that year, using the expression "suit to set aside an adoption," denoted a suit bringing the validity of an adoption into question; and the rule of limitation given by that article applied to all suits in which the suitor could not succeed without displacing an apparent adoption, in virtue of which the opposite party was in possession. The plaintiffs, as collateral heirs of a childless Hindu, questioned the adoptions purporting to have been made by his widows in pursuance of authority from him; such adoptions having been followed by continuous possession, and having been recognized in formal instruments, proceedings, and decrees to which the plaintiffs were parties. *Held* on the ground that the adoptions were brought into question more than twelve years after their date, though less than twelve years after the plaintiffs' titles (if any) had accrued at the death of the surviving widow, that the suits were barred under art. 129 of sch. II of Act IX of 1871. Part of the language of the judgment in *Raja Bahadur Singh* v. *Achumbit Lall, L. R., 6 I. A., 110,* referred to, and that case, in which the plaintiffs' claim was not affected by the widow's adoption, distinguished from the present. JAGADAMBA CHAODHRANI *v.* DAKHINA MOHUN ROY CHAODHRI. SARODA MOHUN ROY CHAODHRI *v.* DAKHINA MOHUN ROY CHAODHRI **[I. L. R., 13 Calc., 308**
L. R., 13 I. A., 84

6. ———— *Suit questioning an adoption—Invalidity, by Hindu law, of second adoption.*—An adopted son, proprietor in possession of half of the estate of his adoptive father, deceased, sued to obtain the other half which was in the defendant's possession. The defence was that the latter was entitled to the half share in dispute, having been adopted to the deceased under a power given by him to his widow, and exercised by her. *Held* that the suit, having, in order to succeed, brought into question the second adoption, was a suit to set aside an adoption within the meaning of art. 129, sch. II, Act IX of 1871, the Limitation Act in force for a period after the cause of suit had arisen. *Jagadamba Chowdhrani* v. *Dakhina Mohan, I. L. R., 13 Calc., 308 : L. R., 13 I. A., 84,* referred to and followed. With reference to the coming into operation of the subsequent Limitation Act (XV of 1877), s. 2 of the latter Act prevented the revival of any right to sue already barred by the previous Act, as the right now claimed had been. *Appasami Odayar* v. *Subramanya Odayar, I. L. R., 12 Mad., 26 : L. R., 15 I. A., 167,* referred to. It was nevertheless clear that, if this suit had not been barred, the second adoption could not have been held valid under Hindu law as an adoption; because, by that law, a second adoption cannot be made during the life of a son previously adopted. *Rungama* v. *Atchama, 4 Moore's I. A., 1,* referred to. MOHESH NARAIN MUNSHI *v.* TARUCK NATH MOITRA . . . **I. L. R., 20 Calc., 487**
[L. R., 20 I. A., 30

7. ———— **and art. 125**—*Suit by reversioner to declare adoption invalid and set aside alienation.*—Where a plaintiff as reversioner prayed for a declaration that an adoption alleged to have been made by a Hindu widow eighteen years before suit, was invalid, and that the sale of certain property made by the widow and the adopted son two years before suit was not binding upon him,—*Held* that the suit, being substantially brought to declare the invalidity of the sale so as to enable plaintiff to recover as reversioner on the death of the widow and adopted son, and the declaration as to the adoption being ancillary to that claim, was not barred by limitation. SRINIVASA *v.* VENKATRAMANA . . **I. L. R., 5 Mad., 121**

8. ———— *Suit for declaration that alleged adoption is invalid.*—Where, in a suit brought in 1885 for a declaration that an adoption alleged to have taken place in 1871 was null and void, the factum of adoption was disputed, and it was not shown that the alleged adoption became known to the plaintiff before 1881,—*Held,* with reference to art. 118 of sch. II of the Limitation Act (XV of 1877), that the suit was within time. *Jagadamba Chaodhrani* v. *Dakhina Mohun Roy Chaodhri, I. L. R., 13 Calc., 308,* distinguished. GANGA SAHAI *v.* LEKHRAJ SINGH . . **I. L. R., 9 All., 253**

9. ———— *Suit for possession where adoption is set up—Hindu law, Adoption.*—Against

a claim for the proprietary right by inheritance brought by the nearest bandhu, or cognate heir, of the deceased, the defendant in possession set up his adoption by the widow under her husband's authority. The Courts below had found that no such authority had been given, and that the widow, not adopting to her husband, had adopted the defendant as her son. *Held* that, on the facts found, this was not a suit to which limitation under art. 118, sch. II, Act XV of 1877, was applicable. LACHMAN LAL CHOWDHRI *v.* KANHAYA LAL MOWAR . **I. L. R., 22 Calc., 609**
[L. R., 22 I. A., 51

10. ———————— *Suit for possession of property incidentally necessitating the setting aside of, or declaration of invalidity of, an adoption.*—Art. 118 of sch. II of the Indian Limitation Act applies only to suits for a declaration that an adoption is invalid or in fact never took place; it does not apply to a suit for possession of property merely because it may be necessary in order to give effect to the relief claimed in such suit to find that a given adoption is invalid. *Basdeo* v. *Gopal, I. L. R., 8 All., 644; Ghandharap Singh* v. *Lachman Singh, I. L. R., 10 All., 485; Padajirav* v. *Ramrav, I. L. R., 13 Bom., 160*; and *Lala Parbhu Lal* v. *Mylne, I. L. R., 14 Calc., 401,* referred to. NATTHU SINGH *v.* GULAB SINGH . . . . **I. L. R., 17 All., 167**

11. ———————— *Suit for possession by Hindu widow as heiress—Defendant in possession under an alleged adoption.*—A Hindu died in 1884, leaving the plaintiff, his widow, and certain landed and other properties. The defendant claimed, to the knowledge of the plaintiff in 1885, to have been adopted by the deceased, and from that date he had claimed as an adopted son to be entitled to the estate of which the plaintiff never enjoyed possession. She now sued in 1893 for possession with mesne profits, alleging in the plaint that the adoption had been falsely set up, but seeking no declaration with regard to it. *Held* that the suit was barred by limitation. PARVATHI AMMAL *v.* SAMINATHA GURUKAL
[I. L. R., 20 Mad., 40

12. ———————— *Suit for possession of immoveable property by a Hindu, on the allegation that he was the reversionary heir by adoption of the last owner.*—In a suit brought by the plaintiff to recover possession of certain immoveable properties on the allegation that he was the great-grandson by adoption of one *R* who was the brother of one *V* to whose adopted son the said properties originally belonged, the defence was that the suit was barred by limitation under art 119, sch. II of the Limitation Act. *Held* that art. 119 of sch. II applies only to a suit for a declaratory decree as to the validity of an adoption, and that the present suit, which was one for possession of immoveable property, was not barred under that article, notwithstanding that the plaintiff had to establish the validity of an adoption as the basis of his title. *Parvathi* v. *Saminatha, I. L. R., 20 Mad., 40,* dissented from. *Lala Parbhu Lal* v. *Mylne, I. L. R., 14 Calc., 401; Basdeo* v. *Gopal, I. L. R., 8 All., 644; Ganga Sahai* v. *Lakhraj Singh, I. L. R., 9 All., 253; Natthu Singh* v. *Golap Sing, I. L. R., 17 All., 167; Padajirav* v. *Ramrav, I. L. R., 13 Bom., 160; Fannyama* v. *Manjaya Hebbar, I. L. R., 21 Bom., 159;* and *Hari Lal Pranlal* v. *Bai Rewa, I. L. R., 21 Bom., 376,* referred to. JAGANNATH PRASAD GUPTA *v.* RUNJIT SINGH . . **I. L. R., 25 Calc., 354**

13. ———————— *Suit for possession of immoveable property on a declaration that an adoption is invalid.*—Art. 118, sch. II of the Limitation Act, does not apply to a suit for possession of immoveable property, though it may be necessary for the plaintiff to prove the invalidity of an adoption. *Jagannath Prasad Gupta* v. *Runjit Singh, I. L. R., 25 Calc., 354,* referred to. RAM CHANDRA MUKERJEE *v.* RANJIT SINGH
[I. L. R., 27 Calc., 242
4 C. W. N., 405

14. ———————— *Suit to recover possession of immoveable property by setting aside adoption.*—An adoption was made by *M*, a Hindu widow, to her husband *J* in 1854, when the plaintiff's father, the then nearest reversionary heir to *J*, was alive and the adopted son *B* got actual possession of the property left by *J*, on the 14th April 1877, under a deed of gift executed by *M*. *M* died on the 6th February 1883, and *B* was succeeded by his son, the present defendant. The plaintiff's father died on the 15th October 1875, and the plaintiff attained his majority on the 28th July 1894, having been born on the 29th July 1873. The plaintiff brought the present suit against the defendant, on the 28th January 1895, for the recovery of the properties left by *J* as being his nearest reversionary heir. *Held* that the suit was barred under art. 129 of the Limitation Act (IX of 1871), as it involved the setting aside of an adoption made in 1854, having been brought after twelve years from the date of the adoption, and the period of limitation having commenced to run during the lifetime of the plaintiff's father. HARNABH PERSHAD *v.* MANDIL DASS **I. L. R., 27 Calc., 67**

15. ———————— **and arts. 119 and 141**—*Suit by reversioner for a declaration that adoption was invalid and for recovery of possession—Limitation Act (IX of 1871), sch. II, art. 129—Limitation Act (XIV of 1859), s. 1, cls. 6 and 12—Specific Relief Act (I of 1877), s. 42.*—*S* and *K* were two divided brothers. They were members of a vatandar family. *K* died leaving two sons *S R* and *T*. *S R* was given in adoption to *S*. *T* died leaving a widow and three daughters. In 1872 *T*'s widow *G* adopted defendant No. 1, and she died in the year 1890. In 1894 *S*'s grandson by adoption, the present plaintiff, a minor represented by his adoptive mother, sued for a declaration that the adoption of defendant No. 1 was invalid, for a declaration of ownership and possession of property with mesne profits, and for an injunction. *Held* that the suit for a declaration that the adoption was invalid was governed by art. 118, sch. II of the Limitation Act, and being barred under that article, the whole claim was time-barred. *Per* JENKINS, *C.J.*—A combination of several claims would not in general deprive each claim of its specific character and description. *Per* CANDY, *J.*—Primarily the case is governed by art. 141, but if the defendant

LIMITATION ACT, 1877—*continued.*

in possession can plead "I am to your knowledge or to the knowledge of your predecessor in title in possession as a son alleged to have been validly adopted by the widow, on whose death you claim possession," then the case is governed by art. 118. *Per* TYABJI, *J.*—(1) Art. 118 of sch. II of the Limitation Act applies to every suit where the validity of the defendant's adoption is the substantial question in dispute, whether such question is raised by the plaintiff in the first instance or arises in consequence of defendant setting up his own adoption as a bar to the plaintiff's success. (2) Art. 141 applies to the ordinary simple case of a reversioner where the validity of the adoption is not the substantial point in dispute, or where the plaintiff can succeed without impugning the validity of the defendant's adoption. *Fannyamma* v. *Manjaya Hebdar, I. L. R., 21 Bom., 159,* overruled. SHRINIVAS MURAR *v.* HANMANT CHAVDO DESHPANDE

[I. L. R., 24 Bom., 260

——— **art. 120 (1871, art. 118: 1859, s. 1, cl. 16).**

See BOMBAY REVENUE JURISDICTION ACT, s. 4 . . **I. L. R., 16 Bom., 455**

See MAHOMEDAN LAW—ENDOWMENT.

[I. L. R., 18 Bom., 401

See MALABAR LAW—JOINT FAMILY.

[I. L. R., 15 Mad., 6

See TRUST . **I. L. R., 18 Bom., 551**

The general period of limitation of six years under cl. 16 of s. 1 of the Act of 1859 was necessarily much wider in its application than is art. 120 of the present Act, so many more suits being now specially provided for. There was under the Act of 1859 a difference of three years in the period of limitation applicable to contracts registered and that applicable to unregistered contracts which could have been registered, the period being six years for the former, and three years for the latter. Suits on contracts which could not have been registered were considered as cases not specially provided for, and held to be governed by the general limitation of six years.

See ALI SAIB *v.* SANIYASIRAZ PEDDA BALAIYA RASIMHULU . . . . . **2 Mad., 401**

VELLIAPPEN CHETTY *v.* NOOTOO THEEVAN

[2 Ind. Jur., O. S., 11

GURIVI CHETTY *v.* AIYAPPA NAIDU

[2 Mad., 329

BOISTUB CHURN DOSS *v.* PREM CHAND MITTER

[4 W. R., 98

CHUNDER SEIN *v.* GUJADHUR LALL

[1 N. W., 148: Ed. 1873, 230

LESLIE *v.* PANCHANAN MITTER

[6 B. L. R., 668: 15 W. R., O. C., 1

PYARI CHAND MITTER *v.* FRAZER

[6 B. L. R., Ap., 60

S. C. OFFICIAL ASSIGNEE *v.* FRAZER

[14 W. R., O. C., 51

LIMITATION ACT, 1877—*continued.*

In the present Act the distinction is between "contracts not in writing registered" (art. 115) and "contracts in writing registered" (art. 116).

1. ——— *Contract to cultivate indigo, Suit for damages for breach of—Act X of 1836, s. 3.*—A contract to sow and cultivate indigo provided for liquidated damages payable in a lump sum in the first year in which a breach of contract took place. *Held* that a suit for damages to the extent of the injury sustained brought under s. 3, Act X of 1836, against a party for prevailing upon raiyats who had entered into a lawful contract with the plaintiff, to break that contract, was governed by the six years' limitation provided by cl. 16, s. 1, Act XIV of 1859. MAHOMED KAZEM CHOWDHRY *v.* FORBES . . . . . **5 W. R., 277**

MAHOMED KAZEM *v.* FORBES . **8 W. R., 257**

FORBES *v.* PERTAB SINGH DOOGUR **7 W. R., 401**

2. ——— *Suit for declaratory decrees.*—The general period of six years extended to suits in which a declaratory decree and nothing more was sought—*Per* MELVILL, *J.* MORU BIN PATLAJI *v.* GOPAL BIN SATU . . **I. L. R., 2 Bom., 120**

NANABAI HARIDAS, *J.*, in the same case decided, however, that it would not apply where the declaration sought was of a right in immoveable property.

See also DOLHUN JANKEE KOER *v.* LALL BEHAREE ROY . . . . . **19 W. R., 32**

It was also held not to apply to a suit for a declaratory decree as to the erroneousness of a Magistrate's order as to possession under the Criminal Procedure Code. MEGHRAJ SINGH *v.* RASHDHAREE SINGH . . . . **17 W. R., 281**

UNDHOOB SINGH *v.* CHUTTERDHAREE SINGH

[9 W. R., 480

3. ——— *Suit for declaration of title—Possession.*—Limitation will not apply to a claim for a declaration of title, where the plaintiff is in possession of the land regarding which the declaration is required. PUREE JAN KHATOON *v.* BYKUNT CHUNDER CHUCKERBUTTY . . **7 W. R., 96**

4. ——— *Suit for declaration of title to, and possession in, immoveable property—Limitation—Act XV of 1877 (Indian Limitation Act), sch. II, arts. 120, 144.*—A suit for a declaration of right to, and of actual possession in immoveable property is governed by the limitation prescribed by art. 120 of the second schedule to the Indian Limitation Act, 1877. *Morubin Patlaji* v. *Gopal bin Satu, I. L. R., 2 Bom., 120; Durga* v. *Haidr Ali, I. L. R., 7 All., 167; Bhikaji Baji* v. *Pandu, I. L. R., 19 Bom., 43;* and *Mahomed Riasat Ali* v. *Hasin Banu, I. L. R., 21 Calc., 157,* referred to. The judgment of OLDFIELD, *J.*, in *Debi Prasad v. Jafar Ali, I. L. R., 3 All., 40,* not followed. LEGGE *v.* RAMBARAN SINGH **I. L. R., 20 All., 35**

The general limitation of six years was held under the Act of 1859 not to apply to divorce suits. HAY *v.* GORDON . **10 B. L. R., 301: 18 W. R., 480**

5. ——— *Suit for abatement of rent —Suit for apportionment of rent—Beng. Act VIII of 1869, s. 19.*—In 1877 certain batwara proceedings were terminated, and the amount of land held by the plaintiff in the portion of the estate allotted to the defendant was ascertained. The rent payable was admitted to be at the rate of R4 per bigha. In 1881 the defendants sued the plaintiff for rent of a larger amount than the plaintiff admitted to be due, and obtained a decree on the 31st May 1881. On the 20th September 1881, the plaintiff instituted a suit nominally under the provisions of s. 19 of Bengal Act VIII of 1869 for abatement of rent upon the ground that the defendants were seeking to charge him rent upon a larger amount of land than he actually held. The defendants pleaded that the suit was barred by limitation as being brought more than one year after the cause of action accrued. The Court found that the amount of land held by the plaintiff was the amount stated by him in his plaint, and not that alleged by the defendants. *Held* that the suit was rather one for the apportionment of rent after the batwara proceedings, and not one for abatement of rent, and that it was not barred by limitation, inasmuch as the period allowed for such suit must be taken to be six years, and not one year. DOORGA PERSHAD *v.* GHOSITA GORIA
[I. L. R., 11 Calc., 284

6. ——— *Suit for the apportionment of assessment on land.*—In a suit by the holder of one share against the holders of other shares in inam land included in a single pottah and assessed in an entire sum, for apportionment of the assessment, it appeared that the plaintiff had asked for the apportionment to be made more than six years before suit. *Held* that the suit was not barred by limitation: s. 120 was not applicable to such a suit. ANANDA RAZU *v.* VIYYANNA
[I. L. R., 15 Mad., 492

7. ——— *Breach of covenant in lease.* —The defendant took certain land from the plaintiff under a registered lease, which contained a clause prohibiting the defendant from digging a tank on the land without the plaintiff's permission. The defendant having nevertheless constructed a tank without such permission, the plaintiff brought a suit to compel him to fill up the tank, or, in case he should fail to do so, for compensation. *Held* that the period of limitation applicable to such a suit was art. 120 of sch. II of the Limitation Act. KEDARNATH NAG *v.* KHETTURPAUL SRITIRUTNO
[I. L. R., 6 Calc., 34: 6 C. L. R., 569

8. ——— *Suit to recover compensation-money wrongfully drawn out of Collectorate.*—*A*, a Hindu widow, granted, without legal necessity, a mokurari lease of certain mouzahs, portion of her husband's estate, to *B*. During *B*'s possession part of the lands comprised in the granted mouzahs were taken up by Government, and the compensation-money was lodged in the Collectorate. *A* having afterwards died, the next heirs of *A*'s husband, on the 7th October 1871, sued *B* to recover possession of the mouzahs, but not being aware of the facts, did not in that suit claim the compensation-money lying in the Collectorate. While this suit was still pending, *B*, in March 1872, drew the compensation-money out of the Collectorate. The heirs, after obtaining a decree against *B* for possession of the mouzahs on the 13th September 1875, instituted a fresh suit against him to recover the compensation-money wrongfully drawn out by him from the Collectorate. *Held* that it was not barred by limitation, although more than three years had elapsed since the money had been drawn out by *B*,—art. 118, and not art. 60, of sch. II of the Limitation Act (IX of 1871) applying to the case. NUND LALL BOSE *v.* ABOO MAHOMED
[I. L. R., 5 Calc., 597: 5 C. L. R., 45

9. ——— **and art. 62**—*Suit for compensation for land wrongfully withdrawn by person representing himself as owner.*—Where the compensation-money awarded by Government for land acquired by them had been withdrawn by a tenant representing himself to be the owner, and a suit was subsequently brought by the landlord against the tenant for recovery of his share of the compensation-money,—*Held* that the suit came under art. 62 or art. 120 of the Limitation Act, and not under art. 36. KHETTER KRISTO MITTER *v.* DIVENDRA NARAIN ROY
[3 C. W. N., 202

10. ——— *Recovery of money deposited in Government treasury.*—The period of limitation for recovery of moneys deposited in a Government treasury, the equivalent whereof was to be returned, does not exceed six years. SHEORAJ SINGH *v.* COLLECTOR OF MORADABAD . . **2 N. W., 379**

11. ——— *Suit to recover deposit.*—Where *A* made a deposit as security for the discharge of his duties as manager of an estate under the Court of Wards, which deposit was liable for all sums not accounted for by *A*; and a suit was, after his dismissal from his appointment, brought for the recovery of the deposit,—*Held* that the period of limitation allowed was certainly not less than six years, and began to run not from the date of his dismissal, but from the time when the account of charges due against the deposit was made and sent in to him. UPENDRA LAL MUKHOPADHYA *v.* COLLECTOR OF RAJSHAHYE . . **I. L. R., 12 Calc., 113**

12. ——— *Suit to recover deductions from deposit of revenue to prevent sale.*—The six years' period of limitation applies to a suit to recover deductions made on account of revenue by the Collector from a deposit made by a sharer of a joint estate in order to protect his share from sale by reason of the default of his co-sharer. BOYKUNT NATH BHOOYA *v.* RAM NATH BHOOYA . **4 W. R., S. C. C. Ref., 9**

13. ——— *Suit on mortgage-bond to recover amount by sale of property—Personal liability of mortgagor—Cause of action.*—By a mortgage-bond, dated the 28th Magh 1281 B. S. (9th February 1875), it was provided that, if the mortgagors should fail to pay the money secured thereby according to the terms thereof, the mortgagees should immediately institute a suit and realize the amount due by sale of the mortgaged property, and that, if the proceeds of such sale should not be sufficient to liquidate the debt, the mortgagees should realize the

balance from the persons and other properties of the mortgagors. It was further agreed that the principal and interest secured by the bond should be repaid in the month of Magh 1282 (January—February 1876). In a suit instituted on the 9th October 1882 upon the mortgage to recover the amount due by the sale of the mortgaged property, and the balance, if any, from the persons of the mortgagors,—*Held* that the bond in question provided for two remedies in one suit, and did not contemplate a second suit being instituted to recover the balance from the persons of the mortgagors in the event of the first remedy against the mortgaged property proving insufficient to pay the debt in full, and consequently that the cause of action against the persons of the mortgagors accrued upon the date on which the mortgage-money became due; and as the suit was instituted more than six years after that date, the plaintiff's claim was barred by limitation, so far as the personal liability of the mortgagors was concerned. MILLER *v.* RUNGA NATH MOULICK . . . **I. L. R., 12 Calc., 389**

See CHATTER MAL *v.* THAKURI
[I. L. R., 20 All., 512

and KAMALA KANT SEN *v.* ABUL BASKAT
[I. L. R., 27 Calc., 180

14. ——— *Suit to recover non-hereditary office—Karnam.*—The plaintiff's adoptive father was dismissed from the office of karnam on the 4th of April 1862, and the plaintiff was appointed in his stead on the 29th April 1865. On the 25th September 1865, the plaintiff was dismissed and the second defendant appointed. The present suit for recovery of the office and land attached was filed on 21st September 1877. *Held,* on the authority of *Tammirazu Ramazogi* v. *Pantina Narsiah, 6 Mad., 301,* that the suit was barred, not having been brought within six years from the 25th September 1865. *Fattehsangji Jaswatsangji* v. *Dessai Kallianraiji Hekumutraiji, L. R., 1 I. A., 34,* discussed. VENKATASUBBARAMAYYA *v.* SURAYYA
[I. L. R., 2 Mad., 283

15. ——— *Suit to oust a shebait from office the appointment to which is made by nomination.*—A suit to oust a shebait from his office, the appointment to which has been made by nomination, is one for which no period of limitation is specially provided, and is therefore governed by art. 120 of sch. II of the Limitation Act. JAGAN NATH DAS *v.* BIRBHADRA DAS . **I. L. R., 19 Calc., 776**

16. ——— *Time from which period of limitation begins to run—Mortgage by conditional sale.*—A mortgagee under a deed of mortgage by conditional sale obtained a final order for foreclosure under Regulation XVII of 1806 in December 1875. He then sued to have the conditional sale declared absolute and for possession of the mortgaged property, obtaining a decree for the relief sought in April 1881. In a suit for pre-emption in respect of the mortgage,—*Held,* with reference to art. 120, sch. II of the Limitation Act, which was applicable to the case, that the pre-emptor's full right to impeach the sale had not accrued until the mortgagee had obtained the decree of April 1881 declaring the conditional sale absolute and giving him possession. *Rasik Lal* v. *Gajraj Singh, I. L. R., 4 All., 414,* and *Prag Chaubey* v. *Bhajan Chaudhri, I. L. R., 4 All., 291,* referred to. UDIT SINGH *v.* PADARATH SINGH
[I. L. R., 8 All., 54

17. ——— *Share of undivided mehal—Conditional sale.*—The limitation applicable to a suit to enforce a right of pre-emption in respect of a conditional sale of a share of an undivided mehal is that contained in art. 120, sch. II of Act XV of 1877, *viz.,* six years. NATH PRASAD *v.* RAM PALTAN RAM . . . . **I. L. R., 4 All., 218**

ASHIK ALI *v.* MATHURA KANDU
[I. L. R., 5 All., 187

18. ——— *Mortgage by conditional sale—Right to sue.*—The limitation for a suit to enforce a right of pre-emption in respect of a mortgage by conditional sale is that provided by No. 120, sch. II of Act XV of 1877,—that is to say, six years. *Nath Prasad* v. *Ram Paltan Ram, I. L. R., 4 All., 218,* followed; and where the mortgagee by conditional sale is not in possession under the mortgage, and after foreclosure has to sue for possession, the right to sue to enforce a right of pre-emption accrues when he obtains a decree for possession. RASIK LAL *v.* GAJRAJ SINGH . . . . **I. L. R., 4 All., 414**

19. ——— *Suit for pre-emption—Rival pre-emptor impleaded as defendant.*—Two suits, to enforce the right of pre-emption in respect of a particular sale having been instituted, the plaintiff in the one first instituted was added as a defendant to the other. *Held* that, as regards him, the second suit constituted a claim by one pre-emptor against another for determination of the question whether the plaintiff or the defendant had the better right to pre-empt the property, which was a claim essentially declaratory in its nature; and there being no specific provision for such a claim in the Limitation Act, it was governed by art. 120 of that Act, and the right to sue accrued when the first suit was instituted. DURGA *v.* HAIDAR ALI . . . . **I. L. R., 7 All., 167**

20. ——— *Beng. Reg. No. XVII of 1806, ss. 7, 8—Mortgage by conditional sale—Foreclosure—Pre-emption, Suit for.*—Where a mortgage by conditional sale had been duly foreclosed in accordance with the procedure laid down in ss. 7 and 8 of Regulation XVII of 1806, and at the expiration of the year of grace a portion of the mortgage-money remained unpaid,—*Held* in a suit for pre-emption of the mortgaged property that the title of the conditional vendee became absolute on the expiration of the year of grace, and that the plaintiff's right of pre-emption accrued and limitation began to run against him from the expiration of such year of grace. *Forbes* v. *Ameeroonissa Begum, 10 Moore's I. A., 340,* distinguished. *Raisuddin Chowdhry* v. *Khodu Newaz Chowdhry, 12 C. L. R., 479; Jaikaran Rai* v. *Ganga Dhari Rai, I. L. R., 3 All., 175; Ameer Ali* v. *Bhabo Soonduree Debia, 6 W. R., 116; Ajoodhya Pooree* v. *Sohun Lal, 7 W. R., 428; Jeorakhun Singh* v. *Hookum Singh, 3 Agra, 358; Buddree Doss* v. *Durga Parshad, 2 N. W., 284;*

LIMITATION ACT, 1877—*continued.*

Tara Kunwar v. *Mangri Meeah, 7 B. L. R., Ap., 114; Hazari Ram* v. *Shankar Dial, I. L. R., 3 All., 770; Tawakkul Rai* v. *Lachman Rai, I. L. R., 6 All., 344;* and *Ajaib Nath* v. *Mathura Prasad, I. L. R., 11 All., 164,* referred to. *Prag Chaubey* v. *Bhajan Chaudhri, I. L. R., 4 All., 291; Rasik Lal* v. *Gajraj Singh, I. L. R., 4 All., 414;* and *Udit Singh* v. *Padarath Singh, I. L. R., 8 All., 54,* overruled. Ali Abbas *v.* Kalka Prasad

[I. L. R., 14 All., 405

21. ——— *Suit for pre-emption—Mortgage by conditional sale—Transfer of Property Act (IV of 1882), ss. 86 and 87.*—A plaintiff sued for pre-emption, his claim arising out of the foreclosure of a mortgage by conditional sale of a share in an undivided zamindari village. *Held* that the limitation applicable to the suit was that prescribed by art. 120 of sch. II of Act XV of 1877, and that limitation began to run from the date when the mortgagee obtained an order absolute for foreclosure under s. 87 of Act IV of 1882. *Betul Begum* v. *Mansur Ali Khan, I. L. R., 20 All., 315; Poresh Nath Mojumdar* v. *Ramjodu Mojumdar, I. L. R., 16 Calc., 246;* and *Anwarul Haq* v. *Jwala Prasad, I. L. R., 20 All., 358,* referred to. Raham Ilahi Khan *v.* Ghasita

[I. L. R., 20 All., 375

22. ——— **and art. 73**—*Promissory note—Special agreement.*—*Held* that a suit brought in March 1881 upon a promissory note, dated the 12th of September 1875, payable at any time within six years upon demand, was not barred by limitation, being governed, not by art. 73, but by art. 120, of sch. II of the Limitation Act, 1877. Sanjivi *v.* Errapa . . . **I. L. R., 6 Mad., 290**

23. ——— *Suit for refund of money paid on decree afterwards reversed.*—*A* got a decree against *B* for rent at an enhanced rate, on the 29th of June 1863, which decree was affirmed both in regular and special appeal, but was reversed by the Privy Council on the 5th of May 1873. Between the two dates just mentioned *A* got sixteen other decrees for rent at the enhanced rate, based on the original one of the 29th of June 1863. A Full Bench having ruled that a suit for a refund of the excess rent would lie,—*Held* that such a suit must be brought within six years, under Act IX of 1871, sch. II, cl. 118 (Act XV of 1877, sch. II, cl. 120). Kali Churun Dutt *v.* Jogesh Chunder Dutt . **2 C. L. R., 354**

24. ——— *Suit for money paid under a decree on reversal of the decree.*—In a suit of 1867 the present defendant obtained a decree for possession of a certain village and mesne profits for one year. Pending an appeal against that decree, execution was stayed on the present plaintiff depositing a note for R15,000 as security. The decree was affirmed on appeal, and the present defendant had the note sold in execution and drew out of the proceeds a sum for mesne profits for subsequent years; but an appeal was preferred in the execution-proceedings to the High Court, which set aside the execution so far as concerned the mesne profits for the years subsequent to that to which the original decree related. The present plaintiff thereupon attached and sold the village to recover the balance; before that amount was paid to the present plaintiff, the present defendant brought a suit against him in the District Court and there obtained a decree for mesne profits for the subsequent years, and in the execution drew the amount of the decree out of Court. In second appeal, however, the High Court, on 26th September 1881, reversed the decree of the District Court, whereupon the present plaintiff applied for restitution under Civil Procedure Code, s. 583, which application was ultimately disallowed. The present suit was brought to recover the amount to which that application related. *Held* that the Limitation Act, sch. II, art. 120, was applicable to the suit, which, having been filed on 9th August 1887, was accordingly not barred by limitation. Narayana *v.* Narayana

[I. L. R., 13 Mad., 437

25. ——— *Contribution, Suit for—Liability created by ikrarnama—Suit upon a covenant in the ikrarnama for money paid—Cause of action.*—A suit upon a covenant in an ikrarnama (executed by some of the defendants who were adults, and by the guardian of the others who were minors at the time when the ikrarnama was executed) was brought by the plaintiffs for the purpose of obtaining from the defendants contribution in respect of a debt which had been realized by the sale of the property mortgaged by the father of the plaintiffs. The defence mainly was that the suit was barred by limitation, inasmuch as it was not brought within six years from the date when the ikrarnama was executed, or from the date when the mortgage-debt became repayable upon the mortgage-bond. *Held* that the cause of action in the case arose when the plaintiffs were damnified, *i.e.*, when they paid the mortgage-debt, and as the suit was brought within six years from that date it was not barred by limitation. Kumar Nath Bhuttacharjee *v.* Nobo Kumar Bhuttacharjee

[I. L. R., 26 Calc., 241

26. ——— *Suit for recovery of instalment of professional tax—Towns Improvement Act, Madras (III of 1871).*—A suit for recovery of instalments of profession tax under the provisions of the Madras Towns Improvement Act, 1871, is governed by art. 120, sch. II of the Limitation Act. President of the Municipal Commission, Guntur *v.* Srikakulapu Padmarazu

[I. L. R., 3 Mad., 124

27. ——— *Claim to compel tenant to remove trees.*—Art. 120, Act XV of 1877, applies to an alternative claim put forward in a suit for ejectment to compel the defendant to remove trees from lands leased to him for agricultural purposes. Gonesh Doss *v.* Gondour Koormi

[I. L. R., 9 Calc., 147 : 12 C. L. R., 418

28. ——— *Suit for exclusive right to worship.*—A suit for an exclusive right to worship an idol is governed by art. 118 of Act IX of 1871. Eshan Chunder Roy *v.* Monmohini Dassi

[I. L. R., 4 Calc., 683

29. ——— **and art. 11**—*Order disallowing claim—Civil Procedure Codes (Act VIII* *of 1859), s. 246, and (Act X of 1877) ss. 97-371.*—The defendants attached certain property, which the plaintiffs alleged belonged to them. The plaintiffs preferred a claim to the property under s. 246 of Act VIII of 1859; this claim was disallowed on the 15th August 1877. In June 1878 the plaintiffs brougt a suit to establish their title to the property attached, and for confirmation of possession. Pending this suit, the principal defendant died, and the plaintiffs applied for an order to substitute certain persons as defendants. The Court thereupon directed the issue of a summons on the defendants proposed by the plaintiffs to appear and defend the suit; but the plaintiffs failing to pay the costs of the service of this summons, the suit was dismissed on the 14th March 1879. On the 4th March 1880 the plaintiffs again brought a suit to establish their title to the same property and for confirmation of possession. *Held* that the order of the 15th August 1877 not being an order passed under s. 283 of Act X of 1877, art. 11 of sch. II of Act XV of 1877 did not apply, but that art. 120 of sch. II was applicable. BISSESSUR BHUGUT *v.* MURLI SAHU

[I. L. R., 9 Calc., 163: 11 C. L. R., 409

See GOPAL CHUNDER MITTER *v.* MOHESH CHUNDER BORAL

[I. L. R., 9 Calc., 230: 12 C. L. R., 139

30.———————— *Suit after release from attachment.*—*A* and *B*, in execution of a decree obtained on the 16th January 1877 by them against *C* for rent, obtained possession of certain property. *D*, whose husband was originally tenant of the property, had sold her interest in it, obtained a mortgage from her vendee upon it, and subsequently, in execution of a decree, dated 12th January 1877, on the mortgage, attached the property, but the attachment was released on the 14th April 1877 at the instance of *A* and *B*. *D* thereupon transferred her decree to the plaintiff, who again attached the property, but the attachment was again refused. The plaintiff then sued on the 18th March 1880 to have it decleared that the decree of the 14th January 1877 was collusive, and that he was entitled to sell the property under the mortgage decree of 12th January 1877. *Held* that the suit was governed not by art. 11, but by art. 120, of sch. II of the Limitation Act, and that the suit was not barred. BROJO MOHUN BHUTTO *v.* RADHIKA PROSUNNO CHUNDER

[13 C. L. R., 139

31. ———————— **and art. 61**—*Money which plaintiff was obliged to pay in consequence of acts of defendants.*—On the 29th May 1873 one *T* drew from the hands of a shroff a sum of money which had been deposited by him in the name and to the credit of a third person. On the death of such third person, his heirs sued the shroff to recover the sum deposited, and on the 30th January 1878 obtained a decree, in satisfaction of which the shroff paid the decretal money into Court on the 15th January 1883. On the 5th February 1884 the shroff sued *T*, the heirs of the third party and another person (who owned to having received some of the money from *T*), to recover the sum he had been compelled to pay under the decree of 1878. *Held* that the plaintiff's cause of action arose at the time when he actually paid down the money on the 15th January 1883, and that the suit therefore was not barred by limitation. TORAB ALI KHAN *v.* NILRUTTUN LAL . . **I. L. R., 13 Calc., 155**

32. ———————— *Express trust—Administration suit—Executor—Suit for an account against an executor or his representative.*—*R* died in 1865, leaving a will, of which his nephews *P* and *S* were the executors. His will provided that after payment of all debts, etc., the residue of his property should remain in the hands of the executors, who were "to maintain the family in the same manner as I used to maintain the family in my house." After the death of both the executors, the residue was to be apportioned among the children of his nephews in equal shares. On the death of the testator, *P* took possession of the estate, and died on the 10th January 1876. *S* remained passive until the 27th August 1884, when he took out probate of *R*'s will. On the 23rd January 1885, he filed the present suit against the defendant as widow and administratrix of *P*, praying for an account of the estate of *R* that had come to the hands of *P*, and also for an account of the estate of *P*. The plaintiff contended that *R*'s estate came into the hands of *P* as a trustee; that the suit was to rocover the property for the purposes of the trust, and that s. 10 of the Limitation Act (XV of 1877) applied. The defendant alleged that all the moneys belonging to *R*'s estate, which had come into the hands of *P*, had been expended in paying *R*'s debts, and that there was no residue left for the purposes of the trusts of the will, and she contended that the suit was barred by limitation. *Held* that the suit was barred by art. 120 of sch. II of the Limitation Act (XV of 1877), being primarily not a suit to follow trust property in the hands of a representative of a trustee, but really to ascertain whether any trust remained to be administered after the testator's debts and funeral expenses had been paid. No breach of trust was alleged. The suit was merely for an account against the executor or his representative. To such a suit s. 10 of the Limitation Act does not apply. SHAPURJI NOWROJI POCHAJI *v.* BHIKAIJI . . **I. L. R., 10 Bom., 242**

33. ———————— *Company, Winding up—Liquidator—Suit by liquidator for calls—Period of limitation applicable to suit by liquidator for calls different from that applicable to suit by company itself.*—The directors of the *P* company made a call of R100 per share upon its shareholders on the 1st October 1882. On the 8th March 1886, the company was ordered to be wound up by the Court, and an official liquidator was appointed. On the 17th March 1886, the official liquidator filed this suit against the defendant, who was a holder of twenty-one shares in the company, to recover (along with other calls) the amount of the said call of 1st October 1882. As to this part of the claim, the defendant pleaded limitation. *Held* that the suit being brought, not by the company, but by the liquidator, art. 120 of the Limitation Act (XV of 1877) applied, and that the claim was therefore not barred. PARELL SPINNING AND WEAVING COMPANY *v.* MANEK HAJI **[I. L. R., 10 Bom., 483**

34. ———— **and arts. 48 and 60**—*Suit for right to follow goods in hands of agent made liable for conversion.*—The defendant as an agent sold goods entrusted to him by his principal, who died after a decree had been made against him for their conversion, and as agent for the representative of the deceased retained the proceeds, which the decree-holder had an equitable right to follow in the agent's hands. *Held* that neither art. 48 of sch. II of Act IX of 1871, fixing the limitation of three years to suits for moveable property acquired by dishonest misappropriation or conversion, nor art. 60 of the same schedule, fixing the limitation of three years to suits for "money payable by the defendant to the plaintiff," and to suits "for money received to the plaintiffs' use," were applicable to the present suit; but that, as a suit for which no period of limitation was provided elsewhere, it fell within art. 118 of the same schedule, fixing for such suits the limitation of six years. GURUDAS PYNE *v.* RAM NARAIN SAHU **[I. L. R., 10 Calc., 860 : L. R., 11 I. A., 59**

35. ———— **and arts. 62 and 89**—*Suit against trustee for possession of share, and for account and recovery of profits.*—*M* and *S* purchased certain property jointly in 1865, and had equal interests in it till 1868, when *M*'s interest was reduced to one-third. *S* paid the entire purchase-money in the first instance, and incurred expenses in conducting suits for possession of the property, and for registration of the deed, and ultimately obtained possession in 1869 or 1870, and took the profits from that date. *M* did not pay any part of the money up to 1870, and it was not till 1871 that the whole of his share of it was subscribed, and he paid little or nothing towards the expenses. Subsequently he sued *S* for possession of his share, to have an account taken of the profits, and to recover his share of them with future mesne profits and costs. *Held* that art. 89 of sch. II of the Limitation Act did not apply to the suit; and that art. 62 did not meet a claim like the present, relating to an equitable claim against a trustee liable to account, in which the relief sought was to have an account taken of the trust property and to recover what might be due. *Guru Das Pyne* v. *Ram Narain Sahu, L. R., 11 I. A., 59 : I. L. R., 10 Calc., 860,* referred to. *Held also* that art. 120 of sch. II of the Limitation Act applied to the suit, as it was one for which no period of limitation was provided elsewhere in the schedule. MUHAMMED HABIBULLA KHAN *v.* SAFDAR HUSAIN KHAN . . . . **I. L. R., 7 All., 25**

36. ———— **and s. 14 and art. 127**—*Dismissal of former suit on substantive ground of failure to establish cause of action—Claim by contributors to a common fund.*—An agreement was entered into between an uncle and his nephews in 1879 that their earnings should be put into a common fund, which fund should be utilized for family requirements. No provision was, however, made for the division of any surplus that might arise. The agreement was acted upon until 1894, by which time a sum of R37,723-8-0 had accumulated. Upon a claim being made by the nephews in 1894 for a distribution of this fund, the uncle denied their right to participate in it. The uncle, who was working in partnership with others, in the same year, 1894, instituted a suit against his partners for an account and for his share of profits. He claimed the said accumulated fund of R37,723-8-0 as his share. While his suit was pending, namely, in December 1895, he assigned its subject-matter to the present ninth defendant (a banking corporation). The partners in defence alleged that the present plaintiffs were entitled to share equally in the R37,723-8-0, and that they held the fund as stakeholders. In December 1894, present plaintiffs filed a suit against their uncle the said first defendant, and his partners, in which they claimed shares in the said sum of R37,723-8-0. The two suits were tried together. First defendant's suit against his partners was dismissed on the ground that he had claimed for himself alone and had not brought the proper parties before the Court. In plaintiffs' suit, the latter were declared to be entitled to shares in the said sum as prayed. First defendant appealed in both suits, judgment being given by the Appellate Court on 19th October 1897. In the suit in which first defendant was plaintiff, the plaint was allowed to be amended, and a decree was passed for the amount found due to him alone in the settlement of accounts. In the plaintiffs' suit, the Appellate Court found that plaintiffs had no cause of action as against first defendant's firm; and that, as between plaintiffs and first defendant, there were accounts to be settled, in addition to those which appeared in the books of the firm. The Appellate Court further declined to treat the suit as one for partition only, and dismissed it, intimating that plaintiffs could obtain relief by way of partition in a suit so framed as to embrace all the parties interested and all the property in which they were interested. On 30th January 1899, plaintiffs filed the present suit in which they claimed that their shares in the said fund of R37,723-8-0 should be determined and paid. *Held* (affirming BODDAM, *J.*) that plaintiffs were entitled to recover. *Held* also that the time occupied in prosecuting the former suit could not be excluded when computing the period of limitation. *Held* further that the claim was not barred by limitation. The title of the nephews was not based on contract, express or implied, but arose out of the fact that they were contributors to a common fund, which the Court was now asked to distribute. The claim was one which the Court must deal with on equitable principles, and apart from any question of partnership or of contract, and was consequently one to which art. 120 of the Limitation Act applied. Also, that the question was not one relating to joint family property within the meaning of art. 127. *Rani Mewa Kuwar* v. *Rani Hulas Kuwar, 13 B. L. R., 312,* referred to. COMMERCIAL BANK OF INDIA *v.* ALLAVOODEEN SAHEB . . . **I. L. R., 23 Mad., 583**

37. ———— **and arts. 62 and 132**—*Suits for "haq-i-chaharam" based on custom.*—*C*, the proprietor of a certain mohalla, sued *K*, who had purchased a house situated in the mohalla at a sale in the execution of his own decree, for one-fourth of the purchase-money, founding his claim upon an ancient custom obtaining in the mohalla, under which the proprietor thereof received one-fourth of the purchase-money of a house situated therein, whether sold privately or in the execution of a decree. *Held* that the period of limitation applicable to such a suit was that prescribed by art. 120, sch. II of Act XV of 1877, and not by art. 62 or by art. 132 of that schedule. Kirath Chand *v.* Ganesh Prasad

[I. L. R., 2 All., 358

38. ——————— **and art. 106**—*Suit to wind up partnership.*—*T*, *B*, *R*, and *W*, the owners of a certain estate in equal shares, in 1863 entered into a partnership for "the cultivation of tea and other products" upon such estate. In 1864 *H*, *E*, and *I* joined the firm. In 1870 *H* died, and in 1871 *T* purchased his share and those of *E* and *I*, and in 1873 that of *R*. In 1875 *T* gave the Delhi and London Bank a mortgage, on which they afterwards obtained a decree against him personally, in execution of which his right and interest in the estate were put up for sale on 20th June 1877, and purchased by the Bank, who obtained possession in August 1877. In August 1879, *B* and *W*'s executor sued *T* and the Bank claiming a declaration that they had been partners with *T* in the estate; that if the partnership should be held to be subsisting, it might be dissolved, or that, if it had ceased to exist, the date of its termination might be fixed, and that in either case a liquidator might be appointed. *Held* that the period of limitation applicable to the suit was that provided in art. 120, and not art. 106, Act XV of 1877, but that in either case the suit was within time, as the partnership was dissolved and consequently time began to run not from the death of *H* or the purchase by *T* of the shares of *E* and *I* in 1871, or of *R* in 1873, but in August 1877, when the defendant Bank took possession of the partnership property. Harrison *v.* Delhi and London Bank

[I. L. R., 4 All., 437

39. ——————— **and arts. 131, 144**—*Adverse possession—Suit for declaration of right to malikana and to set aside order refusing to register names.*—Previous to 1825, dearah X accreted to mouzah Y, and some time before 1860 the malik of Y executed two conveyances in favour of *A* and *B* respectively. In 1860 *A* sued *B* in the Munsif's Court for possession of a share in X which *B* claimed under his conveyance. In that suit *A* succeeded on the ground that *B*'s conveyance did not cover the share claimed by him in X, but merely covered the share in the mouzah itself, whereas by his conveyance *A* had acquired the right to the share in X which he claimed. In 1866 the Collector refused to recognize *B*'s right to malikana payable in respect of the share in X which had been the subject of the suit in 1860, or to register his name in respect thereof, but acknowledge *A*'s right thereto, relying on the decision of the Civil Court in the suit between *A* and *B*. Subsequently *B*'s representatives, *C* and *D*, in 1866, sought to have their names registered in respect of the same malikana, but they were opposed by *E*, who alleged that *A* had been acting throughout as his benamidar. The Collector referred the case under s. 55 of Act VII of 1876 to the Civil Court, and the application of *C* and *D* was eventually disallowed. *C* and *D* thereupon, on the 5th November 1880, instituted the present suit against *E* in the Court of the Subordinate Judge, for a declaration of their right to the malikana, and for a reversal of the order refusing to allow their names to be registered in respect thereof. *Held* that the suit was barred by limitation, being governed either by art. 120, 131, or 144 of the Limitation Act (XV of 1877), because—(1) there being no allegation of dispossession, if it were contended that the suit was one for possession of an interest in immoveable property, art. 144 would apply; (2) if it were contended that the suit was for the purpose of establishing a periodically recurring right, pure and simple, art. 131 would apply, and the period must be reckoned from 1866, when the plaintiff was first refused the enjoyment of the right; (3) if, however, it were said to be a suit to establish a periodically recurring right, and something in addition, inasmuch as the right carried with it a right to the property itself, if the parties consented to take a settlement when the time for concluding the next temporary or permanent settlement came, art. 120 must be held to apply. But that, in any event, inasmuch as in the year 1866 the Collector refused to recognize *B*'s right to the malikana, and adverse possession, so far as possession could be taken of such an interest in immoveable property, was then taken by *A*, or in other words by *E*, because it must be taken that the Collector since that date had been holding for *A*, whose right he had then recognized, after refusing to recognize the right claimed by *B*, the present suit, having been instituted in 1880, was equally barred, whichever of the above articles was held to apply. *Rao Karan Singh* v. *Bakur Ali Khan, L. R., 9 I. A., 99*, referred to and distinguished. Gopinath Chowdhry *v.* Bhugwat Pershad

[I. L. R., 10 Calc., 697

40. ——————— *Suit for declaration that the defendant is a mere benamidar for the plaintiff—Suit for relief on ground of fraud—Limitation Act (XV of 1877), sch. II, art. 95.*—A suit brought by *A* to obtain a declaration that a decree originally obtained by *B* against *C* and another, which had been purchased in the name of *D*, had really been purchased by the plaintiff for his own benefit, the cause of action alleged being the wrongful execution of the decree by *D*, is not a suit for relief on the ground of fraud within art. 95 of sch. II of the Limitation Act, but is governed by art. 120 of that schedule. Under the circumstances, the suit was held not to be barred by limitation. Gour Mohun Gouli *v.* Dinonath Karmokar . . . **I. L. R., 25 Calc., 49**

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41. ——————— *Suit on written instrument which could not have been registered—Limitation Act, 1859, s. 1, cls. 9, 10, 16.*—The period of limitation applicable under Act XIV of 1859 to suits upon written instruments which could not have been registered under the law in force at the time of execution of such instruments was six years under cl. 16 of s. 1 of the said Act. VENKATACHALAM *v.* VENKATAYYA . . **I. L. R., 11 Mad., 207**

42. ———— *Act XIII of 1859, s. 2—Claim to recover an advance.*—Act XIII of 1859 being a penal enactment, the Limitation Act (sch. II, art. 120) is no bar to a claim under s. 2 to recover an advance made to a labourer. IN RE KITTU **[I. L. R., 11 Mad., 332**

43. ———— *Suit for removal of trees.*—A suit by a zamindar for removal of trees planted in certain waste land of his village by persons who have no right to plant them is governed by art. 120, sch. II of the Limitation Act, and not by art. 32, sch. II of the Act. Where a defendant having a right to use property for a specified purpose perverts it to other purposes and a suit has to be instituted for any relief in respect of any injurious consequences arising from such perversion, such a suit will be governed by art. 32, sch. II of the Limitation Act. *Gangadhar* v. *Zahurriya, I. L. R., 8 All., 446,* distinguished. MUSHARAF ALI *v.* IFTKHAR HUSAIN **[I. L. R., 10 All., 634**

44. ———— **and art. 10**—*Mahomedan law—Pre-emption—Conditional sale—Right of pre-emption among co-parceners—Private partition of pattidari estate.*—*A* and *B* had certain proprietary rights in an 8-anna patti of a certain mehal. *C* and *D* had no rights in that patti, but *D* had a small share in the remaining 8-annas patti. A private partition between the pattis having taken place, *C* and *D*'s brother lent to *B* two sums of R200 and R199 by deeds of bai-bil-wufa dated the 12th and 21st June 1876. *C* and *D* subsequently instituted foreclosure proceedings, and on the 5th May 1884 were put into possession of *B*'s share in the first-mentioned patti in execution of a decree which they had obtained. On the 18th April 1885 *A* sued *C* and *D* to enforce his right of pre-emption. *Held* that the suit was not barred by limitation, it being governed by either art. 10, sch. II of the Limitation Act (Act XV of 1877), which gave the plaintiff a year from the 5th May 1884, the date on which the mortgagee obtained possession, or by art. 120, under which his right to sue accrued upon the expiry of the six months' grace allowed to the mortgagor after the decree for foreclosure, and there would be six years allowed from that time. DIGAMBUR MISSER *v.* RAM LAL ROY . . . **I. L. R., 14 Calc., 761**

45. ———— **and art. 91**—*Suit for declaration of title—Incidental relief—Setting aside instrument.*—The period of limitation for suits to declare title is six years from the date when the right accrued, under the Limitation Act, 1877, sch. II, art. 120; and this period is not affected by art. 91, though the effect of the declaration is to set aside an instrument as against the plaintiff. PACHAMUTHU *v.* CHINNAPPAN **[I. L. R., 10 Mad., 213**

46. ———— *Khoti Act (Bom. Act I of 1880), s. 16—Settlement—Register, Preparation of—Entry in the register.*—On 28th April 1888, the Survey officer, after determining the co-sharers in a khoti village, prepared the settlement register under s. 16 of Bombay Act I of 1880, in which he entered the names of defendants as mortgagees of a certain share in the khotki. In 1891 plaintiffs, who claimed to be entitled to the said share, on becoming aware of the entry, petitioned the Collector for a removal of the names of the defendants from the register on the ground that their mortgage had been redeemed. This petition was opposed on 15th October 1892 by defendants, who denied plaintiff's title, and was finally rejected by the Collector on 25th November 1892. In 1896 plaintiffs filed the present suit to cancel the entry in the register and for a declaration of their own title. *Held* that the suit was not time-barred. The cause of action accrued on 15th October 1892, when defendants denied plaintiffs' title, and not on 29th April 1888, when defendants' names were entered in the register as mortgagees. DATTATRAYA GOPAL *v.* RAMCHANDRA VISHNU **[I. L. R., 24 Bom., 533**

47. ———— **and art. 127**—*Suit for partition and account of joint property.*—In a suit commenced in 1865 by a member of a joint family for the declaration of his rights, partition not being claimed, the order of Her Majesty in Council (1879) directed that the talukhdar should cause and allow the villages forming the talukhdari estate and the proceeds thereof to be managed and applied according to the trust declared in favour of the members of the family. The plaintiff in that suit afterwards obtained entry of his name as a co-sharer in the villages in the register kept under Act XVII of 1876, s. 56, and then on 14th December 1880 brought the present suit for his share upon partition, both in that estate as it stood in 1865 and also with the addition of villages since acquired out of profits, claiming an account against the talukhdar. *Held* that the suit, as one for partition and an account, was not barred by limitation under Act XV of 1877, art. 120, and must be decreed. PIRTHI PAL *v.* JOWAHIR SINGH . **I. L. R., 14 Calc., 493**
[L. R., 14 I. A., 37

48. ———— *Suit for perpetual injunction.*—In a suit for a perpetual injunction to restrain the defendant from preventing the plaintiff from entering a certain house it was alleged that the defendant had been in exclusive possession for more than six years before suit. *Held* that Limitation Act, sch. II, art. 120, applied to the suit, which was therefore barred by limitation. KANAKASABAI *v.* MUTTU . . . **I. L. R., 13 Mad., 445**

49. ———— *Suit for mutation of names in register.*—A suit by a purchaser against his vendor to compel mutation of names in the register is not barred by limitation unless the Collector has refused without qualification to effect such mutation, negativing the plaintiff's right to the land in question. A merely conditional refusal does not raise a cause of action. VIRASAMI *v.* RAMA DOSS **[I. L. R., 15 Mad., 350**

50. ———— *Suit by a reversioner for a declaration of his title to property sold in execution of a decree against a Hindu widow—Cause of* *action.*—*D* died leaving him surviving a widow and a daughter who was plaintiff's mother. Defendant No. 2 obtained a decree against the widow, and in execution put up *D*'s property to sale. Defendants 3, 4, and 5 purchased the property and took possession in 1869. In 1883 the plaintiff sued as *D*'s reversionary heirs for a declaration that they were entitled to the property in dispute on the widow's death, alleging that the decree, in execution of which the property was sold, was a collusive and fraudulent decree, and that they were not bound by the sale in execution. They further alleged that the cause of action arose in 1879 when their mother died. *Held* that the suit was barred by limitation. The cause of action giving any reversioner the right to sue for a declaration was that given to the plaintiff's mother in 1869, both by the sale and the dispossession, and it was not revived in favour of the plaintiffs on her death in 1879. All right to sue for a declaration was therefore barred in 1875 under art. 120 of sch. II of the Limitation Act (XV of 1877). CHHAGANRAM ASTIKRAM *v.* BAI MOTIGAVRI **[I. L. R., 14 Bom., 512**

51. ——————— *Suit by reversioners to set aside alienation by Hindu widow—Similar suit barred by limitation as against a prior reversioner, Effect of, on suit by subsequent reversioner.*—Where there are several reversioners entitled successively under the Hindu law to an estate held by a Hindu widow, no one such reversioner can be held to claim through or derive his title from another, even if that other happens to be his father, but he derives his title from the last full owner. If therefore the right of the nearest reversioner for the time being to contest an alienation or an adoption by the Hindu widow is allowed to become barred by limitation as against him, this will not bar the similar rights of the subsequent reversioners. *Beni Prasad* v. *Hardai Bibi, unreported; Ramphal Rai* v. *Tula Kuari, I. L. R., 6 All., 116; Jumoona Dassya Chowdhrani* v. *Bamasoonderai Chowdhrani, I. L. R., 1 Calc., 289: L. R., 3 I. A., 72;* and *Isri Dut Koer* v. *Hansbutti Koerain, I. L. R., 10 Calc., 324 : L. R., 10 I. A., 150,* referred to. *Chhaganram Astikram* v. *Bai Motigavri, I. L. R., 14 Bom., 512,* and *Pershad Singh* v. *Chedee Lall, 15 W. R., 1,* dissented from. BHAGWANTA *v.* SUKHI . **I. L. R., 22 All., 33**

52. ——————— *Suit for a declaration of heirship—Accrual of the cause of action—Denial of title.*—*A* sued for a declaration that she was the daughter of *B*, who died in 1870. On *B*'s death, his kulkarni vatan was attached, and *C* was appointed to officiate on behalf of Government. In 1892 *A* applied for a certificate of heirship to *B*, with a view to get her name entered as a vatandar in place of her deceased father's. *C* opposed her application, denying that she was the daughter and heiress of *B*. Her application being rejected, *A* filed the present suit against *C* in 1877, to obtain a declaration that she was the daughter and heiress of *B*. The Court of first instance granted the declaration sought. The Appellate Court rejected the claim as barred under art. 120 of the Limitation Act (XV of 1877), holding that time should be computed from the date of *B*'s death. *Held* that *A*'s cause of action accrued *not on B*'s death, but on the denial of her status by *C* in the certificate proceedings. The suit, having been brought within six years from that time, was not barred under art. 120 of the Limitation Act. TUKABAI *v.* VINAYAK KRISHNA KULKARNI . **I. L. R., 15 Bom., 422**

53. ——————— *Suit by a decree-holder against the sons of a deceased judgment-debtor whose property had passed to them.*—A decree was passed against a Hindu for money dishonestly retained by him from the plaintiff's family to which he was accountable in respect of it. The judgment-debtor having died, the decree-holder sought to attach in execution property of the family which had passed into the hands of his sons by survivorship. The sons objected that such property was not liable to attachment, and the decree-holder was referred to a regular suit. He now brought a suit against the sons. *Held* that the suit was governed by art. 120 of the Limitation Act, and that time began to run for the purposes of limitation from the death of the father. NATASAYYAN *v.* PONNUSAMMI . **I. L. R., 16 Mad., 99**

54. ——————— *Suit by the purchaser in execution-sale to recover the purchase-money.*—The plaintiff purchased land sold in execution of a decree in favour of the defendant, but was subsequently evicted by the son of the judgment-debtor. He now sued in 1889 to recover the purchase-money paid by him on the ground that the judgment-debtor possessed no saleable interest in the property in question. It appeared that in 1888 the son of the judgment-debtor had obtained a decree against the plaintiff and others, declaring that she (the judgment-debtor) had no saleable interest in the property. *Held* that Limitation Act, sch. II, art. 120, contained the rule of limitation applicable to the suit, which was accordingly not time-barred, since the cause of action did not arise until 1888. NILAKANTA *v.* IMAMSAHIB . . . **I. L. R., 16 Mad., 361**

55. ——————— *Right of suit—Continuing right—Suit for construction of will—Suit for declaratory decree.*—In a suit by reversioners after the death of the widow of a testator for the construction of his will and codicil, and for a declaration of the plaintiff's rights,—*Held* that the suit was not barred by lapse of time. A suit for declaratory relief of such a nature cannot be held to be barred so long as the right to the property in respect of which the declaration is sought is a subsisting right, and the plaintiff has a subsisting right as reversioners, so long as the widow was alive. The right to bring such a suit is a continuing right therefore, and may be claimed within the statutory period from the time when the plaintiffs become entitled to the consequential relief. The present suit, having been brought within six years from the death of the widow, was within time. CHUKKUN LAL ROY *v.* LOLIT MOHAN ROY . **I. L. R., 20 Calc., 906**

56. ——————— **and s. 10 and art. 62** —*Act XI of 1859, s. 31—Suit to recover surplus sale-proceeds of a sale for arrears of Government revenue.*—In a suit brought for the residue of the sale-proceeds of an estate sold under the provisions of

Act XI of 1859 against the Secretary of State for India in Council, the defence was raised that the suit was barred under art. 62 of sch. II of the Limitation Act (XV of 1877). *Held* by the Full Bench that art. 62, sch. II of the Limitation Act, did not apply, and that the case was governed by art. 120. *Held* by PIGOT, *J.*, that the sale-proceeds became vested in the defendant in trust for a specific purpose within the meaning of s. 10 of the Limitation Act, and that therefore the Limitation Act had no operation in the case; but that, assuming that the Limitation Act was applicable, the case was governed by art. 120. *Secretary of State for India in Council* v. *Fazal Ali, I. L. R., 18 Calc., 234,* overruled. SECRETARY OF STATE FOR INDIA *v.* GURU PROSHAD DHUR. ABDUL BARI *v.* SECRETARY OF STATE FOR INDIA. SECRETARY OF STATE FOR INDIA *v.* RAMBULLUB DAS CHOWDHRY . . . **I. L. R., 20 Calc., 51**

See SECRETARY OF STATE FOR INDIA *v.* FAZAL ALI **[I. L. R., 18 Calc., 234**

57. ———— **and s. 10 and arts. 124 and 144**—*Suit by a uralan against an agent of a devasom—Repudiation of agency.*—In 1873 a predecessor of the plaintiff claiming to be the uralan of a devasom brought a suit in a District Munsif's Court against the present defendant, whom he alleged to be an agent of the devasom, and the defendant disputed the uraima right of the plaintiff and denied that he had been appointed agent as alleged. Issues as to both of these matters were decided in favour of the defendant, and the suit was dismissed in 1874. A suit was now brought in 1890 for a declaration of the plaintiff's title as uralan and to recover from the defendant as such agent property of a value which exceeded the pecuniary limits of the jurisdiction of a District Munsif, the suit being therefore instituted in the Subordinate Judge's Court. *Held* that the suit was barred by limitation. SANKARAN *v.* KRISHNA **[I. L. R., 16 Mad., 456**

58. ———— **and s. 23 and arts. 34, 35**—*Suit for restitution of conjugal rights.*—It is not necessary, as a condition precedent to a suit for the restitution of conjugal rights or for the recovery of a wife who has deserted her husband, the parties being Hindus, that there should be any demand by the plaintiff and refusal by the defendant. The provisions of arts. 34 and 35 of sch. II of the Limitation Act cannot be taken as applicable to suits of this description. To hold that they did apply would be to introduce serious innovations into the personal law of the Hindus (and of the Mahomedans) which could not have been contemplated by a statute of the nature and scope of the Limitation Act. The Limitation applicable to suits of the present nature is that of art. 120 of sch. II read with s. 23 of the Limitation Act. BINDA *v.* KAUNSILIA **I. L. R., 13 All., 126**

59. ———— *Suit for nullity of Parsi marriage.*—A suit by a Parsi girl for a declaration of nullity of marriage was held to be governed by art. 120 of the Limitation Act, and being brought within three years of her attaining majority, it was not barred. BAI SPUNIBAI *v.* KHARSHEDJI NASARVANJI MASALAVALA . **I. L. R., 22 Bom., 430**

60. ———— **and arts. 49 and 123**—*Suit by Mahomedan widow to have declared her right by local custom to life interest in estate of her husband—Suit for distributive share of property—Suit for moveable property wrongly taken.*—To a suit by a Mahomedan widow against the brother of her deceased husband to have declared her right to possess for life the estate of the latter in accordance with a proved local custom, art. 120, sch. II, Limitation Act (XV of 1877), was held applicable, it not being a suit for a distributive share of property within the meaning of art. 123 of the same; nor a suit for specific moveables wrongly taken within the meaning of art. 49, and no other article of sch. II being applicable. MAHOMED RIASAT ALI *v.* HASIN BANU . . **I. L. R., 21 Calc., 157 [L. R., 20 I. A., 155**

61. ———— *Suit to recover from the widow of a deceased Mahomedan money realized by her on account of a debt due to the deceased.*—*Held* that a suit brought by the other heirs to recover from the widow of a deceased Mahomedan a sum of money said to have been realized by her on account of a mortgage debt due to her deceased husband was a suit to which the limitation applicable was that prescribed by art. 120 of the second schedule to the Indian Limitation Act, 1877. *Mahomed Riasat Ali* v. *Hasin Banu, I. L. R., 21 Calc., 157; Sithamma* v. *Narayana, I. L. R., 12 Mad., 487;* and *Kundun Lal* v. *Bansidhar, I. L. R., 3 All., 170,* referred to. UMARDARAZ ALI KHAN *v.* WILAYAT ALI KHAN . . **I. L. R., 19 All., 169**

62. ———— **and art. 62**—*Suit by purchaser of decree to recover money of deceased judgment-debtor in the hands of his agent.*—One *A P,* having certain moneys lying at his credit in Calcutta, empowered *A L* to receive the same and hold them on his behalf. *A P* died at Moradabad, and subsequently to his death the said moneys, which remained in the hands of *A L,* were attached by one of the creditors of *A P* in execution of a decree. The decree-holder sold his rights under the decree in respect of the moneys in the hands of *A L* to the plaintiffs, who sued to obtain the same from *A L.* *Held* that the period of limitation applicable to such a suit was that prescribed by art. 120 of sch. II of the Limitation Act (XV of 1877). *Gurudas Pyne* v. *Ram Narain Sahu, I. L. R., 10 Calc., 862,* referred to. CHAND MAL *v.* ANGAN LAL **[I. L. R., 13 All., 368**

63. ———— **and art. 62** — *Money received for plaintiff's use—Suit for which no period prescribed—Transfer of Property Act (IV of 1882), s. 135.*—*A* obtained a money-decree against *B* and attached certain land in execution. *C* intervened in execution successfully. *A* then brought a suit to establish that the land was liable to be sold in execution, and obtained a decree. Meanwhile the land was taken up by Government under the Land Acquisition Act, and the compensation-money was paid to *C.* *A* attached this sum as a debt due to *B* and sold it in execution, and it was purchased by the plaintiff. The plaintiff now sued *C* to recover the amount of the debt. *Held* that the suit was governed by Limitation Act, sch. II, art. 120, and not by art. 62, and that the plaintiff was entitled to recover without regard to the terms of Transfer of Property Act, s. 135. KRISHNAN *v.* PERACHAN . **I. L. R., 15 Mad., 382**

64. ———— **and art. 91**—*Suit for declaration of right by setting aside kanom mortgage.*—The reversionary heirs to a stanom in Malabar sued in 1889 for a declaration that a kanom executed in 1881 by the first defendant, the present holder of the stanom, in favour of the second defendant, was not binding on them or on the stanom. *Held* that the suit was barred under Limitation Act, 1877, sch. II, art. 120. PURAKEN *v.* PARVATHI **[I. L. R., 16 Mad., 138**

65. ———— **and art. 110**—*Suit to recover customary dues payable on account of a chattram—Suit for rent.*—In a suit by the District Board in charge of a chattram to recover a certain sum as the arrears of various merais, being customary dues payable by the defendants for the benefit of the chattram on account of lands held by them, the defendants among other defences relied upon a plea of limitation. *Held* that the suit was governed by Limitation Act, sch. II, art. 120, and not by art. 110 as a suit for rent. VENKATAVARAGA *v.* DISTRICT BOARD OF TANJORE **[I. L. R., 16 Mad., 305**

66. ———— **and s. 131**—*Periodically recurring right—Denial of right.*—In a suit brought in 1889 by a landholder against the Secretary of State for a declaration of his right against Government to have certain remissions made in the sum to which he was annually assessed, no consequential relief was sought, and it appeared that the plaintiff's claim for the remission had been made in 1878 and had been refused by Government. *Held* that Limitation Act, 1877, sch. II, art. 120, and not art. 131, applied to the case, and the suit was barred by limitation. BALAKRISHNA *v.* SECRETARY OF STATE FOR INDIA **[I. L. R., 16 Mad., 294**

67. ———— **and art. 144**—*Emoluments of hereditary office—Interest in immoveable property.*—A suit to recover a sum of money due by custom as an emolument of an hereditary office is not one for the possession of an interest in immoveable property. In 1888 a sum of money became payable, as marriage dues, to the holder of certain offices connected with a temple. Upon a suit being brought more than six years thereafter, namely in 1895, to recover the amount, it was objected that the claim was barred by limitation. *Held* that such a claim is governed by art. 120 of sch. II to the Limitation Act, and must, in consequence, be enforced within six years of the accrual of the right. RATHNA MUDALLIAR *v.* TIRUVENKATA CHARIAR **[I. L. R., 22 Mad., 351**

68. ———— *Liability of son for father's debts—Suit for money against sons of a deceased judgment-debtor—Decree for money against father to be discharged by instalments—Previous execution proceedings—Form of decree.*—A personal decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on the 19th October 1877. The decree provided for payment of the secured debt in various instalments by May 1895. The mortgagor died in 1883, having discharged part of the debt. The decree-holder having attached certain family property in execution, the mortgagor's two younger sons, who had not been born at the date of the above decree, objected that their shares were not liable to attachment. This objection prevailed, the Court expressing the opinion that the matter in controversy should be determined in a regular suit. The other defendants in the suit of 1877 had both died in the interval, one of them leaving infant sons. The decree-holder (in whose sole name the mortgage stood) now sued the sons of the mortgagor and their infant nephews in 1891 for the payment out of the family property of all the unpaid instalments. *Held* that the period of limitation applicable to the suit was six years, and that time began to run for the purposes of limitation from the date when each instalment would have become due from the deceased judgment-debtor; and that the plaintiff was entitled to a decree for payment out of the family property of all such instalments as would have so become due at the date of the suit, and for a declaration only as to the subsequent instalments. RAMAYYA *v.* VENKATARATNAM . . . . **I. L. R., 17 Mad., 122**

69. ———— *Suit to set aside an instrument—Suit for maintenance of possession in joint family property—Limitation Act, 1877, sch. II, art. 91.*—The plaintiff sued for maintenance of possession in certain joint family property by cancelment, so far as his interest was concerned, of a certain deed of sale by which another co-parcener in the same property had purported to convey the whole to a stranger. *Held* that the limitation applicable to such a suit was that prescribed by s. 120 of sch. II of the Limitation Act, 1877, and not that prescribed by art. 91. *Sobha Pandey* v. *Sahodra Bibi, I. L. R., 5 All., 322,* referred to. *Janki Kunwar* v. *Ajit Singh, I. L. R., 15 Calc., 58,* distinguished. DIN DIAL *v.* HAR NARAIN . . . . **I. L. R., 16 All., 73**

70. ———— **and arts. 91, 95**—*Suit by auction-purchaser of mortgaged property to cancel a perpetual lease granted by the mortgagor in contravention of a covenant in the mortgage.*—During the continuance of a mortgage which contained a covenant against alienation of the mortgaged property, the mortgagor made a perpetual lease of that property. The mortgagee brought a suit on his mortgage, and, having obtained a decree, put the mortgaged property up to sale. The auction-purchaser of the mortgaged property, on becoming aware of the existence of the perpetual lease, sued for its cancellation and for a declaration that the defendant had no right to interfere with, or obstruct the plaintiff in respect of, the property in question. *Held* that the limitation applicable to such suit was that prescribed by art. 120 of the second schedule to the Indian Limitation Act, 1877, and not that prescribed by art. 91 or art. 95. The main prayer of the plaint was for a decree declaring and establishing the plaintiff's title, and the prayer for cancellation of the lease could be treated as merely subsidiary to the main relief asked. *Pachamuthu* v. *Chinnappan, I. L. R., 10 Mad., 213,* and *Uma Shankar* v. *Kalka Prasad, I. L. R., 6 All., 75,* referred to. *Din Dial* v. *Har Narain, I. L. R., 16 All., 73,* followed. MUHAMMAD BAQAR *v.* MANGO LAL . . . **I. L. R., 22 All., 90**

71. ——— *Suit to set aside invalid trust—Conveyance to trustees.*—Under art. 120, sch. II of the Limitation Act (XV of 1877), the right to recover property settled on invalid trusts accrues directly the property is conveyed to the trustees. COWASJI NOWROJI POCHKHANAWALLA *v.* RUSTOMJI DOSSABHOY SETNA . . **I. L. R., 20 Bom., 511**

72. ——— *Exclusive occupation of joint lands by some of the co-owners—Suit by the other joint tenants for compensation.*—Some of the joint tenants of certain lands took the use and occupation of part of the joint lands to the exclusion of the other joint tenants, who afterwards brought a suit for compensation for such use and occupation. *Held* that the period of limitation for such a suit was governed by art. 120 of the Limitation Act, and that therefore the plaintiffs were entitled to recover compensation for six years. WATSON & CO. *v.* RAM CHAND DUTT . . **I. L. R., 23 Calc., 799**

73. ——— *Suit to recover haq-i-chaharum—Suit for money had and received—Limitation Act, art. 62.*—*Held* that the limitation applicable to a suit by a zamindar to recover haq-i-chaharum, alleged to be payable to him by custom on the sale of a house, was that prescribed by art. 120 of the second schedule of the Indian Limitation Act, 1877, and not that prescribed by art. 62. *Kirath Chand* v. *Ganesh Prasad, I. L. R., 2 All., 358,* approved. *Nanku* v. *Board of Revenue for the N.-W. P., I. L. R., 1 All., 444,* referred to. *Raghu Nath Prasad* v. *Girdhari Das, Weekly Notes, All. (1893), 65,* dissented from. SHAM CHAND *v.* BAHADUR UPADHIA **[I. L. R., 18 All., 430**

74. ——— *Decree for rent against tenants jointly—Execution against one defendant—Suit by him for contribution—Limitation Act, arts. 61 and 99.*—The holder of a zamindari village obtained a decree jointly against sixty-eight persons, including the present plaintiff and defendants, for R4,001, being rent accrued due on lands in the village, and in execution he brought to sale property of the plaintiff, and on the 28th October 1889 he received, out of the sale-proceeds, R2,650. The share payable by the plaintiff was R183-10-10 only, and he instituted the present suit against the defendants on the 28th October 1892 to recover the amounts which they were liable to contribute. *Held* that Limitation Act, sch. II, art. 99, did not govern the case, and that, whether art. 61 or art. 120 was applicable, the suit was not barred by limitation. PATTABHIRAMAYYA NAIDU *v.* RAMAYYA NAIDU . **I. L. R., 20 Mad., 23**

75. ——— *Suit to set aside sale in execution of certificate under Public Demands Recovery Act (Beng. Act VII of 1880) and in which no notice was served and in which all proceedings were invalided.*—*Held* that a suit to set aside a sale in execution of a certificate under the Public Demands Recovery Act, in which no notice was served and the proceedings consequently invalided, is governed by art. 120, sch. II of the Limitation Act, and art. 14 has no application to such a case; nor has sub-s. 8 (*b*) of Bengal Act VII of 1880 any application here. SARODA CHARAN BANDOPADHAYA *v.* KISTA MOHUN BHATTACHARJEE . . . **1 C. W. N., 516**

——— art. 121 (1871, art. 119; 1859, s. 7).

1. ——— *Sale for arrears of rent of patni tenure.*—Upon the sale of a patni talukh for arrears of the landlord's rent, the purchaser acquires it free of all incumbrances created by the outgoing patnidar; and according to Act XIV of 1859, s. 7, the purchaser's cause of action arises from the date of sale. BROJO SOONDUR MITTER *v.* FUTICK CHUNDER ROY . . . . . . **17 W. R., 407**

2. ——— *Encroachment by a trespasser—Incumbrance—Adverse possession—Purchaser at sale of talukh for arrears of rent.*—Adverse possession is an incumbrance within the meaning of art. 121, sch. II of the Limitation Act (XV of 1877). *Lukhmeer Khan* v. *Collector of Rajshahye, S. D. A. (1851), 116; Womesh Chunder Goopto* v. *Raj Narain Roy, 10 W. R., 15; Khanto Moni Dasi* v. *Bijoy Chand Mahatab, I. L. R., 19 Calc., 787; Karmi Khan* v. *Brojo Nath Dass, I. L. R., 22 Calc., 244,* referred to. An auction-purchaser of a patni talukh in its entirety gets the talukh free of all incumbrances, therefore in a suit brought by the auction-purchaser to recover possession of land situated within the talukh against a trespasser who was alleged to have held the disputed land adversely, the period of limitation would begin to run from the date when the sale becomes final and conclusive. NUFFER CHANDRA PAL CHOWDHRY *v.* RAJENDRA LAL GOSWAMI **[I. L. R., 25 Calc., 167**

3. ——— *Act IX of 1871, art. 120—Suit to cancel under-tenures—"Avoid."*—The interpretation which should be put on the word "avoid" in sch. II, arts. 119, 120, of Act IX of 1871, is to do something in exercise of the right of avoidance. UNNODA CHURN BISWAS *v.* MOTHURA NATH DOSS BISWAS . . . . **I. L. R., 4 Calc., 860** **[4 C. L. R., 6**

——— art. 122 (1871, art. 121; 1859, s. 1, cl. 11).

1. ——— *Execution of decree against Sirdar's heir who is not a Sirdar—Suit on decree—Decree payable by instalments.*—The plaintiff's father obtained a decree in the Court of the Agent for Sirdars in 1848 against the defendant's grandfather, a third class Sirdar. The decree gave an option to the Sirdar to pay up the debt at once, or year by year, out of the revenues of a village. The Sirdar chose the latter alternative, and execution proceeded accordingly on that footing till his death in 1862. His son survived him and died in 1867, when the defendant, who was not himself a Sirdar, succeeded. The Subordinate Judge of Khed—to whom, on the cessation of the Sirdarship in the defendant's family, the Agent referred the decree for further execution—proceeded with the execution up to the year 1876, when these proceedings were pronounced to be irregular. The plaintiff thereupon, in the year 1877, filed the present suit on the strength of his decree of 1848. *Held* that the period of limitation applicable was that of twelve years from the date of the decree (Act IX of 1871, sch. II, art. 121), but that the decree should be viewed as analogous to an instalment decree and made as against the defendant in 1867,—down to which time the proceeds were regularly realized,—because it then, on his father's death, became first operative against him. In the case of a decree payable by instalments, as the command of the Judge prescribes a term for the performance of the several parts of his order, it is to be construed as becoming a judgment for purposes of limitation as to each instalment only on the day when payment is to be made. SAKHARAM DIKSHIT *v.* GANESH SATHE . . . **I. L. R., 3 Bom., 193**

2. ———— *Suit on barred judgment-debt—Suit for administration—Mortgage decree—Transfer to High Court for execution—Application for execution by sale—Civil Procedure Code (1882), ss. 227, 230, and 244—Transfer of Property Act (IV of 1882), ss. 67, 89, and 99—Limitation Act (XV of 1877), sch. II, arts. 179 and 180.*—On the 29th September 1882, a decree was obtained against the defendant's husband in a suit on a mortgage by the latter dated the 6th April 1880. On the 27th July 1883, an order was made for transfer of the decree to the High Court for execution. On the 8th April 1886, the mortgagee applied to the High Court for execution by attachment of the mortgaged properties, and in the same year an order for attachment was made. The mortgagee died in April 1892, and on the 20th August 1894 the plaintiff (his widow and administratrix) applied to the High Court for an order absolute for sale of the mortgaged properties under s. 89 of the Transfer of Property Act. On the 5th January 1895, the application was refused on the ground that the mortgaged properties were outside the territorial jurisdiction of the High Court. The plaintiff then instituted the present suit, in which she sought (*inter alia*) administration of the estate of the mortgagor (who had died before the mortgage suit was filed), and asked for the sale of such properties as might be found subject to such mortgage. *Held* (affirming the decision of SALE, *J.*) that, whether the plaintiff sued on the original debt or on the decree of the 29th September 1882, the suit was barred by limitation. *Held* also that, even apart from any question of limitation, the suit was not maintainable by reason of the provisions of ss. 230 and 244 of the Civil Procedure Code, the questions arising in the suit being such as should have been determined in execution of the decree, and not by a separate suit. JOGEMAYA DASSI *v.* THACKOMONI DASSI . . . . **I. L. R., 24 Calc., 473**

———— art. 123 (1871, art. 122; 1859, s. 1, cl. 11).

1. ———— *Suit under will for sum as legacy.*—Where a sum assigned to sons was, by the terms of the will, to be regarded as a legacy, and not as a charge on the estate for their maintenance,—*Held* that cl. 11, s. 1, Act XIV of 1859, was the limitation applicable to suits under the will for recovery of the sum due as a legacy. NANA NARAIN RAO *v.* RAMA NUND . . **2 Agra, 171**

2. ———— *Suit for legacy.*—*R* by his will gave the whole of his property to his brothers, making a specific provision of R4,000 for one of his daughters (the mother of the plaintiffs), which was to remain as amanut in the family treasury, yielding her interest if and till she gave birth to a male child, when she should also have 200 bighas of land. Shortly after this, the testator died and the elder of the plaintiffs was born. The mother having since died without drawing the principal or taken the allotment of land, and the manager of the family estate having refused to give the plaintiffs their due, they sued to recover what was left to their mother. *Held* that this was a suit for legacy, and that cl. 11, s. 1, applied so far as the claim for money was concerned; and that the cause of action to the plaintiffs occurred at the time of the birth of the elder plaintiff, when his mother became immediately entitled to the principal sum of money and to the land. PROSSONO CHUNDER ROY CHOWDRY *v.* GYAN CHUNDER BOSE . . **13 W. R., 354**

3. ———— *Will—Suit for share of testator's moveable property.*—Art. 122 of Act IX of 1871 applies to a suit for a share of the residue of a testator's moveable property disposed of by his will. TREEPOORASOONDERY DOSSEE *v.* DEBENDRONATH TAGORE . **I. L. R., 2 Calc., 45**

4. ———— *Suit for legacy against representative of testator.*—Art. 123 of the Limitation Act only applies to cases in which the property sought to be recovered is not only a legacy, but is also sought to be recovered as such from a person who is bound by law to pay such legacy, either because he is the executor of the will or otherwise represents the estate of the testator. ISSUR CHUNDER DOSS *v.* JUGGUT CHUNDER SHAHA **[I. L. R., 9 Calc., 79**

5. ———— **and art. 120**—*Executor de son tort—Suit for a share of Government promissory notes by an heir against one falsely professing to hold them under a will.*—Suit in 1887 by a daughter to recover her share of Government promissory notes being stridhanam of her mother who died in 1880. The property in question had been in the possession of a son of the deceased since her death. He claimed the property under a will, but the will was set aside by the Court as false in 1884. *Held* that Limitation Act, sch. II, art. 123, is applicable only to cases in which the defendant lawfully represents the estate of the deceased, and that the suit was accordingly barred by limitation. SITHAMMA *v.* NARAYANA . . . **I. L. R., 12 Mad., 487**

6. ———— *Suit for legacy under a will—Cause of action—Amendment of plaint.*—A suit was brought in May 1894 by a legatee claiming under the will of a testator, who died on the 8th December 1881, against the executors of the will. The plaint did not specifically ask for payment of the legacy or for ascertainment of the share in the residue due to the plaintiff, but set forth certain alleged acts of misconduct on the part of the defendants with respect to their dealings with the property, and prayed the Court to call for an account, to set aside certain sales of the property made by the defendants, and for damages. The Court of first instance, without going into the merits, held that the suit was really for an account, and dismissed it as being barred. On appeal to the High Court,—*Held* that the plaint should have been amended in order to show clearly that the plaintiff really was trying to recover his legacy from the defendants personally, and that therefore the suit fell within art. 123, sch. II. of the Limitation Act, which gives a period of twelve years from the date the legacy became due, and, that being one year after the testator's death (or the 8th December 1882), the suit was in time. CURSETJEE PESTONJEE BOTTLIWALLA *v.* DADABHAI EDULJEE . **I. L. R., 19 Mad., 425**

7. ———————— *Non-claim of share under an intestacy*—One *M N W* died intestate in 1837, leaving a widow (*M*) and two sons. *M* obtained letters of administration, and until her death in 1897 remained in sole possession and enjoyment of her husband's estate, although by law entitled only to a widow's share, the two sons being entitled to the remainder. In this suit filed in 1897 by the widow of one of the sons,—*Held* that the right of both sons to recover the shares to which they were originally entitled was barred by limitation (art. 123 of the Limitation Act), and their right to such shares was extinguished under s. 28 of the Limitation Act. *M N W's* estate had therefore become merged in *M's* estate. NAVROJI MANOCKJI WADIA *v.* PEROZBAI **[I. L. R., 23 Bom., 80**

8. ———————— *Suit by a Mapilla widow for her share in her husband's property.*—The widow of a Mapilla, who had died intestate more than fourteen years before suit, sued to recover a one-sixteenth share of the property left by him and his brother. *Held* that, although the parties were Mapillas, the suit was governed by art. 123 of the Limitation Act, and was accordingly barred. KASMI *v.* AYISHAMMA . . **I. L. R., 15 Mad., 60**

9. ———————— *Suit to recover vatan allowance.*—In 1864 *N B*, the owner of a share in a deshpande vatan, died childless and intestate. A certificate of administration under Regulation VII of 1827 was granted to one *G*, a distant relation, who received *N B's* share in the vatan up to and including the year 1871. In the meantime, *viz.*, on the 19th November 1870, two nearer relations, *D* and *B*, succeeded in getting *G's* certificate cancelled, and obtained a certificate to themselves jointly. In 1876 the Collector recognized *D* alone as the heir of *N B*, and paid *D's* son *S* the share of the deceased *N B* with arrears from 1872. After *S's* death, his son *N* (defendant No. 1) received it down to the year 1884. In 1883 *K* (father of plaintiff No. 1) got the certificate of 1870 cancelled and obtained a certificate to himself jointly with defendant No. 1. *K* died, and the plaintiffs (his son and nephew) brought this suit claiming to be co-sharers in the one anna and four pies share of *N B*. The defendants contended (*inter alia*) that the suit was barred. The Court of first instance awarded the plaintiffs' claim for the three years previous to the suit, and rejected the rest of the claim. The defendants appealed to the District Judge, who held that the plaintiffs' claim was totally barred under art. 123 of the Limitation Act. On appeal by the plaintiffs to the High Court, —*Held*, reversing the decree of the lower Appellate Court, that art. 123 did not apply, and that the suit was not barred. There was no cause of action until *N B* and his successors in title *D* and *S* were recognized by the Collector and paid the arrears of the hak. *G* was quite independent of them, and this recognition did not take place until 1876—less than twelve years before the institution of the plaintiffs' suit. KESHAV JAGANNATH *v.* NARAYAN SAKHARAM **[I. L. R., 14 Bom., 236**

———————— **art. 124 (1871, art. 123).**

Suits of the nature described in this article were under Act XIV of 1859, held to be governed by cl. 12 of s. 1, the general limitation of twelve years.

1. ———————— *Office of hereditary priest —Immoveable property.*—In a suit between Hindus, the office of hereditary priest to a temple, though not annexed to, or held by virtue of, the ownership of any land, yet being by that law classed as immoveable property, should be held to be immoveable property within the meaning of cl. 12 of s. 1 of the Limitation Act, 1859. KRISHNABHAT BIN HIRAGANGE *v.* KAPABHAT BIN MAHALBHAT **[6 Bom., A. C., 137**

BALVANTRAV *alias* TATIAJI BAPAJI *v.* PURSHOTAM SIDHESHVAR . . . . **9 Bom., 99**

In a Madras case, however, the six years' period was held to apply.

2. ———————— *Office of karnam—Incidental right to land attached to office.*—Suit brought in 1868 to establish that plaintiff had vested in him the right to the office of karnam of certain villages from which he had been ousted by the defendant in 1857, and to recover from defendant the mirasi lands annexed to the office. The Court of first instance decreed for plaintiff. The Civil Court reversed this decision on the ground that title to the office was the principal matter of the plaintiff's claim, and the right to possession of the land merely an incident dependent upon that title; that therefore, as the period of limitation applicable to the former claim (six years) had elapsed before the institution of the suit, it was not maintainable for the land. Upon special appeal, the decree of the Civil Court was affirmed on the grounds that it was conclusively found that the land was inseparably attached to the office as a source of endowment for the services of the holder of it for the time being, and that, as against the plaintiff, the defendant was protected in the possession of the office by cl. 16, s. 1, Act XIV of 1859. TAMMIRAZU RAMZOGI *v.* PANTINA NARSIAH **[6 Mad., 301**

3. ———————— *Suit for possession of hereditary office and for account—Adverse possession.* —*X*, the founder of two pagodas, died in 1795 leaving six sons, of whom two were named *C* and *T* respectively. *T*, the younger, died in 1834, leaving two sons, of whom one, who died in 1853, was the father of the plaintiff. The founder's elder son, *C*, died in 1816 leaving two sons (*M*, who died in 1840, and *L*, who died in 1847) and two daughters (*A* and the defendant's mother). The office of dharmakarta descended from the founder to *C*. After his death, a manager was appointed by the Collector, and *C*'s son *M* was dispossessed by his uncle *T*, and in 1834 *M* brought a suit in equity against *T* and his sons. Pending the final decree, *M* was appointed by the Supreme Court to act as dharmakarta. A decree was never passed, and the suit abated on *M*'s death in 1840. *M* was succeeded in the office of dharmakarta by his brother *L*, who held it till 1847, when he died, leaving it by will to his sister *A* and her husband *R* jointly. *R* died soon after, and *A* in 1872, leaving the office by will to her sister's son, the defendant. In a suit by plaintiff, as eldest surviving male member of the founder's family, claiming the office of dharmakarta, or that, if he were not entitled, some proper person might be appointed to it, and praying that an account might be taken of the pagoda property against the defendant as dharmakarta, and also as executor of *A*,—*Held* on appeal (confirming the decision of the Court of first instance), on the first question, that the suit was barred by the Limitation Act (IX of 1871), sch. II, art. 123; that whatever might be the effect of the possession by *M* and *L*, the will left by *L* in 1847 bequeathing the office to his sister *A* and her husband *R* was an act unequivocally hostile to the rights of the male members of the family; and as the will was at once acted upon, they must have had notice of this invasion of their rights. MAMALLY CHENNA KESAVARAYA *v.* VAIDELINGA

[I. L. R., 1 Mad., 343

4. ————— *Suit for possession of hereditary office—Watan, Alienation of.*—Adverse possession, in the case of an alienation of a watan, only begins to run against the heir from the time when he is entitled to succeed to the possession of the watan property, *i.e.*, from the date of the death of the wantandar. RAVLOJIRAV BIN TAMAJIRAV *v.* BALVANTRAV VENKATESH

[I. L. R., 5 Bom., 437

5. ————— *Suit to have the appointment of a karnam declared void—Suit for hereditary office.*—A suit by existing karnams, to have the appointment of another person as a karnam jointly with themselves declared void, does not fall within the provision of art. 124 of the Limitation Act. LAKSHMINARAYANAPPA *v.* VENKATARATNAM

[I. L. R., 17 Mad., 395

6. ————— *Suit for declaration of right as khadims of temple and for turn of worship—Suit for hereditary office.*—The plaintiffs sued for a declaration that they were khadims of a certain Mahomedan durga and as such entitled to perform the duties attached to that office for twenty-one days in each month, and during that period to receive the offerings made by the worshippers at the durga. *Held* that the suit, being a claim to an hereditary office, fell under art. 124 of the Limitation Act, and was not barred by limitation. SARKUM ABU TORAB ABDUL WAHEB *v.* RAHAMAN BUKSH **I. L. R., 24 Calc., 83**

7. ————— *Suit by reversionary heir for office of shebait—Hindu law—Endowment—Succession in management.*—Where a shebait does not appoint his or her successor as provided in the will of the founder and where there is no other provision for the appointment of shebait, the management of the endowment must revert to the heirs of the founder; and the limitation applicable to a suit for possession of such an office is twelve years under art. 124, and not six years under art. 120, of the Limitation Act. *Jai Bansi Kunwar* v. *Chattardhari Singh, 5 B. L. R., 181 : 13 W. R., 396*, and *Gossamee Sree Greedhareejee* v. *Ruman Lolljee, L. R., 16 I. A., 137 : I. L. R., 17 Calc., 3*, referred to. JAGANNATH PRASAD GUPTA *v.* RANJIT SINGH

[I. L. R., 25 Calc., 354

8. ————— and s. 28 — *Right to a temple office and its endowments—Adverse possession.*—Certain offices in a temple and the endowments attached thereto were held jointly by the members of two branches of a family, represented respectively by the plaintiff and the defendant. Long previously to 1872, the defendant's branch got into sole possession, and in that year a family settlement was arrived at, by which it was arranged that the offices should be held in rotation and the lands in equal shares; and, in accordance with this settlement, a certain village forming part of the endowment was delivered to the plaintiff's branch of the family. In 1889 the defendant brought a suit to recover a moiety of that village, but it was dismissed on the ground that the offices and emoluments were indivisible and went by right to the older branch of the family. The plaintiff now sued in 1895 to establish his right to the entire offices and to recover possession of the other village. *Held* that the defendant had acquired a divisible right to a moiety by twelve years' adverse possession, and that the suit should to that extent be dismissed. ALAGIRISAMI NAICKAR *v.* SUNDARESWARA AYYAR

[I. L. R., 21 Mad., 278

————— art. 125 (1871, art. 124).

1. ————— *Suit to set aside deed made by Hindu widow.*—The cause of action in a suit by a reversioner during a widow's lifetime to declare a conveyance made by her to be void was held under Act XIV of 1859 to arise from the date of the conveyance. BHIKAJI APAJI *v.* JAGANNATH VITHAL

[10 Bom., 351

See PERSHAD SINGH *v.* CHEDEE LALL

[15 W. R., 1

2. ————— *Hindu widow—Suit to set aside alienation and to restrain waste.*—*K*, a Hindu widow, assigned one moiety of her share in her husband's estate to *H S*, in consideration that *H S* should conduct and pay all costs of a suit which was then to be instituted against her husband's brothers, of whom *B C*, the present plaintiff, was one, to recover the share to which she was entitled, and also to pay her maintenance in the meantime. The assignment was dated 24th December 1864.

The suit was brought, and a certain sum, in Government paper and notes, was decreed to *K* on August 5th, 1868. This sum was paid into Court by *B C* on 10th March 1869, and upon *K's* application was, on 10th March 1871, paid out to her. *B C* then sued as reversionary heir to have the deed of assignment set aside, and prayed that *H S* should be restrained from receiving the moiety. The plaint was filed on 14th March 1871. In it he alleged his apprehension of waste by *K*. *Held* that a suit simply to set aside the assignment would have been barred as brought more than six years from the date of the assignment, yet so far as it was based on the allegation of apprehended waste, it was not barred by the law of limitation. BISWANATH CHUNDER *v.* KHANTOMANI DASI [7 B. L. R., 131

3. ——— *Alienation—Decree in a collusive suit against a Hindu widow.*—*Held* that the action of a Hindu widow, in causing a collusive suit to be brought against her and confessing judgment therein, whereby the plaintiff in that suit got a decree for possession of property of which the widow was in possession holding a Hindu widow's estate, amounted to an "alienation" of such property within the meaning of art. 125 of the second schedule of Act XV of 1877. SHEO SINGH *v.* JEONI [I. L. R., 19 All., 524

This article applies only to suits to have deeds of alienation declared void. An omission to bring such a suit does not affect the right to sue for possession of the property alienated within twelve years of the widow's death. (*See* art. 141.)

See CHUNDER KANTH ROY *v.* PEARY MOHUN ROY [1 Ind. Jur., O. S., 21
Marsh., 33 : 1 Hay, 69

WOOMA CHURN BANERJEE *v.* HARADHUN MOZOOMDAR . . . . . . 1 W. R., 347

and SRINATH GANGOPADHYA *v.* MAHES CHANDRA ROY . . . . . 4 B. L. R., F. B., 3

——— **art. 126 (1871, art. 125)**—*Cause of action—Suit for possession of joint estate improperly alienated by father of plaintiff.*—In a suit under the Mitakshara law for possession of land by annulment of illegal sales by his father, the plaintiff's only cause of action is the taking possession by the defendant of what was son's joint share of the family property, and his suit ought to be brought within twelve years of such adverse possession. POONHEET KOOER *v.* KISHEN KISHORE NARAIN SINGH [23 W. R., 419

See NOWBUT RAM *v.* DURBAREE SINGH [2 Agra, 145

——— **art. 127 (1871, art. 127; 1859, s. 1, cl. 13).**

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION. [I. L. R., 18 Bom., 513

S. 1, cl. 13, of the Act of 1859 applied to Mahomedan as well as Hindu families. KHYROONISSA *v.* SABHOONISSA KHATOON . . 5 W. R., 238

as this article does; the corresponding article of the Act of 1871 was specially applicable only to Hindus.

1. ——— *Suit for share in family dwelling.*—A claim by a member of a joint Hindu family to a share in a family dwelling, on the allegation that the house was originally joint, fell within the provisions of s. 1, cl. 13, of Act XIV of 1859. DENONATH SHAW *v.* HURRYNARAIN SHAW [12 B. L. R., 349

KRISHNADHUN CHOWDHRY *v.* HUR COOMARY CHOWDHRAIN . . . . 25 W. R., 37

2. ——— *Mortgage by one member of Hindu family—Surrender of equity of redemption.*—Act XIV of 1859, s. 1, cl. 13, was intended to apply to suits between members of a joint family, not to a case where a mortgage having been made by one member on behalf of all to a stranger, that member afterwards, against the will of his co-partners, releases the equity of redemption. RADHANATH DAS *v.* ELLIOTT . . . . . 6 B. L. R., 530

S. C. RADHANATH DAS *v.* GISBORNE & CO. [15 W. R., P. C., 24
14 Moore's I. A., 1

3. ——— *Suit to establish right to share profits of watan.*—In a suit to establish a right to share in a watan and to recover a portion of the profits thereof for seven years,—*Held* that the case was governed, as to limitation, by cl. 13, and not cl. 16, of s. 1; and that arrears for seven years were therefore properly awarded. GUNDO ANANDRAV *v.* KRISHNARAV GOBIND . . 4 Bom., A. C., 55

4. ——— *Suit to enforce right to separate possession.*—Cl. 13, s. 1, applied to suits in which a plaintiff sought to introduce one or more additional co-sharers into the enjoyment of property alleged to be joint, not where a plaintiff sought to enforce his right to separate possession of that to which he was entitled. LUKHEE MONEE DOSSEE *v.* BROJO BULLUB SEAL . . . 11 W. R., 132

5. ——— *Right of son claiming partition after father's death—Survivorship—Inheritance.*—Cl. 13 of s. 1 of Act XVI of 1859, when it provided, as the period of limitation for partition suits, "the period of twelve years from the death of the persons from whom the property alleged to be joint is said to have descended," must be taken to have been intended to apply, in this Presidency, to the case of a son claiming partition of joint family property after the death of his father; although in strictness the language of that clause would not then be applicable, inasmuch as in this Presidency, and wherever the Mitakshara law prevails, sons in such a case are considered to take by survivorship rather than by inheritance. HANSJI CHHIBA *v.* VALABH CHHIBA . . . I. L. R., 7 Bom., 297

6. ——— *Suit for division of family property.*—Where a suit was brought for a division of family property twelve years after the death of the head of the family,—*Held* that the suit was not barred by cl. 13, s. 1, Act XIV of 1859. SUBHAIYAN *v.* SANKARA SUBHAIYAN . . . 2 Mad., 347

7. ——— *Suit to compel partition of moveable and immoveable property.*—A Hindu of the Southern Maratha country, having two sons undivided from him, died in 1872, leaving a will disposing of ancestral estate substantially in favour of his second son, excluding the elder, who claimed his share in this suit. In 1861, a suit brought by this elder son against his father and brother to obtain a declaration of his right to a partition of the ancestral estate, was dismissed on the ground that he had no right in his father's lifetime to compel a partition of the moveables; and that, as to the immoveables, the claim failed, because they were situate beyond the jurisdiction of the Court. *Held* that the suit was not barred under the Limitation Act (XIV of 1859), s. 1, cl. 13. As to the immoveables, setting aside the fact that the plaintiff had remained in possession of one of the houses of the family which had been treated by the father as continuing to be part of the joint property, the decision of 1861, based as to the immoveables on the absence of jurisdiction to declare partition of them, caused this part of the claim to fall under the provisions of Act XIV of 1859, s. 14. As to the moveables: assuming that they could, on the question of limitation, be treated as distinct from the immoveables, and that no payment had been made within twelve years before this suit by the ancestral banking firm to the plaintiff, the adjudication of 1861, whether in law correct or incorrect, had been that the elder son could not assert his rights in the moveables until his father's death. The defendant in this suit, who had taken the benefit of that judgment, could not now insist that it did not suspend the running of limitation on the ground that his brothers might have appealed from it if erroneous. So far, also, as the father's interest was concerned, the succession only opened on his death. LAKSMAN DADA NAIK *v.* RAMCHANDRA DADA NAIK . **I. L. R., 5 Bom., 48**
[L. R., 7 I. A., 181

8. ——— *Suit to recover share of joint property inherited.*—Cl. 13, s. 1 of Act (XIV of 1859, was not applicable to a suit to recover a share of joint property to which the plaintiff claimed to be entitled by inheritance. DINONATH RANA *v.* RUBEEBUNNISSA BIBEE . **20 W. R., 270**

9. ——— *Suit to enforce right to share in joint property.*—Suits to enforce the right to share in any property, on the ground that it is joint family property, must be brought within twelve years, exclusive of the period during which the property was under attachment by Government and neither party was in possession. SHIDOJIRAV *v.* NAIKJIRAV . . . . . . **10 Bom., 228**

10. ——— *Suit by adopted son for share of ancestral estate—Cause of action.*—As against an adopted son suing for his share of the ancestral estate, the law of limitation does not begin to run until the allotment of such share has been demanded and refused. AYYAVU MUPPANAR *v.* NILADATCHI AMMAL . . . **1 Mad., 45**

11. ——— *Suit of share of family property—Exclusion from possession.*—In a suit to enforce the right to share in property on the ground that it was joint family property,—*Held* that, upon the construction of cl. 13, s. 1, Act XIV of 1859, the claimant, in order that the statute shall be a bar, must have been entirely out of possession and excluded from possession by those against whom he claims. GOVINDUN PILLAI *v.* CHIDAMBARA PILLAI
[3 Mad., 99

See RAJESWARA GAJAPATY NARAINA DEO MAHARAJULUNGARU *v.* VIRAPRATAPAH RUDRA GAJAPATY NARAINA DEO MAHARAJULUNGARU
[5 Mad., 31

and SUBBAIYA *v.* RAJESVARA SASTRULU
[4 Mad., 354

12. ——— *Question as to exclusive possession—Onus of proof—Refusal to allow share.*—The question of fact whether there has been such exclusive possession or enjoyment must be decided upon the evidence in each case, and may be satisfactorily proved, although there may be no evidence of an express refusal to allow plaintiff any part of the benefits of the joint property. SUBBAIYA *v.* RAJESVARA SASTRULU . . **4 Mad., 354**

JARAOO *v.* FAKEERA . . . **3 Agra, 133**

RAJOO SINGH *v.* GUNESHMONEE BURMONEE
[15 W. R., 400

13. ——— *Suit for share of joint property.*—*A* got a decree for possession, but before she obtained possession, *B* obtained a decree declaring him jointly entitled with *A* to a particular share of the same property. *Held* that, when *A* got possession, that possession inured to the benefit of *B* as well as to herself, and *B*'s cause of action in a suit against *A* in respect of the same property dated from the time when *A* obtained possession and a suit was not barred if brought within twelve years of that time. GOOROO CHURN SIRCAR *v.* GOLUCKMONEE DOSSEE
[13 W. R., 188

14. ——— *Suit for share of profits.*—If by arrangement the shares of certain co-sharers are left in the possession of other co-sharers during the period of a current settlement, the cause of action to the sharers whose shares have been so left for profits accrues only when the settlement expires. TOOLSEE RAM *v.* NAHUR SINGH . . **3 Agra, 271**

15. ——— *Suit for share of joint property.—Cause of action.*—Where parties are living together in commensality and in joint possession of property, no cause of action arises to one of them for the recovery of his share until he is dispossessed by the other, and limitation runs from the date of such dispossession. JADUB CHUNDER SANDYAL *v.* BHYRUB CHUNDER SANDYAL
[19 W. R., 344

16. ——— *Adverse possession—Suit for partition.*—Where the bulk of the estate of a Hindu family is held and managed by a single member of the family, and the other members receive and enjoy part of the lands as sir, the possession of the bulk of the estate by the manager is not adverse so as to bar, under the Limitation Act XIV of 1859, s. 1, cl. 13, a suit by the others for partition, unless there are circumstances to show that they accepted the sír lands in lieu of the shares that would have been allotted to them on a partition. The case of *Appovier* v. *Rama Subha Aiyan, 11 Moore's I. A., 75,* approved. RUNJEET SINGH *v.* GUGRAJ SINGH **L. R., 1 I. A., 9**

17. ——— *Receipt of payments for share of joint property.*—That a Hindu widow, entitled to her husband's share of the joint property, continues to live in the family and mess with them, is sufficient, in the absence of evidence to the contrary, to show that she is receiving payments on account of her share, within cl. 13, s. 1, Act XIV of 1859. GOBIND CHUNDER BAGCHEE *v.* KRIPAMOYEE DABEE . . . **11 W. R., 338**

18. ——— *Rent collected by one member of Mahomedan family living jointly.*—Even if a member of a Mahomedan family collects the rents and profits of the family property, his possession cannot be considered adverse to his mother and sister, so long as these live and mess jointly with him and receive money's worth in the payment of their family expenses. SIRDAR *v.* MOLUNGO SIRDAR

[24 W. R., 1

19. ——— *Joint property, Suit for share of—Onus probandi.*—A suit to enforce a right to a share of joint family property must be brought within twelve years from the date of the last payment to the plaintiff, or the person through whom he claims on account of the share; and the onus is on the plaintiff to show possession of the share, or receipt of a payment on account of it, within twelve years. It is not sufficient for the plaintiff to show that the property was joint family property. GOSSAIN DOSS KOONDOO *v.* SIRO KOOMAREE DEBIA

[12 B. L. R., 219 : 19 W. R., 192

UMBIKA CHURN SHET *v.* BHAGGOBUTTY CHURN SHET . . . . **3 W. R., 173**

BYDDONATH OJHA *v.* GOPAL MAL **6 W. R., 170**

HUREEHUR MOOKERJEE *v.* TEENCOWREE DOSSEE

[6 W. R., 170

KRISTO CHUNDER BURMO SURMAH *v.* MOHESH CHUNDER BURMO SURMAH . **23 W. R., 381**

20. ——— *Suit for share of joint ancestral property.*—A Hindu died in 1840, leaving him surviving seven sons, who, after their father's death, entered into joint possession of certain immoveable property which had been left by him, and continued to live in commensality until 1859, when a separation in mess took place. Subsequently, more than twelve years after the father's death, a suit was brought by the youngest son for his share of the joint ancestral property belonging to the father, and to property subsequently acquired out of the proceeds of such joint estate, to which the brothers were entitled in equal shares. The plaintiff failed to show that any payment was made to him, or any person through whom he claimed, by the person in possession or management of the property, within twelve years before the commencement of the suit. *Held* that the suit was barred by limitation under cl. 13, s. 1, Act XIV of 1859. UMA SUNDARI DASI *v.* DWARKANATH ROY . **2 B. L. R., A. C., 284**

S. C. WOOMA SOONDUREE DOSSEE *v.* DWARKANATH ROY . . . . . **11 W. R., 72**

AMITRAV BIN YESHVANTRAV DESHMUKH *v.* ANYABA ABAJI DESHMUKH . **5 Bom., A. C., 50**

21. ——— *Entry of names in register.*—*Held* that the plaintiffs' suit was barred by lapse of time, they having received nothing from the property, a share of which they claimed, for a period beyond that prescribed by cl. 13, s. 1, Act XIV of 1859. The fact that the plaintiffs had a manifest right by inheritance, and that their names had been entered in the revenue register as proprietors, is not equivalent to proof of payment to and receipt by them of any profit on account of their share. KHORUN SINGH *v.* BEHAREE LALL . **3 Agra, 95**

MAKSOOD ALI KHAN *v.* GHAZEEOODDEEN KHAN

[3 Agra, 158

22. ——— *Suit to enforce share of joint property—Proof of payments.*—In ruling that a suit to enforce the right to a share in certain property on the ground that it is joint family property is barred under s. 1, cl. 13, Act XIV of 1859, it is not enough to find that the plaintiff had occasionally received money from the defendant, and that his sister continued to live in what had originally been the joint family dwelling-house; but there must be a distinct finding as to what payments (if any) have been made to the plaintiff within twelve years next prior to the date of the institution of the suit by the person in possession or management of the property on account of the plaintiff's alleged share. PROSSONO COOMAR MOOKERJEE *v.* SHAMA CHURN MOOKERJEE

[17 W. R., 451

23. ——— *Payments for joint share.*—Proof of payment is not necessary to bring a case within cl. 13, s. 1, Act XIV of 1859; but the limitation therein prescribed will apply to the case of a person entitled to a share in property, and simply enjoying the property with the co-sharers, there being no division of money or any payment at all made between them. BHUJOHUREE PAUL *v.* HURO SOONDUREE DEBEE . . . **17 W. R., 530**

24. ——— *Receipt of share of profits otherwise than by money.*—In a suit to recover possession of land alleged to have belonged jointly to the plaintiff's late husband *O* and his late elder brother *P*, the defendant pleaded limitation, on the ground that neither the plaintiff nor her predecessor was in possession within twelve yaars. It was found that the two brothers had lived in the same mess, the elder collecting the rents and profits and therewith managing the family expenses. *Held* that, if *O* did not receive money from *P*, he received money's worth, and that would suffice to bring the case within Act XIV of 1859, s. 1, cl. 13; and if cl. 13 did not apply, cl. 12 must, and the suit was not barred. CHUNDER MONEE DEBIA *v.* MEHARJAN BIBEE

[22 W. R., 185

25. ——— *Suit by Hindu excluded from joint family property.*—In a suit by a Hindu excluded from joint family property, to enforce a right to a share therein, brought before the 1st of

October 1877, the period of limitation must be computed under art. 127, and not under art. 143, of sch. II of Act IX of 1871. Kali Kishore Roy *v.* Dhununjoy Roy . . **I. L. R., 3 Calc., 228**

Hansji Chhiba *v.* Valabh Chhiba
[I. L. R., 7 Bom., 297

Under Act IX of 1871, the cause of action arose from the time when the plaintiff demanded, and was refused, his share; consequently it was then necessary to make that allegation. Hansji Chhiba *v.* Valabh Chhiba . . . **I. L. R., 7 Bom., 297**

26. ——— *Exclusion from share of joint property.*—Art. 127, sch. II of Act IX of 1871 presupposes the existence of joint family property, and that there has been an exclusion from participation in the enjoyment of such property. *Semble*—The word "excluded" in that article implies previous inclusion. Saroda Soondury Dossee *v.* Doya Moyee Dossee . . **I. L. R., 5 Calc., 938**

27. ——— *Joint property—Evidence.*—Before a plaintiff can bring his case within art. 127 of sch. II of the Limitation Act, 1877, it is incumbent on him to show that the property in which he seeks to recover a share is "joint property." Obhoy Churn Ghose *v.* Gobind Chunder Dey
[I. L. R., 9 Calc., 237

28. ——— *Suit by person claiming a share in joint family property.*—The word "person" mentioned in art. 127 of sch. II of the Limitation Act means some person claiming a right to share in joint family property upon the ground that he is a member of the family to which the property belongs. *Radhanath Doss* v. *Gisborne, 14 Moore's I. A., 1: 15 W. R., P. C., 24; Ram Lakhi* v. *Ambica Charan Sen, I. L. R., 11 Calc., 680;* and *Horendra Chundra Gupta Roy* v. *Aunordi Mundul, I. L. R., 14 Calc., 544,* relied on. Kartick Chunder Ghuttuck *v.* Saroda Sunduri Debi
[I. L. R., 18 Calc., 642

29. ——— *Application of article—Stranger holding property belonging to joint family.*—Art. 127 of sch. II of the Limitation Act (XV of 1877) does not apply except in cases between members of a joint family. It does not apply to the case of a stranger to the family holding property which originally belonged to the family. As to him, the ordinary rule of limitation (art. 144) applies. Bhavrao *v.* Rakhmin . . . **I. L. R., 23 Bom., 137**

30. ——— *Claim to property as daughter's son.*—The provisions of art. 127 of sch. II of the Limitation Act do not apply to a person who claims to inherit property as a daughter's son. Mothura Nath Dutt *v.* Borkant Nath Dutt. Peari Mohun Dutt *v.* Borkant Nath Dutt
[11 C. L. R., 312

31. ——— *Suit for possession and partition—Acquiescence in alienation—Exclusion from share.*—In a suit to obtain a share by partition of a joint family property, the interest of the plaintiff's father having been sold in execution of a decree, limitation is to be computed from the time when exclusion from his share first becomes known to the plaintiff. Issuridutt Singh *v.* Ibrahim
[I. L. R., 8 Calc., 653

32. ——— *Exclusion from share—Suit for partition.*—Where in a suit for partition a District Judge held the plaintiff's claim barred on the ground that the defendant had been in possession of the property in dispute for more than fifteen years without any claim having been made by the plaintiff,—*Held* that under the Limitation Act (XV of 1877), art. 127, time would not run against the plaintiff until his exclusion (if he was excluded) from the property had become known to him. Hari *v.* Maruti . . . **I. L. R., 6 Bom., 741**

33. ——— *Exclusion from joint property.*—A collateral member of a Hindu family, alleging it to be joint, claimed his share of ancestral property in Oudh, part of which formed a talukh inherited for a considerable time past by the eldest son, who, taking the whole of it, had given maintenance to the other members. This taking was entered in the first and second of the lists made under the provisions of the Oudh Estates Act (I of 1869), and as to it there was no ground of claim. But with respect to the savings, accumulations, and investments made from the income and proceeds of the talukh before the confiscation and restoration of Oudh lands in 1858, the contention was that each member was entitled to his share, and that, by the presumption in respect of a joint family, the burden was on the talukhdar to prove that there were no savings or accumulations made otherwise than out of the talukh and before the confiscation. *Held* that, if it were assumed that the family was for some purposes undivided, still this was not the case of an ordinary undivided Hindu family, and that, in such a case as this, the presumption must depend on somewhat special circumstances. However, this case must be decided on the distinct ground that, as the claimant had been excluded from his share, if he had one, for more than twelve years, he knowing of this exclusion, the law of limitation enacted in Act XV of 1877, sch. II, art. 127, was applicable, and the claim was barred by lapse of time. Raghunath Bali *v.* Maharaj Bali
[I. L. R., 11 Calc., 777: L. R., 12 I. A., 112

34. ——— *Aliyasantana law—Exclusion from joint family property.*—In a suit in which the plaintiffs sought declarations that they were members of an undivided Aliyasantana family with the defendants, that certain property belonged to the family, and that plaintiff No. 1, the senior member of the family, was entitled to have the lands registered in his name, the defendants denied the allegations in the plaint, and pleaded that the suit for declarations only was not maintainable, and that it was barred by limitation. It was found that the plaintiffs had separated themselves from the defendants more than twelve years before suit. *Held* that art. 127 applied to the case, and that the plaintiffs, having separated themselves from the defendants, had for more than twelve years been to their own knowledge excluded from the

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joint family property, and that their suit to enforce a right to share therein was barred. *Mahalinga* v. *Mariyamma, I. L. R., 12 Mad., 462,* distinguished. MUTTAKKE *v.* THIMMAPPA **I. L. R., 15 Mad., 186**

35. ———— *Suit for share of joint property—Exclusion—Adverse possession.*—In a suit for a share of undivided property from which the plaintiff had been out of possession admittedly for thirty-five years,—*Held* that the suit was not barred by limitation, as the possession of the share in question by the defendant since 1845 had not been a possession of it as their own property to the exclusion of the plaintiffs or their father. NILO RAMCHANDRA *v.* GOBIND BALLAL

[I. L. R., 10 Bom., 24

36. ———— *Limitation Act, 1859, s. 1, cl. 13—Hindu law, Maintenance—Refusal of person liable to maintain—Cause of action.*—In a suit for maintenance brought in 1887 by a Hindu widow against the undivided family of her deceased husband, who had died about twenty-four years before suit, it appeared that her maintenance had not been made a charge on specific property. *Held* that time began to run against the plaintiff's claim, under the Limitation Act of 1859, only from the date of refusal on the defendant's part to maintain her. *Narayan Rao Ramchandra Pant* v. *Ramabai, I. L. R., 3 Bom., 415,* followed. RAMANAMMA *v.* SAMBAYYA . . . **I. L. R., 12 Mad., 347**

37. ———— *Suit for share of property alleged to be joint—Limitation Act, 1859, s. 1, cl. 13—Property in possession of a managing member.*—Suit for partition and possession of an undivided share of property sold to plaintiff by an aged gosha lady of the class of Canarese Mahomedans called Navayats. The property sold was the vendor's share as heiress of her father, brother, and sister, who died in 1856, 1866, and 1871, respectively; but it appeared that the property of the family had been in the possession of one managing member since 1856. *Held* that the suit was not barred by limitation. KHATIJA *v.* ISMAIL

[I. L. R., 12 Mad., 380

38. ———— *Suit for possession by purchaser from sharer in joint family.*—Art. 127 of sch. II of Act XV of 1877 does not apply to a suit where the plaintiff is a stranger, who has purchased a share in joint family property from one of the members thereof. HORENDRA CHUNDRA GUPTA ROY *v.* AUKOARDI MUNDUL

[I. L. R., 14 Calc., 544

39. ———— *Hindu law—Joint family—Joint estate—Partition—Portion of estate reserved undivided—Possession of reserved portion by one member of family—Adverse possession—Possession, Inference arising from—Burden of proof—Res judicata as between defendants.*—The plaintiffs sued for part of a house as a portion of joint family property left undivided on the occasion of a general partition which had taken place about thirty-five years before the suit. The defendant had since then been in sole possession and enjoyment of the house in dispute. The Subordinate Judge dismissed the suit as barred by limitation on the ground that the plaintiffs had failed to prove participation in possession or enjoyment within twelve years. On appeal, the Assistant Judge held that, as no share had been demanded or refused, the defendant's possession was not adverse to the plaintiffs, and as the house in dispute had been admittedly reserved from partition, art. 127 of the Limitation Act (XV of 1877) did not apply. He therefore reversed the decree of the Subordinate Judge, and remanded the case for re-trial on the merits. On appeal to the High Court,—*Held* that the suit was barred. The fact that the house in question had admittedly remained undivided did not prevent the operation of the Limitation Act, and art. 127 of Act XV of 1877 applied. That article applies equally to a portion of joint family property left undivided as to the whole estate, and a twelve years' exclusion, known to the excluded sharer, binds him in the one case as in the other. What would bar the operation of the article in question would be a reserve of a part of the joint estate from partition and a possession of that portion conceded to, and taken by, one of the sharers as the common property of himself and the other sharers. RAMCHANDRA NARAYAN *v.* NARAYAN MAHADEV

[I. L. R., 11 Bom., 216

See TATYA *v.* ANAJI

[I. L. R., 11 Bom., 220 note

and VITHOBA *v.* NARAYAN

[I. L. R., 11 Bom., 221 note

40. ———— *Hindu law—Partition—Property excluded from partition.*—The members of a joint Hindu family made a partition of family property in 1877, reserving undivided, however, certain land and the capital and assets of their family business which remained under the control and in the possession of one of them, *viz.*, the present first defendant. The plaintiff, who was a member of the family, demanded his share in the undivided property on the 4th of March 1882, and the defendants refused to give effect to his claim. The plaintiff in 1892 sued for his share in the property. *Held* that the property in question was co-parcenary property, notwithstanding the transaction of 1877, and that the plaintiff's suit was not barred by limitation. MUTHUSAMI MUDALIAR *v.* NALLAKULANTHA MUDALIAR

[I. L. R., 18 Mad., 418

41. ———— *Exclusion from share in a portion of joint property.*—The fact that the plaintiffs were not excluded from their share in part of the joint property does not prevent art. 127, sch. II of the Limitation Act (XV of 1877), from operating in respect of another part from which they had been excluded to their knowledge. VISHNU RAMCHANDRA *v.* GANESH APPAJI CHAUDHARI . . . **I. L. R., 21 Bom., 325**

42. ———— **and art. 144**—*Partition effected without taking into account a minor co-parcener—Invalid partition—Adverse possession—Exclusion from joint property.*—Three brothers, *S L,* and *K,* were members of a joint Hindu family. In 1862 *S* and *L* divided the whole of the family property between them without reserving any share for their brother *K,* who was then a minor. *K* lived with *L* as a member of his family. *L* died in 1867, leaving a childless widow, with whom *K* continued to live till his death 1876. *K* left an infant son (the plaintiff), only a year old. Subsequently, *S* died in 1887, leaving two widows without issue. In 1889 the plaintiff, being still a minor, sued by his next friend to recover the family property in the possession of the widows of *L* and *S. Held* that the suit was not barred by limitation, either under Act IX of 1871 or Act XV of 1877, in the absence of any evidence showing that *K* ever demanded partition and was refused, or that he was excluded to his knowledge from all participation in the family property. KRISHNABAI *v.* KHANGOWDA

[I. L. R., 18 Bom., 197

43. ———————— *Suit for partition—Exclusion—Burden of proof.*—In a suit for partition of joint family property, the defendant pleaded that the plaintiff's branch of the family had been separated more than thirty years ago. The plaintiff proved that the family property was joint, and that he had a share in it. *Held* that, under the circumstances, it lay on the defendants to prove plaintiff's exclusion from the joint estate for more than twelve years and an exclusion known to the plaintiff. JIVANBHAT *v.* ANIBHAT . **I. L. R., 22 Bom., 259**

44. ———————— **and art. 142**—*Exclusion from joint family property—Onus of proof.*—Art. 127 (and not art. 142), sch. II of the Limitation Act, applies to a case where the plaintiff has been excluded from joint property, and under that article the onus is upon the defendant to prove that the exclusion from joint family property became known to the plaintiff more than twelve years before suit. *Brindarani* v. *Bundhoo* (Appeal from Appellate Decree No. 1023 of 1888, decided by O'KINEALY and TREVELYAN, *JJ.*, on the 22nd February 1889,—unreported), followed. UMESH CHANDRA BHATTACHARJEE *v.* JAGADIS CHANDRA BHATTACHARJEE

[1 C. W. N., 543

45. ———————— *Joint family—Possession by one member of family—Neglect by plaintiff to take possession of his share notwithstanding request that he would do so—Adverse possession.*—The plaintiff and the defendant were brothers and members of an undivided family. The plaintiff was in Government service, and had been for a long time absent from his native place on duty, the family property remaining under the management of the defendant. In 1863 the defendant wrote to the plaintiff, requesting him to return and manage his share of the property, or to employ some one to manage it for him. Nothing, however, was done by the plaintiff in the matter, and the defendant continued in possession. In 1882 the plaintiff sued the defendant for partition. The defendant pleaded that the suit was barred, contending that he had been in adverse possession from the date of the letter. The Court of first instance awarded the plaintiff's claim. The defendant appealed, and the lower Appellate Court reversed the lower Court's decree, holding that the suit was barred. On appeal by the plaintiff to the High Court,—*Held* that the suit was not barred. The above-mentioned letter of the defendant showed that, up to the date at which it was written, the defendant had not been in possession of the property "as his own property to the exclusion of the plaintiff," and the mere circumstance that, subsequently to the date of the letter, the plaintiff had not participated in the profits, would not, in the absence of other evidence, justify the inference that the plaintiff was then excluded. DINKAR SADASHIV *v.* BHIKAJI SADASIV

[I. L. R., 11 Bom., 36

46. ———————— *Limitation Act, 1859, s. 1, cl. 13—Suit for share on partition of property.*—In 1803, *G* being in possession of the zamindari of *M,* the permanent settlement was made with him, and a sanad was granted to him as prescribed by Regulation XXV of 1802. In 1827 *C,* the only son of *G,* being in possession of the zamindari, got into debt, and the zamindari was sold in execution of a decree and bought by Government. In 1835 the zamindari was granted to *J,* the son of *C,* by Government, and a sanad issued in the usual terms as prescribed by Regulation XXV of 1802. *J* died in 1864, leaving four sons, the three plaintiffs and *D,* his eldest son. *D* died in 1869, leaving an only son, the infant defendant. In 1869 the Court of Wards took charge of the estate on behalf of the infant defendant and allowed his uncle, plaintiff No. 1, to receive the rents of the zamindari as renter. The infant defendant and his three uncles lived in the same house and participated in the joint family property until 1872, when the plaintiffs claimed to have the zamindari divided. By an agreement between the plaintiffs and the Court of Wards all the moveable and immoveable property, except the zamindari talukh, was divided into four shares and distributed in 1874 between the plaintiffs and defendants. In 1884 the plaintiffs sued for partition of the zamindari, alleging that their cause of action arose in 1872, when the Court of Wards denied their right to a partition of the zamindari talukh. The defendants pleaded that the suit was barred by limitation. *Held* that the suit was not barred by limitation. JAGANATHA *v.* RAMBHADRA . **I. L. R., 11 Mad., 380**

47. ———————— *Act XIV of 1859, s. 1, cl. 13—Joint family—Partition—Claim by absent member—Adverse possession—Exclusion—Participation in profits of joint property—Payment—Occasional residence of wife of absent member with joint family.*—The plaintiff and his four brothers (*G, S, R,* and *B*) were members of a joint Hindu family. The only one of them who lived at home was *S.* In 1854 the family property, which had been mortgaged, was redeemed by the brothers, and after redemption it was placed under the management of *S* by the eldest brother *G.* Subsequently, two of the brothers died while absent from the village; and the plaintiff, who was twenty years of age in 1854, joined the army in 1855. He did not return until 1876; but, during the interval, his wife used occasionally to visit her husband's native place, and during these visits resided in the family house with *S* and *G.* In 1872 *G* died. The plaintiff alleged that in 1876 he demanded his share, but was refused. In 1883 he filed this suit for partition. It was contended that the right of the plaintiff had become barred by the Limitation Act (XIV of 1859) and was not revived by Act XV of 1877, which was in force at the date the suit was brought. The Court of first instance awarded the plaintiff's claim. On appeal, the Assistant Judge reversed the decree of the Court below, holding that under cl. 13 of s. 1 of the Limitation Act (XIV of 1859) the plaintiff had his right to sue, and that such right could not be revived by the passing of the subsequent Limitation Acts (IX of 1871 and XV of 1877). He was of opinion that the fact that the plaintiff's wife "had put up at *S*'s house for a few days, if it were a fact, did not help the plaintiff's title." *Held* by the High Court, following *Ahmed* v. *Moro Keshav, I. L. R., 11 Bom., 461 note*, that the occasional residence of the plaintiff's wife with *S*, who was in possession of the property, might be a benefit out of the estate equivalent to a payment so as to satisfy the requirement of cl. 13 of s. 1 of Limitation Act (XIV of 1859). If such a benefit had been received by the plaintiff within twelve years previously to the repeal of that Act, the plaintiff had not lost his right to sue at the date of the passing of Act IX of 1871; and that Act would therefore have applied to any suit brought by him while it was in force. By art. 127 of sch. II of the Limitation Act (IX of 1871), the period of limitation dated from the time when the plaintiff claimed and was refused his share, which, according to the plaintiff's allegation, was in 1876. Act IX of 1871 was repealed by Act XV of 1877, which governed the present suit, unless the right to sue had expired under Act XIV of 1859. The Court remanded the case for a fresh decision on the question of limitation, having regard to the above observations. KANE BABLE *v.* ANTAJI GANGADHAR . . . **I. L. R., 11 Bom., 455**

AHMED *v.* MORO KESHAV **[I. L. R., 11 Bom., 461 note**

48. ———— *Suit by a Mahomedan for partition of joint property.*—Art. 127 of the Limitation Act (XV of 1877) applies to a suit by a Mahomedan for partition of joint family property. BAVASHA *v.* MASUMSHA . . . **I. L. R., 14 Bom., 70**

49. ———— *Joint family property—Suit by Mahomedan heir for his share in an undistributed estate.*—The words "joint family property" in Limitation Act, 1877, sch. II, art. 127, are intended to refer to joint family property in the Hindu sense of the term. A Mahomedan sued as heir in 1888 to recover his share in the property of his grandfather, which had been enjoyed jointly by his descendants from his death, which occurred in 1840, up to a recent date. It did not appear that the family was governed by any special custom. *Held* that the suit was not governed by art. 127 of the Limitation Act, and was barred by limitation. PATCHA *v.* MOHIDIN **[I. L. R., 15 Mad., 57**

KASMI *v.* AYISHAMMA . **I. L. R., 15 Mad., 60**

50. ———— *Mahomedan family—Redemption of mortgage by some co-sharers—Possession by such co-sharers after redemption—Subsequent claim to property by other co-sharers.*—The possession by a Mahomedan co-sharer of property which he has redeemed from a mortgage does not become adverse to the other co-sharers until some exclusive title is set up. *Ramchandra Yashvant* v. *Sadashiv Abaji, I. L. R., 11 Bom., 422*, and *Bhaudin* v. *Ismail, I. L. R., 11 Bom., 425*, referred to. FAKI ABAS *v.* FAKI NURUDIN . **I. L. R., 16 Bom., 191**

51. ———— *Suit by Mahomedans for possession by right of inheritance of shares in the property of their deceased ancestor.*—The words "joint family property" in art. 127 of sch. II of the Limitation Act (XV of 1877) mean "the property of a joint family." Hence the period of limitation prescribed by that article of the Limitation Act will not apply to a case in which members of a Mahomedan family are suing for possession by right of inheritance of shares in immoveable property alleged to have been that of the deceased common ancestor of themselves and some of the defendants, and of which they allege they had been dispossessed by the defendants. *Bavasha* v. *Masumsha, I. L. R., 14 Bom., 70*, dissented from. AMME RAHAM *v.* ZIA AHMAD **I. L. R., 13 All., 282**

52. ———— *Joint family property—Suit by Mahomedan for possession of share by inheritance.*—Art. 127 of sch. II of the Limitation Act (XV of 1877) does not apply to a suit by Mahomedans for possession by right of inheritance of shares in the property of their deceased ancestor. MAHOMED AKRAM SHAHA *v.* ANARBI CHOWDHRANI **[I. L. R., 22 Calc., 954**

53. ———— *"Joint family property"—"Exclusion" from such property.*—A Mahomedan family consisting of three brothers and their uncle jointly owned certain immoveable property which the uncle managed. Two of the brothers effected a settlement of accounts with the uncle with reference to the profits of the estate; the share of the three brothers was appropriated; and the money representing that share was deposited with the uncle. Subsequently the two who had effected the settlement withdrew their portion of the common share, and the third brother sued the uncle to recover a sum of money as his one-third portion. He alleged that he had been deceived by the defendant into supposing that his portion was included in the amount withdrawn by his brothers; but he did not base his suit upon any allegation of fraud. It was contended that art. 127, sch. II of the Limitation Act (XV of 1877), applied to the suit, limitation running from a date whereon the defendant had denied all liability in respect of the plaintiff's demand. *Held* that the amount claimed could not, under the circumstances, be regarded as joint family property, that the defendant's denial of the plaintiff's right to recover that amount was not an exclusion of the plaintiff from such property, and that consequently art. 127 did not apply to the suit. AHMED ALI KHAN *v.* HUSAIN ALI KHAN **[I. L. R., 10 All., 109**

54. ———— *Limitation Act, 1859, s. 1, cl. 13—Partition suit for share of joint family estate—Failure to prove participation in the family co-parcenary within the period.*—In a suit brought

LIMITATION ACT, 1877—*continued.*

in 1881 for a share of joint family estate, the question whether the plaintiff's right to sue was barred by limitation under Act XIV of 1859, s. 1, cl. 13, depended on whether there had been any participation of profits between the plaintiff's father and the defendants, who with him were co-descendants from a common ancestor, after 1837 down to which year the family was certainly joint. If in 1871 the period of limitation had expired, the Act IX of that year and the later Acts need not be referred to; for, if they altered the law, they would not revive the right of suit. Upon the evidence it was found that, whatever might have been the father's intention when he settled in another village in 1837, the effect of what had been since done, or omitted, on both sides was that in due time the right of suit had become barred under the first Limitation Act. APPASAMI ODAYAR *v.* SUBRAMANYA ODAYAR . **I. L. R., 12 Mad., 26** **[L. R., 15 I. A., 167**

55. ———— **and art. 131**—*Pension, Suit for share of—Gift of pension, Effect of, as against right of heir by inheritance.*—A pension of the nature described in Act XXIII of 1871 (Pensions Act), s. 7, cl. (2), was drawn by a Mahomedan, in whose name alone it was recorded in the Government registers, for himself and the other members of his family, who, up to the time of his death, received their shares from him. Shortly before he died, he executed a deed of gift in favour of his wife, which purported to assign to her the whole pension. No mutation of names was affected in the Government registers, but the deed of gift and the sanads in respect of which the pension had originally been granted were handed over to the donee. After the death of the donor, one of his sisters brought a suit against his widow to establish her right (i) to receive the share in the pension which she had inherited from her father and received up to her brother's death; and (ii) as heir to her brother himself, to the share which he had inherited. In defence it was pleaded (*inter alia*) that the suit was barred by limitation. *Held* that it was doubtful whether in such a case and as between such parties the Limitation Act would be applicable at all; but that, assuming it to be so, either art. 127 or art. 131 of the second schedule should be applied, and the plaintiff having received her share within twelve years, the suit was brought in time. SAHIB-UN-NISSA BIBI *v.* HAFIZA BIBI. HAFIZA BIBI *v.* SAHIB-UN-NISSA BIBI . . **I. L. R., 9 All., 213**

———— art. 128 (1871, art. 128; 1859, s. 1, cl. 13).

1. ———— *Suit to recover maintenance.*—S. 1, cl. 13, Act XIV of 1859, applied to suits for the recovery of maintenance, whether the right to receive maintenance arose out of the general law or out of a specific deed granting such maintenance. BAMASOONDERY DEBEA *v.* SHAMASOONDERY DEBEA **[W. R., 1864, 13**

2. ———— *Suit for maintenance.*—Cl. 13, s. 1, Act XIV of 1859, did not apply to a suit for maintenance, when the right to receive such maintenance was not a charge on the estate of a deceased person, but on the estate of living persons.

LIMITATION ACT, 1877—*continued.*

BINODE LALL CHATTERJEE *v.* LUCKHEE MONEE DEBIA . . . . . **4 W. R., 84**

3. ———— *Suit for maintenance.*—In a suit for maintenance, the cause of action ordinarily arises at the time when the maintenance having become necessary is refused by the party from whom it is claimed. S. 1, cl. 13, Act XIV of 1859, did not apply to all suits for the recovery of maintenance brought by a Hindu widow against her husband's family, but only to suits in which the plaintiff seeks to have her maintenance made a charge on a particular estate. TIMMAPPA BHAT *v.* PARMESHRIAMMA . . **5 Bom., A. C., 130**

4. ———— *Suit for maintenance as charge on estate.*—The plaintiff sued the defendants for future and past maintenance and obtained a decree for future maintenance and for arrears of maintenance for seven years. The parties were governed by the Aliyasantana law. It was found by the lower Appellate Court that for twenty years before the suit the plaintiff lived apart from the defendants and the other members of the family, and supported herself without receiving or applying for anything towards her maintenance out of the family property in the possession of the defendants, or obtaining any recognition of the right to maintenance. On special appeal,—*Held per* SCOTLAND, *C.J.*, that, assuming the Aliyasantana law recognizes the right of the plaintiff to enforce separate maintenance as a charge upon the estate, the plaintiff's claim was barred by s. 1, cl. 13, Act XIV of 1859. *Per* COLLETT, *J.*—It is doubtful whether cl. 13, which applies to cases where the right to receive maintenance is a charge on the inheritance of any estate, applies in a case where the right of the plaintiff is said to exist by reason of her being a co-proprietor with the defendants. If the suit be not within cl. 13, then it was one to recover an interest in immoveable property, and was equally barred by cl. 12 of s. 1. ABBAKKU *v.* AMMU SHETTATI **4 Mad., 137**

SUBRAMANIA MUDALIAR *v.* KALIANI AMMAL **[7 Mad., 226**

Suits for maintenance not chargeable on any estate were governed by cl. 16 of s. 1 of the Act of 1859; the cause of action in such cases did not arise until there had been a demand and a refusal. KALO NILKANTH *v.* LAKSHMIBAI **I. L. R., 2 Bom., 637**

5. ———— *Hindu widow—Maintenance.*—With regard to the widow's right to maintenance, a statute of limitation would do much harm if it should force widows to claim their strict rights and commence litigations which, but for the purpose of keeping alive their claim, would not be necessary or desirable. A Hindu, disposing of his estate by will, expressed his hopes that his wives and son would all live amicably together after his death, and would all look upon his eldest son as the head of the family; he then bequeathed the whole of his property to his eldest son, directing him to provide for his (the testator's) widows, and for the other members and dependents of the family, and he declared that he made these provisions with a view to prevent dissensions in the family, and to enable them to live in peace and

harmony after his decease. In a suit brought more than sixteen years after the death of the testator by one of his widows against the eldest son to recover maintenance, it was pleaded for the defendant that the claim was barred by limitation under cl. 13, s. 1, Act XIV of 1859, which provides that suits for the recovery of maintenance, when the right to receive such maintenance is a charge on the inheritance of any estate, must be brought within twelve years from the death of the person on whose estate the maintenance is alleged to be a charge. *Held* that the testator had not created by his will a specific charge on the inheritance of his estate within the meaning of the provision of Act XIV of 1859, but had merely imposed upon the defendant an obligation, in case the will should interfere with the ordinary Hindu law entitling his widows to maintenance, to make allowances for their support of a kind analogous to that which the law would have provided. *Held* also that, although there was no evidence of a specific demand for maintenance, there was ground for believing that maintenance had been withheld under circumstances amounting to a refusal, giving rise to a cause of action. NARAYANRAV RAMCHANDRA PANT *v.* RAMABAI
[I. L. R., 3 Bom., 415
L. R., 6 I. A., 114 : 6 C. L. R., 162

6. ———— *Suit for arrears of maintenance.*—In suits coming within the operation of the Limitation Act, IX of 1871, the widow might recover arrears for any period, unless it appeared that there had been a demand and refusal, in which case she could recover arrears for twelve years only from the date of such demand and refusal. TIVI *v.* RAMJI
[I. L. R., 3 Bom., 207

7. ———— **and arts. 130 and 132**—*Suit for arrears of maintenance charged upon immoveable property.*—An allowance for the maintenance of a younger member of a family was charged upon the inheritance to which the eldest male member alone succeeded. *Held* that a suit for arrears of such maintenance within twelve years was within time under Act XV of 1877. AHMAD HOSSEIN KHAN *v.* NILA-UD-DIN KHAN . **I. L. R., 9 Calc., 945**
[13 C. L. R., 330
L. R., 10 I. A., 45

8. ———— *Suit for arrears of maintenance—Suit on decree specifying no date for payment of future maintenance.*—A Hindu widow obtained a decree in 1876, which provided that she should receive future maintenance annually at a certain rate, but did not specify any date on which it should become due. In 1887 she filed the present suit claiming arrears of maintenance at the rate fixed in the decree of 1876. *Held* that the suit did not lie. *Sabhanatha Dikshatar* v. *Subba Lakshmi Ammal, I. L. R., 7 Mad., 80,* distinguished. VENKANA *v.* AITAMMA . **I. L. R., 12 Mad., 183**

———— **art. 130 (1871, art. 130 ; 1859, s. 1, cl. 14).**

See ONUS OF PROOF—RESUMPTION AND ASSESSMENT . **3 W. R., 69, 182**

Cl. 14 of s. 1 of the Act of 1859 applied to suits to resume or assess lands held rent-free subsequent to the Permanent Settlement, 1790. KRISHTO MOHUN DOSS BUKSHEE *v.* JOY KISHEN MOOKERJEE
[3 W. R., 33

DHUNPUT SINGH *v.* BOOJAH SAHOO **4 W. R., 53**

1. ———— *Suit for resumption.*—Under Act XIV of 1859, a zamindar could not resume land, whether lakhiraj or not, held from before 1790. Even an auction-purchaser was barred by limitation if the raiyat could prove that the land was in the possession of those through whom he claimed before 1790. RADHA KISTO MYTEE *v.* BHUGWAN CHUNDER BOSE . . . . . . **1 W. R., 248**

SRISTEEDHUR SAMUNT *v.* ROMANATH ROKHIT
[6 W. R., 58

KHELUT CHUNDER GHOSE *v.* POORNO CHUNDER ROY . . . . . . **2 W. R., 258**

2. ———— *Suit for land as part of mal tenure—Cause of action.*—The cause of action in a suit for land as part of the plaintiff's mal tenure, which land the defendant is holding on an invalid lakhiraj tenure, arises when the defendant first begins to hold the land in dispute rent-free. FURLONG *v.* KUSROO MUNDUR . . . . **7 W. R., 531**

See BARODA KANT ROY *v.* SOOKMOY MOOKERJEE
[1 W. R., 29

3. ———— *Suit to recover portion of zamindari granted not in accordance with Mad. Reg. XXV of 1802.*—The appellant, a zamindar, sued to recover a portion of the zamindari granted by his grandfather upwards of forty years ago, upon the ground that the grant was not made in conformity with the requirements of Regulation XXV of 1802, and that, in the absence of the observance of the formalities there prescribed, the grant was void. *Held* that more than twelve years having elapsed since the title accrued to the person under whom the plaintiff derived his right to resume, the appeal should be dismissed. S. 1, cl. 14, of Act XIV of 1859, considered and applied. SETA RAMA KRISTNA RAYUDAPPA RANGA RAO *v.* JAGUNTI SITAYAMMA GARU . . . . **3 Mad., 67**

ALI SAIB *v.* SANYASIRAZ PEDDABALIYARA SIMHULU . . . . **3 Mad., 5**

See KRISHNA DEVU GARU *v.* RAMACHANDRA DEVU MAHARAJULU GARU . . **3 Mad., 153**

4. ———— *Suit for resumption by darpatnidar—Cause of action.*—In a suit by a darpatnidar for the resumption of land alleged to be held as lakhiraj under an invalid title, limitation must be calculated, not from the date of the creation of his dar-patni title, but from that of possession of the party from whom the patnidar originally derived his title. GUNGARAM CHOWDRY *v.* HUREE NATH CHOWDRY . . . **15 W. R., 436**

And so if he is an auction-purchaser. BUSSEEROODDEEN *v.* SHIBPERSHAD CHOWDHRY
[W. R., 1864, 170

LIMITATION ACT, 1877—*continued.*

NIRUNJUN ACHARJEE *v.* KURALEE CHURN BANERJEE . . . . . **1 W. R., 197**

Or a purchaser from Government: his cause of action dates from the time when the right accrued to the Government. BUNNOO *v.* AMEEROODDEEN **[23 W. R., 24**

5. ——————— *Suit for assessment of rent after resumption of lakhiraj lands.—A* got a decree against *B*, which declared that certain lands in *B's* possession, alleged to have been lakhiraj lands from before 1790, were *A's* mal lands and liable to assessment. More than twelve years after the date of this decree, *A* sued to assess the lands. *Held* (affirming the decision of AINSLIE, *J.*) that the suit was not barred by the provisions of Act IX of 1871, sch. II, art. 130. PROTAP CHUNDER CHOWDHRY *v.* SHUKHEE SOONDAREE DASSEE . . **2 C. L. R., 569**

6. ——————— *Service tenure—Assessment of rent by Settlement officer.*—In a suit against the Talukhdari Settlement officer, who had assessed rent-free land on the ground that it had been granted for service, and that service was no longer required,—*Held* that, if the grant was the grant of an office remunerated by the use of land, the right to assess was barred by the possession of a person not claiming under the grantee for a longer period than twelve years after the right to resume accrued under Act IX of 1871, s. 29, and art. 130, sch. II. KEVAL KUBER *v.* TALUKHDARI SETTLEMENT OFFICER **[I. L. R., 1 Bom., 586**

7. ——————— **and arts. 121 and 149—** *Resumption and assessment of lakhiraj land.*—Discussion of the law of limitation as applicable to the resumption and assessment of lakhiraj lands. KOYLASHBASHINY DOSSEE *v.* GOCOOLMONI DOSSEE **[I. L. R., 8 Calc., 230: 10 C. L. R., 41**

8. ——————— *Suit for assessment of rent on lakhiraj land after decree for resumption—Effect of decree as creating or not relationship of landlord and tenant.*—The plaintiff brought a suit in 1861 against *C* for resumption of, and for declaration of his right to assess rent upon, *C's* lands within his zamindari which *C* held as lakhiraj. That suit was presumably instituted under Regulation II of 1819, s. 30, which related only to resumption of lakhiraj lands existing prior to 1790, but there was nothing to show conclusively under what law it was instituted, or whether the lakhiraj grant was one subsequent or anterior to 1790. In that suit an *ex-parte* decree was passed in 1863 that "the suit be decreed and the land in dispute be declared to be shukur," *i.e.*, liable to assessment. In a suit brought in 1886 against the representatives of *C* after serving a notice upon them to pay rent for the land at a certain rate, to assess the land at the rate mentioned in the notice, and for the recovery of rent at that rate,—*Held* that the decree of 1863 had not the effect of creating the relationship of landlord and tenant between the parties, and therefore the suit, not having been brought within twelve years from the date of that decree, was barred by art. 130 of the Limitation Act (XV of 1877). BIR CHUNDER MANIKYA *v.* RAJMOHUN GOSWAMI **[I. L. R., 16 Calc., 449**

LIMITATION ACT, 1877—*continued.*

9. ——————— *Suit for assessment of rent on lakhiraj land after decree for resumption—Effect of decree as creating or not relationship of landlord and tenant.*—The plaintiff in 1862 obtained a decree for resumption of land held under an invalid lakhiraj title created before 1790, the decree declaring the land liable to assessment. In a suit brought more than twelve years after the decree against the representatives of the defendant in the suit of 1862 to assess the land,—*Held* that the decree of 1862 did not create the relationship of landlord and tenant between the parties, and that the suit was therefore barred under art. 130 of the Limitation Act (XV of 1877). NIL KOMUL CHUCKERBUTTY *v.* BIR CHUNDER MANIKYA . **I. L. R., 16 Calc., 450 note**

——————— **art. 131 (1871, art. 131).**

1. ——————— *Cause of action—Suit for turn of worship of an idol.*—The plaintiff sued the defendants for a declaration of his right to a turn of worship of an idol for seven-and-a-half days in each month, alleging that the defendants, who were entitled to another turn, had in 1864 taken adverse possession of the idol and properties belonging to it, and had so deprived him (the plaintiff) of his turn of worship from that time. *Held* that the cause of action did not recur as the turn of worship came round. Such suit fell within the operation of cl. 16, s. 1, Act XIV of 1859. GAUR MOHAN CHOWDHRY *v.* MADAN MOHAN CHOWDHRY **[6 B. L. R., 352: 15 W. R., 29**

2. ——————— *Right to exclusive worship of idol—Right to turn of worship.*—In a suit brought in 1875, in which the plaintiff claimed, as heir of her husband, a share in a certain talukh, together with exclusive right of worship of an idol A, and the right to the worship of an idol B, for one-sixth of every year, from the possession and enjoyment of which she alleged she had been dispossessed by the defendants in 1866,—*Held* that her claim as to the idol B came under the provision of art. 131 of Act IX of 1871, and was not barred; but as to A, the claim was governed by art. 118 of the same Act, and, not having been preferred within six years, was barred by lapse of time. ESHAN CHUNDER ROY *v.* MONMOHINI DASSI . **I. L. R., 4 Calc., 683**

3. ——————— *Worship of idol—Turn of worship—Recurring right.*—A suit for a palla, or right to worship an idol in turn, is a periodically recurring right within the meaning of Act XV of 1877, sch. II, art. 131. *Eshan Chunder Roy* v. *Monmohini Dassi, I. L. R., 4 Calc., 683*, followed. GOPEEKISHEN GOSSAMY *v.* THAKOORDASS GOSSAMY **[I. L. R., 8 Calc., 807: 10 C. L. R., 439**

4. ——————— *Suit to recover burial fees—Cause of action.*—In a suit to recover burial fees, the right to which occurred whenever a corpse was brought for burial, the period of limitation was held to be twelve years from the date of the first refusal of the enjoyment of the right. BAHAR SHAH *v.* PERO SHAH . . . . . **24 W. R., 385**

5. ——————— *Claim for monthly allowance from zamindari—Demand and refusal—Recurring right.—S*, being entitled to a monthly allowance from a zamindari under an agreement dated 1861, died in that year. In 1867 *K*, his senior widow, claimed the allowance; the zamindar contended that the allowance was personal to *S*, and did not descend to his heirs. *K* obtained a decree. In 1864 *R*, the junior widow of *S*, sued *K* to establish the right of her son *M*, to succeed to the estate of *S* as his son and sole heir, and obtained a decree from the Privy Council in 1871. In 1872 *M* demanded and was refused the allowance from the zamindari. In 1875 *M* came of age, and in 1879 brought a suit against the zamindar to establish his right to the allowance. *Held* that the claim by *M* was not barred by limitation. RAMNAD ZAMINDAR *v.* DORASAMI

[I. L. R., 7 Mad., 341

ZAMINDAR OF RAMNAD *v.* DORASÁMI

[I. L. R., 7 Mad., 341

6. ———— *Execution of decree for maintenance—Decree for payment of an annuity without specifying date of payment—Default in paying such annuity—Enforcement of payment by execution of decree—Computation of time.*—A Hindu widow obtained a decree, dated 7th September 1865, directing that a sum of R36 should be paid to her every year on account of her maintenance. The judgment-debtors paid the annuity for some years. In 1881 the widow applied for execution of the decree and recovered three years' arrears. In 1885, payments having again fallen into arrears, she again applied for execution, but her application was rejected as barred by limitation, having been made more than three years after the last preceding application. *Held* that the application was not time-barred. The decree created a periodically recurring right. Though no precise date was specified in the decree for payment of the annuity, the judgment-debtors were liable to make the payment on the day year from its date, and henceforward on the corresponding date year after year. The decree was, as to each year's annuity, to be regarded as speaking on the day upon which for that year it became operative, and separately for each year. The right to execute accruing on a particular day, limitation should be computed from that day should the judgment-debtor fail to obey the order of the Court. *Sakharam Dikshit* v. *Ganesh Sathe, I. L. R., 3 Bom., 193,* followed. *Sabhanatha Dikshatar* v. *Subba Lakshmi Ammal, I. L. R., 7 Mad., 80,* and *Yusuf Khan* v. *Sirdar Khan, I. L. R., 7 Mad., 83,* distinguished. LAKSHMIBAI BAPUJI OKA *v.* MADHAVRAV BAPUJI OKA

[I. L. R., 12 Bom., 65

7. ———— *Declaratory decree for share of rents and for mesne profits—Periodical payments.*—A decree declaring that the plaintiff was entitled to receive every year from the defendant 12 per cent. of the rents and profits of a certain inam village, and awarding mesne profits from the date of suit, was held not to be an award of a periodical payment *in æternum.* The very word "mesne" implies a terminus *ad quem* as well as *á quo,* and in the absence of a special order the terminus was the date of the decree. VINAYAK AMRIT *v.* ABAJI HAIBATRAV . . . I. L. R., 12 Bom., 416

8. ———— **and art. 132**—*Claim for arrears of revenue by grantee from Government.*—The right to the revenue on certain land having been granted to the trustees of a mosque, the said grant was confirmed by Government in 1866. In 1883 a suit was brought to recover arrears of revenue from the owners of the land. It was found that no payment of revenue had ever been made by the defendants to the plaintiff, and the suit was dismissed as barred by limitation under art. 144, sch. II of the Limitation Act. *Held* that the suit was not barred, and that the plaintiff was entitled, under arts. 131 and 132 of the Limitation Act, to recover twelve years' arrears of revenue. ALUBI *v.* KUNHI BI

[I. L. R., 10 Mad., 115

9. ———— **and art. 62**—*Suit to establish title to a share in an annual allowance and also to recover arrears.*—A suit by a co-sharer to establish his title to a share in an annual allowance received by the defendant from Government is one falling under art. 131, and not 144, of the second schedule of the Limitation Act (XV of 1877). The plaintiffs sued to establish their title to a half share in the deshmukhi allowance annually received by the defendant from the Mamlatdar's treasury, and also to recover six years' arrears. Both the lower Courts found that the plaintiffs had not received their share of the allowance at any time within twelve years before suit, and therefore rejected the plaintiffs' claim as time-barred. *Held,* in second appeal, that the plaintiffs' claim for a declaration of their title to the allowance was governed by art. 131 of the Limitation Act, under which article it would not be barred by the mere fact of the plaintiffs' exclusion from enjoyment of their share for twelve years before suit, unless it were shown that such exclusion was the result of refusal made upon a demand. The period of twelve years provided by that article would run from the time when the plaintiffs were first refused the enjoyment of the right. *Held* further that the claim for arrears of the allowance fell under art. 62 of the Limitation Act. *Held* also that, if the claim for a declaration of title to the allowance were barred, the claim for arrears would also be barred. RAOJI *v.* BALA . . . . I. L. R., 15 Bom., 135

10. ———— **and art. 132**—*Kattubadi —Recurring right—Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 7.*—In a suit by a zamindar against the grantee of an inam to recover arrears of kattubadi, it appeared that no payment had been made in respect of kattubadi for a period of twelve years before suit. The suit was dismissed in the Court of first appeal on the findings among others (1) that the plaintiff had not proved his right to the kattubadi, and (2) that his right to it, if any, was barred by limitation. On second appeal by the plaintiff,—*Held* that the above findings should be accepted and the second appeal dismissed. *Alubi* v. *Kunhi Bi, I. L. R., 10 Mad., 115,* distinguished. RAMACHANDRA *v.* JAGANMOHANA

[I. L. R., 15 Mad., 161

———— **art. 132 (1871, art. 132).**

1. ———— *Malikana—Recurring cause of action.*—*Held* (by GLOVER, *J.*) that malikana

LIMITATION ACT, 1877—*continued.*

is rent under Regulation VIII of 1793; that a cause of action for recovery of arrears of malikana is a recurring cause of action; and that failure to recover arrears for more than twelve years would not bar the right to recover for such period as has not been barred by the statute, cl. 16, s. 1, Act XIV of 1859,—that is, for a period of six years. *Held* (by KEMP, *J.*) that the suit was barred, as no malikana had been paid for more than twelve years. *Bhuli Singh* v. *Nehmu Behu, 3 Ap., 102 : 12 W. R., 46. Held* on appeal that a suit for the recovery of malikana was barred by limitation if the malikana had not been received for a period of twelve years. BHULI SINGH *v.* NEHMU BEHU **[4 B. L. R., A. C., 29 : 10 W. R., 302**

BADURUL HUQ *v.* COURT OF WARDS **[12 W. R., 498**

CHUMMUN *v.* OM KOOLSOOM . **13 W. R., 465**

Contra, GOVERNMENT *v.* RHOOP NARAIN SINGH **[2 W. R., 162**

HEERANUND SAHOO *v.* OZEERUN . **6 W. R., 151**

Reversed, however, on review, in OZEERUN *v.* HEERANUND SAHOO . . . **7 W. R., 336**

where it was held that the twelve years' limitation applied, but that s. 1, cl. 13, of the Limitation Act was applicable.

On a second review in HEERANUND SAHOO *v.* OZEERUN . . . . . . **9 W. R., 102**

cl. 12 of *s.* 1 was held to apply to the case.

2. ——— *Malikana—Interest in land.*—Malikana is an interest in land coming under Act XIV of 1859, s. 1, cl. 12, and the right to recover it ceases when it is left as an unclaimed deposit in the Collector's hands for twelve years. GOBIND CHUNDER ROY CHOWDHRY *v.* RAM CHUNDER CHOWDHRY **[19 W. R., 94**

KRISHTO CHUNDER SANDEL CHOWDHRY *v.* SHAMA SOONDUREE DEBIA CHOWDHRAIN **22 W. R., 520**

3. ——— *Payment of malikana by one of joint holders.*—A payment by one of two persons holding land jointly of malikana on account of the joint land saves the operation of the limitation as against both of them. NURSINGH NARAIN SINGH *v.* AMEERUN . . . . **22 W. R., 551**

4. ——— *Malikana commuted from payment in cash to set off against rent.*—Where an arrangement has been effected by which malikana is to be paid, not in cash, but as a set-off against the rent payable, to be deducted therefrom, and it is not shown that the right to such malikana has been alienated, the fact of its not having been paid in cash for twelve years is not a bar to the claim of the maliks for the malikana. ALEH AHMUD *v.* NEHAL SINGH . . . . . **21 W. R., 88**

5. ——— *Suit for malikana.*—Malikana is an annual recurring charge on immoveable property, and may be sued for within twelve years from the time when the money sued for becomes due. HURMUZI BEGUM *v.* HIRDAYNARAIN **[I. L. R., 5 Calc., 921 : 6 C. L. R., 133**

LIMITATION ACT, 1877—*continued.*

6. ——— *Suit for recovery of hak—Immoveable property.*—In suits for recovery of haks, which are of the nature of claims of money charged upon or payable out of land, the period of limitation is twelve years. BHARATSANGJI MANSANGJI *v.* NAVANAIDHARAYA MANSUKHRAM . **1 Bom., 186**

See FUTTEHSANGJI JASWANTSANGJI *v.* DESAI KULLIANRAIJI HAKOOMUTRAIJI **[13 B. L. R., 254 : 10 Bom., 281 L. R., 1 I. A., 34 : 21 W. R., 178**

Overruling decision in FATESSANGJI *v.* DESAI KALYANRAJA . . . **4 Bom., A. C., 189**

But *see* RAIJU MANOR *v.* DESAI KULLIANRAI HUKMATRAI . . . **6 Bom., A. C., 56**

which was held to be a case of a hak not charged on land.

7. ——— *Suit by hakdar against original grantee—Suit by sharer of hak against another—Desaigiri allowance.*—Art. 132, sch. II of the Limitation Act (IX of 1871), applies to suits which are brought by a hakdar against the person originally liable for payment of the hak, and not to suits by one sharer in a watan against another sharer or alleged sharer who has improperly received the plaintiff's share of the hak. A suit of the latter description is a suit for money received by the defendant for the plaintiff's use, and the period of limitation is three years as prescribed by art. 60 of the Act. HARMUKHGAURI *v.* HARISUKHPRASAD **[I. L. R., 7 Bom., 191**

8. ——— *Bond charging immoveable property—Enforcing bond by demanding payment as if secured by collateral mortgage of land.*—Where a suit was brought upon a bond to secure the payment of principal and interest, and the relief sought was that payment of principal and interest might be enforced, both as a simple contract liability and a debt secured by a collateral mortgage of immoveable property,—*Held* that the suit was one for the recovery of an interest in land under s. 1, cl. 12, Act XIV of 1859, and was not barred for twelve years. KRISTNA ROW *v.* HACHAHA SUGAPA **2 Mad., 307**

CHETTI GAUNDAN *v.* SUNDARAM PILLAI **[2 Mad., 51**

KAUNDAN *v.* MUTTAMMAL . . **3 Mad., 92**

OOMRAO BEGUM *v.* KHOOSERAM **[1 N. W., 181 : Ed. 1873, 260**

JONNA VENKATA SAWMY *alias* VENKATASETTI *v.* BASIREDDY KONDAREDDY . . **5 Mad., 364**

and SURWAR HOSSEIN KHAN *v.* GHOLAM MAHOMED . . . . **B. L. R., Sup. Vol., 879**

S. C. SURWAN HOSSEIN *v.* GHOLAM MAHOMED **[9 W. R., 170**

Overruling PARUSH NATH MISSER *v.* BUNDAH ALI **[6 W. R., 132**

The cases of GORA CHAND DUTT *v.* LOKENATH DUTT . . . . . . **8 W. R., 334**

KADARSA RAUTAN *v.* RAVIAH BIBI **2 Mad., 108**

SEETUL SINGH *v.* SOORUJ BUKSH SINGH **[6 W. R., 318**

and LYSTER *v.* KO MIHONE . . **7 W. R., 354**

may also be considered as overruled.

9. ——— *Bond—Instrument creating interest in immoveable property.—B*, having borrowed money from *A*, executed in his favour a bond (which was afterwards duly registered), in which he engaged to repay the amount with interest on a day named, and hypothecated certain lands by way of security, with a condition that, in the event of the said lands being sold in execution of decree before the day fixed for repayment, *A* should be at liberty at once to sue for the recovery of the debt. Before the term for repayment expired, the mortgaged lands were sold in execution of a decree obtained by another creditor on a second bond made by *B* subsequently and subject to the bond made to *A*. In a suit by *A* against *B* and the purchasers of the lands at the execution-sale, *A* charged *B* personally, and also sought to realize the amount due on his bond by the sale of the mortgaged lands. *Held* that the claim was in substance a suit for the recovery of immoveable property, or of an interest in immoveable property, within the meaning of cl. 12, s. 1, Act XIV of 1859, and consequently was governed by the twelve years' rule of limitation therein provided, and not by the rules provided by cls. 10 and 16 of the same section. *Semble*—Although *A* was at liberty to sue from the date of the sale of the lands, limitation did not run against his claim from that date, but only from the date fixed in the bond for repayment. JUNESWAR DASS *v.* MAHABEER SINGH **[I. L. R., 1 Calc., 163: 25 W. R., 84 L. R., 3 I. A., 1**

10. ——— *Suit for money charged on immoveable property.—R* obtained a decree on a bond hypothecating certain immoveable property and a declaration of his lien on the property, and attached the property in execution of the decree as the property of his judgment-debtors. *M*, who was in possession of the property as purchaser in execution of a decree to which she was no party, objected to the sale, and obtained an order from the Court executing the decree for releasing it from attachment, under the provisions of s. 246, Act VIII of 1859. *R* sued to enforce his lien, referring in his plaint to the order as the cause of action, but not alleging that the order was illegal, nor suing to set it aside. Art. 15 of the second schedule of Act IX of 1871 could not be made applicable to the suit. It was a suit for money charged on immoveable property to which art. 132 of the schedule applied. RADHO PANDAY *v.* RUP KUAR **[7 N. W., 223**

11. ——— *Charge on immoveable property—Mortgage—Suit for money lent.—A* lent *B* R99, and *B* executed a document on the 24th July 1881, whereby he agreed to repay the amount with interest in the month of Baisakh 1289 F. S. (April 1882), and further agreed that, if he did not pay the money as stipulated, he should sell his right to certain land, and that *A* should take possession thereof, and that, after *A* took possession of the land, no interest

should be paid by him (*B*), and that *A* should pay the rent of the landlord out of the profits of the land without any objection. *A* instituted a suit on the 3rd August 1885 to recover the R99. *Held* that the document did not amount to a mortgage, nor did it create a charge under s. 109 of the Transfer of Property Act, and that the suit was barred by limitation, three years, and not twelve years, under art. 132 of the Limitation Act, being the period applicable. MADHO MISSER *v.* SIDH BINAIK UPADHYA *alias* BENA UPADHYA . . **I. L. R., 14 Calc., 687**

12. ——— *Registered hypothecation-bond—Personal remedy barred after six years.*—Art. 132 of sch. II of the Indian Limitation Act, 1877, by which a period of twelve years is allowed to enforce payment of money charged on immoveable property, refers only to suits to enforce payment by sale of the property charged, and not to a claim to enforce the personal remedy on a registered bond by which immoveable property is pledged as security for the debt. SESHAYYA *v.* ANNAMMA **[I. L. R., 10 Mad., 100**

13. ——— *Suit for money charged upon immoveable property—Instrument purporting in general terms to charge all the property of obligor—Maxim "certum est quod certum reddi potest."* The obligor of a bond acknowledged therein that he had borrowed R153 from the obligee at the rate of R1-8 per cent. per mensem, and promised to pay the principal with interest at the agreed rate upon a date named. The bond continued thus: "To secure this money, I pledge, voluntarily and willingly, my wealth and property in favour of the said banker. Whatever property, etc., belonging to me be found by the said banker, that all should be available to the said banker. If, without discharging the debt due to this banker, I should sell, mortgage, or dispose of the property to another banker, such transfer shall be void. For this reason, I have of my free will and consent executed this hypothecation-bond that it may be of use when needed." The amount secured by the bond became due on the 6th May 1879. The bond was registered under the Registration Act as a document affecting immoveable property, and the obligor was a party to such registration. On the 9th May 1885, the obligee sued the heir of the obligor to recover the principal and interest due upon the bond by enforcement of lien against and sale of immoveable property belonging to the defendant. *Held* that the words used in the bond as indicating the property which was intended to be subject to the charge were sufficiently specific and certain to include, and were intended to include, all the property of the obligor; that this being so, the maxim "*certum est quod certum reddi potest*" applied; that the bond created a charge upon the immoveable property of the obligor in respect of the principal and interest in question; that such principal and interest were moneys charged upon immoveable property within the meaning of sch. II, art. 132, of the Limitation Act (XV of 1877); and that, so far as the claim was to enforce payment of such principal and interest by recourse to the immoveable property of the obligor, the suit was brought within time. *Ram Din* v. *Kalka*

LIMITATION ACT, 1877—*continued.*

Prasad, I. L. R., 7 All., 502; Gauri Shankar v. *Surju, I. L. R., 3 All., 276;* and *Tadman* v. *D'Epineuil, L. R., 20 Ch. D., 758,* referred to. RAMSIDH PANDE *v.* BALGOBIND

[I. L. R., 9 All., 158

14. ——— *Construction of will — Charge on immoveable property.*—A will devising immoveables stated that the father of the devisee had lent a sum of money to the testator, and directed the devisee to repay the debt with interest. This was construed to be a charge on immoveables, and it was held that a suit, brought by the auction-purchaser of the creditor's claim, to recover the above-mentioned debt was within art. 132 of the second schedule of Act XV of 1877, and, having been brought within twelve years from the date when the debt was so charged, was not barred by time. GRISH CHUNDER MAITI *v.* ANUNDOMOYI DEBI . **I. L. R., 15 Calc., 66**

[L. R., 14 I. A., 137

15. ——— *Purchase-money, Suit by vendor to recover.*—The defendants purchased land from the plaintiff, and gave bonds for the purchase-money. These bonds were not registered, and were therefore not admissible in evidence. *Held* that the plaintiff as vendor was under no necessity to rely on the bonds in order to establish a charge in the property sold in respect of the unpaid purchase-money. Unpaid purchase-money is a charge on the property in the hands of the vendee, and the claim to enforce it falls under art. 132, sch. II of the Limitation Act. VIRCHAND LALCHAND *v.* KUMAJI

[I. L. R., 18 Bom., 48

16. ——— *Suit for payment of annuity.*—A plaintiff, whose right to receive a yearly payment out of the income of certain immoveable property had been settled by arbitration in the course of a suit in 1864, sued in 1890 to recover from the then holder of the property arrears of such allowance for two years preceding the suit. The plaintiff alleged, but failed to prove, that he and his predecessor in title had received payment of the allowance for the intervening years or any of them. *Held* that the suit was not barred by limitation. *Chagan Lal* v. *Bapubhai, I. L. R., 5 Bom., 68,* followed. GAJPAT RAI *v.* CHIMMAN RAI

[I. L. R., 16 All., 189

17. ——— *Suit for kattubadi—Whether kattubadi is rent merely or constitutes a charge.*—The plaintiff sued for possession of three villages granted by his predecessor to the ancestors of the defendants on the ground that the villages had been granted on service tenure, and that he was entitled to resume them. He prayed in the alternative for a decree for six years' arrears of kattubadi. *Held* that the plaintiff was entitled to a decree for only three years' arrears of kattubadi. VIZIANAGARAM MAHARAJAH *v.* SITARAMARAZU

[I. L. R., 19 Mad., 100

Contra VENKATARAMA DOSS *v.* MAHARAJAH OF VIZIANAGRAM . **. I. L. R., 19 Mad., 103 note**

18. ——— *Suit for money due on mortgage-bond—Money payable by instalments—Default in payment of instalment—Right to sue for entire amount due on default of payment of any instalment.* — Where, by a mortgage-bond (hypothecating immoveable property) executed by the defendants, a sum of money was made payable by four instalments, the plaintiff to be at liberty in case of any default to sue either for the amount of that instalment or for the whole amount due on the bond, —*Held* that limitation ran from the date of the first default. SITAB CHAND NAHAR *v.* HYDER MALLA

[I. L. R., 24 Calc., 281

1 C. W. N., 229

19. ——— *Suit for money lent on mortgage – Cause of action—Bond, Construction of.*—In a mortgage-bond, dated the 14th June 1876, it was stipulated that the money advanced should be repaid "in the month of Jeyth 1289 Fusli, being a period of six years." The last day of Jeyth 1289 answered to the 1st June 1882, and the period of six years from the date of the bond ended on the 14th June 1882. In a suit brought upon the bond on the 12th June 1894,—*Held* (AMEER ALI, *J., dubitante*) that the money sued for became due on the 14th June 1882, and the suit was in time. *Rungo Bujaji* v. *Babaji, I. L. R., 6 Bom., 83; Almas Banee* v. *Mahomed Ruja, I. L. R., 6 Calc., 239;* and *Gnanasammanda Pandaram* v. *Palaniyandi Pillai, I. L. R., 17 Mad., 61,* referred to by BEVERLEY, *J.* LATIFUNNESSA *v.* DHAN KUNWAR

[I. L. R., 24 Calc., 382

20. ——— *Hypothecation-bond for payment on certain date—On default in payment of interest whole amount payable on demand—Meaning of "payable on demand."*—Where a hypothecation-bond provided for the repayment of the principal sum on a certain date with interest in the meantime payable monthly, and further provided that, on default in payment of interest, the principal and interest should become payable on demand,—*Held* that the period of limitation prescribed by art. 132 of the Limitation Act was applicable, and that period began to run from the date of the default. *Hanmantram Sadhuram Pity* v. *Bowles, I. L. R., 8 Bom., 561,* and *Hall* v. *Stowell, I. L. R., 2 All., 322,* distinguished. PERUMAL AYYAN *v.* ALAGIRISAMI BHAGAVATHAR . **. I. L. R., 20 Mad., 245**

21. ——— *Interest on mortgage-bond.*—Where a mortgage-bond stipulated that interest at a certain rate should be paid annually and there were no words limiting this liability to the time fixed for the payment of the principal, and where it appeared from the evidence that interest had been paid for several years after the due date,—*Held* that the interest was a charge on the property, and that the claim for interest fell under art. 132 of the Limitation Act (XV of 1877). VITHOBA TIMAP SHANBHOG *v.* VIGNESHWAR GANAP HEDGE

[I. L. R., 22 Bom., 107

22. ——— **and art. 120**—*Suit on mortgage-bond to recover amount by sale of property— Personal liability of mortgagor — Cause of action.*—By a mortgage-bond, dated the 28th Magh 1281 B.S. (9th February 1875), it wa provided that, if the mortgagors should fail to pay the money secured thereby according to the terms thereof, the mortgagees should immediately institute a suit and realize the amount due by sale of the mortgaged property, and that, if the proceeds of such sale should not be sufficient to liquidate the debt, the mortgagees should realize the balance from the persons and other properties of the mortgagors. It was further agreed that the principal and interest secured by the bond should be repaid in the month of Magh 1282 (January-February 1876). In a suit instituted on the 9th October 1882 upon the mortgage to recover the amount due by the sale of the mortgaged property and the balance, if any, from the persons of the mortgagors,—*Held* that the bond in question provided for two remedies in one suit, and did not contemplate a second suit being instituted to recover the balance from the persons of the mortgagors in the event of the first remedy against the mortgaged property proving insufficient to pay the debt in full, and consequently that the cause of action against the persons of the mortgagors accrued upon the date on which the mortgage-money became due; and as the suit was instituted more than six years after that date, the plaintiff's claim was barred by limitation, so far as the personal liability of the mortgagors was concerned. *Held* also that art. 132, sch. II of the Limitation Act (XV of 1877), only refers to suits to enforce payment of money charged upon immoveable property by the sale of such property. MILLER *v.* RUNGA NATH MULLICK

[I. L. R., 12 Calc., 389

See CHETTAR MAL *v.* THAKURI

[I. L. R., 20 All., 512

23. ———— *Suit to enforce charge under mortgage-deed.*—*Held* that a suit to enforce the charge under a mortgage-deed is a suit of the nature mentioned in cl. 12, s. 1, and can be brought at any time within twelve years. KOONJ BEHARY LALL *v.* RAJ NARAIN . . . **2 Agra, 244**

MANNU LALL *v.* PEGUE

[9 B. L. R., 175 note: 10 W. R., 379

GOKALBHAI MULCHAND *v.* JHAVER CHATURBHUJ

[8 Bom., A. C., 61

24. ———— *Mortgage — Interest — Charge on land.*—In suits to recover the principal and interest of a loan secured by a mortgage of immoveable property, interest for twelve years is recoverable by virtue of art. 132 of sch. II of the Limitation Act, 1877. DAVANI AMMAL *v.* RATNA CHETTI . . **I. L. R., 6 Mad., 417**

25. ———— *Money charged on immoveable property.*—The plaintiff held a mortgage of certain immoveable property given to him by the defendant to secure the repayment of a loan of money with interest. The plaint stated the fact of the mortgage, but prayed only for a money-decree. The mortgage contained a personal undertaking to repay. The said mortgage was dated 16th February 1870, and the plaint in this suit was filed on the 28th April 1881. The plaintiff maintained that he was not time-barred, as he had twelve years within which to bring the suit under art. 132 of Act XV of 1877. *Held* that plaintiff was too late in bringing a suit for a money-decree on the promise to pay in the mortgage, inasmuch as the article referred to was meant to apply to suits brought to enforce against the property payment of "money charged upon immoveable property," and not, under any circumstances whatever, to a suit for a mere money-decree. PESTONJI BEZONJI *v.* ABDOOL RAHIMAN

[I. L. R., 5 Bom., 463

26. ———— *Mortgage — Suit by a mortgagee to recover debt from a mortgagor personally — Money-decree.*—Art. 132 of the Limitation Act, XV of 1877, sch. II, is applicable to a suit by a mortgagee to obtain a mere money-decree, to which suit, therefore, the limitation of twelve years from the time the money sued for becomes due applies. *Pestonji Bezonji* v. *Abdool Rahiman, I. L. R., 5 Bom., 463,* overruled. LALLUBHAI *v.* NARAN . . **I. L. R., 6 Bom., 719**

27. ———— **and art. 120** — *Sale for arrears of revenue— Lien of mortgagee on balance of sale-proceeds — Transfer of Property Act (IV of 1882), s. 73—Mortgage suit—Charge on proceeds of revenue sale — Revenue-paying estate—Act XI of 1859, s. 53.*—When a mortgaged property, being a revenue-paying estate, is sold free from all incumbrances for arrears of revenue, the lien of the mortgagee is transferred from the property itself to the balance of the sale-proceeds which remains after satisfying the Government demand. The time within which a suit can be brought to recover money charged on a mortgaged estate is not therefore shortened by reason of the estate having been sold for arrears of Government revenue; in such a case, a suit brought by the mortgagee for satisfaction of the mortgage-debt out of the surplus sale-proceeds will be governed by art. 132 of the Limitation Act. Even if the original cause of action of the mortgagee to enforce a charge on the mortgaged property be considered to cease when the property was sold for arrears of revenue, and if it be considered that a new cause of action then accrued to him, so as to entitle him to bring a suit for the recovery of the surplus sale-proceeds, art. 120 of the Limitation Act would apply to such a suit. *Ram Din* v. *Kalka Persad, I. L. R., 7 All., 502: L. R., 12 I. A., 12,* and *Miller* v. *Runga Nath Moulick, I. L. R., 12 Calc., 389,* distinguished. KAMALA KANT SEN *v.* ABUL BARKAT *alias* HABIBULLA

[I. L. R., 27 Calc., 180

28. ———— *Interest— Bom. Reg. V of 1827, ss. 11 and 12—Act XXVIII of 1855—Act XIV of 1870—General Causes Consolidation Act (I of 1868)—Damdupat—Rule.*—The mortgagor of an estate gave to the mortgagee, subsequently to the date of the mortgage, two successive money-bonds, in each of which it was stipulated that, if the amount were not paid on the due date, it should take priority of the amount due under the mortgage, and that redemption of the mortgage should not be claimed until the bond had been satisfied. The assignee of the equity of redemption sued for possession of the estate on payment merely of the mortgage-money. *Held* that s. 12 of Regulation V of 1827 is not in force. That section was repealed by Act XXVIII of 1855, s. 1, and although the latter section was repealed by Act XIV of 1870, the former was not restored, there being no express provision in Act XIV of 1870 to revive it, as required by the General Clauses Act (I of 1868, s. 3). The question of the period for which interest was to be allowed was therefore to be determined by Act XV of 1877, the Act in force at the date of the institution of this suit, art. 132 of which applied; but as the rule of damdupat is not affected by Limitation Acts, the defendants could not be allowed as interest more than the amount of the principal on which it was to be paid. HARI MAHADAJI *v.* BALAMBHAT RAGHUNATH . . . **I. L. R., 9 Bom., 233**

29. ——— *Suit by mortgage to recover mortgage-money—Suit for money charged on immoveable property—Relief against the person of mortgagor.*—In a suit by a mortgagee to enforce the mortgage, No. 132, sch. II of the Limitation Act, 1877, is not applicable, so far as relief against the mortgagor personally is claimed. *Lallubhai* v. *Naran, I. L. R., 6 Bom., 719,* dissented from. RAGHUBAR DAYAL *v.* LACHMIN SHANKAR **I. L. R., 5 All., 461**

30. ——— *Periods respectively applicable to personal demands and to claims charged on immoveable property.*—That there is a personal liability upon an instrument charging a debt upon immoveable property does not carry with it the effect that the period of limitation fixed for personal demands by Act IX of 1871 is extended, by reason of this demand being thereby brought within the meaning of art. 132 of sch. II of that Act, which applies to claims "for money charged upon immoveable property." A mortgagee of lands sought, after the lapse of more than six years from the date when the mortgage-money was payable, to enforce two distinct remedies, the one against the property mortgaged and the other against the mortgagor personally, on the contract to repay the mortgage-money. *Held* that art. 132 above mentioned applied only to suits to raise money charged on immoveable property out of that property; and the twelve years' bar did not apply to the personal remedy, as to which the shorter period prescribed in art. 65 of the same schedule applied. RAM DIN *v.* KALKA PRASAD **I. L. R., 7 All., 502: L. R., 12 I. A., 12**

31. ——— *Unpaid purchase-money—Suit to recover the money from the vendee personally and from the property sold—Personal remedy—Limitation Act, sch. II, art. 111.*—Unpaid purchase-money is a charge on the property in the possession of the vendee, and a suit to enforce it against the property so charged falls under art. 132 of the Limitation Act (XV of 1877). But the article does not extend the time allowed otherwise under the Act to claims to recover the money from the defaulter personally or his other property. The limitation for the personal remedy is three years under art. 111. *Virchand* v. *Kumaji, I. L. R., 8 Bom., 48,* and *Ram Din* v. *Kalka Prasad, I. L. R., 7 All., 502 : L. R., 12 I. A., 12,* followed. Where certain land was sold and possession given to the vendee in 1890, and a suit was brought in 1895 to recover the unpaid purchase-money from the vendee personally as well as from the property sold,—*Held* that the personal claim was time-barred. CHUNILAL *v.* BAI JETHI **I. L. R., 22 Bom., 846**

See NATESAN CHETTI *v.* SOUNDARAJA AYYANGAR **I. L. R., 21 Mad., 141**

32. ——— *Transfer of Property Act (IV of 1882), s. 55, sub-s. 4 (b)—Vendor's lien—Suit to enforce charge against the property.*—*Held* that a suit by a vendor of immoveable property to enforce against the property his lien for the unpaid purchase-money under s. 55, sub-s. 4 (*b*), of the Transfer of Property Act, 1882, falls within art. 132 of the second schedule to the Limitation Act, 1877. *Virchand Lalchand* v. *Kumaji, I. L. R., 18 Bom., 48,* and *Chunilal* v. *Bai Jethi, I. L. R., 22 Bom., 846,* followed. *Natesan Chetty* v. *Soundararaja Ayyangar, I. L. R., 21 Mad., 141,* dissented from. *Ramdin* v. *Kalkapershad, L. R., 12 I. A., 12; Sutton* v. *Sutton, L. R., 22 Ch. D., 511;* and *Toft* v. *Stevenson, 5 De G. M. & G., 735,* referred to. HAR LAL *v.* MUHAMDI **I. L. R., 21 All., 454**

33. ——— **and art. 147**—*Hypothecation.*—In 1884 *N* sued *A* to recover the principal and interest due on a registered bond executed in 1870. It was stipulated that the amount should be repaid with interest in 1871, and certain immoveable property was hypothecated as security for repayment of the debt. *Held* that the suit did not fall under art. 147 of sch. II of the Limitation Act, which allows sixty years to a mortgagee to sue for foreclosure or sale from the date the money becomes due, but under art. 132 of the same schedule, which allows twelve years to enforce a payment of money charged on immoveable property. ALIBA *v.* NANU **I. L. R., 9 Mad., 218**

34. ——— *Suit for sale of immoveable property by a creditor who has a right to realize a charge not amounting to a mortgage.*—The special provision of art. 147 of the Limitation Act (XV of 1877) applies to all suits properly brought by a mortgagee for foreclosure or sale, while the general provision of art. 132 applise to suits for sale by a creditor having a right to realize a charge not amounting to a mortgage. KHEMJI BHAGVANDAS GUJAR *v.* RAMA . **I. L. R., 10 Bom., 519**

35. ——— *Suit for dower as a charge on immoveable property in hands of heir.*—A suit by a Mahomedan widow against the heir, who has ousted her, for her dower, as being a lien on landed property, was held to be governed by cl. 12, s. 1, Act XIV of 1859. JANEE KHANUM *v.* AMSTOOL FATIMA KHATOON . . . . **8 W. R., 51**

36. ——— *Suit for money lent on deposit of title-deeds.*—Where a creditor sues to recover money advanced by him on the deposit of title-deeds of property, his claim is governed by the limitation applying to debts; but where he seeks to have his lien realized, it is a claim to realize an interest in land, to which the limitation of twelve years applies. Peary Mohun Bose *v.* Gobind Chundra Addy **[10 W. R., 56**

37. ——— *Suit for money charged on rents and profits—Suit for money charged on immoveable property.*—*K* borrowed from *C* a sum of R571, and at the same time executed a bond whereby he mortgaged usufructuarily to his creditor his "entire right and share" in a particular estate in lieu of the above-mentioned sum; and it was agreed that *C* might realize the debt from the rents and profits of two years, and that, as soon as it had been realized, his possession should cease. *Held* that the money borrowed by *K* was "money charged upon immoveable property," it being charged upon rents and profits *in alieno solo* which in English Law would be classed as "incorporeal hereditaments," but which by the law of India are included in immoveable property; and that therefore the limitation applicable to a suit for the recovery of the money was that provided in art. 132, sch. II of Act XV of 1877. *Duli* v. *Bahadur, 7 N. W., 55,* and *Pestonji Bezonji* v. *Abdool Rahiman, I. L. R., 5 Bom., 463,* dissented from. *Fatehsangji Jaswantsangji* v. *Desai Kullianraiji Hakoomathraiji, 13 B. L. R., 254,* referred to. *Lallubhai* v. *Naran, I. L. R., 6 Bom., 719,* followed. Muhammad Zaki *v.* Chatku **[I. L. R., 7 All., 20**

38. ——— *Suit for share of Government revenue and for declaration that estate is charged with amount.*—A suit for recovery of Government revenue, which the defendant was bound to pay, but which has been paid by the plaintiff to save the whole estate from sale, where the plaintiff asks to have the amount so paid made a charge on the portion for which he paid it, is governed by art. 132, and not by art. 99, of Act XV of 1877. Ram Dutt Singh *v.* Horakh Narain Singh **[I. L. R., 6 Calc., 549 : 8 C. L. R., 209**

Deo Nundun Agha *v.* Desputty Singh **[8 C. L. R., 210 note**

39. ——— *Suit to establish title and for arrears.*—The plaintiff sued the defendants to recover a share of the income of a certain watan which was admitted to be connected with an hereditary office, but was not, strictly speaking, charged upon immoveable property. In 1861 the plaintiff had brought a previous suit, and obtained a decree declaring his right to share in the watan, and awarding him arrears for six years. Under this decree, he had received payment of his share up to the year 1860. In the present suit the plaintiff claimed arrears for twelve years, *viz.*, from 1862 to 1874. He admitted that he had received no payment for the year 1861, and that his claim for that year was barred. The defendants contended that the period of limitation applicable to such a claim was six years, and not twelve years; that this was the case, at any rate, so long as the Limitation Act, XIV of 1859, was in force, and that therefore the claim to so much of the arrears as was time-barred under that Act could not be revived by Act IX of 1871. *Held* that, whether Act XIV of 1859 or Act IX of 1871 applied to the plaintiff's claim, the period of limitation was twelve years. Art. 132 of sch. II of Act IX of 1871 was a distinct provision to that effect. There was no similar provision in Act XIV of 1859; but all hereditary offices, and all payments or allowances made on account of such offices, are to be regarded as immoveable property within the meaning and intention of that Act, and are therefore governed by the provisions of cl. 12 of s. 1. It was also contended on behalf of the defendants that, even if the period of limitation were held to be twelve years, the plaintiff's claim was nevertheless barred *in toto,* inasmuch as he admitted that he had received no payment on account of his share for thirteen years preceding the institution of the suit. In support of this contention, the cases of *Raiji Manor* v. *Desai Kallianrai, 6 Bom., A. C., 56,* and *Madrala* v. *Balvant, 9 Bom., 260,* were cited, where it was laid down that the cause of action to establish title and the cause of action to recover arrears which rest on such title are not distinct and independent of each other: so that, if the former be barred, even the arrears which may be within the period of limitation cannot be recovered. *Held* that, while this is the rule, which must be applied to cases in which a plaintiff must establish his title before he can ask for arrears accruing due under such title, the same rule does not apply where, as in the present case, the plaintiff has in a former suit obtained a decree declaratory of his title. It is no longer necessary for him to establish his periodically recurring right against any person who is bound by that decree; and that being so, there is nothing in the law of limitation which can be construed into a restriction of the plaintiff's right to recover the arrears falling due within the period of limitation. Chhaganlal *v.* Bapubhai . . . **I. L. R., 5 Bom., 68**

40. ——— *Debt not charged on immoveable property—Hindu widow—Reversioner.*—A widow purported to charge land which she held for her widow's estate with payment of a debt, and afterwards surrendered her estate to the next heir, or reversioner, on condition that he should pay all her debts. In a suit brought by the creditor after the death of the widow, against the reversioner, more than six years from the time when the debt had become payable,—*Held* that, unless the debt had been effectively charged on immoveable property within art. 132, sch. II of the Limitation Act, 1877, the suit would be barred, and the charge alleged to have been made on immoveables was found not to have been in fact a binding one. Kameswar Pershad *v.* Rajkumari Ruttan Koer **[I. L. R., 20 Calc., 79**
L. R., 19 I. A., 234

41. ——— *Suit to enforce mortgage by father against sons.*—A suit to enforce against the sons a mortgage-bond executed by their father is governed by art. 132 of sch. II of the Limitation Act. Pran Krishna Tewary *v.* Jadu Nath Trivedy **[2 C. W. N., 603**

42. ———— **and arts. 99 and 120** —*Contribution, Suit for—Sale of mortgaged property in execution of decree—Confirmation of sale.*—Where the owner of two villages sold under a decree obtained upon a mortgage claims contribution proportionately against the owners of the other properties included in the mortgage, and does not claim from them all collectively one lump sum as contribution, he may join all the contributors in one suit, and is not bound to bring separate suits for contribution against the separate owners. The owners of the other villages included in the mortgage are liable to contribution; and the owner of the property sold is entitled to a charge on those other villages in respect of the several amounts to be contributed; and the suit for contribution is governed by the limitation provided by art. 132, and not by that provided by art. 99 or art. 120 of sch. II of the Limitation Act (XV of 1877), and must be instituted within twelve years from the date of confirmation of sale. *Ram Dutt Singh* v. *Horakh Narain Singh, I. L. R., 6 Calc., 549,* and *Pancham Singh* v. *Ali Ahmad, I. L. R., 4 All., 58,* referred to. IBN HUSAIN *v.* RAMDAI **[I. L. R., 12 All., 110**

43. ———— **and arts. 135 and 147** —*Suit on a mortgage-bond—Conditional sale—Foreclosure—Beng. Reg. XVII of 1806, ss. 7, 8—Transfer of Property Act (IV of 1882), s. 67, cl. (a).*—In a suit for possession of land on the allegations that it was mortgaged by the defendant's father in July 1849 to the plaintiffs' predecessors, by way of conditional sale, by a deed which fixed no time for payment, and made no provision as to the mortgagee taking possession; that the mortgagor made various payments down to 1875; and that subsequently foreclosure proceedings were instituted under Regulation XVII of 1806, and the mortgage foreclosed in 1877, the lower Appellate Court found that the deed was duly executed, but that the foreclosure proceedings were irregular and invalid. *Held* that, inasmuch as the deed fixed no time of payment, and the suit was brought more than twelve years after the date of the mortgage-deed, and also more than twelve years after the date of the alleged last payment to the mortgagee, which was in 1875, the suit was barred by art. 132, sch. II of the Limitation Act. Having regard to the provisions of s. 67, cl. (a), of the Transfer of Property Act, the mortgage being by conditional sale, the mortgagee was not entitled to the remedy by sale, and therefore art. 147 did not apply to the case. *Girwar Singh* v. *Thakur Narain Singh, I. L. R., 14 Calc., 730,* referred to. *Held* also that, inasmuch as the mortgagee did not become entitled to possession after foreclosure proceedings under Regulation XVII of 1806, the proceedings having been found to have been invalid, and as the mortgage-deed did not contain any provision as to the mortgagee taking possession, art. 135 was not applicable. NILCOMAL PRAMANICK *v.* KAMINI KOOMAR BASU **I. L. R., 20 Calc., 269**

44. ———— *Mortgage—Usufructuary mortgage—Further mortgage of the same property—Destruction of mortgaged property by diluvion—Transfer of Property Act (IV of 1882), s. 68, Right to sue under.*—Plaintiffs advanced money on an usufructuary mortgage of certain land in Magh 1280 (January 1873), and subsequently advanced another sum of money in Sraban 1280 (July 1873) on the security of the same land. The land was washed away in 1892. In an action brought in 1894 under s. 68 of the Transfer of Property Act (IV of 1882) for the money of both the mortgages on the ground that the defendants declined to give fresh security, the defendants objected that the claim as regards the mortgage of Sraban 1280 was barred before the inundation under cl. 132, sch. II of the Limitation Act (1877), the money being due on the date of the bond. *Held,* overruling the objection of limitation (1) with reference to the terms of the mortgage of Sraban 1280, that it was intended to add the money to the amount of the previous mortgage and to place it on the same conditions, and that the plaintiffs were therefore equally entitled to sue for the money upon this mortgage as upon the other. (2) That assuming that there was a right to sue for the money, it did not follow that the plaintiffs were not entitled to have substituted for the security the money which took the place of the security. That on the happening of the event provided for in s. 68, the plaintiffs, who were admittedly entitled to remain in possession of the property until the moneys had been repaid, were clearly entitled to have the money substituted for the property. RAM JEWAN MISSER *v.* JUGGERNATH PERSHAD SINGH . **I. L. R., 25 Calc., 450**

45. ———— **and art. 147**—*Suit on a mortgage-bond—English mortgage—"Mortgage" and "Charge"—Transfer of Property Act, ss. 58, 60, 67, 83, 86, 87-89, 92, 93, 100.*—A suit on a mortgage-bond to enforce payment by sale of premises hypothecated is governed by art. 132, and not art. 147, of the Limitation Act. *Brojo Lal Sing* v. *Gour Charan Sen, I. L. R., 12 Calc., 111,* overruled. *Shib Lal* v. *Ganga Pershad, I. L. R., 6 All., 551,* dissented from. The clear distinction drawn for the first time between "mortgage" and "charge" in the Transfer of Property Act is not observed in the Limitation Act. GIRWAR SINGH *v.* THAKUR NARAIN SINGH . . . **I. L. R., 14 Calc., 730**

46. ———— **and art. 147**—*Transfer of Property Act (IV of 1882), ss. 58, 100—Hypothecation-bond.*—The period of limitation for suits upon hypothecation-bonds, which contain no power of sale, or effect no transfer of property, executed before the Transfer of Property Act came into operation, is twelve years under sch. II, art. 132, of the Limitation Act of 1877. *Aliba* v. *Nanu, I. L. R., 9 Mad., 218,* followed. *Per* MUTTUSAMI AYYAR, *J.*—"The transaction in suit appears to be of the kind described in s. 100 of the Transfer of Property Act, which defines how a charge is created," but "it seems to me that the Transfer of Property Act does not invest all prior hypothecations with the rights and liabilities arising from simple mortgages, whether or not those transactions satisfy the requirements of the definition it contains of simple mortgages." RANGASAMI *v.* MUTTUKUMARAPPA **I. L. R., 10 Mad., 509**

47. ———— *Suit on a hypothecation-bond, dated 1876 (before Transfer of Property Act).*

LIMITATION ACT, 1877—*continued.*

to secure money payable on demand.—In a suit to recover principal and interest due on a hypothecation-bond executed before the Transfer of Property Act was passed to secure a loan payable on demand, it appeared that the plaint was filed more than twelve years after the date of the document sued on. *Held* that the suit was governed by Limitation Act, sch. II, art. 132, and that an actual demand was not necessary to establish a starting point for limitation, and that the suit was barred by limitation. PERIANNA GOUNDAN *v.* MUTHUVIRA GOUNDAN **[I. L. R., 21 Mad., 139**

48. ——— **and art. 147**—*Mortgage—Suit for sale.*—On 2nd July 1879 the defendant mortgaged to the plaintiff certain property to secure payment of a debt with interest. The instrument purported to be a mortgage with possession, and it contained a covenant to repay the mortgage amount on the 8th March 1882. The plaintiff never obtained possession, and he brought a suit on the 29th June 1894 to recover the principal and interest by the sale of the land. *Held* that the suit was governed by art. 132, and not art. 147, of Limitation Act, sch. II, and was accordingly barred by limitation. RAMACHANDRA RAYAGURU *v.* MODHU PADHI **[I. L. R., 21 Mad., 326**

49. ——— *"On demand"—Accrual of cause of action.*—In a suit brought in 1895 on a hypothecation-bond, dated 9th October 1880, it appeared that the loan secured thereby was repayable on 9th October 1883, but it was stipulated that, if interest was not paid at 10 per cent. per annum as therein provided, then that the loan should be repaid with interest at 15 per cent. when the obligee should require it. Default had been made in the payment of interest in 1881, but the obligee had not called for the money. *Held* that the suit was not barred by limitation. NETTAKARUPPA GOUNDAN *v.* KUMARASAMI GOUNDAN . . **I. L. R., 22 Mad., 20**

——— art. 134 (1871, art. 134; 1859, s. 5).

1. ——— *Bonâ fide purchasers.*—S. 5, Act XIV of 1859, was intended to benefit only *bonâ fide* purchasers from trustees. KYROONISSA *v.* SABHOONISSA KHATOON . . **5 W. R., 238**

2. ——— *Priority of bonâ fide purchase.*—S. 5, Act XIV of 1859, was held not to apply to a case of priority of *bonâ fide* purchase. KALLY MOHUN PAL *v.* BHOLANATH CHAKLADAR **[7 W. R., 138**

3. ——— *Bonâ fide purchaser—Property belonging to idol.*—In 1799 an estate was purchased in the name of an idol, and immediately afterwards was mortgaged. Subsequently, when the mortgage-debt had been paid off, it was reconveyed to the idol. After this, the names of the idol and of its shebait were entered in the Collector's books as owners of the estate. In 1812 the purchaser again mortgaged the property, and in 1816 his widow executed a second mortgage of it to pay off the mortgage of 1812. In 1820 this second mortgage was purchased. The defendant held the property under titles derived from the mortgage of 1816. The shebaits representatives in 1867 sued to recover possession of the property as belonging to the idol, alleging that the purchaser was a mere trustee for the idol; that the present holders of the property were cognizant of this, or might have learnt it by reasonable enquiry, and therefore took the property subject to the trust; and that accordingly the suit now brought was a suit against a trustee within s. 2, Act XIV of 1859, and could not be barred by any length of time. There was no evidence of a formal dedication of the property to the idol. *Held* that the defendant claimed under the purchasers who had purchased *bonâ fide* and for valuable consideration within s. 5, and that therefore the period of limitation was twelve years from the date of purchase, and the suit was barred. BRAJA SUNDARI DEBI *v.* LACHMI KUNWARI **[2 B. L. R., A. C., 155 : 11 W. R., 13**

S. C. on appeal to Privy Council **[15 B. L. R., P. C., 176 note : 20 W. R., 95**

4. ——— *Endowed property—Suit to have land declared wukf.*—In the case of wukf land, the mere stoppage of religious service does not start limitation. In a suit, therefore, to have land sold declared wukf and therefore unalienable, the cause of action arises not from the cessation of services, but from the date of the sale. DOYAL CHAND MULLICK *v.* KERAMUT ALI . . **16 W. R., 116**

A suit by a mutwali for endowed property alienated would probably come within this article.

See LALL MAHOMED *v.* LALL BRIJ KISHORE **[17 W. R., 430**

5. ——— *Mortgage of endowed property—Suit for recovery of property.*—Certain landed property alleged to have been sold to an idol, and registered in the name of the vendee's infant son as shebait, had, after the death of that son, been mortgaged twice by the vendee, who succeeded to the office of shebait, and was mortgaged subsequently, on the death of the vendor, by his widow, to pay off the charge created by her husband. The last mortgage was foreclosed, and the mortgagee obtained a decree for possession. In a suit for the recovery of the property by descendants of the vendee, claiming as shebait of the idol,—*Held* that the last mortgagee was a *bonâ fide* purchaser for valuable consideration, and was therefore entitled to the protection of s. 5. GOBIND NATH ROY *v.* LUCHMEE KOOMAREE **[11 W. R., 36**

6. ——— *Suit to remove trustee and recover possession of trust property from third party—Civil Procedure Code (1882), s. 539.*—Art. 134 of the second schedule of the Indian Limitation Act (XV of 1877) applies to a suit for the dismissal of a trustee and for the recovery of trust property from the hands of a third party to whom the same has been improperly alienated. Such a suit is within the scope of s. 539 of the Civil Procedure Code. *Subbayya* v. *Krishna, I. L. R., 14 Mad., 186,* followed. *Lakshmandas Parashram* v. *Ganpatrav Krishna, I. L. R., 8 Bom., 365,* distinguished. SAJEDUR RAJA CHOWDHURI *v.* GOUR MOHUN DAS BAISHNAV . . . **I. L. R., 24 Calc., 418**

7. ———— *Suit against purchasers by representative of mortgagor.*—In a suit by the representative of a mortgagor against *bonâ fide* purchasers for valuable consideration from the mortgagee,—*Held* that the period of limitation was twelve years from the date of the purchase, under s. 5, Act XIV of 1859. SITHA UMMAL *v.* RUNGASAMI IYENGAR . . . . **5 Mad., 385**

8. ———— *Mortgage by member of joint Hindu family—Bonâ fide purchaser.*—To entitle a purchaser to claim the benefit of Act XIV of 1859, s. 5, he must prove,—1st, that he is a purchaser of what is represented to him, and what he fully believes to be not a mortgage, but an absolute title; 2nd, that he purchased *bonâ fide*,—that is to say, without a knowledge of the title having been originally a mortgage, and of a doubt existing as to the mortgage having ceased; and 3rd, that he is a purchaser for valuable consideration. Where an estate having been originally mortgaged by *K*, a member of a joint Hindu family, he subsequently, without the knowledge of the other members, released the equity of redemption to *R*, who afterwards sold to *H*, the owner of a factory, who afterwards sold to *G & Co.* the factory with the lands appertaining thereto, amongst which was the property so released, and proceedings had for many years been taken by the other members to assert their rights,—*Held*, reversing the decision of the High Court, that *G & Co.* were not purchasers entitled to the protection of Act XIV of 1859, s. 5. *Held* also that s. 10 does not apply in such a case, although *K* acted fraudulently. RADHANATH DAS *v.* ELLIOTT . . **6 B. L. R., 530**

S. C. RADHANATH DAS *v.* GISBORNE & Co.
[14 Moore's I. A., 1: 15 W. R., P. C., 24

Reversing the decision of the High Court in GISBORNE & Co. *v.* RADHANATH DAS . **5 W. R., 253**

9. ———— *Mortgage—Purchaser from mortgagee—Necessity of possession in order to validate transaction as against original mortgagor.*—A person purchasing or taking a mortgage from a mortgagee believing that he is getting a good title must have possession of the property for the statutory period in order to validate the transaction as against the original mortgagor under art. 134 of the Limitation Act (XV of 1877). RAMCHANDRA VITHAL RAJADHIKSHA *v.* MOHIDIN
[I. L. R., 23 Bom., 614

10. ———— *Sale of property by representatives of mortgagee.*—The sale of mortgaged property by the heirs of a mortgagee after it has been held and enjoyed by them upwards of sixty years does not give a fresh cause of action to the representatives of the mortgagor. RAM DHUN BHUGGUT *v.* GUNESHEE MAHTOON **16 W. R., 96**

11. ———— *Bonâ fide purchaser.*—A defendant who seeks to protect himself by the provisions of s. 5, Act XIV of 1859, against the claim of a mortgagor suing within sixty years to recover mortgaged lands must show clearly that he, or the person from whom he derives his title, was a *bonâ fide* purchaser. JUGGURNATH SAHOO *v.* SHAH MAHOMED HOSSEIN . . . . **14 B. L. R., 386**
[23 W. R., 99: L. R., 2 I. A., 49

12. ———— *Mortgage—Sub-mortgage by mortgagee—Suit for redemption by original mortgagor against mortgagee and sub-mortgagees—Adverse possession by sub-mortgagees—"Purchaser for value"—"Valuable consideration"—S. 5 of the Limitation Act (XIV of 1859)—Art. 134, sch. II of the Limitation Act (IX of 1871).*—*Held* that the expression "purchaser for valuable consideration" in art. 134 of the Limitation Acts (IX of 1871 and XV of 1877) includes a mortgagee as well as a purchaser properly so called. *Semble*—The words "*bonâ fide,*" which appeared in art. 134, sch. II of the Limitation Act (IX of 1871), were advisedly omitted from art. 134, sch. II of the Limitation Act (XV of 1877), to exclude the possible inference that absence of notice of the real owner's claim was necessary to enable a purchaser to avail himself of the article. YESU RAMJI KALNATH *v.* BALKRISHNA LAKSHMAN
[I. L. R., 15 Bom., 583

13. ———— *Mortgage—Sub-mortgage—Suit for redemption.*—In 1864 *A* mortgaged the property in dispute with possession to *B*. *B* and his widow after his death sub-mortgaged various portions of it to *S* (defendant No. 3) in 1864, 1866, and 1870. After the death of the mortgagor, *A*, his grandsons (plaintiffs Nos. 1, 2, and 3) sold their equity of redemption to plaintiffs Nos. 4 and 5, and in 1891 the five plaintiffs sued defendants Nos. 1 and 2, the heirs of *B* (original mortgagee), and the sub-mortgagee (defendant No. 3), for redemption and possession. The defendants contended that the suit was barred by the Limitation Act (XV of 1877), sch. II, art. 134. *Held* that art. 134 did not apply, as the language of the sub-mortgage-deed showed that the transaction was merely a mortgage of the mortgage interest of *B*, and not of the entire property in the land. *Baivakhan Daudkhan* v. *Bhiku Sazba, I. L. R., 9 Bom., 475,* and *Yesu Ramji* v. *Balkrishna, I. L. R., 15 Bom., 583,* referred to. SAVALARAM *v.* GENU . . . **I. L. R., 18 Bom., 387**

14. ———— *Mortgage—Decree obtained by mortgagee for possession until payment of mortgage-debt—Possession taken by mortgagee under decree—Continuance after decree of relation of mortgagor and mortgagee—Sale by mortgagee—Vendor and purchaser—Subsequent suit for redemption by mortgagor against mortgagee and his vendee—Purchaser, bonâ fide.*—A decree on a mortgage having directed the mortgagor to give possession to the mortgagee until the payment of the mortgage debt and costs found due, the mortgagee entered into possession, and subsequently sold the property to a third party. More than twelve years after the sale, the mortgagor brought a redemption suit both as against the mortgagee and the purchaser. *Held* that the suit (as against the purchaser) was barred under art. 134, sch. II of the Limitation Act (XV of 1877), and that, notwithstanding the decree for possession, the relationship of mortgagor and mortgagee continued, whether under the original mort-

gage or the decree. Absence of *bonâ fides*, as distinguished from actual knowledge of the vendor's title, does not prevent the purchaser from claiming the benefit of art. 134. In order to give the purchaser the benefit of art. 134, the purchase need not be *bonâ fide* in the sense of being without "constructive notice" of the restricted nature of the vendor's title, but by the term "purchaser" in that article is meant a person who purchases that which is *de facto* a mortgage upon the representation made to him and in the belief that it is an absolute title. PANDU *v.* VITHU . . . **I. L. R., 19 Bom., 140**

15. ——— *Vendor and purchaser—Bonâ fides—Notice of charitable trust.*—The words "conveyed in trust" in art. 134 of sch. II of the Limitation Act (IX of 1871) include devises in trust, or are equivalent to the words "vested in trust" in s. 10 of the same Act. The words "in good faith" in art. 134 of sch. II, and in s. 10 of the Limitation Act (IX of 1871), do not necessarily involve absence of notice in the purchaser of an existing trust or equity, though the fact of there being such notice may be an important element in the question whether there was *bonâ fides.* The defendant in the present case, though he purchased with actual notice, must, having regard to all the circumstances, be held to have purchased in good faith, and the suit was accordingly barred by limitation, there being nothing in the Limitation Act (IX of 1871) excluding from its benefit those asserting their right to claim under a *bonâ fide* purchase for value, by reason that those claiming against them are the objects of a charitable trust imposed on such property. MANIKLAL ATMARAM *v.* MANCHERSHI DINSHA . . . **I. L. R., 1 Bom., 269**

16. ——— *Mortgage—Sale of mortgagee's rights and interests for the recovery of arrears of revenue—Suit for redemption—Reg. XI of 1882, s. 29—Reg. XVII of 1806.*—It was not intended that property which would pass on the sale by a mortgagee of his interest should come within the scope of art. 134, sch. II of the Limitation Act (XV of 1877). The article was intended to protect, after the expiration of twelve years from the date of a purchase, a person who, happening to purchase from a mortgagee, had reasonable grounds for believing, and did believe, that his vendor had the power to convey and was conveying to him an absolute interest and not merely the interest of a mortgagee. *Radanath Doss* v. *Gisborne & Co., 14 Moore's I. A., 1 : 6 B. L. R., 530; Piarey Lal* v. *Saliga, I. L. R., 2 All., 394;* and *Kamal Singh* v. *Batul Fatima, I. L. R., 2 All., 460,* referred to. Contemporaneously with the execution of a registered deed of sale of zamindari property in 1835 for R4,000, the vendee executed a deed in favour of the vendors, which also was registered, and by which he agreed that, if within ten years the vendors should pay R4,000 in a lump sum without interest, he would accept the same and cancel the sale, and that he should be in possession during that period. This transaction admittedly amounted to a mortgage by conditional sale. The mortgagee remained in possession, and his name was entered as

that of proprietor in the Collector's register, in which no allusion was made to a mortgage. In 1840 his rights in this property were sold by auction, for arrears of Government revenue due by him on account of other land, and apparently no notice was given by any one at or prior to the sale that it was the mortgagee's interest only which was about to be or was being sold. The property was purchased for R3,000 by *S* who took possession, and in 1845 sold it for R3,000 to *T* who took possession, and in 1847 sold it for the same sum to *C*. On the occasion of each transfer, the name of the transferee was entered in the Collector's register as that of proprietor. No application for foreclosure was made at any time. In 1885 the representatives of the mortgagors brought a suit against the representative of *C* for redemption of the mortgage and for mesne profits. The defendant pleaded (i) that the suit was barred by limitation under art. 134, sch. II of Act XV of 1877; (ii) that the several transferees were innocent purchasers for valuable consideration without notice, who had purchased in each case from the person who was, with the consent, express or implied, of the persons for the time being interested, the ostensible owner, and had in each case, prior to the purchase, taken reasonable care to ascertain that the transferor had power to make the transfer and had acted in good faith. *Held* that art. 134 of the Limitation Act did not apply to the case, inasmuch as that article referred only to persons purchasing what was *de facto* a mortgage, having reasonable grounds for the belief, and believing that it was an absolute title; and that, having regard to s. 29 of Regulation XI of 1822, to the presumption that the several transferees knew the law and made inquiries as to the interest they were purchasing, and examined the register in which the deed constituting the transaction of 1835 (a mortgage) was registered, and also having regard to the fact that R3,000 only were paid as purchase-money in each case, and to the circumstance that it was doubtful whether a purchaser at a formal auction-sale such as that in question could be said to have purchased without notice an absolute interest from the mortgagee, it must be inferred that the transferees knew, or might, or ought to, have known, unless they wilfully abstained from inquiry, that the interest which they respectively were purchasing was merely that of a mortgagee. *Sobhag Chand Gulab Chand* v. *Bhai Chand, I. L. R., 6 Bom., 193,* referred to. *Held* that, as by Regulation XVII of 1806 mortgagors in such a case as the present were entitled to redeem within sixty years, the plaintiffs were entitled to a decree for redemption. BHAGWAN SAHAI *v.* BHAGWAN DIN . . . **I. L. R., 9 All., 97**

17. ——— *Clause of conditional sale in mortgage—Suit by mortgagee for declaration of the title—Decree ordering delivery of property to mortgagee in default of payment of mortgage-debt by mortgagors within one month—Default of payment by mortgagors—Effect of such default—Mortgaged property taken by mortgagee in execution of such decree not as mortgagee, but absolutely—Subsequent suit for redemption.*—In 1863 *B* and *C* mortgaged certain land to one *G* under a mortgage-deed, which provided that, if the mortgage-debt was not paid at the stipulated time, the land should become the absolute property of *G*, the mortgagee. In 1871 *G* filed an ejectment suit against *B* and *C* and one *H* alleging that he had become owner of the land by operation of the above clause, and that he had subsequently let it to *H*, who now, in collusion with the other two defendants (the mortgagors), denied his title. The ejectment suit was subsequently converted into one for a declaration of *G*'s title as owner as against the mortgagors, *B* and *C*, who claimed a right to redeem. A decree was passed in 1872, ordering *B* and *C* to pay R100 to *G* within one month, or, in default, to deliver up to him possession of the land. The money was not paid, and *V* as purchaser from *G* got possession in execution of the above decree in August 1873. In September 1885, the plaintiff, as *B*'s heir and legal representative, filed a suit against *G* and *V* to redeem the property. The Court of first instance dismissed the suit, holding that the plaintiff's claim was *res judicata* by virtue of the decree passed in 1872, and that the right to redeem was lost. On appeal, the Court reversed this decision and passed a decree for redemption on payment of R100 by the plaintiff within six months. The defendant *V* then applied to the High Court under its extraordinary jurisdiction. *Held* that the suit was barred under art. 134 of sch. II of the Limitation Act (XV of 1877), *V* having purchased the land for value from *G*, the ostensible owner, more than twelve years before suit. VISHNU CHINTAMAN *v.* BALAJI BIN RAGHUJI

[I. L. R., 12 Bom., 352

18. —————— *Suit to redeem by assignee of equity of redemption—Title purchased at execution-sale.*—Suit, in 1885, by the assignee of the equity of redemption to redeem a mortgage of 1826. The mortgagees were put into possession under the mortgage, and no interest was paid. In 1855 the mortgage premises were sold at a Court-sale in execution of a decree against the mortgagees as if they formed part of their family property, and the defendant derived title from the execution-purchaser, who had dealt with it as absolute owner. *Held* that the suit was barred under the Limitation Act, 1877, sch. II, art. 134. MUTHU *v.* KAMBALINGA . . **I. L. R., 12 Mad., 316**

19. —————— *Purchaser for value—Mortgage in 1842—Subsequent mortgage in 1872 by mortgagee representing himself to be owner—Decree on second mortgage—Sale in execution—Purchaser at auction-sale—Right of original mortgagor in 1892 to redeem mortgaged property.*—In 1842 the grandfather of the plaintiff mortgaged the land in question to one *M* with possession. On 9th May 1872, *M*'s son, who was then still in possession, representing himself to be the owner, mortgaged the property with possession to defendant No. 2 and *S*, the grandfather of defendant No. 3. These defendants sued upon their mortgage of May 1872, and obtained a decree and sold the property in 1881 in execution, purchasing it themselves. Defendant No. 3 subsequently sold his share to defendant No. 4. In 1892 the plaintiff sued the first defendant (the grandson of the original mortgagee *M* under the mortgage of 1842) for redemption, making defendants Nos. 2, 3, and 4 party-defendants. The defendants contended that they were purchasers for value, and that the suit was barred by art. 134 of the Limitation Act. *Held* that the suit was not barred, and that the plaintiff was entitled to redeem. By the sale in 1881, the interest of defendant No. 1 became vested in them. The plaintiff could then have redeemed them on paying off the amount due under the mortgage of 1842, disregarding the mortgage of 9th May 1872 altogether. But when the defendants Nos. 2 and 3 had held possession under that mortgage for twelve years (*i.e.*, on 9th May 1884), that mortgage, under art. 134 and s. 28 of the Limitation Act, became a valid mortgage as regards the plaintiffs, and they could not after that date recover possession without redeeming it also. The purchase by defendants Nos. 2 and 3 at the auction-sale in 1881 could not avail them, as the present suit was brought within twelve years from that date. Though a mortgagee is a purchaser for value, he is not an out-and-out purchaser, but only a purchaser *sub modo.* He purchases a mortgagee's interest in the land, *viz.*, a right to hold the mortgaged property until the debt is paid. A mortgagee is *pro tanto* a purchaser for value within the meaning of art. 134 of the Limitation Act (XV of 1877). MALUJI *v.* FAKIRCHAND

[I. L. R., 22 Bom., 225

20. —————— *Sale by mortgagee as owner.*—*A* mortgaged land to *B* and then sold it to *C*, and subsequently sold it to *B* ignoring the previous sale. C now brought a suit for redemption, and *B*, who had been in possession for many years, pleaded limitation. *Held* that the suit was governed by Limitation Act, sch. II, art. 134. REGO *v.* ABBU BEARI

[I. L. R., 21 Mad., 151

21. —————— **and art. 144**—*Suit by trustee to set aside mortgages of trust property made by his predecessor in office.*—A sajjada nashin in possession of certan waqf property during the years 1864 to 1869 executed various mortgages of portions of the waqf property, professing to do so in his capacity of sajjada nashin. The mortgagor died in February 1891, and on the 6th of April 1891 was succeeded by his son as sajjada nashin. On the 25th of November 1893, the son brought a suit to recover possession of the mortgaged property, of which the mortgagees were in possession, on the ground that the mortgages were in violation of the trust and therefore invalid. *Held* by the Court that the suit was barred by limitation. *Per* BLAIR, J.—Whether or not art. 134 of the second schedule to the Indian Limitation Act, 1877, applies to the case is immaterial; if art. 134 does not apply, the suit would be barred by art. 144 of the same schedule, limitation commencing to run against the trustee from the dates of the mortgagees obtaining possession under their respective mortgages. *Nilmony Singh* v. *Jagabandhu Roy, I. L. R., 23 Calc., 536; Yesu Ramji Kalnath* v. *Balkrishna Lakshman, I. L. R., 15 Bom., 583; Bejoy Chunder Banerjee* v. *Kally Prosonno Mookerjee, I. L. R., 4 Calc., 327;* and *Madhaba* v. *Narayana, I. L. R., 9 Mad., 244,* referred

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to. *Per* Banerji, *J.*—The suit is barred by art. 134 of the second schedule to the Indian Limitation Act, 1877, which is as much applicable to a suit against a mortgagee for value from a trustee as to a suit against a person to whom the trustee has sold trust property for value. *Gobind Nath Roy* v. *Luchmee Koomaree, 11 W. R., 36 ; Yesu Ramji Kalnath* v. *Balkrishna Lakshman, I. L. R., 15 Bom., 583 ; Maluji* v. *Fakir Chand, I. L. R., 22 Bom., 225;* and *Nilmony Singh* v. *Jagabandhu Roy, I. L. R., 23 Calc., 536,* referred to. *Per* Aikman, *J.*—The term "purchased" as used in art. 134 of the second schedule cannot be taken as including "mortgaged," but art. 144 would apply and be a bar to the suit. Behari Lal *v.* Muhammad Muttaki

[I. L. R., 20 All., 482

——— **art. 135 (1871, art. 135).**

1. ——— **and art. 147** —*Mortgagor and mortgagee—Purchaser from mortgagor—Adverse possession—Beng. Reg. XVII of 1806, s. 8—Transfer of Property Act, s. 86.*—Under Act XIV of 1859, a mortgagee was ordinarily bound to bring his suit within twelve years from the date of default, and was barred thereafter, unless it could be shown (or might properly be inferred) that the mortgagor or the person in possession held by permission of the mortgagor after the date of default. On the 17th of November 1865, certain property situate in the district of the 24-Pergunnahs was mortgaged by the owner thereof to secure the repayment of R15,785 with interest at 18 per cent. on the 17th of February 1866. The mortgagor and mortgagee were Hindus, and the mortgage was in the ordinary form of an English mortgage of real property. After the date of the mortgage, and before the 15th of February 1872, the mortgagor sold various portions of the mortgaged property. On the 15th of February 1872 the mortgagee filed a foreclosure petition in the Court of the Judge of the district of the 24-Pergunnahs under Regulation XVII of 1806. Notice of the petition was served on the mortgagor alone. Neither principal nor interest was paid by the mortgagor, and on the 6th of September 1882 the assignee of the mortgagee filed a suit for foreclosure against the mortgagor, and the purchasers of the various portions of the property, under the provisions of the Transfer of Property Act, praying for foreclosure and sale. *Held* that as against the purchasers from the mortgagor the suit was barred by limitation under cl. 135, sch. II of Act XV of 1877. Shurnomoyee Dasi *v.* Srinath Das

[I. L. R., 12 Calc., 614

2. ——— *Suit for possession by mortgagee of deed of conditional sale—Foreclosure—Cause of action.*—A conditional mortgage-deed was drawn out, stipulating for the repayment of the loan by annual instalments in nineteen years, and empowering the mortgagee to foreclose if two instalments remained unpaid on any third yearly instalment falling due. *Held,* on the construction of the mortgage-deed, that the mortgagee was not thereby limited to foreclose as soon as the first default in payment of those instalments occurred, and not afterwards; but that the mortgagee was authorized

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in proceeding to foreclose if there were subsequent defaults, any previous default notwithstanding; in fact, there is nothing in law to limit the time within which a mortgagee may foreclose, if, notwithstanding one or more default, the mortgagee's right is not repudiated, but recognized. The mortgagee's right to sue for possession accrues upon the final foreclosure, and he can sue at any time within twelve years from that date, under cl. 12, s. 1, Act XIV of 1859. Buldeen *v.* Golab Koonwer

[Agra, F. B., 102 : Ed. 1874, 77

3. ——— *Mortgage — Dispossession of mortgagor.*—The rule that the date of expiry of the year of grace is the date from which a mortgagee's cause of action to obtain possession of the mortgaged estate is to be calculated, applies only when the mortgagor remains in peaceable and undisturbed possession of the estate. But when the mortgagor is dispossessed and his title disputed, and another person obtains possession of the estate, the possession of the new holder becomes adverse to both mortgagor and mortgagee. The mortgagee's cause of action against the new holder will count from the date on which the latter obtained such adverse possession, unless when the mortgagor contests the title of the new holder, and litigation ensues between them, in which case the mortgagee is not bound to take action upon his mortgage until that litigation is decided. But if the mortgagor's title is rejected, and his possession is disturbed by an adverse one, the mortgagee's cause of action against the new holder commences from the date on which the latter obtains possession on his title adverse to the mortgagor which has been confirmed by the Courts. Ramcoomar Sein *v.* Prosonnocoomar Sein

[W. R., 1864, 375

See Sheoumber Sahoo *v.* Bhowaneedeen Kulwar . . . . **2 N. W., 223**

4. ——— *Suit for possession—Mortgagor transferee, Possession by.*—In 1835, *A,* a mortgagee, obtained a decree in a foreclosure suit, subject to two prior mortgages. In 1844 *B* purchased the rights of the mortgagor in the mortgaged property, and in 1854 redeemed the two prior mortgages. *Held* that *A* was not barred by the statute of limitations from asserting his title to the land subject to the prior mortgages. Bhugwan Doss *v.* Behary Khan . **Marsh., 191 : 1 Hay, 437**

5. ——— *Suit for possession after foreclosure of mortgage—Adverse possession—Possession of dar-patnidar.*—Where a plaintiff, who had acquired the right of a mortgagee in a patni turruf, had foreclosed the mortgage under a decree of the Supreme Court in 1852, but had omitted to take out execution until 1869, when he first sought to obtain possession; and defendant put in a claim to the turruf on the ground that his predecessor in title had as dar-patnidar paid in the revenue to save the patni, and had taken possession of the estate under s. 13, Regulation VIII of 1819; and the lower Courts found that plaintiff was entitled to recover possession because the dar-patnidar had recovered the amount of his deposit in the intervening years,—*Held* by the

High Court that the plaintiff's claim was barred by limitation. *Held* also that the dar-patnidar's occupation of the patni after his lien on it had expired was an adverse possession, which the plaintiffs were bound to resist as soon as they became aware of it; and that this obligation was not loosened by the fact that the mortgagees, on the expiry of their lien, were bound to find out the owners and deliver up the estate to them. KANTI CHUNDER MOOKERJEE *v.* BAMUN DOSS MOOKERJEE

[25 W. R., 434

6. ———— *Purchaser from mortgagor—Adverse possession.*—Where a party *boná fide* purchased from another as his own property land in fact mortgaged, and obtained possession and mutation of names, his title was held to be adverse to the mortgagee. After a *boná fide* purchaser had been in open possession more than twelve years, and after the lapse of more than twelve years from the accrual to the mortgagee of the right of entry under the mortgage-deed (which was in the English form), the mortgagee sued the purchaser to obtain possession of the property. *Held* the suit was barred. *Quære*—Whether in cases in the mofussil, where the mortgagor continues in possession, paying rent to the mortgagee, the law of limitation begins to run from the date of the right of entry. BRAJANATH KUNDU CHOWDHRY *v.* KHELAT CHANDRA GHOSE

[8 B. L. R., 104 : 14 Moore's I. A., 144
16 W. R., P. C., 33

S. C. in High Court, KHELAT CHUNDER GHOSE *v.* TARACHURN KOONDOO CHOWDHRY **6 W. R., 269**

7. ———— *Adverse possession—Purchaser at a sale in execution of decree.*—The possession of a purchaser at the sale in execution of decree, without notice of a mortgage of the property, is adverse to the mortgagee, and a suit to disturb his possession must be brought within twelve years of the commencement of such possession. ANAND MAYI DASI *v.* DHARENDRA CHANDRA MOOKERJEE

[8 B. L. R., 122 : 14 Moore's I. A., 101
16 W. R., P. C., 19

Affirming decision of High Court in DHURUNDRO CHUNDER MOOKERJEE *v.* ANNUND MOYEE DOSSEE

[1 W. R., 103

8. ———— *Suit for possession—Conditional mortgagee, Title of.*—It is not necessary for a conditional mortgagee, if he be in possession at the expiry of the year of grace, to bring a suit to complete his title. The limitation period should be computed from the expiry of the year of grace, if the mortgagee be then in possession. KHOOB CHUND *v.* LEELA DHUR . . . **3 Agra, 103**

9. ———— *Mortgage—Suit for possession—Foreclosure—Beng. Reg. XVII of 1806, s. 8—Cause of action.*—*A*, by a Bengali deed of conditional sale, dated the 10th of August 1853, mortgaged two estates, the deed providing that the mortgage-debt should be repaid on the 9th of July 1855, and that, on default of payment, the deed of conditional sale should become one of absolute sale, and that the mortgagee should thereupon acquire the absolute proprietary right, and might enter upon and retain possession of the mortgaged property. *A* failed to pay at the time stipulated, and on the 18th of December 1856 her right, title, and interest in the estates were sold in execution, and purchased by the defendants without notice of the mortgage. On the 3rd of April 1866, the plaintiff bought the mortgagee's interest, and in August 1867 he instituted foreclosure proceedings under Regulation XVII of 1806 against the defendants, the auction-purchasers. In a suit instituted by the plaintiff on the 22nd January 1874 against the auction-purchasers to recover possession of the mortgaged property,—*Held* that the cause of action arose on 9th July 1865, when default was made in payment of the mortgage-debt, and the suit, not having been instituted within twelve years from that date, was barred by s. 1, cl. 12, Act XIV of 1859. No new cause of action arose by reason of the foreclosure proceedings on the expiry of the year of grace in August 1868. DENONATH GANGOOLY *v.* NURSING PROSHAD DASS

[14 B. L. R., 87 : 22 W. R., 90

10. ———— *Mortgage—Suit for possession—Foreclosure—Cause of action.*—The defendant mortgaged certain immoveable property to the plaintiff by a byebil-wafa, or deed of conditional sale, dated 20th January 1851. The deed stipulated that the mortgage-debt should be repaid on the expiration of three years from the date of the execution. The money was not repaid at the stipulated period, and the mortgagor remained in possession of the property, but there was some evidence to show that he had made payments of interest on the mortgage-debt to the plaintiff. In February 1870 the plaintiff took proceedings to foreclose the mortgage, and on 16th February 1872 he instituted a suit for possession of the property. The defence was that the suit was barred, the plaintiff having been out of possession for more than twelve years previous to the institution of the suit. *Held* that payment and acceptance of interest was evidence of the continuance of the relation between the parties created by the mortgage-deed; and until the mortgagor advanced any rights adverse to the mortgagee, the possession of the mortgagor was permissive, and no cause of action accrued to the mortgagee. MANKEE KOOER *v.* MUNNOO

[14 B. L. R., 315 : 22 W. R., 543

11. ———— *Suit for foreclosure of mortgage—Cause of action.*—The plaintiff, on the 2nd of August 1847, became mortgagee of a house under an instrument of mortgage, which provided that, in default of payment by the mortgagor of the mortgage loan within five years, the house should be considered as absolutely sold to the mortgagee. Default was made in payment and the mortgagee entered into possession, and continued in possession until 1858, when he was dispossessed by the mortgagor. On the 29th March 1866, the plaintiff filed a suit in the nature of a foreclosure suit against his mortgagor, to which the defendant pleaded the law of limitation. *Held* that the plaintiff's cause of action arose in 1858, when he was dispossessed by the defendant, and that he had, under Act XIV of 1859, s. 1, cl. 12, twelve years from that date within which

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to file his suit. LAKSHMIBAI *v.* VITHAL RAMCHANDRA . . . . . . **9 Bom., 53**

12. ———— *Suit by mortgagee against mortgagor and purchasers from him—Regulation XVII of 1806—Transfer of Property Act (IV of 1882).*—A mortgage by conditional sale, before the operation of the Transfer of Property Act, 1882, on default made in payment, proceedings having been taken by the mortgagee under Regulation XVII of 1806, entitled the mortgagee to possession after the year of grace. On the mortgagor's right of possession being thus brought to an end without a suit for foreclosure, a right of entry accrued to the mortgagee, whose suit for possession, unless brought within twelve years from the date "when the mortgagor's right to possession determined," was barred by art. 135 of sch. II of Act XV of 1877. This Regulation foreclosure was applied to a mortgage, dated 17th November 1865, between Hindus, with power of entry and sale, in the English form, of land in the 24-Pergunnahs District (which mortgage therefore received the same effect as a mortgage by conditional sale), and the proceedings were perfect on or before 31st March 1873 as against the mortgagor, whose right of possession determined on the 17th February 1866. Parcels of the mortgaged land had been sold by the mortgagor down to August 1866, and the purchasers, not having been served with notice of the above proceedings under the Regulation, were not parties thereto, so that the relation of mortgagee and mortgagor continued to subsist, as between them and the mortgagee, notwithstanding the determination of the mortgagor's right of possession. In a suit brought in 1882 against these purchasers, as also against the mortgagor for foreclosure and possession, by a transferee, who had acquired the mortgagee's interest in 1879,—*Held* that the mortgagor's right of possession determined on the above date, and that the mortgagee's right of suing for possession having been extinguished on the expiration of twelve years from that time, *viz.*, on the 17th February 1878, such right was not revived by the subsequent creation of suits for foreclosure, on the coming into operation of the Transfer of Property Act, 1882; and that the title of the plaintiff made through the mortgagee, to sue the purchasers for possession of the mortgaged land, was barred by time under art. 135 as against them. The suit therefore was dismissed as against the purchasers; but as against the mortgagor, who made no defence, the right of possession in the mortgagee consequent on the proceedings under the Regulation in force till its repeal in 1882 supported the decree made against him by the Courts below, from which he had not appealed. SRINATH DAS *v.* KHETTER MOHUN SINGH . . . . **I. L. R., 16 Calc., 693**
[L. R., 16 I. A., 85

———— **art. 136 (1871, art. 136).**

1. ———— **and art. 137**—*Suit by purchasers against third persons for possession.*—Arts. 136 and 137 of sch. II of the Limitation Act (XV of 1877) apply to suits brought by purchasers against third persons in possession of the land, in whose favour limitation runs against the purchaser, in the same way as it would against the owner with whose rights the purchaser is clothed. LAKSHMAN VINAYAK KULKARNI *v.* BISANSING **I. L. R., 15 Bom., 261**

2. ———— *Suit for possession of a tenure by a purchaser from the purchaser from a third person who bought at an auction, but never obtained possession—Civil Procedure Code (1882), s. 316—Confirmation of sale—Limitation Act, art. 138.*—In a suit for possession of a tenure by a purchaser, whose vendor purchased it at a private sale from a third person who bought at an auction, but never had obtained possession, the defendants objected that the suit was barred by limitation. *Held* that art. 136, sch. II of the Limitation Act (XV of 1877), applied to the case, and the period of limitation would run from the date when the vendor of the plaintiffs first became entitled to possession, *i.e.*, when the sale was confirmed, and consequently the suit was not barred. MOHIMA CHUNDER BHUTTACHARJEE *v.* NOBIN CHUNDER ROY . **I. L. R., 23 Calc., 49**

3. ———— **and art. 137**—*Ejectment.*—On the 26th of September 1867, *A* executed a conveyance of certain land to *B* for valuable consideration. On the same day *A* acknowledged the execution of the deed before the Registrar, who afterwards registered the same on the 19th of October 1867; *B* never entered into possession of the land. On the 14th of November 1874, *C* purchased this land at a sale in execution of a decree which he had obtained against *B*; *C* did not enter into possession of the land, but on the 26th of September 1879 brought a suit for the recovery thereof against *A*, who had all along remained in possession. *Held* that the suit was barred by limitation under arts. 136, 137, sch. II of the Limitation Act, XV of 1877. ANAND COOMARI *v.* ALI JAMIN . . . . **I. L. R., 11 Calc., 229**

4. ———— **and art. 144**—*Hindu law—Joint family property, Suit to recover—Purchaser of a share of joint family property when vendor is out of possession.*—In a suit for a share of a joint family property where the claimant is out of possession, the material issue is when did the possession of the defendant become adverse to the plaintiff or the person under whom he claims by purchase. *Per* GARTH, *C.J.*—The onus lies upon the purchaser of a share in a joint family property whose vendor is out of possession to show that the exclusion, if any, took place within twelve years of the institution of the suit. The rule of limitation applicable to a suit by a purchaser of a share in a joint family property whose vendor is out of possession at the date of the sale is art. 136 of sch. II, Act XV of 1877. *Per* GHOSE, *J.*—The rule applicable to such a suit is art. 144. RAM LAKHI *v.* DURGA CHARAN SEN
[I. L. R., 11 Calc., 680

———— **art. 137**—*Mortgage of joint property—Share of co-owner sold in execution of decree—Subsequent sale of the mortgaged property by all co-owners—Redemption of mortgage—Suit for partition and redemption by purchaser at Court-sale—Adverse possession.*—Three undivided brothers (*B*, *R*, and *S*) mortgaged part of their joint property (plot 1) in 1870, and the rest (plot 2) in 1874. In 1875 *B*'s share in both plots was sold in execution of a decree against him and was purchased by the plaintiff. In 1877 *B* and his two brothers sold plot 1 to defendants Nos. 3—6, who at once paid off the mortgage of 1870, and took possession. On the 11th February 1877, the three brothers paid off the mortgage of 1874 of plot 2, and in the same month mortgaged that plot to the defendants with possession. On the 26th August 1890, the plaintiff sued for possession of *B*'s share by partition and redemption if necessary. *Held* that the suit was barred by art. 137 of the Limitation Act (XV of 1877). *B* became entitled to possession of his share of plot 1 in 1877, when the mortgage of 1870 was paid off by the defendants, and their possession had been since then adverse to the plaintiff. As to plot 2, *B* had become entitled to possession of his share therein on the 11th February 1877, when the mortgage of 1874 was redeemed. *Ramchandra* v. *Sadashiv. I. L. R., 11 Bom., 422 ; Bhaudin* v. *Shaik Ismail, I. L. R., 11 Bom., 425 ; Faki Abas* v. *Faki Nurudin, I. L. R., 16 Bom., 191 ;* and *Naro* v. *Ragho, P. J. 1892, p. 412,* referred to. GANESH MAHADEO BHANDARKAR *v.* RAMCHANDRA SAMBHAJI MHASKAR

[I. L. R., 20 Bom., 557

————art. 138 (1871, art. 138).

See RIGHT OF SUIT— FRESH SUITS.

[I. L. R., 9 Calc., 602

1. ———— *Suit for possession by purchaser at sale for arrears of revenue—Cause of action.*—Under the general Law of Limitation, the cause of action in a suit for possession by an auction-purchaser at a sale for arrears of revenue arises from the date of purchase. HURREE MOHUN THAKOOR *v.* ANDREWS . . . . **W. R., 1864, 30**

2. ———— *Sale in execution of decree by Sheriff—Period from which time runs.*—As land may pass by mere parol between a Hindu vendor and purchaser, the sale by auction by the Sheriff is enough, without his bill-of-sale, to complete the transaction as between vendor and purchaser, for the purpose of the Law of Limitation ; therefore, where the suit was brought within the time fixed by the Law of Limitation, counting from the date of the Sheriff's bill-of-sale, but too late counting from the time of the actual auction-sale,—*Held* that the plaintiff was barred. MOHESH CHUNDER CHATTERJEE *v.* ISSUR CHUNDER CHATTERJEE **1 Ind. Jur., N. S., 266**

3. ———— *Purchase by mortgagee of mortgaged property.*—While a mortgagee was in possession of the mortgaged premises, the lands were sold for arrears of Government revenue, and purchased by the mortgagee. *Held* that his possession as mortgagee was superseded by his possession as purchaser, and that the Statute of Limitation commenced to run from the beginning of his possession as such purchaser. BYKUNT DHUR SINGH *v.* LALLA BHUGOBUT SAHOY . . **Marsh., 391 : 2 Hay, 475**

4. ———— *Suit by purchaser at sale for arrears of rent of patni tenure— Cause of action —Adverse possession.*—*A* let an under-tenure to *B*, which under-tenure was sold for arrears of rent under s. 105, Act X of 1859, and bought in by *A*. On proceeding to take possession, *A* found that *C* had trespassed upon the under-tenure during *B*'s tenure, and had held possession for more than twelve years. *A* sued to recover possession of the under-tenure, and it was held by the senior Judge of the Division Bench (BAYLEY, *J.*) that *A*'s cause of action was the act of dispossession by *C*, and that the suit was barred, more than twelve years having elapsed ; and that *A*'s right to sue was not affected by the fact that *B*'s tenure was still running. The junior Judge (PHEAR, *J.*) held that the suit was not barred ; that the cause of action to *A* accrued when he obtained back the property at the auction-sale ; and that during the period of encroachment the cause of action did not arise to *B* and pass from *B* to *A* during the time the patni lasted, the patni entirely disappearing in the superior title of zamindar vendee. *Held* by the Appellate Court, in confirmation of the view of PHEAR, *J.*, that the cause of action to *A*, who was a purchaser of an estate free from incumbrances against *C*, who was a trespasser, and had encroached on *B*, the defaulter, must be taken to accrue at the same time as his, *A*'s, right to turn out under-tenants of the defaulter,—*viz.*, from the time of the purchase of the tenure of the defaulter ; and the fact that *A* was both talukhdar and purchaser did not prevent him from exercising the same rights as any other purchaser would be entitled to. WOOMESH CHUNDER GOOPTO *v.* RAJNARAIN ROY

[10 W. R., 15

See RAJNARAIN ROY *v.* WOOMESH CHUNDER GOOPTO . . . . . . **8 W. R., 444**

5. ———— *Survey proceedings—Suit for possession.*—Where the plaintiffs alleged that the disputed lands were fraudulently caused to be demarcated with defendant's zamindari at the time of the survey, and the Appellate Court had held that, as plaintiffs were not parties to the survey proceedings, the present suit was barred by limitation under the decision in *Woomesh Chunder Goopto* v. *Rajnarain Roy, 10 W. R., 15,*—*Held* that, in order to bring a suit within the purview of that decision, it was not enough for plaintiffs to say that this fraud was committed against them by the defendants, and that these defendants were still in possession of the lands as belonging to them and other neighbouring proprietors ; but that it was necessary for them to show that they themselves were in possession of the disputed lands at the time when they granted the patni to the defendants, and that they made over that possession to those defendants at that time. GOPAL KISHEN SIRCAR *v.* RAM NARAIN KOONDOO

[17 W. R., 175

6. ———— *Suit for possession —Cause of action.*—Where formal possession was given by the Court, but the defendants have remained in actual possession, the plaintiff must still date his cause of action from the date of sale. JOWHER ALI *v.* RAMCHAND

[2 B. L. R., Ap., 29 : 24 W. R., 419 note

Contra, BINDUBASHINI DASI *v.* RENNY (RAINEY)

[7 B. L. R., Ap., 20 : 15 W. R., 30

LIMITATION ACT, 1877—*continued.*

7. ———— *Possession, Suit for.—Auction-purchaser, Suit by, for possession.*—Where it was shown in a suit by an auction-purchaser at an execution sale that the formal possession obtained by him through the Court had not been followed by any act of possession, and consequently that it had been infructuous,—*Held* that the purchaser was entitled to bring a suit to obtain actual possession, but was bound to bring it within twelve years from the date of the sale, the period prescribed by art. 138, sch. II of the Limitation Act (XV of 1877). The decisions in *Kristo Gobindo Kur* v. *Gunga Pershad Surmah, 25 W. R., 372,* and *Lolit Coomar Bose* v. *Ishan Chunder Chuckerbutty, 10 C. L. R., 258,* require such purchaser to obtain possession through the Court before bringing his suit, but they do not preclude him from enforcing his right by suit when the formal possession given by the Court has failed to put him in actual possession. KRISHNA LALL DUTT *v.* RADHA KRISHNA SURKHEL

[I. L. R., 10 Calc., 402

8. ———— *Suit for possession by purchaser at sale in execution of decree.*—A purchaser at a sale in execution, not having applied to the Court for possession under s. 318 of the Code of Civil Procedure, brought a regular suit to obtain possession of the property purchased. *Held* that, although a remedy might be open to the plaintiff under s. 318, still he was not precluded from bringing a regular suit, the remedies being concurrent. The words "the date of the sale," in third column of art. 138, sch. II of the Limitation Act, 1877, signify the date of the actual sale, and not that of the confirmation of such sale. KISHORI MOHUN ROY CHOWDHRY *v.* CHUNDER NATH PAL . **I. L. R., 14 Calc., 644**

9. ———— *Suit for purchaser at sale in execution of decree—Delivery of possession by Court.*—In 1867, *R* and *G* mortgaged certain lands to *G R* by a registered deed of that date. In 1870 *G R* obtained a money-decree against *R* and *G*, and in execution put up the mortgaged land for sale. The plaintiff purchased it without notice of the mortgage, and in February 1872 obtained possession through the Court. In the meantime, *G R* brought another suit upon his mortgage against his mortgagors. He obtained a decree, and in April 1872 ejected the plaintiff and obtained possession. In 1883 the plaintiff filed the present suit against *R*, *G*, and *G R* to recover the lands. *Held* that the plaintiff's suit was not barred by art. 138 of sch. II of the Limitation Act (XV of 1877), inasmuch as the plaintiff had obtained possession through the Court within the twelve years preceding the suit. AGARCHAND GUMANCHAND *v.* RAKHMA HANMANT

[I. L. R., 12 Bom., 678

10. ———— **and art. 136**—*Suit for possession by assignee of purchaser at sale in execution of decree.*—Limitation Act, 1877, sch. II, art. 138, and not art. 136, is applicable to a suit brought by the assignee of a purchaser of land at a Court-sale to obtain possession of the land. ARUMUGA *v.* CHOCKALINGAM . **I. L. R., 15 Mad., 331**

11. ———— *Purchase at Court auction and sale in execution of decree—Suit for possession of land—Cause of action.*—In a suit for possession of land instituted on the 1st April 1891, it appeared that the land in question had been purchased by the plaintiff in a Court auction held in execution of a decree on the 20th June 1878, and that the sale to the plaintiff was confirmed on the 31st March 1879, which was the date upon which the certificate issued. The plaintiff failed to prove that the judgment-debtor was out of possession at or subsequently to the date of the sale. *Held* that the suit was governed by the Limitation Act, sch. II, art. 138; that "the date of the sale" in that article means the date of the actual sale, not the date of the confirmation of the sale; and that accordingly the suit was barred by limitation. *Kishory Mohun Roy Chowdhry* v. *Chunder Nath Pal, I. L. R., 14 Calc., 644,* and *Bhyrub Chunder Bundopadhya* v. *Soudamini Dabee, I. L. R., 2 Calc., 145,* followed. VENKATALINGAM *v.* VEERASAMI

[I. L. R., 17 Mad., 89

12. ———— *Suit for possession by assignee of purchaser at sale in execution of decree—Civil Procedure Code (1882), ss. 316 and 318.*—*A*, the purchaser at an execution-sale of a house, of which the judgment-debtor was in possession, sold it, agreeing at the same time to obtain the sale certificate and to deliver possession of the house. After more than three years had expired, he applied for the certificate, which, however, was refused on the ground that his application was time-barred. On *A*'s death, his widow made a second application, which was granted. In a suit by the assignee of *A* to recover possession, the widow set up a title thereto under a sale by the original owner (the judgment-debtor) to herself and others executed more than three years after the Court sale. *Held* that, since *A*, the execution-purchaser, would be barred, the plaintiff was equally barred. *Arumuga* v. *Chokalingam, I. L. R., 15 Mad., 331,* followed. *Kishori Mohon Roy Chowdhry* v. *Chunder Nath Pal, I. L. R., 14 Calc., 644* distinguished. PULLAYYA *v.* RAMAYYA

[I. L. R., 18 Mad., 144

13. ———— *Article applicable to suits by assignees of auction-purchaser—Assignee of auction-purchaser.*—Art. 138 of the Limitation Act (XV of 1877) is not limited to suits by the auction-purchaser himself, but applies also to suits by his assignees. Limitation runs from the date of the sale. *Mohima Chunder Bhuttacharjee* v. *Nobin Chunder Roy, I. L. R., 23 Calc., 49,* dissented from. GOVIND *v.* GANGAJI . **I. L. R., 23 Bom., 246**

14. ———— **and arts. 91 and 95**—*Suit for possession of immoveable property—Suit for cancellation of instrument.*—The purchasers of property sold in execution of a decree, having been resisted in obtaining possession of the property by a person claiming under a mortgage from the judgment-debtor, sued for possession, by avoidance of the mortgage, alleging that the same was collusive and fraudulent. The plaintiffs did not ask for the cancellation or setting aside of the instrument of mortgage. *Held* that the law of limitation governing the suit was not art. 91 or 95 of the Limitation Act, but art. 138. *Hazari Lall* v. *Jadaun Singh*

I. L. R., 5 All., 76; Ramausar Pandey v. *Raghuber Jati, I. L. R., 5 All., 490; Sobha Pandey* v. *Sahodhra, I. L. R., 5 All., 322;* and *Raj Bahadur Singh* v. *Achambit Lal, L. R., 6 I. A., 110,* referred to. UMA SHANKAR *v.* KALKA PRASAD [I. L. R., 6 All., 75

———— art. 139 (1871, art. 140).

1. ———— *Adverse possession.—Plea of receipt of rent.*—In a suit to recover, with mesne profits and other incidents, a jirayati village alleged by the plaintiff to form part of his zamindari, and to be wrongfully held by defendant by virtue of the execution of a decree of the late Commissioner of the Northern Sirkars passed in 1844, the defendant pleaded that he held on a permanent lease subject to a fixed quit-rent, that he and his ancestors had held on that tenure since and previously to the Permanent Settlement, and that the quit-rent had been received from him by the plaintiff. *Held* that, as the defendant stated that the plaintiff had received kattubandi from him since 1857, the plaintiff's claim to eject could not be disposed of absolutely on the ground that it was barred by the Act of Limitations. VAIRICHARLA SURYA NARAYANA *v.* NADIMINTI BHAGAVAT PATANJALI SHASTRI . 3 Mad., 120

2. ———— *Landlord and tenant—Receipt of rent.*—*A*, a Hindu, died, leaving his widow, *B*, and mother, *C*. *B* adopted *D*. *C* granted a patni pottah to *E* of certain property belonging to the estate of *A*. During the minority of *D*, *B* received the rent from *E*, and afterwards *D*, on attaining majority, realized rent from *E* by suits under Act X of 1859. Twelve years after attaining majority, *D* sued for cancellation of the patni lease, and for obtaining khas possession of the property. *Held* that the suit was not barred. BUNWAREE LAL ROY *v.* MAHIMA CHANDRA KNUALL [4 B. L. R., Ap., 86 : 13 W. R., 267

See SHUMBOONATH SHAHA *v.* BUNWAREE LALL ROY . . . . . . 11 W. R., 102

3. ———— *Adverse possession—Cultivated and uncultivated lands.—Ghatwals.*—The owners of a patni of Bishenpore sued to set aside a survey award and alter a map (1855) which demarcated certain lands as cultivated and uncultivated belonging to Government, and in the possession of ghatwals. Certain ghatwali lands, part of the zamindari of Bishenpore, had been given up to the Government by the zamindars in 1802, and the ghatwals had since paid a quit-rent to Government for the same. The plaintiffs became purchasers of the patni in 1839 under a sale for arrears. They admitted that, as to the uncultivated lands, they had never been in actual possession or in the receipt of any rents since they purchased, but they alleged that, from that time, the ghatwals fraudulently or dishonestly refused to pay them rents in respect of the cultivated lands, as they had done to their predecessors; and that the ghatwals had encroached upon the uncultivated lands. The ghatwals, on the other hand, stated that they never had paid rent to the patnidar, and that the lands were all included within those for which they paid a quit-rent to Government. *Held* (LOCH, J., dissenting) that the ghatwals, if proved to have been the tenants of the plaintiffs or their predecessors, could not acquire a title against them by adverse possession of twelve years. *Per* PEACOCK, *C.J.*—The issues are: (1) whether the ghatwals paid rent for the cultivated lands to the patnidar; (2) whether the cultivated or uncultivated lands form part of the patni estate; (3) whether the ghatwals were in possession of the uncultivated lands from 1839, or for a period exceeding twelve years before the commencement of the suit; (4) whether they paid rent for the same to the patnidar. WATSON *v.* GOVERNMENT [B. L. R., Sup. Vol., 182 : 3 W. R., 73

4. ———— *Suit for land—Cause of action—Non-payment of rent.*—In a suit to establish a right to land, the cause of action arises when the defendant sets up an adverse holding. The mere non-payment of rent does not constitute an adverse holding; but if a tenant openly sets up an adverse title, and holds adversely, limitation runs. HURONATH ROY *v.* JOGENDUR CHUNDER ROY [6 W. R., 218

5. ———— *Landlord and tenant—Adverse title set up by tenant.*—Where a landlord sued, after the lapse of more than twelve years from the date of his knowledge that a tenant was setting up a mokurari title, for a declaration that the alleged mokurari title was invalid,—*Held* that the suit was barred by lapse of time. NAZIMUDIN HOSSEIN *v.* LLOYD . . . 6 B. L. R., Ap., 130

NUJMOODDEEN HOSSEIN *v.* LLOYD [15 W. R., 232

6. ———— *Landlord and tenant—Suit for possession.*—About twenty-five years before suit *R*, being possessed of a house, allowed *K* to occupy it without rent, on condition that *K* would keep it in repair, and restore it to *R* on demand. Nine years afterwards, and without any demand having been made by *R*, *K* died, and his heirs continued to occupy the house on the same terms as *K* had done. In a suit brought by *R* against the heirs of *K* to recover possession of the house,—*Held* that the suit was barred, being governed by the twelve years' period of limitation. RADHABHAI *v.* SHAMA . . . . 4 Bom., A. C., 155

7. ———— *Tenant on sufferance.*—Although the English rule of law as to the nature of the possession of a tenant for a term of years, who holds over, has been adopted in British India, the rule of limitation prescribed by 3 & 4 Will. IV, c. 27, by which time begins to run against the landlord from the date of his right of entry, has not been adopted in the Indian Limitation Act, 1877. If a tenant for years holds over in British India, time does not begin to run against the landlord until the tenancy on sufferance has been determined. ADIMULAM *v.* PIR RAVUTHAN I. L. R., 8 Mad., 424

8. ———— *Landlord and tenant—Lease—Tenant overholding on expiration of lease—Nature of holding—Tenant by sufferance—Adverse possesion.*—*Semble*—Under art. 139, sch. II of the Limitation Act, time begins to run against a landlord

LIMITATION ACT, 1877—*continued.*

when the period of a fixed lease expires, when there is no evidence from which a fresh tenancy can be inferred, and not at some indeterminate date after that period. Where a tenant holds over after the expiration of his lease without further agreement, such holding over, though by English law styled a tenancy by sufferance, is wrongful. Slight evidence, however, will suffice to change his position into that of a tenant-at-will. KANTHEPPA RADDI *v.* SHESHAPPA

[I. L. R., 22 Bom., 893

9. ———— and art. 144—*Landlord and tenant—Rent-note—Expiration of the term—Tenant holding over—Tenancy at sufferance—Want of privity between landlord and tenant—Suit to recover possession.*—A tenant holding over after the expiration of the term mentioned in his rent-note is a tenant by sufferance and there is no such relationship between the landlord and such tenant as is contemplated by art. 139, sch. II of the Limitation Act. A tenant by sufferance is only in by the laches of the owner, so that there is no privity between them. CANDY, J.—The possession of a tenant holding over is wrongful, and if there is no evidence from which a fresh tenancy can be inferred in the strict sense of that term, time begins to run against the landlord when the period of the fixed lease expires. CHANDRI *v.* DAJI BHAU . . **I. L. R., 24 Bom., 504**

———— art. 140 (1871, art. 141).

1. ———— *Cause of action—Suit by reversioner against his ancestor's lessee.*—A reversioner's cause of action against his ancestor's lessee does not accrue until the expiration of the lease, unless the reversioner is evicted or deprived of his rent, or rent is received adversely to him by a stranger from the lessee. HURONATH ROY *v.* INDOO BHOOSUN DEB ROY . . . **8 W. R., 135**

2. ———— *Claim to share in immoveable property under will.*—The right to property left by will (assuming that the testator had power to dispose of it) falls into possession, by Hindu law, immediately upon the death of the testator; and therefore a claim, making title to shares in immoveable property under a will, is barred by time, unless brought within twelve years from the date of the testator's death under art. 140 of Act XV of 1877, sch. II. MYLAPORE IYASAWAMY VYAPOORY MOODLIAR *v.* YEO KAY . **I. L. R., 14 Calc., 801**
[L. R., 14 I. A., 168

3. ———— and arts. 141 and 118—*Suit by reversioner for possession by setting aside adoption.*—A Hindu governed by the Mitakshara School of Law died on the 12th May 1867, leaving him surviving a widow *B* and a brother *R*, who was admittedly the next reversioner. In July 1867 *B* purported to adopt a son *D* to *A*, and subsequently in September 1867 obtained a certificate under Act XL of 1858. In 1872 *B* obtained a loan from the plaintiff *M* of R9,000, and to secure its repayment executed a mortgage of seven mouzahs in favour of *M* as guardian of *D*. The money was advanced and mortgage executed at the instigation of *R* and with his consent, and upon his representation that *D* was the duly adopted son of *A*, and it was admitted that the money was specifically advanced for, as well as applied towards, the payment of decrees obtained against *A* in his lifetime and against his estate after his death. *B* died in 1878. On the 14th August 1880, *M* instituted a suit against *D* upon his mortgage, and in that suit he made *S* a party defendant as being the purchaser of the mortgagor's interest in one of the mouzahs included in his mortgage. On the 25th June 1882, *M* obtained a decree, declaring that he was entitled to recover the amount due by sale of the mortgaged mouzahs. In the proceedings taken in execution of that decree *M* was opposed by *L*, who was afterwards held to be a benamidar for *S*, who claimed that he had, on the 8th November 1880, purchased five out of the seven mouzahs, at a sale in execution of certain decrees against *R*. On the 29th February 1884 *L*'s claim was allowed, and on the 11th August 1884 *M* brought this suit against *L*, *S*, *R*, and *D*, and the decree-holders in the suits against *R*, for a declaration of his right to follow the mortgaged property in the hands of *S*. It was found as a fact that the adoption of *D* was invalid; that the advance by *M* to *B* was justified by legal necessity; and that *L* was the benamidar of *S*. It also appeared that *M* had himself become the purchaser of one of the mortgaged mouzahs. The lower Court gave *M* a decree declaring him to be entitled to recover the full amount of the mortgage-money from the five mouzahs in the hands of *S*. *L* and *S* appealed, and *M* filed a cross appeal, alleging the adoption to be valid and binding on *S*. It was contended that *D* had acquired an absolute title by more than *twelve years'* adverse possession from the date of his adoption in 1867 before the purchase by *S* in 1880. *Held* that, as *B* died within twelve years of the alleged adoption, although under art. 118, sch. II, Act XV of 1877 (which came into force before the adoption could become perfected by efflux of time), a suit for a declaration that an adoption was invalid should be brought within six years from the date when the adoption becomes known to the plaintiff, still having regard to the provisions of arts. 140 and 141, the next reversioner was not thereby prevented from suing to obtain possession within twelve years from the date of the widow's death, or when the estate fell into possession, and therefore that *S* was not barred by limitation from disputing *D*'s title. LALA PARBHU LAL *v.* MYLNE

[I. L. R., 14 Calc., 401

4. ———— *Limitation Acts (XV of 1877), sch. II, art. 118, and (IX of 1871), sch. II, art. 129—Suit by devisees to recover possession of property devised by will—Prayer to declare alleged adoption invalid.*—A suit by a devisee to recover possession of immoveable property and to have an alleged adoption (on the strength of which the defendant is in possession) set aside, not being one merely to obtain a declaration, is governed by art. 140 of the Limitation Act (XV of 1877). To such a suit art. 118 does not apply, as the prayer for declaration is subservient or auxiliary only to granting of the substantial relief. FANNYAMMA *v.* MANJAYA HEBBAR . **I. L. R., 21 Bom., 159**

LIMITATION ACT, 1877—*continued.*

Overruled by SHRINIVAS MURAR *v.* HAUNMANT CHAVDO DESPANDE . I. L. R., 24 Bom., 260

in which it was held that art. 118 would apply to such a suit.

1. ———— art. 141—*Suit to set aside alienation by widow—Cause of action.*—A suit to set aside alienations of ancestral property made by a childless Hindu widow during her life-tenancy may be brought at any time within twelve years from the death of the widow. TILUCK ROY *v.* PHOOLMAN ROY [7 W. R., 450

SUNTOKHEE THAKOOR *v.* BELASSEE KOONWUR [10 W. R., 276

GOPAL MULLICK *v.* ONOOP CHUNDER ROY [11 W. R., 183

GREEDHAREE SINGH *v.* INDRO KOOER [17 W. R., 237

CHUNDER KANTH ROY *v.* PEARY MOHUN ROY [1 Ind. Jur., O. S., 21

S. C. PEARY MOHUN ROY *v.* CHUNDEE KANTHA ROY . . . . Marsh., 33: 1 Hay, 69

ANUND MOHUN ROY *v.* CHUNDER MONEE DASEE [Marsh., 547: 2 Hay, 648

2. ———— *Reversioners—Cause of action.*—*R* purchased a patni mehal and devised it to his son *G*. *G* died after *R* childless and intestate, and leaving a widow, *S*, who also died, neither of the three having ever taken possession of the mehal. Plaintiff, as *G*'s nephew, sued to recover possession of the mehal. *Held* that his cause of action did not arise until the death of *S*. RAM DOOLLUB SANDYAL *v.* RAM NARAN MOITRO . . . 7 W. R., 455

3. ———— *Cause of action—Hindu law—Alienation by widow.*—*A*, a Hindu widow, while in possession of the property left by her husband, sold a portion thereof. After her death, her daughter *B* succeeded to the property, but took no steps to set aside the alienation made by her mother. After her (*B*'s) death, her sons succeeded to the property, and instituted the present suit, after a lapse of thirty-six years from the death of *A*, but within twelve years from the death of *B*, to obtain possession of the property sold by *A*. *Held* (MITTER, *J.*, dissenting) that the suit was barred. The cause of action arose when *B* succeeded to the property. RAJKISHOR DUTT ROY *v.* GIRISH CHANDRA ROY CHOWDHRY . . . 4 B. L. R., A. C., 136

4. ———— *Reversioners—Cause of action—Suit to set aside alienation.*—In a suit against a widow for acts of waste and alienations alleged to have taken place during the lives of the plaintiffs' mothers, who were then the next heirs to the property,—*Held* that, as the mothers allowed more than twelve years to elapse, their cause of action expired, and that it did not revive in favour of the plaintiffs, who had since been born and had now arrived at majority. *Held* that, if by the death of the widow a new cause of action accrued to the plaintiffs as reversioners entitled to the property, they might sue again; but they could not succeed in the present suit. PERSHAD SINGH *v.* CHEDEE LALL [15 W. R., 1

5. ———— *Limitation Act (XIV of 1859), s. 1, cl. 12—Suit by reversioner on expiry of widow's and daughter's estate.*—Plaintiff sued in 1887 to recover property as part of the estate of his maternal grandfather, who died about 1845, leaving (1) a widow, who inherited the property and died in 1846; (2) his daughter by her, who took the property on her mother's death and alienated it to the defendants about 1850 and died before suit; and (3) the plaintiff's mother, who was his daughter by another wife. The plaintiff's mother made no claim on the property and died in 1883. *Held* the suit was not barred by limitation. SAMBASIVA *v.* RAGAVA [I. L. R., 13 Mad., 512

6. ———— *Cause of action—Adverse possession—Suit for property inherited from father.*—The plaintiff sought to recover certain property which she inherited from her father, and which had been taken possession of by the defendant during the lifetime of plaintiff's mother. The lower Court dismissed the suit on the ground that it was barred by the law of limitation, plaintiff having failed to show that her mother was in possession at any time within twelve years before the suit. *Held* on special appeal that the suit was not barred. Until the death of her mother, plaintiff's alleged cause of action did not arise, and her right not being derived from or through her mother, the period of limitation could not be considered as having been running against her from the commencement of the adverse possession in her mother's lifetime. ATCHAMMA *v.* SUBBA RAYUDU [5 Mad., 428

7. ———— *Estate held jointly by two widows—Cause of action—Reversioners.*—Where the estate of a deceased Hindu held jointly by his two widows survives, on the death of one of them, to the surviving widow alone, no cause of action can accrue to the reversioners until the death of the survivors even in respect of a moiety of the property. GOBIND CHUNDER MOJOOMDAR *v.* DULMEER KHAN [23 W. R., 125

8. ———— *Reversioner—Cause of action—Adverse possession.*—Where, however, the estate is held by some one adversely to the widow, so as to give her a cause of action to recover it, a suit to recover it brought by her or the reversioners is barred after twelve years of such adverse holding. Where a cause of action with regard to the husband's estate has once accrued to a Hindu widow, who nevertheless fails to assert her rights, no new cause of action arises to the heirs after her death. TARINI CHARAN GANGULI *v.* WATSON [3 B. L. R., A. C., 437: 12 W. R., 413

RAJKUNWAR *v.* INDERJIT KUNWAR [5 B. L. R., 585: 13 W. R., 52

9. ———— *Female heir—Adverse possession—Suit by reversioner.*—Adverse possession against a Hindu female heir, which would bar her right of suit if she were alive, will equally bar that

of the reversioner. NOBIN CHUNDER CHUCKERBUTTY *v.* GURUPERSAD DOSS
[B. L. R., Sup. Vol., 1008

S. C. NOBIN CHUNDER CHUCKERBUTTY *v.* ISSUR CHUNDER CHUCKERBUTTY . . 9 W. R., 505

overruling AMEER ALI *v.* MOHENDRO NATH BOSE. BEHARY KOOMAREE *v.* MOHENDRO NATH BOSE. SUHODARA BIBEE *v.* MOHENDRO NATH BOSE
[2 W. R., 271

JEONATH BHUGGUT *v.* ROOPA KOONWUR
[2 W. R., 273 note

and HARADHUN NAUG *v.* ISSUR CHUNDER BOSE
[6 W. R., 222

and followed in RAM KANAI ROY CHOWDRY *v.* TRILOCHAN CHUCKERBUTTY 1 B. L. R., S. N., 12

PARBUTTY MOFLEESSA *v.* RAJOO
[W. R., 1864, 88

RAM DYAL GOSSAIN *v.* KATTYANEE DEBIA
[8 W. R., 256

BRINDA DABEE CHOWDHRAIN *v.* PEAREE LALL CHOWDHRY . . . . . 9 W. R., 460

RASH BEHAREE LALL *v.* BURMESSUR NAUTH
[10 W. R., 30

CHUNDER NATH SEIN *v.* ANUNDOMOYEE DOSSEE
[11 W. R., 289

GUNESH DUTT *v.* LALL MUTTEE KOOER
[17 W. R., 11

MOHIMA CHUNDER ROY CHOWDHURI *v.* GOURI NATH ROY CHOWDHURI . . 2 C. W. N., 162

10. ——— *Reversioners—Cause of action.*—Where a Hindu widow, who takes by inheritance from her husband, is dispossessed, the period of limitation as against the reversionary heir claiming the succession after the widow's death is, in the absence of fraud, to be reckoned, not from the time of the widow's death, but from the time from which it would have run against the widow had she lived and sued to recover the inheritance. *R*, holding ancestral estates in Bengal jointly with his brothers as an undivided Hindu family, died, leaving a widow, *S*, and three unmarried daughters, *B*, *S M*, and *N*. On her husband's death, *S* continued to reside with his brothers, and was supported out of the income of the joint estate. During the lifetime of *S* her daughters married, and *B* became a widow without having had a child. After *S*'s death, and during the lifetime of *S M*, *N* also became a childless widow. *S M* died after her mother, leaving a son, *R K*. *R K*, on atttaining majority, sued to recover with mesne profits a 4-anna share in the ancestral estates to which he claimed to be entitled on his mother's death as heir of *R*, and from which he alleged that he had been dispossessed by the representatives of *R*'s brothers, whom he made defendants in the suit, joining *B* and *N* with them as co-defendants. Some time after the institution of the suit, a petition was filed, purporting to proceed from *B* and *N*, by which they admitted that the plaintiff was the heir of *R*, and that they had no defence to offer. *Held* that limitation could not be taken to have run against the plaintiff's claim during the lifetime of *S*, who, in the absence of proof that she had received only maintenance, as distinguished from participation in the profits of the estate, must be presumed to have had possession of the share in the estate which she inherited as her husband's widow. *Quære*—Whether, if *N* had been considered as having relinquished her rights, she would not, at the time of the relinquishment, have been barred by limitation. AMRITOLAL BOSE *v.* RAJONEEKANT MITTER . . 15 B. L. R., 10 : 23 W. R., 214
[L. R., 2 I. A., 113

11. ——— *Reversioner—Hindu widow.*—Where after the death of a Hindu who had been separate in estate from his brothers, and during the lifetime of his widow, his brother's sons obtained mutation of their names on the Collector's rent-roll, and held possession of the estate in right of inheritance for more than twelve years,—*Held* that under the Mitakshara law, the possession by the nephews being adverse to the widow, the claim of the reversioner on her death was barred. GOPAL SINGH *v.* KANHYA LALL SAHEBZADA
[2 B. L. R., Ap., 14 : 11 W. R., 9

12. ——— *Reversioner—Hindu widow—Cause of action—Adverse possession.*—A Hindu died leaving two daughters, who succeeded to their father's property. One sold her half share of the property and died in 1835; the other died in 1859, and her son instituted the present suit in 1867 for recovery of the half share which her sister had sold. The defence set up was that the suit was barred by lapse of time, as the plaintiff's cause of action arose in 1835, or more than twelve years before the institution of the suit. *Held* (following a dictum in the Full Bench ruling in *Nobin Chunder Chuckerbutty* v. *Guru Persad Doss, B. L. R., Sup. Vol., 1008*) that the words "cause of action" in cl. 12, s. 1, refer, not to the new cause of action which accrues to the reversioner, but to the "cause of action" which accrued to the tenant-for-life; and that the suit, having been brought after a lapse of more than twelve years after the death of the tenant-for-life, was barred. GANGA CHARAN ROY CHOWDRY *v.* JAGARNATH DUTT
[3 B. L. R., A. C., 208 : 12 W. R., 97

13. ——— *Suit by reversionary heirs—Possession by adopted son.*—A Hindu widow, in 1824, assumed to adopt a son to her husband, and such son, and after him the defendant, his heir, was put in possession of the properties in suit. The widow died in 1861. The suit was instituted in 1866 to recover the property and to declare the adoption illegal. *Held* that such possession during the life of the widow could not be said to be adverse as against the widow. The cause of action to the reversionary heirs arose at the time of the death of the widow, and was consequently not barred by limitation. SRINATH GANGOPADHYA *v.* MAHESH CHANDRA ROY
[4 B. L. R., F. B., 3 : 12 W. R., F. B., 14

14. ——— *Relinquishment by Hindu widow—Cause of action by heirs.*—Where a widow relinquished her right to her husband's property in favour of his then reversionary heirs who were accordingly put into possession, and other persons subsequently claimed the property as the husband's heirs, the cause of action of such other persons was held to have accrued from the time when the then reversionary heirs came into possession of the property. KALEE COOMAR NAG *v.* KASHEE CHUNDER NAG . . . . . . **6 W. R., 180**

15. ——————— *Right to possession of property on death of Hindu widow—Reversioner.*—The right of a Hindu to the possession of immoveable property on the death of a Hindu widow, to which art. 142, sch. II, Act IX of 1871, refers, must be one *in esse* at the time of the death of the widow. The determination therefore of such right during her lifetime extinguishes also the right of reversioner on her death. SARODA SOONDURY DOSSEE *v.* DOYAMOYEE DOSSEE . **I. L. R., 5 Calc., 938**

16. ——————— *Will—Gift of estate subject to vested interest of widow—Suit in widow's lifetime for declaration of right and account.*—*V S*, a Hindu, died in 1858, leaving a will of which he appointed *G* and *S* executors. After payment of debts, legacies, etc., the executors were directed to manage the residue of the estate, and not to sell it during the lifetime of *L*, the junior wife of *V S*, to whom a monthly payment for life was to be made by them. After the death of *L*, the executors were directed to divide the property that remained in equal shares between them, and to continue to enjoy the same in equal shares. *L* survived both *G* and *S*, who died in 1875 and 1879 respectively. In a suit brought in 1879 by the divided nephew of *V S* against *L* and the representatives of *G* and *S* to have his right to the estate of the testator upon the death of *L* declared and for an account,—*Per* KINDERSLEY, *J.*—*Semble*—The suit was barred by limitation, as the widows of *V S* had not been in possession of the estate as Hindu widows, but had enjoyed merely their allowance under the will. KOLLA SUBRAMANIAM CHETTI *v.* THELLANAYAKULU SUBRAMANIAM CHETTI . **I. L. R., 4 Mad., 124**

17. ——————— *Suit by reversioners after death of Hindu widow.*—In 1846, a widow, under an ikrarnama, made over to her brother-in-law certain properties formerly belonging to the estate of one *L*, her late husband. The widow died in 1878. In March 1879 a suit was brought by the daughters of *L* to recover the properties formerly belonging to their father from the hands of certain vendees. *Held* that the suit by the reversioners was not barred under art. 141 of Act XV of 1877, there having been no possession adverse to the widow, by dispossession, for more than twelve years, the widow's cause of action having ceased when she entered into the ikrarnama in 1846, and gave up her right to the property; nor, under s. 2 of Act XV of 1877, could the right of the plaintiffs be said to be barred by any Act repealed thereby, inasmuch as art. 142 of Act IX of 1871 prescribes the same period of limitation as is prescribed in art. 141 of Act XV of 1877: and that although, under Act XIV of 1859, repealed by Act IX of 1871, it was decided in *Nobin Chunder Chuckerbutty* v. *Guru Persad Doss, B. L. R., Sup. Vol., 1008,* that adverse possession which bars a widow also bars the reversionary heirs, yet the exception laid down in that case would be applicable, and would save limitation. PURSUT KOER *v.* PALUT ROY

[I. L. R., 8 Calc., 442

18. ——————— **and art. 140**—*Act IX of 1871, sch. II, art. 140—Suit by reversioner for possession.*—Under art. 141 of sch. II, Act XV of 1877, a reversioner who succeeds to immoveable property has twelve years to bring his suit for possession from the time when his estate falls into possession. SRINATH KUR *v.* PROSUNNO KUMAR GHOSE

[I. L. R., 9 Calc., 934 : 13 C. L. R., 372

19. ——————— *Alienation by Hindu widow—Suit by reversioner.*—Where there had been a suit and compromise by a Hindu widow, which were held to be tantamount to an alienation by her, it was held that there had been no adverse possession during her life, and that the period of limitation in a suit by the reversioners must be calculated from her death. SHEO NARAIN SINGH *v.* KHURGO KOERRY. SHEO NARAIN SINGH *v.* BISHEN PROSAD SINGH

[10 C. L. R., 337

20. ——————— *Suit by daughter entitled to possession of immoveable property on death of Hindu widow.*—The daughter of a separated Hindu, who was entitled to succeed to her father's immoveable property upon his widow's death, instituted, after the widow's death, a suit for possession of such property against certain persons who, upon the Hindu's death, had obtained possession and held it adversely to the widow. *Held* by the Full Bench that art. 141 of sch. II of the Limitation Act (XV of 1877) was applicable, and that limitation ran from the date of the widow's death. *Srinath Kur* v. *Prosunno Kumar Ghose, I. L. R., 9 Calc., 934,* followed. RAM KALI *v.* KEDAR NATH . . **I. L. R., 14 All., 156**

21. ——————— *Limitation Act (IX of 1871), art. 142—Dismissal of Hindu daughter's claim as heiress of a share, as barred by time, Effect of, in regard to right of reversioner after her—Res judicata—Adverse possession.*—In a suit in which the parties were descendants of a common ancestor, who had daughters only, one of the latter having been the mother of the first defendant, who was in possession of the ancestral estate, the plaintiff, son of the last surviving daughter, claimed, on her death, possession of his share by inheritance, and also of a share acquired by him by gift from another of the defendants, a son of another daughter of the common ancestor. The defence was that a suit, brought by the plaintiff's mother, in her lifetime, against the same defendant, for her share, had been dismissed by a final judgment on the ground of her claim having been barred by limitation. *Held* that the estate, which would have devolved on the plaintiff's mother as survivor of her sisters, was similar to the inheritance of a widow, the same result following the dismissal of the daughter's suit that ensued in regard to the decree adverse to the widow in *Katama Natchiar* v. *Raja of Shivagunga, 9 Moore's I. A., 539,* where a decree, duly obtained against the widow,

bound the reversioner. The previous decree dismissing the daughter's suit as barred was binding on her son. His claim therefore failed, not only as to his share by inheritance, but, for similar reasons, as to the share acquired by him from the defendant donor. Art. 141 in the schedule to Act XV of 1877, fixing the date of the female heir's decease as the starting point for limitation, did not alter the existing law as to the effect of a decree adverse to the predecessor as representing the estate, nor did it give a new starting point to the successor, nor did art. 142 in the schedule to Act IX of 1871. HARI NATH CHATTERJEE *v.* MOTHURMOHUN GOSWAMI . **I. L. R., 21 Calc., 8**
[L. R., 20 I. A., 183

See TRIBHUWAN SUNDAR KUAR *v.* SRI NARAIN SINGH . . . . **I. L. R., 20 All., 341**

and PREMMOYI CHOWDRANI *v.* PREONATH DHUR
[I. L. R., 23 Calc., 636

22. ——— – – *Possession of Hindu widow—Suit by reversionary heir.*—A Hindu proprietor died, leaving a widow, and also a son who died leaving a widow, a few years after his father, whose widow, either during the son's lifetime or on his death, took possession of the property left by the father, and remained in possession till she died, having held it for about seventeen years. This she did notwithstanding the claim of the son's widow, whose suit against her for the property was dismissed, on the ground of limitation, in 1875. Before her death, she transferred part of the property by gift, and was said to have transferred another part by will. On a question as to the capacity in which she had taken and retained possession, it was found that she had done so absolutely and without any assertion of a right, which she had not, to a widow's estate. Suit by the reversionary heirs, whom the son's widow joined, were held barred by limitation, on the ground that the possession taken had been adverse to them. Not only was any claim, through the deceased son, barred, but the rights of the reversionary heirs also, the possession by the father's widow not having been shown to be that of the limited interest of a widow. LACHHAN KUNWAR *v.* MANORATH RAM. LACHHAN KUNWAR *v.* ANANT SINGH . . **I. L. R., 22 Calc., 445**
[L. R., 22 I. A., 25

23. ——— *Reversioner—Adverse possession—Hindu law—Widow, Suit to set aside alienation by.—R* died, leaving him surviving his son *G* and his widow *J*. On *R*'s death, *G* succeeded to *R*'s property and died subsequently, leaving him surviving his widow *S*, who lived with her brother. The property remained in the possession of *J*, the widow of *R*. In 1862 *J* sold the property to the defendants, who entered into possession forthwith. In 1874 *J* died, and subsequently *S* died. In 1886 the plaintiff, as reversionary heir, sued to set aside the alienation made by *J* in 1862 to the defendants. *Held* that the plaintiff's suit was barred. The adverse possession of *J* and her alienees for more than twelve years during *S*'s life was a bar, not only to *S*, but also to the claim of the reversionary heirs on her death. BABU *v.* BHIKAJI. IBRAHIM *v.* BHIKAJI
[I. L. R., 14 Bom., 317

24. ——— *Adverse possession—Alienation by Hindu widow.*—A title by adverse possession for more than twelve years accrues even during the lifetime of a Hindu widow, but if possession arises directly from any invalid alienation on her part, special provision is made for the right to sue on the parts of the reversioners within twelve years from her death and the accrual of their title. GYA PERSAD *alias* LAL PERSAD *v.* HEET NARAIN
[I. L. R., 9 Calc., 93

25. ——— *Reversioner, Suit by—Adverse possession against Hindu widow.*—In a suit instituted on the 26th August 1879 by the reversioner on the death of a widow, who died on the 28th August 1867, to recover certain immoveable property, it appeared that the defendant had forcibly dispossessed the widow of the property in 1864 and held it ever since. *Held* that, under art. 141 of sch. II of Act XV of 1877, the reversioner was entitled to a fresh period of limitation from the death of the widow, although limitation had begun to run against her. *Semble*—The law as laid down by the Full Bench in *Nobin Chunder Chuckerbutty* v. *Issur Chunder Chuckerbutty, 9 W. R., 505,* has been intentionally modified by the Legislature by art. 141 of sch. II of the Limitation Act of 1877. DWARKA NATH GUPTA *v.* KOMOLMONI DASI . **12 C. L. R., 548**

26. ——— **and art. 140**—*Adverse possession—Hindu mother—Reversioner.—Semble,* —That in Hindu law, where a mother succeeds to property as heir of her son, and her right thereto becomes barred by adverse possession, the next heirs of her son on her death will have twelve years therefrom in which to sue for possession of the property. KOKILMONI DASSIA *v.* MANICK CHANDRA JOADDAR
[I. L. R., 11 Calc., 791

27. ——— *Suit by person claiming immoveable property on death of Hindu or Mahomedan female.—N,* a Mahomedan, died in 1849 leaving immoveable property which was inherited by his mother *B*, his brother *E*, and his sister *A*. It was found that *A* was never in possession of the share inherited by her, and that she died in 1878. *Held,* in a suit against *E* and his son, brought in 1884 by *A*'s heirs for possession of that share, that art. 141 of the Limitation Act did not apply, and that the suit as to that share was barred. *Per* WILSON, *J.*—Art. 141 of sch. II of Act XV of 1877 refers to suits by persons claiming on the death of a Hindu or Mahomedan female, under an independent title, in the same way as, in respect of suits by remaindermen, reversioners, and others, art. 140 does. It does not apply to the case of a person suing on the very same cause of action which accrued to a female, and suing by right of being her heir. AZAM BHUYAN *v.* FAIZUDDIN AHAMED
[I. L. R., 12 Calc., 594

28. ——— *Suit by Mahomedans for possession of immoveable property by right of inheritance to mother.*—Plaintiffs sued for their share in the estate of their deceased father and mother. The defendants were the brother and a sister and a stepmother of the plaintiffs. As regards the claim of the plaintiffs to their shares in the estate of their mother, the defendants pleaded that the same was barred by limitation, inasmuch as their mother died on the 22nd January 1873, and the suit was not instituted till the 29th of January 1885. The Court below, finding that the mother died on the 22nd January 1873, held that art. 141, sch. II, Limitation Act, barred the claim, and dismissed the suit. *Held* that art. 141 of the Limitation Act does not apply to a suit by an heir-at-law for possession of immoveable property in that character; but to a suit by a Hindu or Mahomedan who, prior to the death of a female, occupied the position of a remainderman, or reversioner or a devisee, and on the death of the female sues on the basis of that character. HASHMAT BEGAM *v.* MAZHAR HUSAIN **[I. L. R., 10 All., 343**

29. ———— *Suit to obtain a declaration that an alleged adoption is invalid or never took place—Suit for possession of immoveable property.*—Art. 118 of the Limitation Act applies only to suits where the relief claimed is purely for a declaration that an alleged adoption is invalid or never in fact took place. Such a suit is distinct from a suit for possession of property, and the latter kind of suit cannot be held to be barred as a suit brought under art. 118, merely by reason of its raising a question of the validity of an adoption, but is separately provided for by art. 141. It is discretionary in a Court to grant relief by a declaration of a right, and consequently the fact that a person has not sued for a declaration should not be a bar to a suit for possession of property on any ground of limitation prescribed for the former. In a suit by a person who had objected to an attachment of immoveable property in execution of a decree, and whose objection had been disallowed, to set aside the order disallowing the objection, for removal of the attachment, and for possession of the property, the defendants, at whose instance the attachment had been made, set up a title based on the adoption of the judgment-debtor by the widow of the person whom the plaintiff claimed to succeed by right of inheritance. *Held* that the limitation applicable to the suit was art. 141 and not art. 118, of the Limitation Act (XV of 1877), the suit being not to obtain any declaration that the alleged adoption was invalid, but for recovery of possession of immoveable property, for which there was a special limitation. BASDEO *v.* GOPAL . **I. L. R., 8 All., 644**

30. ———— **and arts. 118, 119—** *Limitation Act (IX of 1871), sch. II, art. 129—Limitation Act (XIV of 1859), s. 1, cls. 6 and 12—Specific Relief Act (I of 1877), s. 42—Adoption by widow—Suit by reversioner for a declaration that adoption was invalid and for recovery of possession.*—*S* and *K* were two divided brothers. They were members of a vatandar family. *K* died leaving two sons, *S R* and *T*. *S R* was given in adoption to *S*. *T* died leaving a widow and three daughters. In 1872 *T's* widow *G* adopted defendant No. 1 and she died in the year 1890. In 1894 *S's* grandson by adoption, the present plaintiff, a minor, represented by his adoptive mother, sued for a declaration that the adoption of defendant No. 1 was invalid, for a declaration of ownership and possession of property with mesne profits, and for an injunction. *Held* that the suit for a declaration that the adoption was invalid was governed by art. 118, sch. II of the Limitation Act (XV of 1877), and being barred under that article, the whole claim was time-barred. *Per* JENKINS, *C.J.*—A combination of several claims would not in general deprive each claim of its specific character and description. *Per* TYABJI, *J.*—(1) Art. 181 of sch. II of the Limitation Act (XV of 1877) applies to every suit where the validity of the defendant's adoption is the substantial question in dispute, whether such question is raised by the plaintiff in the first instance or arises in consequence of defendant setting up his own adoption as a bar to the plaintiff's success. (2) Art. 149 applies to the ordinary simple case of a reversioner where the validity of the adoption is not the substantial point in dispute, or where the plaintiff can succeed without impugning the validity of the defendant's adoption. *Fannyamma* v. *Manjaya Hebdar, I. L. R., 21 Bom., 159,* overruled. SHRINIVAS MURAR *v.* HANMANT CHAVDO DESHPANDE . . **I. L. R., 24 Bom., 260**

31. ———— *Will of owner leaving residue of estate to dharma and also leaving four immoveable properties to dharma after death of his widow, to whom a life estate was given—Hindu law —Widow—Suit by heir of owner after death of widow.*—*K* died childless in 1869, leaving two widows, *C* and *N*, him surviving. By his will he bequeathed certain legacies and gave four immoveable properties to his widows for their lives. The rest of his estate and, on the death of his widows, these four properties also, he left to dharma. *C* died in 1871; *N* died in 1888. The plaintiff was the son of the testator's brother *G*, who died in 1884. In December 1888 he filed this suit, claiming to be entitled, as heir of his uncle the testator, to the said immoveable properties and to such portion of the moveable property as had not been disposed of by the widows. He contended that the bequest in the will to dharma was void, and that the residue consequently came to him as heir. The defendants (*inter alia*) pleaded limitation. *Held* that the bequest to dharma was void, and that there was an intestacy as regards the four immoveable properties after the widows' death; and as to the residue, that the suit was not barred by limitation. The article of the Limitation Act (XV of 1877) applicable was art. 141. Under that article, the plaintiff had twelve years from the death of *N*, which took place in 1888. As long as either *C* or *N* lived, the plaintiff had no right of action. He could not sue for possession, and he had no right whatever to interfere in the management or disposition of the income of the property. CURSANDAS GOVINDJI *v.* VUNDRAVANDAS PURSHOTAM **[I. L. R., 14 Bom., 482**

32. ———— *Adverse possession—Hindu widow—Reversioner.*—*N*, a Hindu, died in 1863, leaving two widows *T* and *G*, and a daughter *M*, him surviving. In 1874 the widows divided the property left by *N* between them, and one of them *T* in 1876 sold her share to one who again sold it to the plaintiff. *G* died in 1887, *T* having died previously. After the death of the two widows, *M*, the daughter of *N*, was heir to the property, but the plaintiff in this suit alleged a title by adverse possession. *Held* that the plaintiff had no title as against the defendant *M*. Under art. 141 of the Limitation Act (XV of 1877), the possession of *T's* vendee and of the plaintiff was not adverse to the defendant *M*, who took as *N's* heir, until the death of *G*, the surviving widow of *N*, in 1887. *Srinath Kur* v. *Prosunno Kumar Ghose. I. L. R., 9 Calc., 937*, and *Cursandas Govindji* v. *Bundravanda Purshotam, I. L. R., 14 Bom., 488*, followed. MUKTA *v.* DADA . . . **I. L. R., 18 Bom., 216**

33. ———— *Partition of land between widow and mother of the last male owner—Creation of life estate—Adverse possession—Widow's right on death of mother—Hindu law.*—The widow and mother of a land-owner, who died without issue, divided his land between them in 1869. The mother sold her share of the land in 1870, and died in 1890. The widow now sued in 1893 to recover the property from the vendee. *Held* that the widow and mother on the partition took life estates in their respective shares; that the cause of action arose on the death of the mother when the possession of the vendee became adverse; that the suit was not barred by limitation, and the plaintiff was entitled to recover. PARVATHI AMMAL *v.* SUNDARA MUDALI . **I. L. R., 20 Mad., 459**

34. ———— *Suit by reversioner on the death of female heir—Adverse possession.*—A Hindu died in 1880, leaving him surviving (1) a daughter who died in 1886, who was the grandmother of one of the plaintiffs; and (2) the son of a predeceased daughter who was another plaintiff; and (3) the widow of a predeceased son who was the defendant. The plaintiff now sued in 1893 to recover possession of his land, of which the defendant had been in possession since his death. *Held* that the suit was not barred by limitation, and that the plaintiffs were entitled to a decree. VENKATARAMAYYA *v.* VENKATALAKSHMAMMA . **I. L. R., 20 Mad., 493**

35. ———— *Suit by reversioner for possession—Death of the widow—Accrual of right to sue—Unsuccessful application in execution proceedings against widow—Civil Procedure Code (1882), s. 283.*—Under art. 141, sch. II of the Limitation Act (XV of 1877), a reversioner's right to sue accrues on the death of the widow. The fact that the reversioner has made an unsuccessful application for possession in execution proceedings against the widow, and has not sued under s. 283 of the Civil Procedure Code (Act XIV of 1882), does not debar him from filing a regular suit. TAI *v.* LADU

[I. L. R., 20 Bom., 801

36. ———— *Suit by reversioner after widow's death for share of property—Accrual of cause of action—Adoption, Effect of—Suit to set aside invalid adoption—Limitation Act, art. 118.*—A claim by a reversioner to recover his share of the property of a Hindu who has died, leaving a widow, accrues from the death of the widow; and as to immoveable property, art. 141 of Act XV of 1877 allows twelve years within which to bring a suit. An adoption taking place in the meanwhile does not curtail such period or impose upon the reversioner the necessity of filing a suit to have it declared invalid during the lifetime of the widow, under pain of losing the inheritance upon the widow's death. Art. 118 of Act XV of 1877 does not operate as to give validity by lapse of time to an invalid adoption, if no suit is brought by the reversionary heirs within six years of its taking place to obtain a declaration that it is invalid. HARILAL PRANLAL *v.* BAI REWA

[I. L. R., 21 Bom., 376

37. ———— *Reversioner, Suit by—Benami deeds with intent to defraud creditor—Limitation Acts (XV of 1877), s. 1, and sch. II, art. 91, (IX of 1871) sch. II, art. 142—Female heirs, Successive—Adverse possession.*—*K* executed in 1850 four benami documents with intent to defeat the claim of his employer on account of money embezzled by him; two of the documents were hebas (deeds of gift) in favour of *P*, his elder wife, in respect of a moiety of properties 1, 2, and 3, and two were kobalas (conveyances) in favour of *G*, that wife's brother, in respect of the other moiety of those properties. *K* remained in possession of the properties till his death in 1860. After his death, the elder widow *P* remained in possession of properties 1, 2, and 3, and other properties in the district of Midnapur, and the younger widow *S* remained in possession of properties in the district of Hughli. In November 1860, *P* executed a kobala in respect of the 8 annas of the properties covered by the hebas in favour of *G's* son, then a minor. *S* died in 1868, and *P* died in 1871. A daughter of *K* by *S* succeeded them, and that daughter died in August 1882. In a suit brought by a son of that daughter on the 4th of January 1893, for the recovery, *inter alia*, of possession of his share of properties 1, 2, and 3 from *G's* son, with mesne profits, and for a declaration that the deeds executed by *K* were colourable transactions, and that the kobala executed by *P* was not valid and binding,—*Held* (1) art. 91, sch. II of the Limitation Act (XV of 1877), did not apply to the case; that article applying only to suits in which the documents sought to be set aside were intended to be operative against the plaintiff or his predecessor in title and would remain operative if not set aside. *Jagadamba Chaodhrani* v. *Dakhina Mohun Roy Chaodhri, I. L. R., 13 Calc. 308 : L. R., 13 I. A., 84; Janki Kunwar* v. *Ajit Singh, I. L. R., 15 Calc., 58 : L. R., 14 I. A., 148; Raghubar Dyal Sahu* v. *Bhakya Lal Misser, I. L. R., 12 Calc., 69;* and *Mahabir Pershad Singh* v. *Hurihur Pershad Narain Singh, I. L. R., 19 Calc., 629*, distinguished. (2) Art. 141, sch. II of the Limitation Act (XV of 1877), applies to a case in which the reversion comes after several successive female heirs, and the present suit, having been brought within twelve years of the death of the plaintiff's mother in August 1882, was in time. *Kokilmoni Dassia* v. *Manik Chandra Joddar, I. L. R., 11 Calc., 791*, referred to. (3) The old law that limitation which barred the widow barred the reversioner has undergone a change under art. 142, sch. II of Act IX of 1871, and art. 141, sch. II of

Act XV of 1877 (*Sreenath Kur* v. *Prosunno Kumar Ghose, I. L. R., 9 Calc., 934,* referred to); but s. 2 of the Act of 1877 would make the old law applicable in respect of the claim to the moiety covered by the kobala by *K* to *G*, there being no collusion of the widow as regards that kobala, and more than twelve years having elapsed between the death of *K* in 1860 and the coming into operation of Act IX of 1871 in April 1873. (*Drobomoyi Gupta* v. *Davis, I. L. R., 14 Calc., 323,* referred to.) In the present case, however, the possession held by the heir of *G* was not adverse to the widow in the sense of its being obtained against her will, and there was every reason to think that it was obtained in collusion with her; the reversioner's claim was therefore not barred by limitation. *Nobin Chunder Chuckerbutty* v. *Guru-persad Doss, B. L. R., Sup. Vol., 1008: 9 W. R., 505,* referred to. (4) As regards the moiety covered by the hebas, the widow, when she came into possession, was the heir of *K*, and she could not by any act or declaration of her own while retaining possession of her husband's estate give her possession or estate a character different from that attaching to the possession or estate of a Hindu widow; the objection that she held as donee and adversely to the reversioner therefore failed, and the claim as regards this moiety also was not barred by limitation. *Lachhan Kunwar* v. *Manorath Ram, I. L. R., 22 Calc. 445,* distinguish. **SHAM LALL MITRA v. AMARENDRO NATH BOSE** . . . . **I. L. R., 23 Calc., 460**

38. ———— *Limitation applicable to reversioner.*—One *C S* died without issue on the 6th January 1869, leaving two widows, *C* and *N*, who thereupon took a widow's estate in such of his immoveable property as was not validly disposed of by him. By his will, dated the 5th January 1869, he appointed the defendant *V* and two others his executors and trustees. The two latter were dead at the date of this suit. By his will he left two immoveable properties to his wife *C* for life and two to his wife *N*, and the residue of his property he left to his trustees, directing them to apply the same in charity (dharam). The properties left to his widows were to revert on their death to the charity fund held by the said trustees. *C* died in 1871. *N* survived till 1888 and died in November of that year, leaving a will. The plaintiff was the nephew (brother's son) and heir of the testator, and he sued to have his rights in and to his uncle's estate ascertained. He contended that the bequests for dharam were void, and that the property bequeathed for that purpose was undisposed of. He claimed to be entitled to the whole of the testator's immoveable property, including that which had been devised to the widows for life. The defendant pleaded that he and his co-executors had held and dealt with the estate in accordance with the testator's will, and contended (*inter alia*) that the plaintiff's claim was barred by limitation. *Held* that, under art. 141 of the Limitation Act (XV of 1877), the plaintiff's claim to the immoveable properties left by the testator was not barred by limitation. **VUNDRAVANDAS PURSHOTAMDAS v. CURSONDAS GOVINDJI**

[I. L. R., 21 Bom., 646

Held by the Privy Council in appeal on the question of limitation that the suit was not barred. The limitation, if applicable to the moveables, would have been under art. 120, and to the immoveables under art. 141, of Act XV of 1877. Art. 144, which makes the period of limitation commence from the date when the possession of the defendant is adverse to the plaintiff, does not apply where the suit is otherwise specially provided for, and therefore had no application here. At the same time s. 28 of the Act, as to the extinction of a right by the effect of limitation running against the widows, if it had done so, would not have been applicable to the plaintiff, whose right was not derived from or through the widows, but was derived through their husband on the death of the surviving widow. **RUNCHORDAS VANDRAVANDAS v. PARVATIBAI**

[I. L. R., 23 Bom., 725
3 C. W. N., 621

39. ———— *Suit by reversioner to recover possession of immoveable property alienated by intermediate female heir—Limitation Act (XIV of 1859), s. 1—Limitation Act (IX of 1871), art. 142.*—A female heir in possession of immoveable property for her life can, without legal necessity, make a valid alienation of her life estate, but the possession of the alienee will not, under ordinary circumstances, be adverse to the reversioner, whose cause of action for possession of the said property will not accrue until the death of the female heir, or of the last of such heirs if more than one. One *P*, a separated Hindu, died about 1822, leaving two widows, *H* and *A*, and three daughters, *R*, *J*, and *D*. The widows took possession of the immoveable property of *P*, and some time before 1857 *H*, the survivor of them, sold a certain village to one *H P*. *H* died in 1857. The three daughters next succeeded to the estate of *P*, and the last of them died in 1890 without having made any attempt to interfere with the possession of the alienee. In 1894 the two sons of *R* sued for possession of the property which had been sold by *H*. *Held* that the suit was within time. *Per* BURKITT, *J.*—Decrees affecting immoveable property obtained against a female heir in respect of the subject-matter of the inheritance (if obtained without fraud or collusion or the like) are binding on the reversioner. An alienation made by a female heir in possession is good against her for her life, but is not necessarily binding on the reversioner, to whom, if it be invalid, a cause of action accrues on the death of the female heir. Where property, the estate in which has descended to a female heir, never reaches her hands, but is held adversely to her by a stranger, the cause of action for a suit for the recovery of the property accrues at the commencement of the adverse possession by the stranger, and a suit to enforce that cause of action will be barred, both against the female heir and against the reversioner, after the expiration of the statutory period of limitation counting from the commencement of the adverse possession, the stranger having after the expiration of that period acquired an absolute indefeasible title to the property. The enactment of art. 142 in the schedule to Act IX of 1878, and of art. 141 in the

LIMITATION ACT, 1877—*continued.*

schedule to Act XV of 1877, has not made any alteration in the law as laid down in the last preceding rule. HANUMAN PRASAD SINGH *v.* BHAGAUTI PRASAD [I. L. R., 19 All., 357

40. ———— *Adverse possession—Suit by reversioner to Hindu female heir.*—Where property which should by law be in the possession of a female heir is held adversely to such heir by a trespasser, the possession of the trespasser is adverse also as against the reversioners of such female heir as well as against the female heir, and limitation will begin to run against the reversioners from the date of the commencement of such adverse possession. *Hanuman Prasad* v. *Bhagauti Prasad, I. L. R., 19 All., 357,* approved. The Full Bench decision in *Ram Kali* v. *Kedarnath, I. L. R., 14 All., 156,* has been impliedly overruled by the judgment of the Privy Council in *Lachhan Kunwar* v. *Anant Singh, I. L. R., 22 Calc., 445 : L. R., 22 I. A., 25.* TIKA RAM *v.* SHAMA CHARAN [I. L. R., 20 All., 42

41. ———— *Suit by reversioner for possession of immoveable property on death of Hindu female heir—Adverse possession—Limitation Act, 1877, s. 2—Revival of extinguished right—Limitation Act (IX of 1871).*—*A* and *I*, daughters of one *R*, on his death succeeded in equal shares to the properties left by him. Subsequently *A* died, leaving behind her a minor son *U*, who after his mother's death held possession of half of the said properties as heir to his mother's father for more than twelve years. The period of twelve years expired before the Limitation Act (IX of 1871) came into operation. In a suit for recovery of possession of the share of the immoveable properties, which was originally in the possession of *U* but afterwards passed into the hands of a third party, by the reversioner within twelve years from the death of *I*, the female heir, the defence was that the suit was barred by limitation. *Held* that, inasmuch as the possession of *U* was adverse to the female heir, and as her right to the disputed property was barred before the Limitation Act (IX of 1871) came into operation, the right of the reversioner was also barred. *Srinath Kur* v. *Prosonno Kumar Ghose, I. L. R., 9 Calc., 934,* followed. *Tikaram* v. *Shama Charan, I. L. R., 20 All., 42,* dissented from. BRAJA LAL SEN *v.* JIBAN KRISHNA ROY . I. L. R., 26 Calc., 285

———— **art. 142 (1871, art. 143).**

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

[I. L. R., 16 Calc., 473
I. L. R., 19 Calc., 660
I. L. R., 14 Bom., 458
I. L. R., 16 Bom., 343
I. L. R., 14 Mad., 96

1. ———— *Sale in execution of decree.*—When a suit to establish his title and to recover possession of property is brought by a person who has been dispossessed under a sale in execution of a decree against other persons, and no summary order has been made declaring the property liable to be sold in execution of such decree, the period of limitation applicable is that prescribed by cl. 12, s. 1, Act XIV of 1859,—*viz.*, twelve years from the date of dispossession. JODOONATH CHOWDHRY *v.* RADHOMONEE DASSEE

[B. L. R., Sup. Vol., 643 : 7 W. R., 256

GEDROO SIRCAR *v.* BEHAREE LALL RUDRA [20 W. R., 165

2. ———— *Dispossession or discontinuance.*—The word "discontinuance" in art. 142, sch. II of the Limitation Act, refers to a case where the person in possession goes out and is succeeded in possession by another. *Rani* v. *Barlin, L. R., 14 Ch. D., 537,* and *Gobind Lall Seal* v. *Debendro Nath Mullick, I. L. R., 6 Calc., 311,* followed. SOHNUR ALI *v.* HATTMAN . . . 1 C. W. N., 277

3. ———— *Joint family property, Exclusion from.*—Art. 142, sch. II of the Limitation Act, has no application to a case where the plaintiff has been excluded from a joint family property. UMESH CHANDRA BHATTACHARJEE *v.* JAGADIS CHANDRA BHATTACHARJEE . 1 C. W. N., 543

4. ———— *Suit to recover possession—Sale in execution—Civil Procedure Code, ss. 249, 259, 264, and 269.*—In execution of a decree obtained against *A*, his right, title, and interest in certain property were sold, but the certificate of sale erroneously recited that *A* and *B*'s ancestor were defendants in the suit, and that the interest of the defendants in the suit had been sold; and accordingly the purchaser was put in possession under s. 264, Act VIII of 1859, of the right, title, and interest of *B*'s ancestor as well as of *A* in the property. In a suit brought by *B* for confirmation of title and recovery of possession after the lapse of a year, but within twelve years from the date of dispossession.—*Held* that the suit was not barred by lapse of time. PROTAB CHUNDER CHOWDHRY *v.* BROJOLOLL SHAHA

[B. L. R., Sup. Vol., 638 : 7 W. R., 253

5. ———— *Dispossession under sale in execution—Improper certificate of sale.*—Plaintiff, having been dispossessed under a certificate of sale which was not conformable to or warranted by the sale itself, was declared entitled (having made no complaint to the Court which was executing the decree) to bring his suit for restoration to his property any time within twelve years from the date of his dispossession. BHEEM GOYALLEE *v.* KHOOBUN SAHOO . . . . . . 17 W. R., 429

6. ———— *Suit to recover possession of lands sold in execution of decree.*—The plaintiff's tenant having been ejected from certain immoveable property of the plaintiff, under an auction-sale in execution against a third party, the plaintiff made no application to the Court under s. 246 or 269 of the Civil Procedure Code to prevent or set aside the sale. *Held* that he was not bound to do so, but that he was entitled to file a regular suit to establish his title and recover possession at any time within twelve years from the date of the dispossession, under cl. 12, s. 1. LALCHAND AMBAIDAS *v.* LAKHARAM

[5 Bom., A. C., 139

LIMITATION ACT, 1877—*continued.*

overruling Krishnaji v. Joshi Makund Chimanshet . . . . **2 Bom., A. C., 18**

7. ——— *Suit for lands in excess taken in execution of decree.*—A suit to recover excess lands wrongfully taken under cover of a decree comes within the twelve years' period of limitation. Gour Monee Moorain v. Shun Kuree Paharinee **[13 W. R., 459**

8. ——— *Decree for wrongful possession—Cause of action.*—In a suit for recovery of possession of a share in a certain talukh, on the allegation that the plaintiff had been dispossessed under an award passed under s. 15, Act XIV of 1859, the defence set up was that the plaintiff was not in possession of the property within twelve years of suit. *Held* that the wrongful possession which the plaintiff held during the few months before the award under Act XIV was no possession which could take his case out of the Act of Limitation. The dispossession under the award did not give him a fresh cause of action. Golam Nabi v. Biswanath Kar . . . . . **3 B. L. R., Ap., 85 [12 W. R., 9**

Premchand Kybutta v. Huree Doss Kybutta **[22 W. R., 259**

Tara Banu v. Abdul Guffer Chowdhry **[12 C. L. R., 486**

9. ——— *Suit to establish title invaded by award under s. 15, Act XIV of 1859.*—A suit to establish the plaintiff's title to property invaded by an award under s. 15, Act XIV of 1859, was governed by the limitation of twelve years, and the cause of action arose from the date of the award. Eshan Chunder Banerjee v. Zamuduroonissa Khatoon . . . . . **17 W. R., 468**

10. ——— *Suit for possession—Illegal resumption by Government.*—The plaintiff was possessed of an estate situate on the bank of a river, and of certain chur lands which had accreted thereto. The Collector took possession of the chur lands in 1818, upon the default of the proprietor to appear to answer a claim made by Government to assess the chur land. In 1824 a suit was filed by Government under Regulation II of 1819 for the resumption of these lands, the Government officers, however, continuing to hold possession and collect the rents. In 1847 the Collector, in conformity with a general order under Act IX of 1847, "for the abatement of all suits for the resumption of alluvial lands then pending," struck off the suit and restored the lands to the possession of the zamindar. The proprietor claimed the wasilat enjoyed by the Government during his dispossession; and the Government again dispossessed him, under the assumption that the lands were an island in the river, and that the plaintiff was not entitled to them as an accretion. The plaintiff having brought a suit in 1854 to establish his right to the lands in question,—*Held* that the statute of limitation was no answer to the suit, because the pendency of the suit for the resumption and assessment of the lands between 1824 and 1848 prevented the proprietor from commencing a suit during that period, and that during such period the limitation did not run; and, further, after that period the necessity for a suit was obviated by the restoration of the lands to the proprietor. *Held* also that a fresh cause of action accrued under the second ouster. Surnomoye v. Collector of Rungpore . **Marsh., 13 : W. R., F. B., 4 [1 Hay, 37**

11. ——— *Suit to recover possession of land sold for arrears of revenue.*—In a suit to recover possession of certain villages belonging to a talukh which had been sold by Government for arrears of revenue, where the plaintiff alleged that they ought not to have been sold as they were not subject to revenue, the second defendant, who was the purchaser and in actual possession, pleaded limitation as a bar. The plaintiff urged that a fresh cause of action arose in consequence of some proceedings of the Government by which they made a new grant of the villages to the second defendant at an increased revenue. *Held* that such grant would not give a new cause of action, and could not affect the time when the only cause of action arose to the plaintiff. Chaitanya Chundra Huris Chandana Jagadevu v. Collector of Ganjam **[22 W. R., 187 L. R., 1 I. A., 335**

12. ——— *Cause of action—Suit for land sold, but taken back under agreement to exchange.*—In a suit to recover possession of lands which had been sold to plaintiff, but which had been subsequently taken back by one of the vendors under an agreement that he would make over other lands in exchange, plaintiff's contention being that he had been dispossessed of these other lands which were eventually decreed to another party,—*Held* that plaintiff's cause of action originated on the date of the decree depriving him of the lands last mentioned. Kabul Krishna Doss v. Mohessuree Debia **[16 W. R., 270**

13. ——— *Discontinuance of possession—Diluviated lands afterwards re-formed—Adverse possession.*—*Per* Garth, *C.J.*—Where a person can show that he has been in possession of certain lands prior to such lands becoming diluviated, his possession must be considered as continuing during the time of diluvion until such time as he becomes dispossessed by some other person; and in such a case the onus lies upon the dispossessor to show that he has acquired a title under the law of limitation which has put an end to the rights of the original possessor. *Per* White, *J.*—The dispossession, or discontinuance of possession, mentioned in art. 143, sch. II of Act IX of 1871, is that which occurs where the property is taken actual possession of by another, and does not apply to the case where the property is submerged by the act of God, and so made impossible of occupation and actual possession. Owners of land which has suffered from successive diluviations and re-formations must, if they wish to preserve their rights, bring their suit within twelve years of the time when adverse possession is first taken of land re-forming on the original site, whether at the time of suit the land is capable of occupation or his lying under water in consequence of a

second diluvion. KALLY CHURN SHAHOO *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL

[I. L. R., 6 Calc., 725 : 8 C. L. R., 90

14. ———— **and arts. 139, 144**—*Discontinuance of possession.*—In a suit to recover possession of a house, the plaintiffs alleged that their predecessor in title had permitted *A*, the father of the defendants, to occupy the house in question without paying any rent for it, and that since *A*'s death, which took place about twenty years before the institution of the suit, the defendants had been permitted to reside therein without paying rent. The defendants contended that the plaintiff's predecessor in title had made a gift of the house to *A*; that he had remained in possession of it until his death: and that since then they had been in possession of the house by virtue of the gift. *Held* that the suit was barred by limitation under Act XV of 1877, sch. II, art. 142. The meaning of art. 142 is, that where there has been possession followed by a discontinuance of possession, time runs from the moment of its discontinuance, whether there has or has not been any adverse possession, and without regard to the intention with which, or the circumstances under which, possession was discontinued. Arts. 139 and 142 of Act XV of 1877 considered. GOBIND LALL SEAL *v.* DEBENDRONATH MULLICK

[I. L. R., 5 Calc., 679 : 5 C. L. R., 527

In the same case on appeal,—*Held* a suit for the recovery of immoveable property against a person who had originally been in mere permissive occupation or possession accorded on the ground of charity or relationship is governed by Act XV of 1877, sch. II, cl. 144, and not by cl. 142 of the same schedule. In such a case the owner of the property, who has accorded the permissive occupation, cannot be said to have "discontinued" the possession. GOBIND LALL SEAL *v.* DEBENDRONATH MULLICK

[I. L. R., 6 Calc., 311 : 7 C. L. R., 181

15. ———— *Proprietors having refused at the first regular settlement to engage, and others having been admitted as malguzars of the land—Effect of lapse of time—Distinuance of possession.*—The proprietary right would continue to exist until by the operation of the law of limitation it has become extinguished; but if a claim comes within the terms of art. 142 (enacting that when the plaintiff, while in possession of the property, has been dispossessed, or has discontinued possession, limitation shall run from the date of the dispossession or discontinuance), in such a case, by the law of Act XV of 1877, and previously of Act IX of 1871, adverse possession is not required to be proved in order to maintain a defence. At the regular settlement in the Delhi District (1843) the plaintiffs' ancestors, ex-mafidars of a plot on which the rent free tenure had been resumed in 1838, declined to engage for the revenue; and the plot was assessed along with the village in which it was; the village proprietors through the lambardars engaging for, and obtaining, the land. At the revision of settlement, more than thirty years after the plaintiffs claimed possession, alleging their title, and that the village co-parceners held only in farm from the Collector for the period of settlement,—*Held* that there had been a dispossession, or discontinuance of possession, within the meaning of art. 142; and that, whether any proprietary right had existed or not in the plaintiffs' ancestors, the twelve years' limitation ran from the date of the dispossession or discontinuance. MAHAMMUD AMANULLA KHAN *v.* BADAN SINGH . **I. L. R., 17 Calc., 137**

[L. R., 16 I. A., 148

16. ———— *Suit for possession—Dispossession during unexpired lease by plaintiff's predecessor.*—In a suit brought by the plaintiff in 1880 to recover possession of certain lands from which his predecessor in title had been dispossessed, in which suit the Court of first instance found that the defendant had dispossessed the plaintiff's father in 1860, during the unexpired term of a lease granted by the plaintiff's father to a ticcadar,—*Held* that the preponderance of authority in India was in favour of the view that limitation ran from the date of the expiry of the ticca, and not from the time when the defendant had been held by the Court of first instance to have dispossessed the plaintiff's father. SHEO SOHYE ROY *v.* LUCHMESHUR SINGH

[I. L. R., 10 Calc., 577

17. ———— *Suit for possession of immoveable property—Suit for cancellation of instrument—Act XV of 1877, sch. II, No. 91.*—The plaintiff sued to set aside a mortgage by conditional sale of certain immoveable property belonging to him, made on his behalf during his minority, and for possession of the property. *Held* that the suit was one described in No. 142, sch. II, Limitation Act, 1877, and not in No. 91 of that schedule. RAMAUSAR PANDEY *v.* RAGHUBAR JATI . . **I. L. R., 5 All., 490**

18. ———— *Symbolical possession.*—On the 7th November 1868, certain property was purchased by one *G D B* at a sale held in execution of a decree obtained against one *J G*. On the 8th January 1873, the purchaser obtained a sale-certificate, and, on the 10th August 1873, was put into symbolical possession of the property through the Court. On the 3rd March 1875, the plaintiff, in execution of a decree obtained against *G D B*, purchased this property, symbolical possession of the property being given to him by the Court on the 31st March 1875. On the 7th August 1885, the plaintiff brought this suit to recover possession of this property, alleging that he had been dispossessed therefrom, on the 13th July 1885, by the defendant No. 2, who had taken an ijara of the property from the son of *J G*. The defence set up was limitation. *Held* that on the principle laid down in *Juggobundhu Mukerjee* v. *Ram Chunder Bysack, I. L. R., 5 Calc., 584*, the suit was not barred. *Krishna Lall Dutt* v. *Radha Krishna Surkhel, I. L. R., 10 Calc., 402*, overruled. JOGOBUNDHU MITTER *v.* PURNANUND GOSSAMI . **I. L. R., 16 Calc., 530**

DHAPI *v.* BARHAM DEO PERSHAD

[4 C. W. N., 297

19. ———— *Dispossession.*—Where the plaintiffs were proprietors of land, but declined to engage for the land revenue, in consequence of

LIMITATION ACT, 1877—*continued.*

which the defendants were admitted so to do, and to obtain possession. *Held* that there was a dispossession of the plaintiffs within the meaning of art. 142, and that a suit by the plaintiffs brought after the expiration of the thirty years' settlement with the defendants was barred. MUHAMMAD AMANULLA KHAN *v.* BADAN SINGH . **L. R., 16 I. A., 148**
[I. L. R., 17 Calc., 137

20. ——————— *Possession, Suit for—Privy Council, Practice of—Concurrent decisions on fact—Evidence as to ownership of property held benami.*—Two properties bought by a Mahomedan father in his lifetime, but held in the names of members of his family, were the subject of dispute after his death, the question being whether they belonged to his estate, so as to be divisible among the sharers in the inheritance, or had been held so that the beneficial interest in them belonged to those of his children who had been born of one of his two wives, excluding the sons born of his other wife. The Courts below decided in favour of the sons of the wife first married. As to one of the properties, they concurred in finding the facts entitling these sons alone, and the committee preferred not to depart from the general rule as to concurrent decisions on fact. As to the other property, both the Courts found that there had been a transfer from the name of the original benamidar into the name of the wife first married; but, whereas the first Court found that this change was intended to give her the beneficial interest, which thenceforth belonged to her, and to her sons after her, the Appellate Court found that the transfer was simply from one benamidar to another, although after the death of the mother the property had been treated as that of her sons. Accordingly, as to this the evidence was considered, and their Lordships inclined to the view taken by the first Court. However, the title not having been clearly proved, they preferred to rest their decision on the possession found. The claimants, and their father before them, having together been out of possession for more than twelve years before action brought, limitation was an absolute bar. ASGHAR REZA *v.* MEDHI HOSSEIN . . **I. L. R., 20 Calc., 560**
[L. R., 20 I. A., 38

21. ——————— **and art. 44**—*Mortgage, Suit for redemption of—Equity of redemption, Purchase of, by mortgagee—Adverse possession by mortgagee.*—The plaintiff sued to redeem certain land which he alleged had been mortgaged by his father in 18 8 to one *B*, the grandfather of the first defendant. The defendants alleged that the mortgage was executed not to *B*, but to the father of the second defendant, and that in 1863 the equity of redemption had been sold to the mortgagee by the widows of the mortgagor, the plaintiff being then a minor. The defendants contended that this suit was really to set aside the sale of 1863, and was barred by art. 44 of the Limitation Act (XV of 1877). The second defendant also pleaded adverse possession. The plaintiff contended that the second defendant and his father had possession of the land merely as the agents or trustees of the mortgagee. *Held* that cl. 44 of the Limitation Act did not apply, and that the suit was not barred. The necessity of impugning the sale of 1863 to the second defendant arose from the second defendant's resisting the plaintiff's claim to redeem the mortgage. *Held* also that the second defendant, having entered into possession as mortgagee, could not afterwards set up an adverse possession as owner so as to defeat the plaintiff's right to redeem. BHAGVANT GOVIND *v.* KONDI VALAD MAHADU . . . **I. L. R., 14 Bom., 279**

22. ——————— **and art. 144**—*Suit for possession alleging obstruction to possession—Adverse possession.*—The plaintiff sued to recover possession of certain land, together with mesne profits until recovery of possession, alleging that he had obtained possession under his sale, and that his possession was obstructed by the defendants. *Held* that the suit fell under art. 142, and not art. 144, of the Limitation Act. FAKI ABDULLA *v.* BABAJI GUNGAJI
[I. L. R., 14 Bom., 458

——————— **art. 143 (1871, art. 144).**

1. ——————— *Stipulation by tenant to clear land, Suit for breach of.*—Limitation was held to apply in a case where it was stipulated in a lease that the tenant should clear a defined area in a certain time, the cause of action accruing when the defendant did not clear by the time specified. TUMEEZOODEEN CHOWDHRY *v.* SURWAR KHAN
[7 W. R., 209

2. ——————— *Breach of condition—Forfeiture—Alienation by Hindu widow.*—A Hindu widow, under an arrangement with her deceased husband's cousin, was in possession for life of a share of ancestral property of her husband's family, in which he jointly with the cousin had held a share in his lifetime. This share she sold as if she had held an absolute interest, and the purchaser's name was entered, instead of hers, in the revenue records; but no change of possession took place till her death. To a suit brought by the cousin's heirs to recover the property purchased from the widow, more than twelve years after the sale, but less than twelve years after the widow's death, the defence was limitation under Act IX of 1871, sch. II, cl. 144, commencing from the date of the sale, there having been, it was alleged, "a breach of condition or forfeiture" within the meaning of that clause. By the terms of the arrangement contained in a solehnama, the widow was to have no power to alienate, and after her death her share was to belong to the cousin. *Held* that these terms prohibited only such an alienation by the widow as would prevent the cousin's succeeding after her death, and the alienation made was good for the widow's lifetime. There was no condition against such an alienation; and if there had been, there was neither any rule of law, nor anything in the words used in the solehnama, attaching forfeiture to the breach of such a condition. *Held* accordingly that art. 144 did not apply, and the suit was not barred by limitation. SAHODRA *v.* RAI JANG BAHADUR. LUTCHMAN SAHAI CHOWDHRY *v.* RAI JANG BAHADUR **I. L. R., 8 Calc., 224; L. R., 8 I. A., 210**

LIMITATION ACT, 1877—*continued.*

3. ——————— *Act IX of 1871, s. 23—Breach of condition in mortgage—Suit for ejectment of mortgagees—Continuing breach of contract.*—In November 1873 *M* sued for the cancelment of a deed of usufructuary mortgage executed by her in November 1856, and for the ejectment of the mortgagees, on the ground of the breach of a condition in the deed that the mortgagees should pay her a life annuity of R15, during the term of the mortgage (twenty years) and also after foreclosure, otherwise, on any failure, they would be liable to ejectment and to the forfeiture of the mortgage. It did not appear that any payments of the annuity had been made. The plea of limitation having been taken, the lower Courts held that the suit was within time, as the case fell within cl. 148, sch. II, Act IX of 1871. It was held in special appeal that, assuming that they were in error in so holding, the case was governed by cl. 144, and the provisions of s. 23 enabled the plaintiff to treat each failure to pay the stipulated annuity as a new breach giving a new right to eject, and that the suit was therefore clearly within time. SADHA *v.* BHAGWANI . . **7 N. W., 53**

4. ——————— *Agreement to pay annual fees—Right of possession in default—Suit for possession.*—The purchasers of certain land agreed to pay the vendors certain fees annually in respect of such land, and that in default of payment the vendors should be entitled to the proprietary possession of a certain quantity of such land. The purchasers never paid the fees, and more than twelve years after the first default the vendors sued them for possession of the land they were entitled to. *Held* that the suit, being governed by No. 143, sch. II of Act XV of 1877, and more than twelve years having expired from the first breach of such agreement, was barred by limitation. The difference between s. 23 of Act IX of 1871 and Act XV of 1877 pointed out. BHOJRAJ *v.* GULSHAN ALI . **I. L. R., 4 All., 493**

——————— art. 144 (1871, art. 145; 1859, s. 1, cl. 12).

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[I. L. R., 14 Calc., 109

1. IMMOVEABLE PROPERTY.

1. ——————— *Immoveable property—Toda giras hak.*—The expression "immoveable property" in Act XIV of 1859, s. 1, cl. 12, must not be construed as identical with "lands or houses." It comprehends all that would be real property according to English law, and possibly more. A toda giras hak being a right to receive an annual payment, the liability for which is not a mere personal liability, but one which attaches to the inamdar into whosesoever hands the village may pass, is "an interest in immoveable property" within the meaning of cl. 12, s. 1, Act XIV of 1859. FUTTEHSANGJI JASWANTSANGJI *v.* DESAI KULLIANRAIJI HAKOOMUTRAIJI
[13 B. L. R., 254 : 10 Bom., 281
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Overruling decision in FATESANGJI *v.* DESAI KALYANRAIJI . . . **4 Bom., A. C., 189**

2. ——————— *Immoveable property—Fees paid to hereditary office-holder.*—The clause of the Limitation Act (XIV of 1859) which was applicable to a suit to recover fees payable to the incumbent of an hereditary office such as that of a village Joshi was cl. 12, and not cl. 16, of s. 1 of that Act. *Krishnabhat* v. *Kapabhat, 6 Bom., A. C., 137,* followed. The meaning of the term "immoveable property," as used with regard to Hindu law, discussed. BALVANTRAV *alias* TATIAJI BAPAJI *v.* PURSHOTAM SIDHESHVAR . . **9 Bom., 99**

3. ——————— *Immoveable property—Suit for dues of hereditary office.*—A suit to recover payment of sums claimed by certain persons as hereditary officers, and arising out of a grant by the sovereign proprietor of the territory by which the possessors thereof were bound to contribute to the maintenance of such hereditary officers, *held* to fall within the fourth section of Bombay Regulation V of 1827, limiting the period of recovery to twelve years. BEEMA SHUNKER *v.* JAMASJEE SHAPOORJEE
[2 Moore's I. A., 23 : 5 W. R., P. C., 121

4. ——————— *Suit for share of hereditary land set apart for performance of office of patil.*—Plaintiff, being entitled by an arrangement between the members of a family of patils, of whom he was one, to a third of the emoluments of the office of managing revenue and police patil, sued the defendant in possession to recover a third of a portion of the hereditary fields set apart as remuneration for the performance of the duties of the office; and the District Judge on appeal found his claim barred on the ground solely that he had not for twelve years been in possession of the one-third which he claimed of the service land. *Held* that, having regard to s. 4 of Act XI of 1843, the plaintiff's cause of action did not depend on his possession within twelve years, but on whether his turn to officiate as patil, and his right to enjoy the land in dispute, arose more than twelve years before the suit was brought. SINDE *v.* SINDE . . . **4 Bom., A. C., 51**

5. ——————— *Grant by a Hindu sovereign to a Hindu temple—Immoveable property.*—The Peishwa, by a sanad dated 1790, granted to an ancestor of the plaintiffs, for the support of a Hindu temple, an annual cash allowance of R350 out of the "antastha sadilvar" and three khandis of rice out of the "kherij jamabandi parbhare," to be levied from certain mehals and forts mentioned in the sanad. The allowances were paid till the death of the plaintiff's father on the 26th December 1859, when the Collector of Thana stopped them. On the 23rd December 1870, the plaintiffs sued to establish their right to the grant and to recover six years' arrears of the allowances. The defendant pleaded that the suit was barred by the law of Limitation. The question for consideration was whether the suit was governed by cl. 12 or cl. 16 of s. 1 of the Limitation Act (XIV of 1859). *Held* (*per* SARGENT, *J.*) that the grant in question was of the nature of immoveable property, and that the suit therefore fell within the provisions of cl. 12 of s. 1 of the Limitation Act (XIV of 1859). In using the expression "subject of the suit" in the rule laid down by the Privy Council in the Toda Giras case (*Fatesangji* v. *Desai Kallianrayaji, L. R., 1 I. A., 34*), their Lordships intended to include in it all the facts which determine the nature of the plaintiff's claim, and not merely of the allowance itself, and to confine the application of Hindu law to those cases in which the "subject of the suit" has such a distinctive Hindu character as that only Hindu law and usage can be legitimately invoked to determine its quality and nature. It is the fixed and permanent character of an allowance from whatever source derived, which by Hindu law entitles it to rank with immoveables. Here the grant, from the object which it had in view, was to be deemed to be one in perpetuity, and the fund out of which this perpetual allowance was to be paid was derived from a permanent source. It had therefore all the characteristics of permanency and durability which were essential to bring it, according to Hindu law, within the term "immoveable property." *Held* (*per* MELVILL, *J.*) that the allowance in question was not immoveable property, and that the suit therefore did not come within the provisions of cl. 12 of s. 1 of the Limitation Act (XIV of 1859). From a consideration of the judgment of the Privy Council in *Fatesangji* v. *Desai Kallianrayaji, L. R., 1 I. A., 34,* it would appear that the rule which their Lordships intended to lay down is this, *viz.*, that, whenever it is possible to do so, the terms "immoveable property" and "interest in immoveable property" in Act XIV of 1859 must be interpreted, on general principles of construction, with reference to the nature of the thing sued for, and not to the status, race, character, or religion of the parties to the suit; but that in exceptional cases, in which the thing sued for is of such a special and exceptional character that its nature cannot be determined without reference to the special and peculiar law of a particular sect or class, in such cases, and in such cases only, the law of such sect or class may properly be referred to as furnishing a guide to the determination of the question. The Privy Council has thus laid down a rule and an exception, and the question in every case must be whether the rule or the exception applies. The rule is that the terms "immoveable property" and "interest in immoveable property" are to be held to include, not only land and houses, and such other things as are physically incapable of being moved, but also such incorporeal hereditaments as issue out of, or are connected with, immoveable property properly so called, and which therefore savour of the realty, *e.g.*, rights of common, rights of way, and other profits *in alieno solo*, rents, pensions, and annuities secured upon land,—all these clearly constitute an interest in immoveable property. Pensions and annuities not secured upon land, houses, or the like, as clearly do not constitute such an interest. When a classification can thus be made, it ought to be so made without reference to the character of the party claiming the right. But there may be cases in which the test prescribed by the rule fails, or is very difficult of application, and then will come in the operation of the exception to the rule, and it may become the duty of the Court to seek for guidance in some arbitrary definition contained in the religious law of the claimant, *e.g.*, in the instance of an hereditary office in a Hindu community incapable of being held by any person not a Hindu. The claim now in question is a claim to an annuity granted by a Hindu sovereign to a Hindu temple. The annuity is not made a charge upon land, and it is not therefore, according to general principles of construction, immoveable property. That being so, it is not necessary to go further. COLLECTOR OF THANA *v.* KRISHNANATH GOVIND . **I. L. R., 5 Bom., 322**

Held, by a Full Bench on appeal under the Letters Patent, that the grant made by the sanad was "nibandha," and that the subject-matter of the suit was immoveable property, or an interest in immoveable property, within the meaning of the Limitation Act (XIV of 1859), s. 1, cl. 12. *Held* also that the Hindu law might be properly resorted to for the purpose of determining whether the subject-matter of the suit was immoveable property (*i.e.*, nibandha) within the meaning of the Limitation Act (XIV of 1859), s. 1, cl. 12. Assuming that it was incorrect to apply Hindu law to ascertain the nature of the grant in question, nevertheless held that the grant was an interest in immoveable property within the meaning of the Limitation Act (XIV of 1859), s. 1, cl. 12. The grant savoured throughout of locality, and was undoubtedly irresumable, inalienable, and perpetual. The Indian Legislature did not intend to exclude such property from s. 1, cl. 12, of the Act. The Indian Legislature, which passed the Limitation Act (XIV of 1859), has not given any explanation or definition in the Act of the phrase "immoveable property," but has left suitors to their former ideas on the subject. Under these circumstances, it would be a hardship upon them to construe the Act inconsistently with such ideas, inasmuch as they were furnished with no guide which could have led them to suppose that "immoveable property," according to Act XIV of 1859, meant anything less than what they had previously known as such. And that the Indian Legislature were not disposed to be very harsh, is shown by its subsequent more fully developed legislation on the subject of limitation, which to haks and other periodical payments assigns the twelve years' limit. A pension or other periodical payment or allowance granted in permanence is

nibandha, whether secured on land or not. COLLECTOR OF THANA *v.* HARI SITARAM
[I. L. R., 6 Bom., 546

6. ———— *Claim to easement — Immoveable property.*—A claim to an easement is one relating to an interest in land and is governed by the limitation of twelve years. DEO SURUN POORY *v.* MAHOMED ISMAIL . . . **24 W. R., 300**

7. ———— *Immoveable property—Jalkar, Suit to establish.*—A jalkar is not an easement within the meaning of s. 27 of Act IX of 1871, but is an interest in immoveable property within the meaning of sch. II, art. 145 of that Act. Where the defendant had been exercising a right of fishing in certain water adversely to the plaintiff for more than twelve years,—*Held* that a suit by the plaintiff for a declaration that he was entitled to the exclusive right of fishing in such water was barred by limitation. PARBUTTY NATH ROY CHOWDHRY *v.* MUDHO PAROE
[I. L. R., 3 Calc., 276 : 1 C. L. R., 592

8. ———— *Suit for opening water-course stopped by defendant — Interest in immoveable property.*—A suit for recovery of possession of land and for opening a water-course through it, alleged to have been stopped by the defendant, is a suit "for an interest in immoveable property," and therefore subject to the limitation prescribed by cl. 12, s. 1. OODOYESSURREE *v.* HUROKISHORE DUTT
[4 W. R., 107

9. ———— *Suit for possession of immoveable property—Suit for a declaration of proprietary right.*—Where the plaintiff claimed a declaration of his proprietary right to land, and to be maintained in possession thereof as proprietor free from the liability to pay rent,—*Held* that the limitation applicable to the present suit was not that provided by art. 118 of sch. II of Act IX of 1871, but that provided by art. 145 of that schedule, a suit by a person in the possession of land for a declaration of proprietary right being substantially a suit for possession of immoveable property, and the present suit was therefore within time; and that arts. 14 and 15 of that schedule were not applicable, there being no decree or order which the plaintiff was bound to have set aside within one year. DEBI PRASAD *v.* JAFER ALI . . . . . . **I. L. R., 3 All., 40**
Contra, LEGGE *v.* RAMBARAN SINGH
[I. L. R., 20 All., 35

10. ———— *Suit claiming exemption from payment of assessment on land after payment.*—Where a person claiming to hold land free of Government assessment was compelled by the Collector to pay the same and afterwards brought his suit to establish his right,—*Held* that the suit was one to recover an interest in immoveable property, and the cause of action first arose when the right was actually interfered with by the Collector compelling payment of the rent; and that, as the suit was brought within twelve years from that date, it was not barred; but that only one year's arrears was recoverable under Act XIV of 1859, s. 1, cl. 4. BHUJANG MAHADEB *v.* COLLECTOR OF BELGAUM . **11 Bom., 1**

11. ———— *Agreement defining shares of parties in immoveable property—Deed of compromise.*—An agreement by way of compromise of disputed title to immoveable estate, under which shares are allotted to the parties thereto, gives to each party a cause of action founded not merely upon contract within the meaning of Act XIV of 1859, s. 1, cl. 10, but upon the title which is acknowledged and defined by the agreement; and a suit brought to recover a share of the estate was governed by s. 1, cl. 12. MEWA KOWAR *v.* HULAS KOWAR
[13 B. L. R., 312
L. R., 1 I. A., 157

12. ———— *Suit on agreement to lease land.*—An agreement to grant a lease cannot be said to create an interest in immoveable property, nor can a suit upon it be said to be one for the recovery of such property or of an interest in it. Such a suit was governed, not by the 12th, but by the 16th, clause of s. 1, Act XIV of 1859. LALLA RAM SAHOY LALL *v.* CHOWBAIN . . . . **22 W. R., 287**

13. ———— *Trees—Interest in immoveable property.*—Trees are immoveable property, and a claim in connection with them relates to an interest in such property, and was subject to the limitation specified in s. 1, cl. 12, of Act XIV of 1859. GHUFOORUN BEBEE *v.* MUSTUKEDEH . **2 Agra, 300**

14. ———— **and s. 26**—*Suit to recover possession of mango trees—Adverse possession for twelve years by taking fruit—Easement.*—The plaintiff having brought a suit to recover possession of mango trees growing on his own land, and the lower Courts having found that the defendant had, during twelve years preceding the suit, adverse possession by taking the fruit thereof,—*Held* that the claim was for possession of an interest in immoveable property and was governed by the limitation of twelve years prescribed by art. 144 of the Limitation Act XV of 1877. BAPU *v.* DHONDI
[I. L. R., 16 Bom., 353

15. ———— *Growing tree—Suit for possession of tree standing on land sold to plaintiff.*—A tree standing on land is immoveable property. A suit for a tree standing on the land is governed therefore by the twelve years' limitation under art. 144 of the Limitation Act. SAKHARAM MULSHET MHADIK *v.* VISHRAM . **I. L. R., 19 Bom., 207**

16. ———— *Suit to set aside solehnamah relating to produce of trees—Interest in immoveable property.*—The plaintiff executed a deed of gift of a village in favour of his sons and nephews, with a condition that they should not alienate the property. On their hypothecating it, the deed of gift was set aside in a suit by the plaintiff. One of the plaintiff's rights as proprietor was to receive half of the produce of a certain grove, which right, while the deed was in force, the donees had agreed, by a solehnamah with the defendant, to commute for a yearly rent. The plaintiff sued to set aside the solehnama and to recover half of the value of two trees which the plaintiff had cut down and appropriated. *Held* that, as the suit was not for the recovery of rights and interests in immoveable property, to which cl. 12, but to set aside a selehnamah, to which cl. 16, of s. 1 of Act XIV of 1859 applied, and for damages, the suit to set aside the solehnamah was barred by limitation under cl. 16. HANOOMAN PERSHAD *v.* SURUBJEET SINGH . **4 N. W., 167**

17. ——— *Mortgage of house "exclusive of land"—Interest in immoveable property.*—A bond whereby "the superstructure of a house exclusive of the land beneath" is hypothecated creates an interest in immoveable property within the terms of the Limitation Act, the apparent intention being to mortgage the existing house and not merely the materials. NARAYANA PILLAY *v.* RAMASAWMY THAVUTHARAN . . . . **8 Mad., 100**

18. ——— *Immoveable and moveable property.*—In the year 1857 *A* died, leaving a son, the plaintiff *B*, and the defendants *C* and *D*, his widows, him surviving. *C* took possession of all *A*'s property. The plaintiff *B* was the son of *D*, and, shortly after *A*'s death, *D* gave birth to another son, the plaintiff *E*. In 1865 *D* instituted a suit against *C* and *B* and *E*, alleging that *A* had left a will. In this suit *C* claimed to be the heiress of *A*. No decree was made in the suit, which was compromised. In November 1877 *B* and *E* entered into possession of a shop which had belonged to their father, and which had been managed, during their minority, by the defendant *C*. In 1879 the plaintiffs instituted the present suit, claiming to recover from *C* the property of *A* come to her hands. *Held* that, so far as the immoveable property was concerned, the case fell either under art. 120 or art. 144 of Act XV of 1877, sch. II; and as to the moveable property, under art. 89 or 90 of the same Act. KALLY CHURN SHAW *v.* DUKEE BIBEE

[I. L. R., 5 Calc., 692 : 5 C. L. R., 505

19. ——— *Saranjam — Right to possession and management of saranjam.*—The right to possession and management of a saranjam is an interest in immoveable property within the meaning of art. 144 of sch. II of the Limitation Act XV of 1877; and where the defendant had enjoyed that interest since 1866, at which date the plaintiff, who had been in correspondence with Government with reference to his claim against the defendant, was referred by Government to the Civil Courts, the plaintiff's claim was, in a suit brought in 1885, held to be barred by limitation. NARAYAN JAGANNATH DIKSHIT *v.* VASUDEB VISHNU DIKSHIT . . **I. L. R., 15 Bom., 247**

20. ——— *Emoluments of hereditary office—Interest in immoveable property.*—A suit to recover a sum of money due by custom as an emolument of an hereditary office is not one for the possession of an interest in immoveable property. In 1888 a sum of money became payable, as marriage dues, to the holder of certain offices connected with a temple. Upon a suit being brought more than six years thereafter, namely in 1895, to recover the amount, it was objected that the claim was barred by limitation. *Held* that such a claim is governed, not by art. 144, but by art. 120 of sch. II to the Limitation Act, and must, in consequence, be enforced within six years of the accrual of the right. RATHNA MUDALIAR *v.* TIRUVENKATA CHARIAR . **I. L. R., 22 Mad., 351**

21. ——— *Right of purchaser to have lands registered in his name—Nature of such right—Cause of action in respect of such right—Suit for declaration of such right—Vendor and purchaser—Limitation Act, sch. II, art. 120.*—Plaintiffs, having purchased certain lands in 1867, brought this suit in the year 1890 to obtain a declaration of their right to have the land registered in their name in the revenue records. The lower Courts dismissed the suit as barred under art. 144, sch. II of the Limitation Act (XV of 1877). *Held*, reversing the decree, that a right to be placed on the register was not an interest in immoveable property, and that art. 144 of the Limitation Act did not apply. The right is one which does not give rise to a cause of action until it is asserted or denied, and a suit for a declaratory decree in respect to it must be brought within a period of six years from that date. In the present case the right had not been asserted or denied until the suit was filed, and the suit was therefore not barred. BHIKAJI BAJI *v.* PANDU

[I. L. R., 19 Bom., 43

2. ADVERSE POSSESSION.

22. ——— *Application of article.*—Art. 144 of sch. II of Act XV of 1877, as to adverse possession, only gives the rules of limitation where there is no other article in the schedule specially providing for the case. MAHAMMUD AMANULLA KHAN *v.* BADAN SINGH

[I. L. R., 17 Calc., 137
L. R., 16 I. A., 148

23. ——— *Onus probandi.*—Under art. 144 of the Limitation Act (XV of 1877), it is not for the plaintiff to prove that he has been in possession within twelve years before suit, but it is for the defendant to show that he has held adversely to the plaintiff for twelve years. NYAMTULA *v.* NANA VALAD FARIDSHA

[I. L. R., 13 Bom., 424

24. ——— *Adverse possession.*—*A*, *B*, and *C* were brothers. In 1846 and 1847, a partition was effected between *A* (since deceased) and *C* on the one part and *B* on the other, *C* being at the time a minor. *B* then obtained, and since held separately as his share, certain lands in the village of K among others. By a razinama in 1852 the same quantity of land was confirmed to him as his share. In 1855 certain proceedings were taken, the object of which was to adjust the shares so as to make them equal in quality as well as in quantity, *B* continuing to hold nearly the same quantity of land as he did before. *C* attained his majority in 1854, and in December 1863 brought a suit against *B* for a re-adjustment of the partition completed in

1847, so far as it respected lands held by *B* in the village of K. *Held* that *B*'s possession was adverse from 1847, and the re-adjustment in 1855 could not give the plaintiff a new starting point; the suit therefore was barred by limitation. SRINIVASSIENGAR *v.* SRINIVASSARANGA CHARIYAR . **4 Mad., 10**

25. ———— *Adverse possession.*—The political department in Chota Nagpore as judgment-creditors took out attachment against a family estate, in which the rule of primogeniture prevailed, to meet ancestral debts, and appropriated the proceeds in satisfaction. Objection was made by a member of the family claiming ten of the villages as held by him and his ancestors under a mokurari grant for maintenance. An answer was put in and litigation followed, resulting in a final decision by the civil authorities of the zillah that the claimant was not entitled to four out of the villages claimed, and the proceeds were diverted to the payment of debts which were not his. He then sued for a declaration of his right and title to the four villages. *Held* that the possession of the political department had not been adverse to the plaintiff, and his cause of action did not arise till his title was devised and the proceeds diverted from his use. COURT OF WARDS *v.* BUNWAREE LALL THAKOOR . . **15 W. R., 102**

26. ———— *Suit for possession of land—Collector's possession not adverse to true owner.*—Act IX of 1871, sch. II, art. 145, enacting that suits for possession of immoveable property, or any interest therein, must be brought within twelve years from the time when the possession of the defendant, or some person through whom he claims, has become adverse to the plaintiff, differs from the rule formerly in force under Act XIV of 1859, s. 1, cl. 12. The latter was that the suit must be brought within twelve years from the time when the cause of action arose; and thus the former rule that, where the cause of action arose upon an alleged dispossession, the burden was upon the plaintiff to show that he, or some one through whom he claimed, had actual possession within twelve years before the institution of the suit, has been superseded by the above. Where the Government, in the Revenue Department, has taken possession of land, it is the duty of the Collector, after payment of the revenue and the expenses of the collection, to pay over the surplus proceeds of the estate to the true owner. The Collector's possession does not become adverse to the owner by reason of his making this payment to another claimant. KARAN SINGH *v.* BAKAR ALI KHAN . . . . . **I. L. R., 5 All., 1**
[L. R., 9 I. A., 99

27. ———— *Adverse possession—Attachment of vatan lands—Peshwa's Government—Resumption by British Government—Restoration—Inability to sue during attachment and resumption—Bom. Act I of 1865, s. 34—"Contra non volentem agere non currit præscriptio," Application of.*—In the year 1806-7 the Peshwas attached certain vatan lands belonging to the plaintiff's family. The attachment continued till the year 1866, when the British Government made them khalsa, or resumed them. The defendant in the meanwhile entered upon them as tenant to the Government and paid assessment thereon. In the year 1871 the lands were ordered to be restored to the plaintiffs. After this order of restoration, the plaintiffs brought a suit against their co-parceners for partition and obtained a decree. In the execution of this decree they were obstructed by the defendant, who claimed the lands as his own. The plaintiffs thereupon brought a suit against the defendant in 1881 to eject the defendant and to obtain possession of the lands. The Court of first instance held the plaintiffs entitled merely to such assessment as might remain after payment of judi to Government. It further held that the defendant's possession had become adverse to the plaintiffs, as the latter did not bring their suit within twelve years from the resumption of the lands by Government in 1866, since which time the defendant was to be considered as tenant or occupant under Government. From this decree the plaintiffs appealed, and the lower Appellate Court was of opinion that by the order of restoration the plaintiffs were restored to the right of such assessment as was left after deduction of judi, and that their claim to that even was barred, as it was brought after twelve years from the date of resumption. On appeal to the High Court,—*Held*, restoring the decree of the Court of first instance, that the claim of the plaintiffs was not barred. After the attachment of the lands in dispute, the Peshwa's Government held the same as constructive trustees for the plaintiffs, and when that Government was succeeded by the British Government, the same relation continued. The British Government, having succeeded to the trust, continued to hold as trustee for the family of the plaintiffs; their possession therefore could not be made adverse by intimation or notice to the plaintiffs. It was not found that the defendant held the lands before the attachment by the Peshwas, and the British Government could not, as guardian or bailiff for the real owners, the plaintiffs, put the defendant into a better position than their own. The plaintiffs' right, having never been extinguished, had the same legal force in 1870, when the lands were restored, as it had before attachment in 1806. From 1871 onwards the plaintiffs could act; and as the suit was commenced within the term computed from that time, it was not barred—the inability of the plaintiffs to sue before 1871 falling within the purview of the maxim *contra non volentem agere non currit præscriptio.* It was contended for the defendant that s. 34 of Bombay Act I of 1865 applied in the present case. *Held* that, if it could apply, it would apply only in the sense of limiting the rights acquired under the Collector's management to the term of that management, and nothing further. TUKARAM *v.* SUJANGIR GURU
[I. L. R., 8 Bom., 585

28. ———— **and art. 142 and s. 28** —*Decree obtained—Decree restoring possession to trespasser against dispossession by another trespasser, Effect of—Illegal dispossession by the true* *owner.*—The plaintiffs were in possession without title from 14th June 1870 to 19th September 1873; they were then dispossessed by a third person, but recovered possession by a decree against him in December 1880 and thereafter remained in possession till 14th September 1888, when they were ousted by the principal defendants. Thus, the plaintiffs' possession not aggregating to twelve years, it was contended on their behalf that the decree abovementioned restoring them to possession did away with the effect of dispossession, so as to complete their title by adverse possession. *Held* that the possession of one trespasser could not be added on to that of another, and that the effect of the decree did not affect the position of the true owner. *Quære*—Whether art. 142 or art. 144 of the Limitation Act applied to the case, and on this question depended the further question whether the principal defendants' right had been extinguished under s. 28 of the Limitation Act, and therefore their dispossession of plaintiffs was illegal. Guroo Churn Dutt *v.* Krishna Moni Gupta . . **2 C. W. N., 315**

29. ——————— *Adverse possession.*—*A* became a bairagi and went on a pilgrimage. He alleged that before his departure he made over his property to *B*, on the condition that it should revert to him on his return. *B* sold it to *C*. Upon his return after several years, *A* claimed the property from *C*, who refused to give up possession. *D* purchased *A*'s rights, and then sued the widow of *C* to obtain possession. She denied that the property was made over to *B* upon trust for *A* on his return, and contended that the suit was barred under cl. 12 of s. 1 of Act XIV of 1859. The lower Appellate Court held that it was not barred on the ground that *B*'s possession was not adverse. On special appeal, the case was remanded that it might be found whether *B* had been in possession in trust for *A*, or adversely to him, for more than twelve years. Jagannath Pal *v.* Bidyanand

[1 B. L. R., A. C., 114 : 10 W. R., 172

30. ——————— *Suit for possession—Interrupted adverse possession.*—In a suit to recover possession of immoveable property, the defence was adverse possession for more than twelve years, except for two short periods, during which plaintiffs had been put in possession by a Civil Court: first, under a decree of the High Court between the same parties, but that they had been dispossessed upon that decree being reversed on review; and second, under a misconception, by the Principal Sudder Ameen, of another order of the High Court in another suit between the same parties; but that they had again been dispossessed after appeal by defendant to the High Court. *Held per* Loch, *J.* (Glover, *J.*, dissenting), that plaintiff's possession during those two periods was not *boná fide*, and that the suit was barred. Mati Singh *v.* Lilanand Singh . . . . . **2 B. L. R., A. C., 173**

S. C. Motee Singh *v.* Lulanand Singh

[11 W. R., 49

31. ——————— *Temporary interruption of possession—Wrongful possession given by Court to a third person—Restoration of possession to defendant—Continuous adverse possession.*—In a suit brought to recover possession of certain land the defendant pleaded limitation. He had held possession of the land adversely to the plaintiff from 1881 up to the date of suit (2nd October 1895), with the exception of a period of three years (*viz.*, 4th April 1892 to 9th April 1895), during which he was dispossessed under a decree of a Civil Court of first instance obtained against him by a third person, which being reversed in appeal he was restored to possession on the said 9th April 1895. *Held* that the present suit was barred by limitation. The wrongful possession given by the Court to a third person did not (after possession had been restored to the defendant) prevent the statute from running during its continuance against the plaintiff and in favour of the defendant. Dagdu *v.* Kalu

[I. L. R., 22 Bom., 733

32. ——————— *Adverse possession—Admission of lambardar to partition.*—Where the lambardar had clearly admitted in the wajib-ul-urz that there were shareholders paying the Government revenue through him, who cultivated sír land, although at the time he, the lambardar, has had sole right to the profit and loss,—*Held* that the claim of the shareholders to definition of their shares was not lost. Mehtab Singh *v.* Purma . **3 Agra, 241**

33. ——————— *Adverse possession—Insolvency.*—Suit by the Official Assignee of a deceased insolvent to recover a talukh conveyed (several years before his insolvency) by the insolvent, who was sole or chief acting executor of his father-in-law's will, as a security for his own debt to his father-in-law, not to any other person in trust for the benefit of any parties who might be entitled to the estate, but to the insolvent's wife, who was the tenant for life of the residue. *Held* that, in the absence of any proof of fraud, the widow's continuous and adverse possession for more than twelve years barred the suit. Cochrane *v.* Hurrosoondery Debia

[4 W. R., P. C., 103 : 6 Moore's I. A., 494

34. ——————— *Adverse possession—Joint entry of names.*—In a suit by a Hindu widow for a declaration of right and title to dhurmutter land of which she asserted she had always been in possession, but which defendant had got registered in his own name as well as in hers, and claimed to have been in possession of with his father since the death of the husband,—*Held* that the entry of plaintiff's name conjointly with defendant's was a declaration of at least joint title such as nullified a plea of bar by limitation by adverse possession. Deepo Debia *v.* Gobindo Deb . . . **16 W. R., 42**

35. ——————— *Suit by widow for share on partition of husband's estate—Adverse possession.*—In a partition suit by a widow for the recovery of her husband's share of property, held during his lifetime jointly with his brother, although such suit be brought more than twelve years after her husband's death, her claim is not barred by the statute of limitations, unless the brother has for a period of twelve years before suit held adversely to her. KISTOMONEE CHOWDHRY *v.* SIBCHUNDER CHOWDHRY [Marsh., 196: 1 Hay, 473

36. ——— *Adverse possession.*—A Hindu of Tirhoot died in 1849, leaving two widows and a brother. A compromise was made by the three, whereby they agreed that the brother should remain in possession of the property left by the deceased, and that some land should be assigned to the widows for maintenance. The elder widow died in 1867, and the younger sued the heirs of the brother for recovery of possession of the property. The defence set up was that the suit was barred by limitation, as her cause of action arose not on the death of her co-widow, but on the death of her husband. *Held* that, as to recovery of possession of a moiety of the property, the cause of action arose on the death of the co-widow; that the possession of the elder widow was not adverse to the younger widow, as the elder widow was permitted to enjoy the possession of the husband's property during her lifetime, the younger widow receiving an allowance from the profits of the estate. INDUBANSI KUNWAR *v.* GRIBHIRUN KUNWAR . **3 B. L. R., A. C., 289**

S. C. JUDOOBANSEE KOER *v.* GIRBHIRUN KOER [**12 W. R., 158**

37. ——— *Hindu widow—Adopted son—Possession.*—A Hindu died after leaving directions to his widow to adopt a son. Upon a partition of the joint property amongest his brothers and widow, a certain property was allotted to his widow as her share of the joint property. Afterwards in 1849 his brothers dispossessed the widow. In 1851 she adopted a son, who attained his majority in 1865, and in 1866 instituted the present suit for possession of the property. *Held* that the suit was barred by lapse of time. GOBIND CHANDRA SARMA MAZOOMDAR *v.* ANAND MOHAN SARMA MAZOOMDAR [**2 B. L. R., A. C., 313**

38. ——— Two sisters, *B* and *P*, not being heirs, took possession of ancestral property as heirs on the death of their mother *H*. After a few years they quarrelled. *P* adopted a son and executed a deed of gift in his favour. *B* claimed the whole property through her deceased husband as heir of *B M*, who again was heir of the maternal uncle, on whose death *H* had succeeded. *Held* that, in the absence of any agreement creating a life-estate in favour of the two sisters, the cause of action of the collateral heirs arose from the time that *P* quarrelled with her sister and adopted a son. BUNGSEEDHUR GHOSE *v.* TARINEE CHURN SINGH . **3 W. R., 195**

SHAMA SOONDERY DOSSEA *v.* TARINEE CHURN SINGH . . . . . . **3 W. R., 194**

39. ——— *Impartible zamindari—Succession—Adverse possession by one branch of family.*—Upon the death of *G* in 1829, the impartible zamindari of Sivaganga, which had been acquired by him, was taken possession of by the representative of his elder brother *O*, from whom it was recovered by *K*, the daughter of *G*, in 1863 by suit. From that date until her death in 1877, the estate remained in the possession of *K*. It was subsequently recovered by suit from her sons by the defendant (the son of her elder sister), as being the eldest surviving grandson of *G*. The plaintiff, alleging that he was the third son of *N*, who was the second son of *G* by his wife *M*, and that he, and not the defendant, was the eldest surviving grandson of *G*, sued in 1881 to recover the estate from the defendant. Admitting that he was born in the lifetime of *G*, the plaintiff pleaded that it was not open to him to sue for the estate until the year 1870, when his father, his elder brothers, and a son of his father's elder brother had all died. *Held* that from 1829 limitation began and continued to run against the descendants of *M*. VIJAYASAMI *v.* PERIASAMI . **I. L. R., 7 Mad., 242**

40. ——— *Hindu law—Widow.*—The holder of an impartible zamindari died in 1822, leaving two widows and a daughter. The widows entered on the estate, and having successfully resisted a suit for ejectment brought by the rightful heir (the present plaintiff's great-grandfather) in 1824, they and the survivor of them retained possession till 1870, when the last surviving widow died, and the daughter entered. She, or the Court of Wards on her behalf, retained possession till her death in 1882, when the first defendant came in as the nearest then surviving sapinda of the last male holder. The plaintiff, who was the son of the elder undivided brother (deceased) of the first defendant, now sued in 1891 to recover the zamindari from him. *Held*, following *Vijayasami* v. *Periasami, I. L. R., 7 Mad., 242*, that the suit was barred by limitation. KOOLAPPA NAIK *v.* KOOLAPPA NAIK . . **I. L. R., 17 Mad., 34**

41. ——— *Widow in possession of estate for dower—Suit by heirs for possession—Adverse possession.*—If a Mahomedan widow, without the consent of the heirs, takes possession of her husband's estate in satisfaction of her dower, and continues to hold it for forty years, the heirs of her husband cannot intervene; and their claim must be brought within twelve years, unless they prove that the possession of the widow as to their shares was permissive or fiduciary possession. OOMRAO BEGUM *v.* HAMID JAN . . . . . **3 Agra, 279**

42. ——— *Suit for possession of jungle lands—Evidence of ownership.*—In a suit for possession of jungle lands, where there is no proof of acts of ownership having been exercised on either side, possession must be presumed to have continued with the person to whom they rightfully belong. A suit therefore held not to be barred even if plaintiffs failed to prove any acts of ownership, unless the defendants made out a case of twelve years' adverse possession. LEELANUND SINGH *v.* BASHEEROONISSA [**16 W. R., 102**

See SUNNUD ALI *v.* KURIMOONISSA [**9 W. R., 124**

MOOCHEE RAM MAJHEE *v.* BISSAMBHUR ROY CHOWDHRY . . . . **24 W. R., 410**

43. ——— *Possession of ijaradar—Effect of dispossession on zamindar.*—The zamindar or owner is bound by the dispossession suffered by his ijaradar. Brindabun Chunder Sircar Chowdhry *v.* Bhoopal Chunder Biswas . **17 W. R., 377**

44. ——— *Landlord and tenant—Suit by occupancy-raiyat for recovery of his holding—Ouster, not by landlord—Twelve years' limitation.*—A suit brought by an occupancy-raiyat to recover possession of his holding in which the landlord is no party, and there is nothing on the record to show that the landlord had any hand in the ouster of the plaintiff, is governed by twelve years' limitation, though the defendant might claim to hold under the same landlord. Eradut *v.* Daloo Sheikh **1 C. W. N., 573**

45. ——— *Confirmation of title—Cause of action.*—The plaintiff sued for confirmation of his title to, and for possession of, a jote in the Nowabad mehal, deriving his title under a pottah from the ijaradar. The defendant's case was that he had bought the lands as a talukh, and been in possession accordingly; but finding that the lands had been surveyed as a part of the Nowabad mehal, he took a pottah from the ijaradar four years previous to the plaintiff's pottah. The defendant's pottah was found to be a forgery. *Held* that the plaintiff's cause of action arose solely from the title set up by the defendant under the pottah derived from the ijaradar, and not from the date when the defendant purchased the lands as a talukh. Shahaboodeen *v.* Naduroojuma **[12 W. R., 44**

46. ——— *Lessee under Government.*—*A* claimed certain immoveable property as lessee under a Government settlement made in 1859. *B* had been in possession for more than twelve years before the institution of the suit. *Held* that the suit was barred under cl. 12 of s. 1. Asu Mia *v.* Raju Mia **1 B. L. R., A. C., 34 : 10 W. R., 76**

47. ——— *Adverse possession—Suit for ejectment by a jenmi—Defendant in possession under Government cowle.*—The plaintiffs sued for possession of land which was found to be their jenm. It appeared that the defendant had been in possession for more than twelve years under a cowle from Government, which provided that the grant of the cowle should not affect the jenmi's right, but that the defendant had never recognized the plaintiff's title. *Held* that the suit was barred by limitation. Muniappan Chetti *v.* Muppil Nayar . . . **I. L. R., 21 Mad., 169**

48. ——— **and arts. 113 and 139**—*Agreement to occupy for a term—Permissive occupation—Expiration of term—Suit for possession.*—Plaintiffs sued in September 1893 to recover possession of a certain house from the defendants, resting their claim on a certain document, dated the 3rd May 1880, executed by the defendants' father *M* to the plaintiffs' father *K*. In this document *M* admitted that the house belonged to *K* and promised to vacate it at the end of two years from the date of execution. The document being presented for registration on the 18th May 1880, *M* denied its execution, but after inquiry the District Registrar ordered it to be registered. The lower Court dismissed the suit as barred by limitation (either by art. 113 or art. 144 of the Limitation Act XV of 1877). *Held,* reversing the decree and remanding the case, that the suit was not barred. By the agreement the tenancy or permissive occupation was to end on 3rd May 1882. Either under art. 139 or 144 the plaintiff had twelve years from that date within which to sue. Shivrudrappa Krishnappa *v.* Balappa

[I. L. R., 23 Bom., 283

49. ——— *Landlord and tenant—Suit for possession—Cause of action.*—The plaintiff stated that in the year 1862 he purchased a talukh in which some of the defendants then held an ijara for a term of years expiring in 1868. The talukh had previously been a khas mehal in the possession of the Government, and was bought by the plaintiff at an auction-sale held by the Collector. The plaintiff also stated that the ijaradar defendants, in collusion with the other defendants, had continued in possession of the lands held in ijara after the term of the ijara had expired, and had refused to give up possession thereof to the plaintiff. The Judge of the lower Appellate Court found that the defendants (other than the ijaradars) had been in possession previously to the sale in 1862, and he also found that there was no evidence to support the charge of collusion with the ijaradar defendants. He therefore dismissed the suit (which was brought in 1880) on the ground of limitation. *Held,* on second appeal, that the plaintiff's cause of action arose on the expiration of the ijara, and that the suit, whether governed by art. 139 or 144 of the Limitation Act (XV of 1877), was not barred on the ground of limitation. *Woomesh Chunder Goopto* v. *Raj Narain Roy, 10 W. R., 15,* cited. Krishna Gobind Dhur *v.* Hari Churn Dhur

[I. L. R., 9 Calc., 367 : 12 C. L. R., 19

50. ——— *Landlord and tenant—Notice by tenant claiming to hold under perpetual lease.*—The possession of a tenant for life is not rendered adverse within the meaning of Act XV of 1877 by a notice from the tenant that he claims to be holding on a perpetual or hereditary lease. Beni Pershad Koeri *v.* Dudhnath Roy

[I. L. R., 27 Calc., 156
4 C. W. N., 274

51. ——— *Landlord and tenant—Adverse possession—Trespasser.*—A defendant has a right to set up the plea of tenancy and at the same time to rely on the statute of limitations. The plaintiff sued to recover possession of certain land. The defendant pleaded that it was included in a permanent lease granted to him in 1849 by the plaintiff's predecessor in title, and that the suit was barred by the law of limitation. It was found at the hearing that the land was not included in the lease. It appeared that there were disputes between the parties about the land since 1856, each asserting his own right to it. It was contended for the plaintiff that, inasmuch as the defendant had claimed the land as a tenant, his possession was not adverse under art. 144 of the Limitation Act (XV of 1877). *Held* that, under the circumstances, the defendant's possession was adverse. The defendant was a trespasser, setting up a pretended tenancy which the plaintiff denied throughout. The case therefore was to be regarded as one against a trespasser, and not as one between landlord and tenant. *Dinomoney Dabea* v. *Doorgapersad Mozoomdar, 12 B. L. R., 274,* followed; and *Tekaitne Gowra Kumari* v. *Bengal Coal Company, 12 B. L. R., 282 note,* distinguished. MAIDIN SAIBA *v.* NAGAPA

[I. L. R., 7 Bom., 96

52. ———— *Anubhavom tenure—Forfeiture by alienation—Landlord and tenant.*—Lands in Malabar were demised on anubhavom tenure. Some of them were alienated by the tenant, but the landlord subsequently accepted rent. More than twelve years after the alienation, the landlord sued to eject the tenant on the ground that the tenure was thereby forfeited. The tenant for the first time in his written statement denied the landlord's title. *Held* that the cause of action alleged in the plaint was barred by limitation. MADAVAN *v.* ATHI NANGIYAR . . . **I. L. R., 15 Mad., 123**

53. ———— *Landlord and tenant—Perpetual lease—Surrender of lease.*—The karnavan of a Malabar kovilagom executed a kuikanom lease of certain land, the jenm of the kovilagom in 1846, and in 1861 his successor demised the same land to the same tenants in perpetuity. The present karnavan sued in 1889 to recover possession of the land. *Held* that the perpetual lease, as being of an improvident character, was *ultra vires* and void; that the original lease was not surrendered by reason of the acceptance of the subsequent lease; that the suit was not barred by limitation, the possession of the defendants never having been adverse to the plaintiff's kovilagom. RAMUNNI *v.* KERALA VARMA VALIA RAJA

[I. L. R., 15 Mad., 166

54. ———— *Land in possession of tenant—Relinquishment—Cause of action.*—Plaintiffs brought a suit for recovery of possession of land which was in the possession of his tenants when first act of dispossession occurred, and those tenants did not relinquish their tenures until the year 1295, which was held within twelve years before the date of suit. The Subordinate Judge held that the suit was not barred by limitation. *Held* that in a case like the present where the land is not in the possession of an ijaradar or under-tenure-holder, but in the possession of ordinary tenants, before it can be determined whether the suit is barred or not, it must be found upon the evidence as to whether the tenants in occupation of the land had been paying rent to the plaintiffs or to the defendants. If they had been paying rent to the defendants and not to the plaintiffs, possession must be held to have been with the defendants, and a complete cause of action must be deemed to have arisen to the plaintiffs. On the other hand, if the plaintiffs had been in receipt of rent from the tenants and if such receipt of rent extended to a period within twelve years before the date of the institution of the suit, the suit should not be held as barred by limitation. *Woomesh Chunder Goopto* v. *Raj Narain Roy, 10 W. R., 15; Krishna Gobinda Dhur* v. *Hari Churan Dhur, I. L. R., 9 Calc., 367; Sheo Sohye Roy* v. *Luchmeeshur Singh, I. L. R., 10 Calc., 577;* and *Sharat Sundari Debia* v. *Babu Peshad Kar Chowdhuri, I. L. R., 13 Calc., 101,* distinguished. GOSSAIN MOHENDRA GIR *v.* RAJANI KANT DAS . . . . **1 C. W. N., 246**

55. ———— *Adverse possession—Landlord and tenant.*—The plaintiffs sued for possession of a third share in certain immoveable property, alleging that they were entitled to it under an agreement dated the 1st December 1848, and executed by one Balaji, deceased. By that document Balaji appointed as successors to his estate, after his death, three persons *B*, *R* (plaintiff's father), and *S*, on condition that they should maintain him during the remainder of his life, pay off his debts and perform his obsequies. Accordingly one of the three donees, *B*, lived with Balaji, and managed the property. Balaji died in 1852. *B* continued to manage the property till his own death in 1865, when *B*'s eldest son took up the management, and he and the other heirs of *B* subsequently sold a portion of the property. The suit was principally against the sons and heirs of *B* and the purchaser. The plaint was filed on the 8th September 1873, and alleged (*inter alia*) that *B* managed the property as trustee. The defence substantially was that *B* held it exclusively as owner and not as trustee, and that the suit was barred by limitation. Both the lower Courts dismissed the suit as barred by limitation, holding that *B*'s possession was adverse, and that *R* had no possession or enjoyment within twelve years previously to the institution of the suit. On appeal to the High Court,—*Held* that *B*'s possession, whether it commenced before the death or only on the death of Balaji, was held, after that event, consistently with and in fulfilment of the agreement. *B*, having entered into possession and been left in possession in the first instance in accordance with the contract, could not change the character of the possession by his mere will. He did not intimate to *R* or *S* that he repudiated the contract and intended to go into possession in opposition to any rights which they might assert. As he entered and continued to hold in a character consistent with the subsistence of their rights, they were never called on to eject him, or by any other process to establish rights which were not denied. While there subsisted any contract, express or implied, between the parties in and out of possession to which the possession might be referred as legal and proper, it could not be pronounced adverse. DADOBA *v.* KRISHNA

[I. L. R., 7 Bom., 34

TATIA *v.* SADASHIV . **I. L. R., 7 Bom., 40**

56. ———— *Suit for partition between co-owners—Possession of tenants.*—The plaintiff was the Zamorin of Calicut, and he sued in 1887 for a moiety of certain property in Malabar

alleged to belong in equal undivided shares to his stanom and that of the defendant and to be in the occupation of tenants. The cause of action was stated to have arisen in 1881 when partition was demanded by the Zamorin and refused by the defendant. In some instances the tenants in occupation represented the family, a member of which was at one time admitted by the Zamorin under a demise or kanom, and had attorned to the defendant; in other instances they were shown to have been admitted by the defendant on paying off the former tenant who had been admitted by the Zamorin. In all these instances the defendant intended the tenant who attorned to him to hold as his tenant to the exclusion of any claim by the Zamorin, but it was not shown that the Zamorin had any notice of such attempted usurpation on the part of the defendant. And on these facts the defence of limitation was raised on the ground that the land had been held for more than twelve years adversely to the Zamorin. *Held* (1) that Limitation Act, sch. II, art. 144, and not art. 142, was applicable to the suit, and that in the first class of cases referred to above, the tenancy under the Zamorin had not been determined, and that in the second class there had been no ouster of the Zamorin, and that consequently the suit was not barred by limitation. ITTAPPAN *v.* MANAVIKRAMA
[I. L. R., 21 Mad., 153

57. ——————— *Ijaradar, Dispossession of—Adverse possession—Zamindar, Suit by.*—Possession taken by a trespasser during the currency of an ijara lease does not become adverse to the zamindar (lessor) until upon the expiration of the term, and a suit for possession may be brought within twelve years of that date under the provisions of art. 144 of the Limitation Act. *Krishna Gobind Dhur* v. *Hari Churn Dhur, I. L. R., 9 Calc., 367,* followed. SHARAT SUNDARI DABIA *v.* BHOBO PERSHAD KHAN CHOWDHURI . . **I. L. R., 13 Calc., 101**

58. ——————— *Adverse possession of limited interest in land.*—The manager of a Nambudri family in Malabar, having demised certain land on kanam in 1868, was removed from his position as manager in 1875. In 1883 his successor sued to eject the kanam-holders. *Held* that the suit was barred by limitation. MADHAVA *v.* NARAYANA
[I. L. R., 9 Mad., 244

59. ——————— *Suit for possession—Redemption of mortgage.*—In a suit in 1887 to redeem a kanam for R62 of 1835, it appeared that in 1862 the mortgagee had received a renewal of his kanam for a larger amount, and that the defendant had produced the document of renewal in 1864 to the knowledge of the plaintiff in a suit to which the plaintiff was a party. *Held* that the defendant's posssession had not become adverse from 1864 so as to make it necessary for the plaintiff to sue within twelve years, and that the suit was not barred by limitation. *Madhava* v. *Narayana, I. L. R., 9 Mad., 244,* distinguished. RAIRU NAYAR *v.* MOIDIN
[I. L. R., 13 Mad., 39

60. ——————— *Adverse possession—An outside person claiming an interest in an estate together with an undivided family—Inheritance to such owners.*—In a family of three undivided brothers, an estate was purchased by the eldest as manager, on whose application a fourth party, a sister's husband, was recorded in the revenue records as a co-proprietor with them. The latter, even if he by joining in the purchase had become entitled to an undivided fourth share in the estate, did not thereby become a member of the undivided family; and the members of it would not have had a right to succeed to his fourth share, which would have descended to his own heirs; the other three-fourths which he would not have inherited going by survivorship among the members of the family. A son of the eldest brother obtained, by the deaths of his father and uncles, sole possession of the whole estate. *Held* that he did not take the one-fourth share above mentioned by any right of inheritance, and that, in the absence of proof that his possession of it was by authority of the fourth recorded co-proprietor, his possession must be presumed to have been adverse to the latter and to any one claiming through him. It followed that a suit to obtain from those claiming through the son, who was now dead, the one-fourth share, brought more than twelve years after possession taken by the son, by a purchaser relying on a title through the fourth co-proprietor, was barred by limitation under art. 144 of the second schedule of Act XV of 1877. RAMALAKSHAMMA *v.* RAMANNA . **I. L. R., 9 Mad., 482**

S. C. COLLECTOR OF GODAVERY *v.* ADDANKI RAMANWA PANTULU . . **L. R., 13 I. A., 147**

61. ——————— *Suit for possession.*—On the 7th December 1863, *A*, in execution of his decree, purchased and obtained symbolical possession of a certain 4 annas share, the property of his judgment-debtor. The 4 annas share was at the time under a mortgage to *B*, who happened to be in possession of the share as lessee. The term of the lease expired in 1870 or 1871. *A*, *C*, and *D*, who were members of a Hindu joint family, afterwards came to a partition of their common estate, in which was included the 4 annas share, and one of them, *D*, sold his share in the 4 annas to *B*, who, on the 22nd December 1871, purchased it in the name of *E*. *B* then brought a suit to enforce his mortgage against *F*, the heir of his mortgagor, and on the 8th December 1873 obtained a decree, which on special appeal was confirmed by the High Court on the 21st December 1875. On the 6th December 1875, *A*, *C*, and *E* had brought a suit for the possession of the 4 annas share against one Mukund Kishore, who had wrongfully taken possession of the property in 1870 or 1871, soon after the expiration of the lease to *B*. The suit was finally decided in their favour on the 29th July 1879. In the meantime,—that is, somewhere in 1876,—*B* had contrived to take possession of the whole share. In 1883 symbolical possession was obtained under the decree of the 29th July. *B* then executed his mortgage decree, and attached the 4 annas share, excluding the portion which stood in the name of his benamidar. *Z*, the heir of *A*, having failed to make good his claim to a share of the property in the execution proceedings, now brought a suit for possession against *B* on the 19th July 1884. *Held* that the suit, having been brought within twelve years from the date of the fraudulent possession by *B*, was in time, and fell under art. 144 of the Limitation Act. RAM KISHORE GANGAPADHYA *v.* BANDIKABATAN TEWARI CHOWDHRY . **I. L. R., 13 Calc., 203**

62. ———— *Suit to recover possession from mortgagees.*—The defendant was in possession of three fields (Survey Nos. 222, 360, 372) as mortgagee under mortgages executed by one *G*, who was the plaintiff's guru and his predecessor in office as jairgam or presiding lingayat priest of the math. *G* died in 1874, and the present suit was brought in 1882 to recover possession of the fields on the ground that *G* was not competent to alienate them. Two of these fields had been originally mortgaged by *G* to one *S* in 1863. In July 1866 a fresh loan on the security of the same land was obtained from *D*, the son of *S*, and the first mortgage-deed was then superseded by one executed in favour of *D*. In 1871 *D* assigned his mortgage to the defendant. It was contended that the plaintiff's claim to these two fields was barred, as the mortgage to *D* was more than twelve years anterior to the suit. *Held* that the suit was not barred, as the cause of action accrued to the plaintiff on *G*'s death, and the suit was brought only eight years after that event. JAMAL SAHEB *v.* MURGAYA SWAMI . **I. L. R., 10 Bom., 34**

63. ———— *Adverse possession—Benamidar.*—In a suit against a purchaser at a sale under Act XI of 1859, s. 13, the plaintiff claimed to have an incumbrance by virtue of two mokurari pottahs executed by the heirs of the last of a series of benamidars, and it appeared that the last benamidar had actual ownership of one-fourth of the property comprised therein. *Held* that the incumbrance was good to the extent of such fourth, and that the claim was not barred by art. 144 of Act XV of 1877. IMAMBANDI BEGUM *v.* KUMLESWARI PERSHAD

[L. R., 13 I. A., 160 : I. L. R., 14 Calc., 109

64. ———— *Adverse possession—Under-tenure granted under ghatwali tenure.*—A judgment in a suit regarding conflicting claims made by a ghatwal and the under-tenure-holders to receive certain compensation-money which had been paid in respect of lands in part comprised in the under-tenure determined that the ghatwal was entitled to the money, the under-tenure-holders having been in possession of the lands by the mere sufferance of the ghatwal, who could put an end to the tenure at any time. In a suit brought by the ghatwal to resume, as determinable at will, the under-tenure which had been granted by one of his ancestors of land, part of the ghatwali mehal, limitation was set up in bar of the suit. *Held* that after the creation of the under-tenure, as long as there was no dispute or conflicting claim, the possession of it was not adverse to the ghatwal; and proceedings, either between the ghatwal or between under-tenure-holders on the one side and creditors on the other, could not be taken to show an assertion of right by either of the parties now in litigation, as against one another. There being nothing else to render the possession adverse, limitation only commenced at the date of the above-mentioned claim to the compensation-money which was made less than twelve years before the present suit was brought; and accordingly the suit was not barred. RAM CHUNDER SINGH *v.* MADHO KUMARI

[I. L. R., 12 Calc., 484 : L. R., 12 I. A., 188

reversing on this point the decision of the High Court in MADHO KOOERY *v.* RAM CHUNDER SINGH

[I. L. R., 9 Calc., 411

65. ———— *Possession by mortgagee.*—Where plaintiff's ancestors mortgaged land and the mortgagee obtained possession on condition that the produce should extinguish interest,—*Held* that the plaintiff's suit was not barred by the law of limitation, although the transaction took place twelve years before the passing of Regulation II of 1802. *Held* also that in such a case no cause of action could accrue until something was done to render the friendly possession hostile. VANNERI PURUSHOTTAMAN NAMBUDRI *v.* PATANATTIL KANJU MENAVAN

[2 Mad., 382

66. ———— *Suit for possession of immoveable property—Adverse possession.*—*I* died in 1861 leaving a zamindari estate, a moiety of which at the time of his death was in the possession of a mortgagee. On the death of *I*, the defendants in this suit, who were among his heirs, caused their names to be recorded, as his heirs, as the proprietors of such estate, to the exclusion of the plaintiff in this suit, who was his remaining heir; and they appropriated to their own use continuously for more than twelve years the profits of the unmortgaged moiety of such estate, and the malikana paid by the mortgagee of the mortgaged property. In 1877 the defendants redeemed the mortgage of the mortgaged moiety of such estate from their own moneys. In 1878 the plaintiff sued for the possession of her share by inheritance of such estate. *Held* (SPANKIE, *J.*, doubting), with reference to the mortgaged moiety of such estate, that the possession of the defendants in respect of such moiety did not become adverse, within the meaning of art. 144 of sch. II of Act XV of 1877, on the death of *I* in 1861, but on the redemption of such moiety in 1877—"adverse possession" under that article meaning the same sort of possession as is claimed,—that is to say, in this case, full proprietary possession, which was not the nature of the possession of the defendants until the redemption of the mortgage; and the suit therefore in respect of such moiety was within time. UMR-UN-NISSA *v.* MUHAMMAD YAR KHAN . **I. L. R., 3 All., 24**

67. ———— *Adverse possession.*—On the 6th September 1865 *B* obtained a patni lease of certain land from the zamindar, and at an auction sale by the Sheriff of Calcutta on the 21st February 1867, the zamindar's interest was knocked down to *B*, and a conveyance of the property to him was executed by the Sheriff on the 1st April 1867. On the 13th March 1879 a suit for khas possession was

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brought against *B* by *C*, who had bought the property at a sale in execution of a decree made on a mortgage thereof, the date of the mortgage being 11th January 1865, and the date of the decree being 30th November 1865. *B* pleaded adverse possession. *Held* that *B*'s possession as patnidar only could not be considered as adverse to *C*, who claimed the superior interest; that *B*'s possession as purchaser could not be considered to have commenced before the date of the conveyance to him by the Sheriff,—namely, the 1st of April 1867; and that therefore the plea of adverse possession was bad, since the suit had been instituted within twelve years of that date. KASUMUNNISSA BIBEE *v.* NILRATNA BOSE

[I. L. R., 8 Calc., 79: 9 C. L. R., 173
10 C. L. R., 113

68. ——— *Adverse possession—Suit for possession of mortgaged property.*—Where there was nothing to show whether the family had been a joint or a divided family, and where the suit was not against a mortgagee, but, before the plaintiff could get at the mortgagee, he had to remove the obstacle presented by the adverse title (based on a twelve years' usufructuary original possession) of the daughter-in-law of the original mortgagor,—*Held* that the limitation applicable to the case was that prescribed by cl. 12, s. 1, Act XIV of 1859. NUND KOOMAR LALL *v.* SHUMBOO SINGH . **8 W. R., 34**

69. ——— *Mortgagor and mortgagee—Adverse possession of tortious mortgagee—Heir of mortgagee, Right of, to redeem.*—Lands descended to three sisters. On a question whether a mortgage of a portion by one of the sisters, thirty years ago, was in her own right, or on behalf of the family, or how otherwise, it appeared that each sister had dealt with several portions as on her own behalf; that one of them was the family manager for joint interests, but she had not interfered in respect of the portions mortgaged. The mortgagee had held and enjoyed from the first, and had assigned absolutely, and the assignee had again assigned absolutely as owner. In execution for the debt of the widow of the mortgagor's son, her right and interest mortgaged in the premises were sold, and the Sheriff's vendee sold to the mortgagee. The son of the surviving sister (not the mortgagor) sued for redemption and possession. *Held* that, as his title accrued (on his showing) on his mother's death, at which time defendant's vendors held adversely, no mortgage relation had been established as between plaintiff and defendants; and more than twelve years having elapsed before suit, the suit was not maintainable. SREEMULMONEY BEBEE *v.* GOBERDHONE BERMONO

[2 Ind. Jur., N. S., 319

70. ——— *Cause of action—Adverse possession.*—*R* obtained, on 7th January 1862, a decree declaring a deed of sale of an estate in his favour, dated 7th January 1854, to be a genuine, authentic, and valid instrument. In the meantime the plaintiff had acquired possession of the estate under a farm from Government, which farm expired in 1872. In a suit for possession based on the deed of sale and the decree of 1862,—*Held* that the period of limitation of the suit began to run from the termination of the farming tenure, when only the vendors or their representatives could have obtained adverse possession. DHUNDI *v.* RAM LALL

[7 N. W., 149

71. ——— *Transfer of rights—Dispossession of ijaradar.*—After adverse possession of immoveable property for more than twelve years, a new period of limitation cannot commence to run by the mere circumstance of a transfer of rights or supposed rights or relinquishment. BRINDABUN CHUNDER SIRCAR CHOWDHRY *v.* BHOOPAL CHUNDER BISWAS . . . . **17 W. R., 377**

72. ——— *Adverse possession—Transferee from defendant not a party to suit.*—*A* took and held possession of land adversely to *B*, and afterwards let it in patni to *C*. *B* brought a suit for possession against *A*, and, having obtained a decree, attempted to execute it by turning *C* out of possession. Between the date on which *A* originally took adverse possession of the land and the date on which *B* attempted to turn *C* out of possession, more than twelve years elapsed. *Held* that *B*'s claim against *C* was barred by limitation; and that he was not bound by the decree obtained by *B* against *A*, not having been made a party to the suit. MOHENDRO NATH MUKERJEA *v.* NAFFUR CHUNDER PAL CHOWDHRY . . . . . **1 C. L. R., 537**

73. ——— *Adverse possession—Suit to recover possession of property sold at execution sale.*—The plaintiff and two other members of his family, *M* and *S*, held a zamindari in the following shares, *viz.*,—the plaintiff ten annas, *M* two annas, and *S* four annas. Having first held the land ijmali, or joint, they agreed, in the year 1839, to effect a batwara, or private partition, and of this the result was, that parcels of land representing his ten annas share were allotted to the plaintiff, and other parcels representing their shares, which together made six annas, were allotted to *M* and *S*, who held jointly. *M* died in 1842, and his share came to the plaintiff. The four annas share of *S* was sold in execution of a decree against him in 1856, and the purchaser of it, not accepting the fact of partition, sued both *S* and the plaintiff in 1858 to have it declared that there had been no partition, and for a declaration of his right to possession of a four annas share of the whole estate. A decree was made to that effect in 1860, and in 1863 an appeal by *S* alone against this decree was dismissed by the High Court. The purchaser's heirs, he having died, obtained possession of land representing the four annas share under the decree of 1860. *S* then set up a title to hold part of the lands allotted under the batwara of 1839 to the six annas share on the ground that they were lakhiraj lands, and distinct from the revenue-paying villages in which his interest had passed under the execution sale. The plaintiff sued, in September 1873, the defendant, who had purchased this last alleged interest of *S* at another sale in execution of a decree against him, claiming that the partition having been set aside and a four annas share of the whole estate obtained by the purchasers under the decree of 1860, a right accrued to him to have his share, now twelve annas, declared upon the lands which had fallen within the six annas share. He also claimed to have it declared that the parcels alleged to be lakhiraj were not so. On the question of limitation it was held that the 145th article of the second schedule of Act IX of 1871 was applicable; and that, even if technically the lands now in question remained in the possession of *S* pending the appeal against the decree of 1860, there was no possession adverse to the plaintiff rendering it necessary for him to assert his right until the dismissal of the appeal in 1863. MANWAR ALI *v.* ANNODAPERSAD RAI

[I. L. R., 5 Calc., 644: 6 C. L. R., 71
L. R., 7 I. A., 1

74. ——— *Suit by trustee to recover temple lands—Possession for twelve years by party claiming to be trustee.*—The defendant purchased from one of the co-trustees of a temple the right to manage the affairs of the temple and enjoy certain land which formed the endowment of the temple, and held possession of the land for more than twelve years. *Held* that a suit by the other trustee to recover the land was barred by limitation. KANNAN *v.* NILAKANDAN . . **I. L. R., 7 Mad., 337**

75. ——— *Cause of action—Suit for accretions to tenure.*—The cause of action in respect of accretions accrues from their formation and delivery to the defendant, and a suit brought after twelve years from that time is barred. LUCHMEE NARAIN SHAHA *v.* JUTADHAREE HOLDAR

[7 W. R., 89

Upheld on review in DOYAMOYEE DOSSEE *v.* LUCHMEE NARAIN SHAHA . . . **7 W. R., 457**

76. ——— *Suit for alluvial land for which there has been a decree—Judicial determination of area of land—Cause of action.*—A consent decree of 1873 decided that certain alluvial land belonged to the plaintiff's village Sipah. The area was judicially determined in 1876 on a map of 1874, but actual possession was not obtained from the defendant who owned villages on the opposite side of the river. *Held,* in a suit to recover the land, that the twelve years which would bar the suit ran from 1876, the judicial ascertainment of the land decreed, and the suit, having been brought within twelve years from that time, was not barred. JAGAJIT SINGH *v.* SARABJIT SINGH

[I. L. R., 19 Calc., 159
L. R., 18 I. A., 165

77. ——— *Suit for division of lands according to custom established in former suit.—Establishment of right.*—A co-owner of village lands sued in 1861 to have them divided among the villagers according to a custom (last observed in 1835) that at the expiration of every twelve years the lands should be redistributed by lot among the co-owners, and to have two of the shares delivered to him as one of such co-owners. In 1851 another co-owner had, in a suit to which some only of the present defendants were parties, obtained a decree for the periodical allotment of the lands; and in 1853 such decree, which clearly recognized the existence and validity of the custom, was affirmed on appeal. *Held* that litigation which commenced in 1851 was sufficient to prevent the law of limitation from barring the plaintiff's right to sue, and that the circumstance that some only of the present defendants were parties to such litigation could make no difference with regard to the litigation bar. *Quære*—Whether, in the absence of such litigation, the law of limitation would have been a bar. VENKATASVAMI NAYAKKAN *v.* SUBBA RAU. SANKARA SUBBAIYAN *v.* SUBBA RAU

[2 Mad., 1

78. ——— *Suit for possession by avoidance of sale-deed—Cause of action—Adverse possession.*—The suit was instituted on the 17th of February 1874, the plaintiff claiming the possession of his deceased brother's share in the joint ancestral estate, by avoidance of a sale-deed, dated the 14th of May 1859, on the averment that he and his brother had mortgaged the estate, the mortgagees taking possession; that after his brother's death the defendant *M,* his widow, had made a sale of the share in favour of the defendant *B,* who had redeemed the mortgage about five years before suit and obtained possession; and that *M,* having made a second marriage, had lost her interest in the share. It was held that the suit was barred by limitation under art. 145, second schedule, Act IX of 1871, reckoning the period from the date of the sale, from which date *B* began to hold adversely to the plaintiff. GOBARDHAN *v.* BALMUKAND . . . . . **7 N. W., 349**

79. ——— *Act IX of 1871, art. 93—Suit to set aside deed and for possession.*—On the death of *A,* his property was taken possession of by *C* under an alleged deed of sale from *A.* *Held* that a suit by *A*'s heir for possession and to set aside the deed was governed by Act IX of 1871, sch. II, cl. 145, and not by cl. 93. TRILOCHUN CHATTAPADHYA *v.* NOBOKISHORE GHUTTUCK

[2 C. L. R., 10

80. ——— *Suit for cancellation of deed of sale.*—Plaintiff sued for cancellation of the sale of certain lands made to defendants in 1841. In 1843 defendants executed an agreement (A) to plaintiff, giving her a right of re-purchase. The language of the document was—"If you and your posterity pay in a lump the 175 rupees, we will hand over the lands to you." Upon the question of limitation,—*Held* in special appeal that the plaintiff's claim was barred, more than twelve years from the date of the cause of action (1843 at latest) having elapsed before suit. VENKAPPA CHETTI *v.* AKKU . **7 Mad., 219**

81. ——— **and art. 91**—*Suit for possession of immoveable property—Suit for cancellation of instrument.*—The purchasers at a sale in execution of decree of land sued to set aside an instrument of usufructuary mortgage of the land executed by the judgment-debtor before the sale, and for possession of the land, alleging that the mortgage was fraudulent and collusive. *Held* that, as the main and substantial relief sought was the recovery of possession of immoveable property from persons trespassing on it under the title of a fictitious mortgage, and the declaration of the invalidity of the defendants' pretensions was no more than an incidental step in the assertion of the plaintiffs' title and right to possession, the limitation of twelve years was applicable to the suit. *Tawangar Ali* v. *Kura Mal, I. L. R., 3 All., 394; S. A. No. 432 of 1882, decided the 11th August 1882; Weekly Notes, All., 1882, p. 173; Sobha Pandey* v. *Sahodra Bibi, I. L. R., 5 All., 322; Ramausar Pandey* v. *Raghubar Jati, I. L. R., 5 All., 490; Uma Shankar* v. *Kalka Prasad, I. L. R., 6 All., 75;* and the judgment of STRAIGHT, *J.*, in *Hazara Lal* v. *Jadaun Singh, I. L. R., 5 All., 76,* followed. *Bhawani Prasad* v. *Bisheshar Prasad, I. L. R., 3 All., 846; Ashgar Ali* v. *Mahammad Zainulabdin, I. L. R., 5 All., 573,* distinguished. IKRAM SINGH *v.* INTIZAM ALI

[I. L. R., 6 All., 260

82. ———— **and art. 44**—*Omission to sue within due time to set aside instrument affecting immoveable property—Suit to recover property.*—Where a certain period is allowed by the Law of Limitation within which an instrument affecting a person's rights or immoveable property must be impugned, and the person whose rights or property are affected fails to impugn such instrument within that period,—*Held* that he will not be precluded from availing himself of the longer period allowed for the recovery of immoveable property, provided that he can prove that such instrument is null and void so far as his interests are concerned. RAGHUBAR DYAL SAHU *v.* BHIKYA LAL MISSER

[I. L. R., 12 Calc., 69

83. ———— *Agreement not to execute decree—Wrongful execution in breach of agreement—Deed of conditional sale—Disavowal of trust.*—The plaintiff sued in 1875 to recover possession of immoveable property which the defendant had obtained in 1873, in execution of an *ex-parte* decree, dated the 8th June 1861. That decree was founded on a deed purporting to be a deed of conditional sale, dated the 24th December 1853, executed by the plaintiff in favour of the defendant. The plaintiff alleged that the deed was executed in order to protect the property against the claims of plaintiff's son, and the plaintiff sought to set it aside on account of defendant's breach of an agreement, dated the 16th January 1856, whereby the defendant stipulated that plaintiff's possession should not be disturbed. The defendant, *inter alia*, pleaded the bar of limitation against plaintiff's suit. *Held* that the suit was not barred by limitation, as plaintiff's cause of action only arose when defendant first practically disavowed the trust by seeking more than nominal execution of decree. PARAM SINGH *v.* LALJI MAL

[I. L. R., 1 All., 403

84. ———— *Suit for recovery of endowed property.*—In 1801 the shebait and proprietor of the gudi of a debsheba at K alienated part of the land by deed of gift to *B* for the purpose of founding a sheba at C, which was accordingly done. In 1823 the then shebait of the debsheba at K instituted a suit for the recovery of the alienated lands against the then shebait of the sheba at C, and in that suit it was declared that the sheba was independent of the debsheba, and the then plaintiff was referred to a regular suit. In 1861 the then shebait of the debsheba brought a suit for recovery of the lands against the then shebait of the sheba. *Held* that the suit, not having been instituted until after the lapse of more than twelve years from the plaintiff's succession to the sheba, was barred by the Statute of Limitations. *Semble*—That the Statute of Limitations, Bengal Regulation III of 1793, barred the suit twelve years after the death of *A*. KISSNONUND ASHROM DUNDY *v.* NURSINGH DASS BYRAGEE

[Marsh., 485

85. ———— *Religious endowment—Sale of trust property in execution—Suit by trustee to recover the property.*—In execution of decrees against the plaintiff, as the representative of his deceased father and brother, certain lands were sold to the first defendant. The plaintiff sued to recover them, alleging that the former owner of the lands had assigned them to his (the plaintiff's) brother and himself (the plaintiff) and their descendants by a deed of gift to perpetuate the worship of the donor's household idol. *Held* that the plaintiff was entitled to recover the property. The gift was a valid one creating a religious endowment under the Hindu law; and that the plaintiff's suit was not to set aside the sale, but was one by the trustee of the endowment to recover the property to which the limitation of twelve years was applicable. RUPA JAGSHET *v.* KRISHNAJI GOVIND . . . **I. L. R., 9 Bom., 169**

86. ———— *Suit by a trustee of a devasom disaffirming the act of his predecessor.*—The trustee of a Malabar devasom, who had succeeded to his office in June 1883, sued in 1887 to recover for the devasom possession of land which had been demised on kanom by his predecessor in February 1881, on the ground that the demise was invalid as against the devasom. The defendant had been in possession of the land for more than twelve years, falsely asserting the title of kanomdar with the permission of the plaintiff's predecessor in office. *Held* the suit was not barred by limitation. VEDAPURATTI *v.* VALLABHA

[I. L. R., 13 Mad., 402

87. ———— *Suit by mirasidar to recover land resigned to Government by his ancestor—Cause of action.*—In a suit brought by a mirasidar to recover possession of miras land, which his ancestor had resigned to Government, against a holder to whom Government had subsequently granted it, it was held that the statute of limitations commenced to run against the mirasidar and his heirs from the time the miras was signed, and not from the date of the subsequent grant of it by Government. To the validity of the registration of miras land by a mirasidar to Government the consent of his heirs is not requisite. ARJUNA VALAD BHIVA *v.* BHAVAN VALAD NIMBAJI . . . . **4 Bom., A. C., 133**

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

88. ——— *Suit by mirasidar to recover tenure relinquished and taken up by another.*—Where a mirasidar left his miras in 1850 without executing a razinamah resigning it, and the miras lay waste until 1855, when the defendant took it up and cultivated it, it was held that the cause of action of the mirasidar arose in 1855, when the miras was taken up by the defendant. Lakshuman Ramji *v.* Ramlal valad Mahipata . **6 Bom., A. C., 66**

89. ——— *Adverse possession—Mokurari title—Onus probandi.*—The plaintiff purchased a mouzah from the proprietor in 1869, and now sued to obtain possession from the defendant, who was proved to have held under a ticca lease down to 1856, and who now claimed to hold under a mokurari lease, which he said was granted by the former proprietor in 1859. The plaintiff failed to prove possession by his vendor within twelve years of suit brought, and therefore the Courts below dismissed his suit. On special appeal it was held that the defendant, before succeeding on the question of limitation, ought to have shown that the plaintiff had notice of the mokurari title set up. The case was sent back to the Court below to try the validity of that title. Dhanuk Dhari Singh *v.* Gapi Singh

[6 B. L. R., Ap., 151 : 15 W. R., 191

See Prahlad Sen *v.* Run Bahadur Singh

[2 B. L. R., P. C., 111 : 12 Moore's I. A., 289
12 W. R., P. C., 6

90. ——— *Suit to set aside mokurari grant—Notice of claim—Cause of action.*—In a suit by the guardian of a minor to recover possession of certain lands in her zamindari and to set aside an alleged mokurari grant, the plaintiff's case was that the defendants had held under a ticca lease, and had wrongfully held on after its expiration. The defendants set up an old mokurari grant under which they claimed to hold in perpetuity upon the payment of a fixed rent. The High Court, overruling the decision of the first Court upon the statute of limitations, held, and in the opinion of the Privy Council rightly, that the statute does not begin to run in favour of the mokuraridar against the zamindar until the latter has had notice that the former claims under a mokurari grant, and such notice was not given in the present instance twelve years before the commencement of the suit. Tekaetnee Goura Coomaree *v.* Saroo Coomaree

[19 W. R., P. C., 252

Affirming Tekaitnee Goura Coomaree *v.* Bengal Coal Company

[13 W. R., 129 : 5 B. L. R., 667 note
12 B. L. R., 282 note

91. ——— *Act IX of 1871, art. 135—Suit for possession after foreclosure proceedings.*—Under the Limitation Act of 1871, a mortgagee who has taken foreclosure proceedings may bring a suit for possession at any time within twelve years from the expiration of the year of grace. Art. 135, sch. II of that Act, does not apply to such a case. Ghinarain Dobey *v.* Ram Monaruth Ram Dobey

[7 C. L. R., 580 : I. L. R., 6 Calc., 566 note

92. ——— *Suit by mortgagee for possession after foreclosure.*—In a suit by a mortgagee to obtain possession after foreclosure instituted more than twelve years after such mortgagee had, upon default, become, under the words of the deed, entitled to possession, but within twelve years of the date of the expiry of the year of grace granted under the foreclosure proceeding,—*Held* under s. 145 of the Limitation Act (IX of 1871) that the period of limitation must be calculated from the date of the expiry of the year of grace, and not from the time when the default was first made. Burmamoye Dassee *v.* Dinobundhoo Ghose . **I. L. R., 6 Calc., 564**
[7 C. L. R., 583

Ghinaram Dobey *v.* Ram Monaruth Ram Dobey

[I. L. R., 6 Calc., 566 note : 7 C. L. R., 580

93. ——— *Act XV of 1877, sch. II, art. 135—Possession under mortgage.*—Under a mortgage-deed, which by its express terms allows the mortgagee a right to take possession upon default by the mortgagor in payment of the mortgage-money, the mortgagee, as absolute owner of the property, has twelve years from the time at which his right to possession commences, in which he may bring his suit for possession. But where there is no such stipulation in the mortgage, the right of the mortgagee to take possession does not accrue until after the expiration of the year of grace. Modun Mohun Chowdhry *v.* Ashad Ally Beparee

[I. L. R., 10 Calc., 68 : 13 C. L. R., 51

See Denonauth Gangooly *v.* Nursingh Proshad Dos . **14 B. L. R., 87 : 22 W. R., 90**

94. ——— *Suit to set aside alienation by mortgagee.*—The cause of action in a suit by a mortgagor to set aside an alienation by a mortgagee in possession arises from the date of redemption of the property by the mortgagor. Adjoodhya Singh *v.* Girdharee . . . . **2 N. W., 199**

95. ——— *Suit for redemption against person not claiming under mortgagee.*—When the plaintiff brought the suit for redemption, it was found that the defendant, who was in possession, did not claim under the mortgagee, and that for more than twelve years before the date of the suit he had held possession from the Government by a title adverse to that of the plaintiff. *Held* that the claim was barred under art. 145 of Act IX of 1871. The contention that so long as the mortgagor is entitled only to the equity of redemption there can be no invasion of his interest cannot be assented to. There are cases in which the rights and interests of the mortgagor and mortgagee are equally invaded, and in such cases the mortgagor must come into Court within the time allowed for the recovery from trespassers of interests in land. Ammu *v.* Ramakrishna Sastri

[I. L. R., 2 Mad., 226

96. ——— *Suit to set aside sale after conversion from mortgage into sale.*—Where a mortgage is subsequently converted into a sale, the cause of action in a suit to set it aside arises, not at the date of the mortgage, but from the date of the sale, and if within twelve years from that date, the suit is in time. IRADAT KHAN *v.* DABEE DYAL [1 Agra, 180

97. ——— *Adverse possession.*—Obstruction to the obtaining possession by a mortgagee under his mortgage by persons who, while claiming a lien on the property, admitted the mortgagor's title to the property, *held* not to be adverse possession as against the mortgagee's title as purchaser. PURMANANDDAS JIWANDAS *v.* JAMNABAI [I. L. R., 10 Bom., 49

98. ——— *Adverse possession — Mortgagor and mortgagee—Suit by mortgagee for possession of mortgaged property—Pre-emption—Purchaser for value without notice.*—Under a registered deed of mortgage, dated in May 1869, the mortgagee had a right to immediate possession; but by arrangement between the parties the mortgagors remained in possession, the right of the mortgagee to obtain possession as against them being, however, kept alive. In October 1869 the mortgagors sold the property, and thereupon one *R* brought a suit to enforce the right of pre-emption in respect of the sale and obtained a decree, and got the property and sold it in 1871 to *D*. In 1883, the mortgagee brought a suit against *D* to obtain possession under his mortgage. *Held,* with reference to a plea of adverse possession for more than twelve years set up by the defendant, that the position of a person who purchased property by asserting a right of pre-emption was not analogous to that of an auction-purchaser in execution of a decree, but that such person merely took the place of the original purchaser and entered into the same contract of sale with the vendor that the purchaser was making. There was privity between him and the vendor, and he came in under the vendor, and his holding must be taken to be in acknowledgment of all obligations created by his vendor. *Anundoo Moyee Dossee* v. *Dhonendro Chunder Mookerjee, 14 Moore's I. A., 101 : 8 B. L. R., 122,* distinguished. DURGA PRASAD *v.* SHAMBHU NATH . . . . I. L. R., 8 All., 86

99. ——— *Limitation Act, 1871, arts. 15 and 82—Suit by minor to set aside alienation of property by guardian.*—A Hindu family being heavily oppressed with debts, ancestral and otherwise, the two elder brothers of the family, for themselves and as guardian of their minor brother, under Act XL of 1858, applied to and obtained from the District Judge an order under s. 18 of the Act for the sale of several portions of the ancestral estate, and sold the same under registered deeds signed by the Judge. Within twelve years after the registration, the adopted son of the minor brother brought several suits against the purchasers to set aside the sales and recover back his share of the property, alleging that the two elder brothers had made the sale fraudulently and illegally to satisfy personal debts of their own. *Held* that a suit of this nature was not a suit to "set aside an order of a Civil Court" under art. 15, sch. II of Act IX of 1871; nor was it a suit "to cancel or set aside an instrument not otherwise provided for" under art. 82, but that it was governed by art. 145. SIKHER CHUND *v.* DULPUTTY SINGH [I. L. R., 5 Calc., 363 : 5 C. L. R., 374

100. ——— and art. 11—*Suit for possession—Civil Procedure Code (Act VIII of 1859), s. 246—Limitation Act (XV of 1877), sch. II, art. 11.*—Where, in consequence of an adverse order passed under the provisions of Act VIII of 1859, s. 246, a suit is [since the Limitation Act (XV of 1877) came into force] instituted to establish the plaintiff's right to certain property and for possession, such suit is not governed by the provisions of art. 11, sch. II of Act XV of 1877, but by the general limitation of twelve years. *Koylash Chunder Paul Chowdhry* v. *Preonath Roy Chowdhry, I. L. R., 4 Calc., 610; Matonginy Dassee* v. *Chowdhry Junmunjoy Mullick, 25 W. R., 513; Joyram Loot* v. *Paniram Dhoba, 8 C. L. R., 54;* and *Raj Chunder Chatterjee* v. *Shama Churn Garai, 10 C. L. R., 435,* cited. GOPAL CHUNDER MITTER *v.* MOHESH CHUNDER BORAL

[I. L. R., 9 Calc., 230 : 11 C. L. R., 363

BISSESSUR BHUGUT *v.* MURLI SAHU

[I. L. R., 9 Calc., 163 : 11 C. L. R., 409

101. ——— and art. 136—*Suit to obtain possession of land from vendor who has been dispossessed and subsequently recovered possession—Possession, Suit for.*—A vendor who was at the time out of possession of certain immoveable property sold a share in it to a purchaser by a kobala. After the date of the sale, the vendor recovered possession, and the purchaser, within twelve years of the vendor's having so recovered possession, but more than twelve years after he had been originally dispossessed, instituted a suit to obtain possession of the share covered by the kobala. *Held* that the suit was governed by art. 144, and not art. 136 of sch. II of the Limitation Act (XV of 1877), and was not barred by limitation. Art. 136 does not apply to a suit brought against a vendor himself when he recovers possession. RAM PROSAD JANNA *v.* LAKHI NARAIN PRADHAN

[I. L. R., 12 Calc., 197

102. ——— and s. 28—*Sale in execution of decree—Suit to recover possession of property sold in execution—Possession of a person having no title.*—*K* obtained a decree against *G* and in execution purchased *G*'s property on the 9th August 1872. Plaintiff obtained a decree against *K*, and in execution purchased the property on the 21st August 1882. On plaintiff's going to take possession, defendant No. I obstructed him on the ground that he had purchased the property from *K* at a private sale, dated the 1st September 1876. The plaintiff thereupon, on the 6th September 1886, brought the present suit to recover possession of the property. *Held* that the title of defendant No. I to the land in dispute being not proved, art. 144 of the Limitation Act (XV of 1877) was applicable to the plaintiff's claim, and that the suit being brought within twelve years from the date of the purchase set up by defendant No. I (which was held by the lower Courts not proved), the claim was not barred. Want of possession for twelve years after the date of purchase would extinguish the purchaser's title. *Ram Prosad Janna* v. *Lakhi Narain Pradhan, I. L. R., 12 Calc., 197,* and *Sheo Prasad* v. *Udai Singh, I. L. R., 2 All., 718,* referred to. LAKSHMAN VINAYAK KULKARNI *v.* BISANSING

[I. L. R., 15 Bom., 261

103. ———— *Suit by auction-purchaser to set aside alienation by judgment-debtor.*—An auction-purchaser can sue to set aside any alienation made by the judgment-debtor previously to the sale in execution which he thinks to be collusive. BAICHOO *v.* HOWARD . . . **3 Agra, 15**

The cause of action in such a suit runs from the date of transfer, and the suit is barred after the expiration of twelve years, unless the transfer was actually fraudulent. NARAIN DASS *v.* NIDDHA LALL

[3 Agra, 19

104. ———— *Purchaser at sale for arrears of revenue—Shikmi talukh.*—*A* purchased a zamindari of which certain mouzahs were claimed and taken possession of by *B* and *C* as mokurari holders of a shikmi talukh created by the former zamindar before the Decennial Settlement. To a suit by *A* for the recovery of the lands, *B* and *C* pleaded limitation, calculating the period from the time of the purchase in 1833. *Held* that limitation must be computed not from the time of the purchase, but from the time when possession was taken from the purchaser. WISE *v.* BHOOBUN MOYE DEBIA

[3 W. R., P. C., 5 : 10 Moore's I. A., 165

105. ———— *Suit by purchaser to compel zamindar to register transfer.*—Where a zamindar refuses to register a transfer on the application of a purchaser, the latter's cause of action in a suit to compel him to do so arises from the time of such refusal, and not from the time when his title accrued by his purchase. RADHIKA PERSHAD SHADHOO *v.* GOOROO PROSUNNO ROY **20 W. R., 125**

106. ———— *Rights of—Limitation.*—One of four children set up a deed of gift and a will, in virtue of which he was in 1842 placed, by a summary proceeding of the Courts, in possession of the whole estate left by his deceased father. The rights and interests of two other children were subsequently sold in execution of a decree for debt, and purchased by the present plaintiffs. A fourth child instituted a suit against the first-mentioned one to set aside the deed of gift and will, the result of which was that in 1835 the will, which affected two-thirds of the estate, was set aside as having been made without due consent of heirs, the consent alleged in the will being held to be no consent. The plaintiffs now sued to get possession of the shares of the two children whose rights and interests they had bought. *Held*, reversing the decision of the High Court, that the plaintiffs, as purchasers at an execution-sale, were in no better position than claimants under any other conveyance or assignment, and, their cause of action

arising in 1842, they were barred by limitation ENAYET HOSSEIN *v.* GRIDHARI LALL

[2 B. L. R., P. C., 75 : 11 W. R., P. C., 29
12 Moore's I. A., 366

107. ———— *Suit to recover land sold in execution of decree—Possession.*—The purchaser at a sale held on the 14th September 1881 in execution of a decree in the form of a money-decree, obtained upon a mortgage-bond executed by the father of a Mitakshara joint family during the minority of his only son, having failed to obtain possession of the property mortgaged, brought a suit for possession, and under a decree made in that suit obtained possession in November 1866. In July 1878 the wife and son of the judgment-debtor brought a suit to recover possession from the purchaser of two-thirds of the property, on the ground that the auction-purchaser was entitled only to the share of the mortgagor. *Held* that the suit, having been brought within twelve years from the date on which the defendant obtained possession, was not barred by limitation. MUNBASI KOER *v.* NOWRUTTON KOER

[8 C. L. R., 428

108. ———— *Settlement by revenue authorities.*—Where the defendants, who were at the settlement in 1841, when the estate was farmed out, recorded as proprietors by the revenue authorities, did not hold proprietary and adverse possession till the expiry of the farming lease,—*Held* that the plaintiff's suit was not barred by limitation as not having been brought within twelve years after 1841. RAMAISHER SINGH *v.* SAIVA ZALIM SINGH

[2 Agra, 8

109. ———— *Settlement by revenue authorities—Co-sharer.*—In a case in which, after resumption, one of several shareholders, for himself and the others, took a settlement from Government, the right of any other shareholder to the property under the settlement accrued from the date of settlement; and a suit within twelve years of that time was not barred. BUNWAREE SINGH *v.* RAMANOOGRA SINGH . . . . . . **10 W. R., 14**

110. ———— *Suit for confirmation of partition—Cause of action—Limitation.*—Where there had been a private partition of an estate, and the several shareholders had held their lands in accordance therewith, an application was made by some of the shareholders to the Collector to have a fresh partition made as if the whole lands were held jointly. Plaintiff, who was also a shareholder, objected, but his objection was overruled. Thereupon he brought a suit for confirmation of the partition, and for an injunction to stay the partition pending before the Collector. *Held* that the plaintiff's cause of action against the defendants arose upon their moving the Collector to interfere with the first partition, and that the period of limitation in respect of such cause of action was the same as in any other suit for determining the rights of parties to immoveable property. KHOOBUN *v.* WOOMA CHURUN SINGH

[3 C. L. R., 453

111. ——— *Cause of action—Suit for possession and declaration of right to participate in permanent settlement of a mehal resumed under Beng. Reg. II of 1819.*—Chur land was held by the proprietors of the adjoining estate. The chur was resumed by Government in 1835, and declared to be liable to assessment under Regulation II of 1819. The recorded proprietors of the adjoining permanently-settled estate, to which the chur was a contiguous accretion, refused to make a permanent settlement with Government at the rent demanded. The chur was then held khas by Government for some time and subsequently leased out for temporary periods to strangers. In these temporary leases Government reserved the proprietor's rights to come in and take a permanent settlement on the expiry of the temporary settlements, and also reserved an allowance of ten per cent. on the rent as malikana on their account, which sum had been kept in deposit in the Collectorate treasury. In 1867 Government made a permanent settlement with the defendant, one of the recorded proprietors of the contiguous estate, of the entire chur and refused the application of other shareholders in the estate to be joined in the settlement. The Collector, at the request of the defendants, applied the deposit in his treasury in satisfaction of the Government revenue. An unsuccessful shareholder brought a civil suit against the defendant for possession and declaration of his right to participate in the settlement. *Held* that the suit was not barred, as the period of limitation commenced from the date of the settlement with the defendant. KRISHNA CHANDRA SANDYAL CHOWDRY *v.* HARISH CHANDRA CHOWDRY . . **8 B. L. R., 524**

S. C. KRISTO CHUNDER SANDYAL *v.* KASHEE KISHORE ROY CHOWDHRY . **17 W. R., 145**

KRISTO CHUNDER SANDEL CHOWDHRY *v.* SHAMA SOONDUREE DEBIA CHOWDHRAIN **[22 W. R., 520**

112. ——— **and art. 113**—*Suit for possession of land based on compromise—Specific performance.*—A suit for recovery of possession of land, based on a compromise effected in the course of previous litigation between the parties, is not a suit for specific performance of contract, but a suit for "immoveable property," and would be covered, not by s. 113 of the schedule to the Limitation Act, but by s. 145. In a suit for recovery of possession based on an agreement to surrender possession, the possession of defendants at the time when they made the agreement to deliver over the land to the plaintiff cannot be taken as hostile to the plaintiff, but can only be considered adverse to plaintiff from and after the date of the agreement by reason of defendant's refusal to carry out the promise. BETTS *v.* MAHOMED ISMAEL CHOWDHRY . **25 W. R., 521**

113. ——— *Vendor and purchaser—Transfer of immoveable property—Specific performance of contract—Limitation Act, 1877, arts. 113, 136.*—On the 27th October 1865 the vendor of certain immoveable property executed a conveyance of such property to the purchasers. On that date the vendor was not in possession of the property, although his title to it had been adjudged by a decree against which an appeal was pending. The conveyance did not contain any express promise or undertaking on the vendor's part to put the purchasers into possession. On the 24th February 1870 the vendor obtained possession of the larger portion of the property, and on the 23rd August 1872 of the remainder. On the 5th October 1877 the purchasers sued the vendor for the possession of the property, stating that "possession was agreed to be delivered on the receipt of possession by the vendor," and that the cause of action was that the vendor had not put them into possession. *Held* that the suit was not one for the specific performance of a contract to deliver possession, to which art. 113 of sch. II of Act XV of 1877 was applicable, but one to obtain possession in virtue of the right and title conveyed to the purchasers, to which either art. 136 or 144 of sch. II of that Act was applicable; and that, whichever of them was applicable, the suit was within time. SHEO PRASAD *v.* UDAI SINGH . **I. L. R., 2 All., 718**

114. ——— *Suit to declare will invalid—Reversioner.*—Suit by *A*, a Hindu lady and daughter of *B*, to declare invalid a will of *B*, made in favour of *C*, a relative. It appeared that *D*, the widow of *B*, instituted proceedings against *C*, the devisee, in which she claimed the property of *B*. Subsequently the widow, by a deed of compromise, admitted the rights of *C* and abandoned her own. *Held* (*per* SETON-KARR, *J.*) that limitation in the present suit by *A* against *C*, the devisee, ran from the date on which the widow admitted the devisee's rights, and not from any prior date, as during the period of the widow's dispute with the devisee she was protecting the interests of *C*, who claimed to be the reversioner, who would not have been heard in the matter, and had no right to sue during the pendency of such litigation. SOUDAMINEE DOSSEE *v.* BISTOO NARAIN ROY **[8 W. R., 323**

115. ——— *Stranger claiming interest in estate together with an undivided family—Inheritance among such owners.*—In a family of three undivided brothers an estate was purchased by the eldest as manager, on whose application a fourth party, a sister's husband, was recorded in the revenue records as a co-proprietor with them. The latter, even if he by joining in the purchase had become entitled to an undivided fourth share in the estate, did not thereby become a member of the undivided family; and the members of it would not have had a right to succeed to his fourth share which would descend to his own heirs, the other three-fourths which he would not have inherited going by survivorship among the members of the family. A son of the eldest brother obtained by the death of his father and uncles sole possession of the whole estate. *Held* that he did not take the one-fourth share above-mentioned by any right of inheritance, and that, in the absence of proof that his possession of it was by authority of the fourth recorded co-proprietor, his possession must be presumed to have been adverse to the latter and to any one claiming through him. It followed that a suit to obtain from those claiming through the son, who was now dead, the one-fourth share, brought more than twelve years after possession taken by the son, by a purchaser, relying on a title through the fourth co-proprietor, was barred by limitation under art. 144 of the second schedule of Act XV of 1877. RAMALAKSHAMMA *v.* RAMANNA . **I. L. R., 9 Mad., 482**

COLLECTOR OF GODAVERY *v.* ADDANKI RAMANNA PANTULU . . . **L. R., 13 I. A., 147**

116. ———— *Benamidars—Purchaser at sale for arrears of revenue.*—In a suit against a purchaser at a sale under Act XI of 1859, s. 13, the plaintiff claimed to have an incumbrance by virtue of two mokurari pottahs executed by the heirs of the last of a series of benamidars, and the question was whether those who had granted the mokurari were entitled to all, or to any, and what part of the land comprised in their grant, and as to this the most important fact was the actual possession or receipt of the rents, it being found that the last benamidar had actual ownership of one-fourth of the property comprised therein. *Held* that the incumbrance was good to the extent of such one-fourth share, and the twelve years' bar commencing from the date of possession first held adversely, the suit was not barred by art. 144, Act XV of 1877. IMAMBANDI BEGUM *v.* KAMLESWARI PERSHAD . . . **I. L. R., 14 Calc., 109**
L. R., 13 I. A., 160

117. ———— *Cause of action—Acts IX of 1871 and XV of 1877.*—*R*, a Hindu widow, granted a jungleburi tenure to certain tenants in respect of a chur belonging to her husband's estate. An amulnama was granted to the tenants signed by a karpardaz of *R* in respect of the tenure. *R* died in January 1861, and was succeeded by *J* and *P*, two daughters, the last of whom died on the 31st December 1880. On her death the grandsons succeeded to the estate. On *R*'s death, *J* and *P* got possession of all estate papers, and amongst them a dowl granted by the tenants in return for the amulnama. In 1865 proceedings were taken by the tenants to obtain kabuliats on the footing of those documents, which proceedings came to an end in 1868. In 1873 *J* and *P* instituted suits against the tenants, alleging the amulnama and dowl to be forgeries, and seeking to enhance the rents payable to them, as well as to have it declared that *R*'s acts did not bind them. In these suits it was found that *J* and *P* had all along been aware of the claim made by the tenants that they held a permanent tenure, and the suits were dismissed on the ground that it was too late for *J* and *P*, after the lapse of twelve years from *R*'s death, to raise the question. In 1884 *D*, a receiver, instituted a suit in the names of the grandsons to eject the tenants on amongst other grounds that the grandsons, reversioners, were not bound by *R*'s acts, and that the jungleburi tenure was not binding on them; that the tenants were middlemen and had no right of occupancy; that at all events the plaintiffs were entitled to rent on the area of land then held by the defendants, as there had been large accretions to the amount covered by the amulnama and dowl. The defendants amongst other things pleaded limitation. *Held* that the suit was barred by limitation. Adverse possession began to run on *R*'s death (as *J* and *P*, who represented the estate, were then well aware that the tenants claimed to hold the lands under a permanent lease, and though *J* and *P* received rent, the possession of the tenants was adverse to them), and more than twelve years elapsed before Act IX of 1871 came into force, and therefore the defendants had then obtained a good title by adverse possession as against all the reversioners which could not be defeated by the provisions of the subsequent Limitation Acts of 1871 and 1877. DROBOMOYI GUPTA *v.* DAVIS
[I. L. R., 14 Calc., 323

118. ———— *Limitation Act, 1877, art. 141—Adverse possession against widow—Reversioners.*—The plaintiffs sued for possession of certain zamindari property as reversioners to the estate of one *C*, their right to sue having accrued as alleged by them on the death of the widow of *C* which took place on 14th October 1884. The defendant, alleging himself to be the adopted son of *C* and being in possession of the property in dispute since the death, contended that the claim was barred. The Court of first instance dismissed the claim as barred by art. 118 of the Limitation Act, and on appeal the District Judge held that the claim was barred by defendant's adverse possession over the property for more than twelve years. On second appeal, it was contended that the suit, being by a Hindu entitled to possession as a reversioner on the death of a female, was governed by art. 141 of the Act, and therefore not barred. *Held* without deciding that question that, as on the facts found the adopted son held adversely to the widow, adverse possession which barred the widow barred also the reversioners, and therefore the claim was barred. *Shiva Ganga case, 9 Moore's I. A., 543,* was referred to. GHANDHARAP SINGH *v.* LACHMAN SINGH
[I. L. R., 10 All., 485

119. ———— *Hindu widow—Adopted son—Adverse possession against widow for more than twelve years, Effect of, as against a subsequently adopted son—Title.*—Adverse possession against a Hindu widow for more than twelve years bars the rights of a subsequently adopted son. *S*, a Hindu, died leaving a widow and a minor son. The minor died in 1856. Thereupon the defendant, a separated cousin of the minor, took possession of his property, got it entered in his own name in the revenue records, and received its income himself without giving the widow any share thereof. In 1872 the widow adopted the plaintiff, and he too was excluded by the defendant from the management and enjoyment of the property in question. In 1883 the plaintiff sued, as the adopted son of *S*, to recover possession of the property in dispute. *Held* that the suit was barred, the defendant having held adversely to the widow for more than twelve years before the plaintiff's adoption. KRISHNAJI JANARDHAN *v.* MORBHAT . **[I. L. R., 13 Bom., 276**

120. ——— *Mortgagee becoming purchaser of share in mortgaged property.*—A mortgagee of an entire undivided estate does not, by a subsequent purchase of a certain share therein from one not in actual possession at the time of conveyance, thereby change his character from a mortgagee to that of an owner, but his possession continues as a mortgagee. *B* held an entire undivided estate under a mortgage (usufructuary) from *C* since 1273 (1866), and as such mortgagee in 1282 (1875) *B* purchased a share therein from *D*, who had not been in actual possession since the date of the mortgage. On the 20th January 1885, *B* brought a suit to recover possession of his purchased share. *Held* that the subsequent purchase did not change the character of *B* from that of a mortgagee to that of an owner, and that his suit was barred by twelve years' limitation. NUNDO LAL ADDY *v.* JODU NATH HALDER **[I. L. R., 14 Calc., 674**

121. ——— *Co-sharer—Possession of one co-sharer when adverse—Mortgage—Mortgage by three co-sharers—Redemption by one of several mortgagors—Right of the other mortgagors to sue for redemption—Period of limitation for such suit.*—In 1847 the property in dispute was mortgaged by three co-sharers, *D*, *A*, and *R*. In 1859 *R* alone redeemed the property and mortgaged it again to a third person. In 1882 the heirs of *D* and *A* brought a suit to redeem the whole of the property, or their portions of it. The defence to the suit was that it was barred by limitation, being brought more than twelve years after *R* had redeemed the property, and *R*'s possession subsequently to such redemption having been adverse to the plaintiffs and their predecessors in title. *Held* that the suit was not barred by limitation. When *R* redeemed the property, he held it, as regards his co-sharers' interests in it, as alienor, and as such his possession was not adverse to them. It did not contradict, but rather implied and preserved, their ultimate proprietary right. In the case of a co-sharer holding after redemption, limitation is computed only from the date when the possession becomes adverse by the assertion of an exclusive title and submission to the right thus set up, in analogy to the provision which bars an excluded sharer generally after the lapse of twelve years from the time when he becomes aware of his exclusion. As long as possession can be referred to a right consistent with the subsistence of an ownership in being at its commencement, so long must the possession be referred to that right rather than to a right which contradicts the ownership. RAMCHANDRA YASHVANT SIRPOTDAR *v.* SADASHIV ABAJI SIRPOTDAR . . **I. L. R., 11 Bom., 422**

122. ——— ——— *Suit for redemption or recovery of property on payment of a charge—Possession after a redemption by one of several mortgagors.*—The plaintiff sought to recover his father's share in two portions of family property, one of which had been mortgaged by the plaintiff's father and the father of the defendant No. 1 jointly; the other had been mortgaged by the plaintiff's father jointly with the father of defendant No. 1 and the husband of defendant No. 2. The first was redeemed by the father of defendant No. 1 alone in 1868; the second was redeemed by the defendant No. 1 more than twelve years before the suit. The parties were Mahomedans, and the plaintiff had a brother and three sisters, only one of whom (defendant No. 2) was a party to the suit. Defendant No. 1 contended that the suit was defective for want of parties, and that it was time-barred. *Held* that the plaintiff's brother and sisters ought to have been joined as co-plaintiffs, the defendant No. 1's possession after redemption not being adverse to them. If it was adverse at all, it was adverse to the whole of the plaintiff's branch of the family, so as to bar the right of the group altogether. But that was no reason why the co-owners should not be admitted as co-plaintiffs, and the suit must go on upon its merits. BHAUDIN *v.* ISMAIL . **I. L. R., 11 Bom., 425**

123. ——— *Redemption of land by one of two co-mortgagors and re-mortgage thereof—Possession under second mortgage for more than twelve years.*—*A* and *B*, two brothers, being entitled to certain land, mortgaged it in 1852 to *C*. In 1864 *A* redeemed the mortgage and re-mortgaged the land to *D* for the same amount. In 1885 the defendants (sons of *A*) redeemed the mortgage to *D*. In 1886 the plaintiff (son of *B*) sued defendants and the representatives of *C* and *D* to redeem a moiety of the land on payment of a moiety of the amount due on the mortgage of 1852. The defendants pleaded, *inter alia*, that the suit was barred by limitation, as the land had been held adversely since the mortgage of 1864. *Held* that, in the absence of proof that the land was held with an assertion of adverse title, the plaintiff was entitled to a decree. MOIDIN *v.* OOTHUMANGANNI **[I. L. R., 11 Mad., 416**

124. ——— *Mortgage—Conditional sale—Foreclosure—Suit for possession—Reg. XVII of 1806, s. 8—Cause of action—Limitation Act (XIV of 1859), s. 1 (12).*—A suit for foreclosure was brought in 1886 upon a mortgage by conditional sale executed in 1846, the condition being for payment within five years from that date. The deed provided that, in default of payment within the prescribed period, the property mortgaged "will be foreclosed (baibat), and this mortgage-deed will be considered as an absolute sale-deed." Between 1846 and 1886 no foreclosure proceeding or other steps were taken by the mortgagee, and no admission of liability was made by the mortgagor. *Held* that by reason of Act XIV of 1859 (Limitation Act) the plaintiff's remedy was barred during the currency of that Act, and that the time within which he was entitled to maintain an action for foreclosure, if he had taken the proper proceedings, expired in 1863. *Held* also that, even if foreclosure-proceedings under Regulation XVII of 1806 had been taken, the cause of action was the original non-payment of the money on the due date, and the provisions of the regulations could not create a fresh cause of action. *Denonath Gangooly* v. *Nursing Proshad Doss, 14 B. L. R., 87,* referred to. MURAIDHAR *v.* KANCHAN SINGH **[I. L. R., 11 All., 144**

125. ——————— *Hindu law—Joint family —Purchaser from one co-partner.*—Plaintiffs, being members of a joint Hindu family alleging division and a sale to them by other members of their share in the family property more than twelve years before suit, sued to eject a more recent purchaser. The plaintiffs failed to prove division as alleged. One of the members of the family who was in possession of the property to which the sale-deed related did not join in executing it. *Held* that the suit was barred by limitation, since the proposition that the possession of one co-parcener is the possession of all for purposes of limitation has no application as between a purchaser from one of the co-parceners and the other members of the family. *Ram Lakhi* v. *Durga Charan Sen, I. L. R., 11 Calc., 683,* followed. MUTTUSAMI *v.* RAMAKRISHNA **[I. L. R., 12 Mad., 292**

126. ——————— *Partition—Alienation by co-parceners—Possession by alienee.*—Where co-parceners have alienated their shares in the joint property by sale and mortgage, and the alienees have been in possession for more than twelve years, a claim for partition is, as against such alienees, barred by limitation under art. 144 of the Limitation Act (XV of 1877). *Pandurang* v. *Bhaskar, 11 Bom., 72,* distinguished. Art. 127, sch. II of the Limitation Act (XV of 1877), does not apply except in cases between members of a joint family. It does not apply to the case of a stranger to the family holding property which originally belonged to the family. As to him, the ordinary rule of limitation (art. 144) applies. BHAVRAO *v.* RAKHMIN . **I. L. R., 23 Bom., 137**

127. ——————— **and art. 141**—*Exclusive possession by one of the co-sharers of portions of joint property, the rest being held jointly.*—Plaintiff and defendant No. 2 (two sisters) inherited jointly to their father's estate twenty-five or thirty years ago. Admittedly all the joint property except the dwelling-house (the subject-matter of the suit) was in the joint possession of both of them. Defendant No. 2 alone was in possession of the family dwelling-house, but plaintiff visited her sister occasionally there in the character of a guest. There was no evidence that plaintiff asserted her title to the house or that her sister denied it. The second defendant then sold the dwelling-house to the defendant No. 1, whereupon the plaintiff brought the present suit. *Held* that art. 144 of sch. II of the Limitation Act, and not art. 141, was applicable to the case, but that the possession of defendant No. 2 was not adverse to the plaintiff, the circumstances of the case showing that that effect could not be given to the exclusive possession of defendant No. 2. *Asud Ali Khan* v. *Akbar Ali Khan, 1 C. L. R., 364,* followed. BARODA SUNDARI DEBY *v.* ANNODA SUNDARI DEBY . . . . **3 C. W. N., 774**

128. ——————— *Limitation Act, 1877, s. 10—Trust—Spiritual slavery of disciple to guru —Act V of 1843.*—This was a suit brought in 1881 by the head of an adhinam for declarations that a muth was subject to his control; that he was entitled to appoint a manager; that the present head of the muth was not duly appointed, and his nomination by his predecessor was invalid; and for delivery of possession of the moveable and immoveable properties of the muth to a nominee of the plaintiff. The claim extended also to religious establishments at Benares and elsewhere connected with the muth. The muth was founded by a member of the adhinam. Many previous heads of the muth had agreed to be "slaves" of the head of the adhinam, but for over sixty years the head of the adhinam had exercised no management over the endowments belonging to the muth, and in a suit (compromised) of the year 1854 the present pretentions of the head of the adhinam had been denied *in toto.* The defendant had succeeded in 1880 to the management of the muth under the will of his predecessor, dated the same year, and was not a disciple of the adhinam. *Held* that the suit was barred by limitation in respect of the personal claim to manage the endowments as to which no claim had been put forward for sixty years; that the suit was not barred by limitation in respect of the claim to set aside the appointment of the defendant (who entered into possession in 1880 under a will, dated in the same year), or to see that a competent dharmapuram man be appointed, in spite of the total denial of the claims of the head of the adhinam in 1854; that the agreement of the head of the muth to become the "slave" of his guru could have no legal operation since 1843, and that the adverse possession of the defendant from that year was fatal to any claim of the plaintiff under such agreement. GIYANA SAMBANDHA PANDARA SANNADHI *v.* KANDASAMI TAMBIRAM . . . . **I. L. R., 10 Mad., 375**

129. ——————— *Grant of profits of deshmukhi vatan in perpetuity—Hereditary gomastas—How far such grant valid after the death of the grantor.*—By a sanad duly executed on the 20th August 1850, the plaintiffs' father, *Y*, who was a vatandar deshmukh, appointed the defendants and their heirs hereditary vatani gomastas, and granted, by way of remuneration for their services, R201 and a quantity of grain out of the annual vatan income in perpetuity. In consideration of certain sums obtained from the defendants, *Y* mortgaged the vatan property to the defendants, who subsequently sued *Y* upon the mortgage. That suit was referred to arbitration, and an award was duly made, and a decree upon the award was obtained by the defendants against *Y*. In 1859 execution of the decree was granted against *Y*. In 1864 the services connected with the vatan were discontinued by Government. In 1871 *Y* died. The defendants, having kept the decree alive, sought in 1881 to execute the decree against the plaintiffs' eldest brother, who filed objections, but his objections were overruled, and execution was ordered to issue. The plaintiffs brought this suit in 1883 for a

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

declaration that the defendants were no longer entitled to the allowance under the sanad, and for an injunction restraining the defendants from the execution of the decree against the vatan. The defendants contended (*inter aliâ*) that the sanad could not be cancelled, *Y* having granted it as full owner; and that the receipt by the defendants of the allowance had been adverse since 1864, when their services had ceased. Both the lower Courts decided in favour of the plaintiffs. On appeal by the defendants to the High Court,—*Held*, confirming the decree of the lower Courts, that the plaintiffs were entitled to the declaratory decree and to the injunction prayed for. Although the management of the vatan was vested by the sanad in the defendants and their heirs in perpetuity under the title of gomastas, nevertheless the remuneration attached to the office by *Y* was in derogation of his successor's rights, and was therefore, at any rate in the absence of proof of custom, invalid against them. *Held* also that, assuming the grant by *Y* to be invalid as against his successor, adverse possession would only run against the plaintiffs from the time of his death in 1871, and the present suit, having been filed within twelve years from that date, was not barred. KRISHNAJI *v.* VITHALRAV . . . **I. L. R., 12 Bom., 80**

130. ———————— *Suit against Government for inam lands and mokasa amals—Attachment under Act XI of 1852, Effect of—Adverse possession—Mokasa amals, Meaning of.*—In 1826 *A* obtained a decree on a mortgage, awarding him possession and enjoyment of certain inam property, consisting of lands and of cash allowances annually paid from the Government treasury called mokasa amals. *A* and his successors continued in possession down to 1852, when the inam was attached on behalf of Government pending an inquiry, under Bombay Act XI of 1852, into the title of the holders of the inam. The attachment remained in force till 1865, when Government finally decided that the inam property, with the exception of a certain portion, should be restored to those from whose possession it had been taken in 1852. Thereupon *D*, the successor in interest of *A*, applied to the Collector to be restored to possession. The Collector refused. *D* therefore sued him for arrears of the mokasa amals and obtained a decree in 1868. Thereafter *D* did not receive any payment from the Government treasury. In 1883 *D* filed the present suit against Government to recover possession of the inam lands together with arrears of the amals. *Held* also that, even if the suit were cognizable by the Civil Courts, it would be barred by limitation. The plaintiff's right to the periodical payments was barred by a total discontinuance of them for more than twelve years before the institution of the suit, notwithstanding his decree for the amals in 1868, which might establish his right to them in that particular year. *Held* further that the claim to the lands was also time-barred, the Collector's possession being that of an adverse holder since 1865, when the attachment was ordered to be withdrawn. The land could not properly be said to be *in custodia legis*, Government having taken possession of it in its own

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right, and not on behalf of any rival claimants thereto. *Rao Karan Singh* v. *Baker Ali Khan, L. R., 9 I. A., 99 : I. L. R., 5 All., 1 ; Shidhojirav* v. *Naikojirav, 10 Bom., 228 ;* and *Tukaram* v. *Sujan Gir Guru, I. L. R., 8 Bom., 585,* distinguished. SHIVRAM DINKAR GHARPURAY *v.* SECRETARY OF STATE FOR INDIA . . **I. L. R., 11 Bom., 222**

131. ———————— *Suit for declaration of title.*—In a suit the parties to which were Nambudri Brahmans following the Marumakkatayam law, the plaintiff sued as the adoptive son of the last member of an otherwise extinct mana for a declaration of his title to certain lands as the sole uralen of a devasom. He was in possession of the greater part of the land, but one paramba was alleged to be held adversely to him by a person not joined in the suit, and the tenants of part of the remaining land had attorned to the defendant. In 1875 a suit was brought by the defendant's brother and others against the plaintiff and others to set aside an alienation by the present plaintiff's predecessor in title, but the suit was dismissed without any decision as to the co-uraimi right of the then plaintiff; and the present plaintiff had no further notice of interference by the present defendant's mana. *Held* that the claim was not barred, and that the plaintiff was entitled to the decree sued for. SUBRAMANYAN *v.* PARAMASWARAN **[I. L. R., 11 Mad., 116**

132. ———————— *Manager of a Hindu temple—Shevaks or servants of an idol—Rights of manager and servants inter se.*—The plaintiff was the hereditary manager of the temple of Shri Ranchod Raiji at Dakor. The defendants were the shevaks or ministers of the deity. The plaintiff sued to oust the defendants from a certain piece of land attached to the temple, alleging that the defendants had erected shops on the land, and appropriated the rents to their own use, although it had been already decided in a suit between the parties that the land was always to be kept open and unoccupied for the use of the temple. The shavaks contended that they had been in exclusive and uninterrupted possession of the land in dispute for more than twelve years, and that by reason of such user they had acquired a quasi-proprietary title at least as against the manager of the temple. They therefore pleaded that the suit was barred by limitation. *Held* that the defendants had not by occupation and user acquired any title as against the plaintiff, who was the manager of the temple estate. They had come into occupation originally as servants and representatives of the deity, and during their occupation they could not by a wish change the nature of their possession. Both they and the plaintiff held the land for the same deity, and their rights could not be adverse to each other so as to give rise to a title by prescription. The only question then was as to which of them was the proper representative of the deity for the particular purpose of this suit, and that question had already been decided in a former suit in favour of the plaintiff. MULJI BHULABHAI *v.* MANOHAR GANESH **[I. L. R., 12 Bom., 322**

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2. ADVERSE POSSESSION—*continued.*

133. ———— *Adverse possession of defendant supplemented by previous adverse possession of widow by whom defendant was adopted—Limitation Act (XV of 1877), s. 3.*—*B* died in 1865 without a son, leaving three widows, *viz.*, *L*, *A*, and *C*, of whom *L* was the eldest and *C* the youngest. The plaintiff was unanimously selected by the three widows for adoption after the death of their husband. The unanimity continued down to May 1866; but on the 30th June 1866 *L* declared that, if the plaintiff were adopted by *C*, she would not consent to it. On the 1st July 1866 *C* adopted the plaintiff without the consent of *L*. On the 12th August 1869 *L* adopted the defendant. On the 10th August 1881 the plaintiff filed this suit against the defendant, alleging himself to be *B*'s adopted son and as such claiming possession of *B*'s property. He did not deny the factum of the defendant's alleged adoption on the 12th August 1869, which constituted (the plaintiff alleged) his cause of action. The defendant contended that he himself was the adopted son of *B*, having been adopted by *L*, the senior widow. He insisted that the plaintiff's adoption was invalid, having been carried out without the consent of *L*, the senior widow. He further contended that the plaintiff's claim to the property was barred by limitation, it having been in possession of himself (the defendant) and *L* for more than twelve years before this suit was filed. *Held* that the suit was barred by limitation (art. 144 of the Limitation Act XV of 1877), the defendant having been in adverse possession of the property for more than twelve years. The plaintiff's alleged adoption took place in July 1866. The defendant was adopted and put into possession on the 12th August 1869. This suit was filed on the 10th August 1881, *i.e.*, two days before the expiration of twelve years from the date of the defendant's adoption. Down to the date of the defendant's adoption, *L* had been either actually or constructively in exclusive possession of the property, such possession being distinctly adverse both to the plaintiff, so far as he claimed to be the adopted son, and to *C*, so far as she might claim to represent him during his minority. The question of limitation then depended on whether the defendant could supplement his own adverse possession since his adoption (which was deficient by two days) by the adverse possession of *L*, and this again depended on whether the defendant could be said to derive his liability to be sued from or through *L* so as to bring himself within the definition of a defendant as provided by s. 3 of the Limitation Act (XV of 1877). The Court was of opinion that the defendant might be said to have derived his liability to be sued from *L*, and that the plaintiff's claim therefore became barred in 1878. PADAJIRAO *v.* RAMRAV

[I. L. R., 13 Bom., 160

134. ———— *Mortgage—Mortgagee in possession—Dispossession of mortgagee by trespasser—Adverse possession as against mortgagee when effectual also as against the mortgagor—Burden of proof.*—Land was mortgaged with possession to *A* (defendant No. 1) in 1828. In 1856 *A* was ousted from possession by *B*, a trespasser (defendant No. 2), who subsequently held the land and dealt with it as his own for forty years. The mortgagor sued both *A* and *B* for redemption. In appeal it was contended by *B* that his possession had been adverse not merely to *A* (the mortgagee), but also to the plaintiff (the mortgagor), and that the suit was barred by limitation. The plaintiff contended that *B*'s possession was not adverse to him, because he as mortgagor had no right to possession during the term of the mortgage. *Held* that the suit fell under art. 144 of sch. II of the Limitation Act (XV of 1877), and that it lay upon *B* to prove that his possession for twelve years prior to the suit was adverse to the plaintiff (the mortgagor). There may be a possession adverse to the interest of a mortgagee, which nevertheless is not adverse to the interest of the mortgagor. In such a case a suit by the mortgagor, or those claiming under him, will not be barred, although one by the mortgagee may be. The case was remanded for a finding on the question of when *B*'s possession became adverse to the plaintiff. CHINTO *v.* JANKI

[I. L. R., 18 Bom., 51

135. ———— *Alienation of an infant's property by his mother and guardian.*—Suit filed in 1891 to recover possession of certain land, the property of a Hindu, who died an infant, leaving him surviving his adoptive mother, who entered into possession and enjoyed the property till her death in 1890. It appeared that in 1861 the deceased and his adoptive mother had conveyed absolutely certain of the properties to the widow of one of his first cousins on his adoptive father's side for her maintenance and that of her daughter, and that it had been assigned by her to *A*, *B*, and *C*. *Held* that the plaintiff's claim to the lands in the possession of *A*, *B*, and *C* was barred by limitation. SUNDRAMMAL *v.* RANGASAMI MUDALIAR . **I. L. R., 18 Mad., 193**

136. ———— *Non-payment of melvaram—Claim of kudivaram right by prescription.*—In a suit to recover land, of which neither the plaintiff nor his predecessor in title had been in possession within a period of forty years before the suit, the defendants pleaded that the plaintiff had been entitled to receive melvaram only, that the payment of melvaram had been discontinued fifteen years before the date of the suit, and that they themselves were entitled to the kudivaram right in the land. It was found that the non-payment of the melvaram had not been accompanied by an assertion of adverse title, and that the defendant's kudivaram right had not been set up twelve years before the suit. *Held* that the suit was not barred by limitation. GOVINDA PILLAI *v.* RAMANUJA PILLAI

[I. L. R., 18 Mad., 171

137. ———— *Mortgage by previous owner out of possession for twelve years—Alienation of endowed property.*—In a suit on a mortgage, dated the 19th June 1888, and executed by the superintendent of a mosque, the endowments of which

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

were comprised in the mortgage, together with defendant No. 1 therein described as his disciple, it was admitted that the first mortgagor had occupied the position of superintendent up to 1871, and that in that year he had executed an instrument authorizing defendant No. 2 to take possession of the properties on behalf of defendant No. 3, whom, as was recited, the executant had taken in adoption and appointed to be his successor. In 1874 the first mortgagor purported to cancel the instrument above referred to, but it appeared that he never actually resumed the management, and that defendant No. 2 resisted various attempts then and subsequently made to interfere with his possession, and held the properties together with defendant No. 3 up to the date of the suit. *Held* that defendants Nos. 2 and 3 were in adverse possession of the mortgage premises from 1871, and that the mortgage was consequently invalid, whatever the purpose of the debt intended to be secured thereby. SUBBARAMAYYAR *v.* NIGAMADULLAH SAHEB

[I. L. R., 18 Mad., 342

138. ———— *Patnidar and dar-patnidar, Dispossession of—Adverse possession—Relinquishment by the patnidar, Effect of.*—The land in dispute along with other lands were let out in patni and dar-patni by the predecessor in interest of the plaintiffs. During the continuance of the said leases the land in dispute was taken possession of, and held adversely by, the defendants or their predecessor. The patni and dar-patni were relinquished by the patnidar and dar-patnidar in favour of the plaintiffs on the 29th June 1891, and they, on the 28th June 1893, brought a suit for recovery of possession of the disputed land from the defendants. The defence was that the suit was barred by limitation. *Held* that art. 144, sch. II of the Limitation Act, applied to the case, and that the suit was barred by limitation, inasmuch as it was not brought within twelve years from the date when the possession of the defendants became adverse to the plaintiffs. *Nuffer Chandra Pal Chowdhry* v. *Rajendra Lal Goswami, I. L. R., 25 Calc., 167; Gunga Kumar Mitter* v. *Asutosh Gossami, I. L. R., 23 Calc., 863; Sharat Sundari Dabia* v. *Bhobo Pershad Khan Chowdhuri, I. L. R., 13 Calc., 101;* and *Chinto* v. *Janki, I. L. R., 18 Bom., 51,* distinguished. GOBINDA NATH SHAHA CHOWDHRY *v.* SURJA KANTA LAHIRI

[I. L. R., 26 Calc., 460

139. ———— *Mortgage dating from before the annexation of Oude—Oude Redemption Act XIII of 1866—Under-proprietary rights of third parties in adverse possession, with a sub-settlement of one of the villages mortgaged.*—In 1854, before annexation (1856), the owner of a talukh of ten villages made a usufructuary mortgage of the entire ilaka to a neighbouring talukhdar. The mortgagor died in 1857, leaving a minor son, to whom, during the events that followed, the mortgage was unknown, and whose attempts to establish an inherited right to the mortgaged ilaka against the talukhdar were ineffectual whilst that ignorance lasted. The confiscation of 1858 had at one time swept away all rights, whether of the talukhdar, who was mortgagee, or of the mortgagor's heir, to redeem, or of any under-proprietors on the ilaka. This effect was thus counteracted. In the settlement of 1859-60, adjustments were made of the ownership of property, and in this case settlement was made with the talukhdar of his larger talukhdari estate, in which the mortgaged ilaka was at the same time incorrectly included as part. The right of redemption was restored by Act XIII of 1866, the mortgagor's heir being, however, unaware of his title to redeem any mortgage. Under-proprietary rights were restored by order of Government in 1859. Such rights were, with a sub-settlement, decreed by a Settlement Court on the 31st July 1866, in one of the villages of the mortgaged ilaka, in favour of a claimant, through whom the defendants in this suit now made title. In 1881, the mortgagor's heir, having by that time discovered the existence of the mortgage of 1854, sued the heir of the mortgagee to enforce the right to redeem. He obtained against the talukhdar as such heir a decree for possession of nine of the villages in the ilaka, *Amanat Bibi* v. *Imdad Husain, I. L. R., 15 Calc., 800: L. R., 15 I. A., 106,* but the tenth was in the hands of the under-proprietors above mentioned, whom he sued for possession of it in 1887. *Held* that, inasmuch as the defendants were by the decree of 1866 established as owners of an under-proprietary right, becoming thereby entitled to a sub-settlement which they had obtained, their possession was adverse to any one claiming to be talukhdar or superior proprietor of the same estate, as well as to others. The defendant's possession with title dating from 1866 at latest, the lapse of time barred this suit under Act XV of 1877. IMDAD HUSAIN *v.* AZIZ-UN-NESSA

[I. L. R., 23 Calc., 483
L. R., 23 I. A., 8

140. ———— *Right of possession claimed by tenant against landlord—Mortgage by landlord — Possessory suit in the Mamlatdar's Court by the tenant against the mortgagor—Decree in favour of the tenant—Assignment of mortgage by mortgagee—Suit brought by the assignee to recover possession—Effect of Mamlatdar's order against mortgagor.*—One *R*, who was the owner of the land in dispute, mortgaged it to *B* in July 1870. In October 1876 the defendant, a tenant of the land, obtained an injunction against *R* restraining him from interfering with his (the defendant's) possession, in possessory suit which was filed in the Mamlatdar's Court in May 1876. In July 1877 *B* obtained a decree on his mortgage, and in execution he got possession of the property from *R* (the mortgagor) in June 1879. The plaintiff, who was the assignee of both *B* and *R* (mortgagee and mortgagor), sued the defendant in ejectment in September 1888. Both the lower Courts allowed the claim. On second appeal, —*Held* that ever since the proceedings in the Mamlatdar's Court commencing with the defendant's suit in May 1876, the possession of the defendant, whatever may have been its nature originally, was distinctly adverse to *R*, and also to the plaintiff, who as assignee might have taken possession at any time under the mortgage, and the present suit, not having been brought until September 1888, was barred by the Limitation Act (XV of 1877). BAPU BIN MAHADAJI *v.* MAHADAJI VASUDEO . **I. L. R., 18 Bom., 348**

141. ———— *Manager—Land appertaining to muth—Sale of miras malki (ownership of miras tenure)—Mirasdar on inam estates, Position of—Limitation Act (XV of 1877), s. 28—Right to recover rent.*—In 1860, *K*, the manager of a muth, sold to *B* the miras malki (ownership of miras tenure) of certain lands appertaining to the muth subject to the payment of assessment. *K* died in the same year, and was succeeded by *R* as manager. In 1864 *R* sued *B* to set aside the sale. The suit was dismissed in 1865, and *B*'s miras right was confirmed. In 1871 one *G* obtained a decree declaring him to be the legal manager of the muth and removing *R*, who was held to have had no title to the office. In 1887 the plaintiff, who succeeded *G* in the management of the muth, brought the present suit against the defendant, who was the vendee of *B*, to recover possession of the lands or to recover assessment for three years previous to the suit. The defendant pleaded that the suit was barred by limitation. The plaintiff contended that, as there was no lawful manager between 1860 and 1875, that period ought to be omitted in computing the period of limitation, and that, as under the deed of sale to *B* the vendee became a tenant, the possession of the vendee and of the defendant could not be adverse. *Held* that, if defendant's possession was adverse to the ownership of the muth during twelve years after *K*'s death, the operation of the law of limitation would not be affected by the fact that there was no legal manager during that time. *Held* further that in the Bombay Presidency the mirasdar on inam estates is only "a tenant at quit-rent or at a reasonable rent not subject to ejectment so long as he pays it;" and as there was nothing in the sale-deed passed by *K* to *B* which required a different construction to be put on the miras tenure created by it, *B*'s possession under it could not be adverse to the muth until there was an assertion by the grantee of his claim to be a permanent tenant, up to which time he would, in the eye of the law, be regarded as a tenant-at-will. But the suit brought by *R* in 1864 showed that *B* was then asserting his mirasi right, and as more than twelve years had elapsed between that date and the bringing of the present suit, the plaintiff's right as representing the muth to recover immediate possession was barred. *Held* further that the plaintiff's right to recover three years' arrears of rent as reserved by the mirasi grant was not affected, as the effect of s. 28 of the Limitation Act (XV of 1877) was to extinguish the plaintiff's right, as claimed by him, to treat the grant as null and void. VITHALBOWA *v.* NARAYAN DAJI THITE . . . . **I. L. R., 18 Bom., 507**

142. ———— *Suit for declaration that lands are khoti—Allegation of fraud—Survey Settlement Act (Bom. Act I of 1865).*—A mixed khoti village, consisting of khoti and dhara lands, belonged to two co-sharers, *P* and *D*; each of them passed kabuliats to Government in alternate years till 1862-63, when *P* on account of his advanced age allowed *D* to pass the kabuliat every year. In the year 1867 the survey settlement having been introduced under Bombay Act I of 1865, *D* refused to pass the annual kabuliat. Government thereupon put the village under attachment, which was, however, removed in the year 1878 on his passing the required kabuliat. The management of the village was restored to him and certain surplus profits were handed over to him by Government. In the year 1881 *P* sold his share in the khoti to *S*, who brought a suit against *D* and his brother to recover a half share of the above-mentioned profits. *D* resisted the claim, denying that either *P* or his assignee had any right to the khoti or to share in the khoti profits. The suit was dismissed on a technical ground. Subsequently in the years 1881 and 1884, *D* got decrees against the actual tenants declaring that the lands, the subject-matter of the present suit, were his dhara lands, and in accordance with those decrees the revenue authorities made corresponding entries in the revenue records. In the year 1888-89 *S* passed a kabuliat as a half sharer in the khoti, and enjoyed the khoti profits for one year. Afterwards plaintiff No. 1, one of *S*'s sons who died in the meanwhile, having passed the annual kabuliat in 1892-93 and again in 1894-95 and having failed during both the years to recover khoti profits from the lands in dispute, he filed the present suit in August 1895 for a declaration that the lands were khoti, and that the defendants had fraudulently got them entered in the revenue records as dhara. The plaintiff stated that they learnt of the defendant's fraud in the year 1895, and sought to recover a share of the khoti profits for 1892-93 and 1894-95. The defendants contended (*inter alia*) that the claim was time-barred. Both the lower Courts allowed the claim for a declaration, holding that it was not time-barred, the first Court holding that the cause of action accrued to the plaintiff's in 1888-89, when *S* first entered on the management, and the Appeal Court holding that the cause of action accrued in 1881 and 1884, when the dhara entries were made in the revenue records, and that, but for s. 18 of the Limitation Act (XV of 1877), the plaintiff's suit would have been time-barred even under art. 144, sch. II of the Act. On appeal to the High Court,—*Held* (reversing the decree) that the claim was barred by limitation. The plaintiffs' cause of action arose in the year 1881 at the date of *S*'s purchase. Neither *S* nor his sons (the present plaintiffs) having ever been in possession of any share of the profits of the lands in dispute, not even in the year when *S* passed the kabuliat and managed the village, and their right to such possession being throughout denied by *D*, the claim was beyond time. *Held* further that the provisions of s. 18 of the Limitation Act (XV of 1877) did not apply. DHONDO RAMCHANDRA *v.* VASUDEO SAKHARAM SOMAN . . . **I. L. R., 24 Bom., 104**

143. ———— *Estate in the possession of the widow of the last male survivor of a family co-parcenary — Possession first obtained through* *her, held, adversely to the heirs, by the widow of another co-parcener.*—The plaintiffs were in the line of the heirs of an ancestor from whom, through his daughter, their grandmother, they were descendants in the third generation. In 1888 they sued the defendants, who were in possession, to recover what had been part of the family estate, alleging title according to the Mitakshara. A question whether the plaintiffs were not barred by limitation depended on whether the now disputed part of the family property had not been from the year 1843 in the adverse possession of the widow of one of their great uncles. This widow, after transferring that part of the property to a person through whom the defendants made title, died in 1886. She was the widow of the elder of two brothers, the last co-parceners of the family, who, being sons of the said ancestor, had at one time held the family estate. This elder brother, her husband, died in 1826. His younger brother survived him, and, having taken the whole estate by survivorship, died in 1833, leaving a widow, who died in 1843. The latter widow, having inherited the estate from her husband for her life-estate, there being no co-parcener left, gave a share of her inheritance to the abovementioned widow of the elder brother. So assigned, the property remained, with the addition in 1843 of the share which the younger brother's widow had kept for herself, in the possession of the other widow, the one first abovementioned. After many years, this widow transferred it to her own brother, of whom the present defendants were the heirs and representatives. It was decided below that it had not been in the right of a Hindu widow taking by inheritance from her husband that the elder brother's widow had obtained, and had dealt with, the property. A widow's estate for life never constituted a possession adverse to the reversionary heir, but here the widow, through whom the defendants claimed, had been from 1843 in adverse possession for more than twelve years. The suit was therefore barred under the Limitation Act (XV of 1877). This judgment was affirmed by their Lordships. MAHABIR PERSHAD *v.* ADHIKARI KOER . . . . **I. L. R., 23 Calc., 942**

144. ———— *Purchase by conditional sale—Vendor remaining in possession as tenant holding over—Possession not shown to be adverse.*—In 1866 the plaintiff bought the lands in suit by conditional sale-deed, repayable in ten years, from a third party who, under the same document, became his tenant of the said lands. Before the expiration of the ten years the vendor died, and his widow sold her right in the lands and gave possession to *G*, the transferor of the second defendant. On the expiration of the ten years, the sale to plaintiff became absolute, and *G* continued to hold over after the expiry of the lease, but there was no evidence to show that *G*'s possession ever became hostile to plaintiff. *Held* that the fact that plaintiff's title ripened into full ownership on the expiration of the ten years provided by the sale-deed did not alter the character of the tenure of *G*, that his possession never became hostile to plaintiff; that *G* acknowledged the plaintiff's title in his sale-deed dated 1881 to the second defendant; and that the suit was not barred. ANANTHA BHATTA *v.* HOLEYA DEYYU . . **I. L. R., 19 Mad., 437**

145. ———— *Landlord and tenant—Permanent tenant—Notice to pay enhanced rent or quit the land—Denial of landlord's right to enhance rent—Suit to recover enhanced rent—Limitation Act, s. 23.*—An inamdar gave his permanent tenant notice to pay enhanced rent or quit the land on a certain date. The tenant denied the liability to pay enhanced rent, and, stating that he held the land on payment of Government assessment only, refused to quit. The inamdar, more than twelve years after the date mentioned in the notice, sued the tenant to recover enhanced rent. *Held* that the plaintiff's (inamdar's) right to enhance the rent and to recover the land in default of payment of such rent was barred by limitation, the tenant, so far as the right was concerned, having been holding adversely to him for more than twelve years. *Held* also that s. 23 of the Limitation Act (XV of 1877) had no application to the case. GOPAL RAO KRISHNA RAJOPADHE *v.* MAHADEVRAO BALLAL MULE . . **I. L. R., 21 Bom., 394**

146. ———— *Suit for possession of property purchased at auction-sale in execution of a decree—Effect of formal possession in saving limitation—Possession given under Civil Procedure Code (1882), ss. 318 and 319.*—Where possession of property purchased at auction-sale in execution of a decree is formally given by the Court under s. 318 or s. 319 of the Code of Civil Procedure, although the actual possession may remain with the judgment-debtor, the date of the granting of such formal possession forms, as against the judgment-debtor, a fresh starting point for limitation in respect of a suit for possession of the property sold brought by the auction-purchaser or his representative. *Juggobundhu Mukerjee* v. *Ram Chunder Bysack, I. L. R., 5 Calc., 584,* and *Joggobundhu Mitter* v. *Purnanund Gossami, I. L. R., 16 Calc., 530,* referred to. MANGLI PRASAD *v.* DEBI DIN

[I. L. R., 19 All., 499

147. ———— *Alienation by a Hindu widow—Subsequent adoption by widow—Suit by the adopted son to recover possession—Limitation Act, sch. II, arts. 140 and 141.*—The childless widow of a separated Hindu, being in possession of his property as his heir, alienated it in the year 1868. Twenty years afterwards (13th May 1888) she adopted a son, who in 1890 brought the present suit to recover the alienated property. *Held* that the suit was not barred by limitation. *Per* FARRAN, *J.*—Whether art. 140 or art. 144 of sch. II of the Limitation Act (XV of 1877) applied to the case, the suit was not barred; for if it fell under art. 140, the possession of the defendants adverse to the widow could not affect the plaintiff's rights, and if it fell, as it seemed to do, under art. 144, the possession of the defendants did not become adverse to the plaintiff until he became entitled to possession of the property upon his adoption. *Srinath Kur* v. *Prosunno Kumar Ghose, I. L. R., 9 Calc., 934,* and *Kokilmoni Dassia* v. *Manick Chandra, Joaddar, I. L.*

R., 11 Calc., 791, followed. *Per* CANDY, *J.*—The suit was governed by art. 144, under which the period of limitation began to run from the time when the possession of the defendants became adverse to the plaintiff on his adoption in 1888. Assuming that the possession of the defendants was adverse to the widow, that fact did not affect the plaintiff, who did not derive his right to sue from or through her. MORO NARAYAN JOSHI *v.* BALAJI RAGHUNATH [I. L. R., 19 Bom., 809

148. ———— *Suit by shebait for possession of debutter property alienated by former shebait — Hindu law, Endowment — Position of Hindu idol—Limitation Act, art. 184.*—A suit was brought in 1892 by the shebait of an idol for recovery of khas possession of mokurari property belonging to the idol, and for a declaration that a dar-mokurari executed by the preceding shebait in 1857 in respect of the mokurari property, the executant professing to act as guardian of her minor son, and a kobala executed by her son in respect of the same property in 1875, were invalid and inoperative. The plaintiff was appointed shebait in 1888. *Held* that the suit was barred by limitation, and it came either under art. 134 or under art. 144 of sch. II of Limitation Act (XV of 1877). *Held* that the idol is a judicial person capable of holding property, and the possession of the defendants, who professed to derive title not from the idol, but ignoring its rights, must be taken to have become adverse to the idol from the dates of the two alienations; and, although it is true that an idol holds property in an ideal sense, and its acts relating to any property must be done by or through its manager or shebait, yet that does not show that each succeeding manager gets a fresh start as far as the question of limitation is concerned, on the ground of his not deriving title from any previous manager. *Shidessuree Dabia* v. *Mothoora Nath Acharjo, 13 Moore's I. A., 270 : 13 W. R., P. C., 18 ; Prosunno Kumari Debya* v. *Golub Chund Baboo, 14 B. L. R., 450 : 23 W. R., 253 : L. R., 2 I. A., 145 ; Kannan* v. *Nilukandan, I. L. R., 7 Mad., 337,* approved. NILMONY SINGH *v.* JAGABANDHU ROY [I. L. R., 23 Calc., 536

149. ———— *Formal possession — Effect of formal possession as against a third person other than the judgment-debtor—Civil Procedure Code (1882), s. 319.*—*Held* that whatever might be the effect of the delivery of formal possession under s. 319 of the Code of Civil Procedure as against the judgment-debtor himself, such formal delivery of possession will not take effect as actual possession as against a purchaser of the rights of the judgment-debtor who has previously obtained actual possession. *Mangli Prasad* v. *Debi Din, I. L. R., 19 All., 499,* referred to. NARAIN DAS *v.* LALTA PRASAD . . . . I. L. R., 21 All., 269

150. ———— *Diluviation—Subordinate tenure—Suit for recovery of possession of land—Re-formation on the site of plaintiffs' villages—Burden of proof.*—In a suit brought by the plaintiffs on the 10th December 1888, for recovery of possession of three plots of land, on the allegation that the lands in dispute were re-formations on the site of their villages of K and M, which were let out in patni and darpatni to third parties in 1868, and that the rights of the patnidar and the darpatnidar were re-acquired by them in the years 1878, 1880, 1883, and 1892, the defence was that the suit was barred by limitation, and that the lands were not re-formation, but accretion to the defendants' village of C. *Held* that, inasmuch as a grantor of a subordinate tenure is not bound to sue for trespasses committed against his tenant during the continuance of the tenure, and that his right of action accrues when the tenancy comes to an end, the suit was not barred by limitation. *Held* also that, as the plaintiffs' title to, and possession of, the villages of K and M, down to the time of their diluviation, was not denied, and as it was found that the disputed plots of land were part of the said villages, it was not incumbent on the plaintiffs to prove possession of the lands in dispute previous to the diluviation, but the onus lay on the defendants to prove adverse possession for more than twelve years prior to the institution of the suit. *Woomesh Chunder Goopto* v. *Raj Narain Roy, 10 W. R., 15,* and *Davis* v. *Abdul Hamed, 8 W. R., 55,* referred to. GUNGA KUMAR MITTER *v.* ASHUTOSH GOSSAMI [I. L. R., 23 Calc., 863

151. ———— *Suit by hereditary trustee to set aside invalid alienation—Alienation of property of religious endowment.*—In a suit brought by an hereditary trustee to set aside certain alienations of the trust property made by his predecessors in title, and to have it declared that he was entitled to the sole management of the trust property, it appeared that the property was held jointly by plaintiff's father and by the mother of the first defendant. On the 17th September 1868, the first defendant's mother alienated her right to the joint management to the first defendant, who, however, never got possession until the 13th February 1869, on which date plaintiff's father alienated his right to joint management to the first defendant; the plaintiff was born in 1875. *Held* that the hereditary right of plaintiff was a personal right accruing on the death of his predecessor, *viz.*, his father, and that, as limitation ran from that date, the suit was not barred. VELU PANDARAM *v.* GNANASAMBANDA PANDARA SANNADHI. GNANASAMBANDA PANDARA SANNADHI *v.* VELU PANDARAM . I. L. R., 19 Mad., 243

In the same case in the Privy Council,—*Held* the possession delivered to the purchaser was adverse to the vendors. After the twelve years' period of limitation, which expired in the lifetime of the vendor, whose son now sued to recover the hereditary managership and possession of the lands of the endowment, the suit was barred under Limitation Act (XV of 1877). There was no distinction between the claim to the office and the claim for the property in regard to the application of art. 124 of sch. II of the Act and of s. 28. If there were, art. 144 would apply to the claim for the property. In order to fix the starting point for limitation at a date later than that of the

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2. ADVERSE POSSESSION—*continued.*

transfer, it was contended that the office and title were held in successive life-estates. If that contention had been right, the period of limitation would have commenced at the death of the plaintiff's father. The Judicial Committee were of opinion that it must be assumed that the origin of the endowment was by gift from the founder, and that, in accordance with the ruling in *Juttendromohun Tagore* v. *Ganendromohun Tagore (1872), L. R., I. A., Sup. Vol., 47 : 9 B. L. R., 377,* heritable estates could not be created to take effect as successive life-estates and inconsistently with the general law. This applied to both the office and the property. *Held* that the law of inheritance did not permit the creation of successive life-estates in this endowment; the above ruling being also contrary to the judgment in *Trimbak Bawa* v. *Narayan Bawa (I. L. R., 7 Bom., 188)*; and that the plaintiff could not claim to have been entitled otherwise than as heir to, and from, and through his father, in whose lifetime the title had been extinguished by lapse of time and adverse possession of the defendant. GNANASAMBANDA PANDARA SANNADHI *v.* VELU PANDARAM

[I. L. R., 23 Mad., 271
L. R., 27 I. A., 69

152. ———— *Suit to set aside alienation of property of religious endowment—Trustee's title barred by adverse possession as against his predecessor.*—The holder of the office of trustee in a temple succeeded to that office in 1893. His predecessor had remained in office for over twelve years, but had never sued for the recovery of certain lands. A suit being now brought to recover the said lands on the ground that they provided the emoluments of the office of meikaval in the temple,—*Held* that the suit was barred by limitation, the adverse possession held during the previous office-holder's time barring his successor. CHIDAMBARAM CHETTI *v.* MINAMMAL . . . **I. L. R., 23 Mad., 439**

See RADHABAI *v.* ANANTRAV BHAGWANT DESHPANDE . . . . **I. L. R., 9 Bom., 198**

153. ———— *Symbolical possession.*—The plaintiff's predecessor in title, one *L N*, acquired the share of 2 annas and 8 pies in certain mouzahs by purchase at a sale held in execution of his own decree against one *H N*, and in September 1874 obtained symbolical possession. In December 1874, *H N* and his co-sharers granted a perpetual lease to one *G*, reserving a nominal rent. Subsequently *L N* brought a suit for possession of the 2 annas and 8 pies share against *H N* and his co-sharers, and after the death of *L N* the plaintiff obtained a decree. In March 1882 the plaintiff obtained symbolical possession in execution of that decree. On the 29th January 1887 one *B M* purchased at a sale in execution of a decree against *G* the right of the latter as lessee, and obtained through the Court symbolical possession of the same. In a suit brought by the plaintiff against *B M* and *G* to recover possession of the 2 annas and 8 pies share in December 1887, that is, thirteen years after the grant of the lease by *H N* and his co-sharers to *G*,—*Held* that the suit was barred by limitation under art. 144 of the Limitation Act. *Held* also that the lease purporting to be a perpetual lease without reversion to the grantors, and no rights reserved to them, but only a nominal rent, symbolical possession as against the grantors would not be effective as against the lessee and thus save the bar of limitation. *Bejoy Chunder Banerjee* v. *Kally Prosonno Mookerjee, I. L. R., 4 Calc., 327,* referred to. GOSSAMI DALMAR PURI *v.* BEPIN BEHARY MITTER . . **I. L. R., 18 Calc., 520**

154. ———— *Symbolical possession.*—The plaintiff purchased the land in dispute on 20th April 1876 at a Court sale held in execution of a decree against defendant's father, and obtained symbolical possession through the Court on 7th September 1876. At the date of the sale, and subsequently thereto, the defendant was in actual possession of the land in question. On 5th September 1888 the plaintiff filed the present suit to recover possession of the land. *Held* that the suit was time-barred, the defendant's possession having been adverse to the plaintiff for more than twelve years. LAKSHMAN *v.* MORU . . . **I. L. R., 16 Bom., 722**

155. ———— *Symbolical possession—Judgment-debtors remaining in actual possession—Subsequent attempt by purchaser to take possession—Resistance or obstruction to execution of decree—Application to remove obstruction converted into a suit under s. 331 of Civil Procedure Code (1882)—Limitation Act (XV of 1877), s. 3, and sch. II, art. 138—Civil Procedure Code (1882), s. 331.*—The plaintiff purchased the property in dispute at an auction-sale in execution of a decree, and on the 14th August 1877 he took formal possession, but the judgment-debtors remained in actual possession. On the 18th September 1889, the plaintiff proceeded to take possession, but was obstructed by the defendant, who alleged that he had purchased the property from the judgment-debtors in 1888. The plaintiff then applied for the removal of the defendant's obstruction, and his application was registered as a suit under s. 334 of the Civil Procedure Code. *Held* that the plaintiff's claim was barred by limitation. When his application was converted into a suit under s. 331, the rights of the parties had to be determined as if an ordinary suit for possession had been instituted against the defendant, and either art. 138 or art. 144 of the Limitation Act (XV of 1877) applied. In either case the defendant could avail himself of the judgment-debtors' possession, which was adverse to the plaintiff. NAMDEV *v.* RAMCHANDRA GOMAJI MARWADI . . . **I. L. R., 18 Bom., 37**

156. ———— *Symbolical possession—Effect of symbolical possession against third parties—Auction-purchaser—Right of auction-purchaser to tack on his own possession to that of judgment-debtor.*—The property in dispute belonged to *D*. He sold it to *A* on the 25th April 1873, but did not put the vendee into possession. On the 18th April 1883, *A* sold the property to the plaintiff. On the 4th June 1883, in execution of a money-decree against *D*, the property was put up to sale as his, and was purchased by the defendants, who were put into possession by the Court on the 26th March 1885. On the 28th March 1885, the plaintiff sued *A* and *D*'s wife (*D* being then in prison) to recover possession of the property. A decree was passed, in execution of which he obtained symbolical possession through the Court on the 8th February 1886. When he sought to take actual possession, he was resisted by the defendants. Thereupon the plaintiff filed the present suit, on the 19th December 1889, to obtain actual possession of the property from the defendants. *Held* that the suit was barred under art. 144 of the Limitation Act (XV of 1877). The defendants had a right to tack on the period of their own adverse possession as against the plaintiff to that of *D*'s adverse possession as against *A*. The symbolical possession obtained by the plaintiff did not break up the continuity of the adverse possession of the defendants and the person through whom they derived their title. HARJIVAN *v.* SHIVRAM . . . **I. L. R., 19 Bom., 620**

157. ———— *Suit for possession of land by an auction-purchaser, who obtained symbolical possession—Code of Civil Procedure (1882), ss. 318 and. 319—Limitation Act, art. 138.*—In a suit for possession of land by an auction-purchaser, who had obtained symbolical possession, the defendant objected that the suit was barred by limitation, it not having been brought within twelve years from the date of the auction-purchase. *Held* that art. 144, sch. II of the Limitation Act (XV of 1877), applied to the case, and that, as the suit was brought within twelve years from the date when the auction-purchaser obtained symbolical possession, it was not barred by limitation. HARI MOHAN SHAHA *v.* BABURALI . . **I. L. R., 24 Calc., 715**

158. ———— *Continuance of possession—Payment of rents and profits to rightful owner during attachment by Magistrate under s. 146, Criminal Procedure Code.*—If the person, who is afterwards found to have title to a property, receives from the Magistrate the rents and profits thereof for the period during which it is held under attachment by the latter, under the provisions of s. 146, Criminal Procedure Code (Act X of 1882), he is held to be in constructive possession thereof until withdrawal of such attachment, and limitation does not run against him during such period. JAGUBANDHU BHATTACHARJEE *v.* HARI MOHAN RAY

[1 C. W. N., 569

159. ———— *Suit by karnavan to recover lands alienated by previous karnavan.*—The plaintiff sued as the karnavan of a Mapilla tarwad to recover lands in the possession of the defendants, who were a donee from, and the descendants of, a previous karnavan and their tenants. It appeared that the alleged previous karnavan had died less than twelve years before the suit was filed, but more than twelve years before the joinder, as a supplemental defendant, of one to whom he had conveyed certain property by way of gift five years before his death. *Held* that the suit was barred by limitation as against the donee above referred to, her possession having been adverse to the tarwad since the date of the gift. BYATHAMMA *v.* AVULLA

[I. L. R., 15 Mad., 19

160. ———— *Gift of a life-interest.*—The karnavan of a Malabar tarwad executed an instrument described as a vasyat, whereby he made a gift of a life-interest in certain self-acquired property, to come into operation at once in 1854. The members of his tarwad acquiesced in this disposition of the property. The donor died in 1859, and the donee in 1880. In a suit brought in 1886 by his successor in the office of karnavan to recover the property,—*Held* that time began to run for the purposes of limitation from the death of the donee, and therefore the suit was not barred. KUTTYASSAN *v.* MAYAN . . . **I. L. R., 14 Mad., 495**

161. ———— *Suit to recover estate granted by predecessor as service tenure with rent reserved.*—In a suit brought in 1886 by a zamindar to recover an estate granted by his predecessor to the predecessor of the defendant on a service tenure, a small money rent being also reserved, it appeared that in 1864 the right of the plaintiff's predecessor to rent had been established by suit, but there was no evidence that the service was then dispensed with, but in 1885 it was intimated to the defendant that the service was dispensed with and a notice to quit was given to him; the option of holding the estate at an enhanced rent was, however, given to him at the same time. *Held* that the suit was not barred by limitation, no adverse possession being shown. MAHADEVI *v.* VIKRAMA

[I. L. R., 14 Mad., 365

162. ———— *Suit for possession—Purchaser at a patni sale under Reg. VIII of 1819 how affected by adverse possession prior to date of sale.*—A person who has held possession of property adversely against a former proprietor cannot be allowed, in a suit for possession, to set up such adverse possession against a person who has purchased the property at a patni sale, held under Regulation VIII of 1819, within twelve years from the date of the institution of the suit. The purchaser is entitled to the patni free from all incumbrances and in the condition in which it was created. *Womesh Chunder Goopto* v. *Raj Narain Roy, 10 W. R., 15,* referred to. KHANTOMONI DASI *v.* BIJOY CHAND MAHATAB . . . **I. L. R., 19 Calc., 787**

163. ———— *Burden of proof.*—The plaintiff, who was the sister of the defendant, sued in 1888 to recover from him a moiety of a paramba purchased by them jointly in 1877. In 1878 the plaintiff went to live elsewhere, but, from time to time, returned and spent a few days with the defendant on the land in suit. The defendant pleaded limitation. *Held* that Limitation Act, sch. II, art. 144, applied to the suit, and the burden of proving adverse possession lay on the defendant. ALIMA *v.* KUTTI . . . **I. L. R., 14 Mad., 96**

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*continued.*

164. ——————— **and s. 19**—*Mad. Reg. II of 1802, s. 18—Starting point of limitation—Acknowledgment—Adverse possession of partial interest in land.*—Suit by the zamindar of Shivaganga to recover certain land as part of his zamindari from the defendants who claimed title under a deed of gift, dated in 1830 from the person then in possession of the zamindari. The istimrar zamindar died in 1829. After his death, certain persons were in possession without title; but in February 1863 his daughter, *K N*, obtained a decree in the Privy Council against the person then in possession of the zamindari, in execution of which she was put into possession. In 1876 she brought a suit against the present defendants to recover the property now in question; but that suit was withdrawn on a petition presented by her vakil stating that the case had been compromised and praying that the suit be struck off the file, which was accordingly done. She died in 1877, and the plaintiff was her successor. It appeared that poruppu was always paid for the land now in question. *Held* (1) that the payment of poruppu did not prevent the possession of the defendants from being adverse to the plaintiff, as possession of a limited interest in immoveable property may be as much adverse for the purpose of barring a suit for the determination of that limited interest as is adverse possession of a complete interest in the property to bar a suit for the whole property; (2) that the date of the Privy Council decree could not be taken as the starting point of limitation; (3) that the transactions in reference to the suit of 1876 did not amount to an acknowledgment of the zamindarni's title, and did not give a new cause of auction to her successors; (4) that the cause of action having arisen to the then rightful owner of the zamindari in 1830, the plaintiffs' suit was barred by limitation. SANKARAN *v.* PERIASAMI

[I. L. R., 13 Mad., 467

165. ——————— **and art. 123**—*Distributive share under Mahomedan law—Suit for possession.*—A Mapilla, alleging that certain "family property" had been enjoyed by herself and the defendants (who were her relations on the mother's side) in common till one year before suit, when she was excluded from possession, now sued to recover the share to which she claimed to be entitled under the Mahomedan law of inheritance. It appeared that the property had been acquired in the lifetime of the plaintiff's maternal grandfather, who had died more than thirty years before suit, and that one of his sons had obtained a decree for his share of it in a suit to which, among others, the plaintiff and the father of the present contesting defendants were parties, and that a plea then raised by the latter to the effect that the property had been acquired by him was overruled. The plaintiff's mother died about twenty years before the present suit. *Held* by the Full Bench that the plaintiff's cause of action arose not from the date when her share became deliverable on the death of the persons to whom the property originally belonged, but on her exclusion from enjoyment of the property, and that the suit was governed by art. 144, and not art. 123, of the Limitation Act, and was not barred by limitation. ABDUL KADER *v.* AISHAMMA . **I. L. R., 16 Mad., 61**

LIMITATION ACT, 1877—*continued.*

2. ADVERSE POSSESSION—*concluded.*

166. ——————— *Deed given by debtor to creditor assigning or appropriating rents till debt was paid—Possession of debtor by tenants.*—Where under an instrument a debtor allotted to his creditor his aivaj on account of deshpande hak and inami recoverable from the villages and undertook not to meddle till the aivaj was paid, and the instrument did not describe the lands mentioned therein by metes and bounds, but only as being in the occupation of certain persons paying so much rent, and contained a clause that the aivaj of R63 (the sum total of rents) had been allotted, and that the creditor might take kabuliats from the occupants and make the recoveries,—*Held* that art. 144, sch. II of the Limitation Act (XV of 1877), applied to the creditor-plaintiff's right of possession, and the defendant not being in adverse possession for twelve years prior to the institution of the suit, the plaintiff's claim was held not barred. HANMANT RAMCHANDRA DESHPANDE *v.* BABAJI ABAJI DESHPANDE

[I. L. R., 16 Bom., 172

——————— **art. 145 (1871, art. 147; 1859, s. 1, cl. 15).**

1. ——————— *Deposit—Demand—Cause of action.*—The plaintiff, on leaving Calcutta in 1850, deposited a sum of money with *A*, *B*, and *C*, on which they were to pay him R9 monthly, and return the principal on his demanding it. Rupees 9 were paid to him monthly, until within twelve months of this suit. *A* and *B* had died since the date of the deposit. This suit was brought against *C* and the representatives of *A* and *B* to recover the amount deposited, and a decree was passed against *C* on his own admission. But the representatives of *A* and *B* set up that the suit was barred. *Held* that it was not a deposit under s. 1, cl. 15, of Act XIV of 1859. But held also, in accordance with the English cases (from which, however, the learned Judge dissented), that the cause of action arose from the date of the agreement to repay the money on demand, and not from the date of the demand, and therefore the suit was barred. PARBATI CHARAN MOOKERJEA *v.* RAMNARAYAN MATILAL

[5 B. L. R., 396 : 16 W. R., 164 note

But *see* BRAMMAMAYI DASI *v.* ABHAI CHARAN CHOWDHRY . **7 B. L. R., 489 : 16 W. R., 164**

2. ——————— *Deposit of Government revenue with Collector pending partition—Account, Adjustment of.*—During the pendency of a batwara, the plaintiff purchased a share in anijmali mehal; and as the proportion of the Government revenue of each shareholder had not been ascertained, the shareholders, including the plaintiff's vendor, and subsequently the plaintiff, paid to the Collectorate what they thought due from them on account of Government revenue. Upon an account stated in 1857 it was ascertained that, after all necessary deductions, a sum of R655 was due to the plaintiff, who in 1864 applied to the Collector for payment of the amount;

LIMITATION ACT, 1877—*continued.*

but the application was rejected, as the money had been previously drawn away by certain creditors of his vendor. In 1867 he sued the Collector for recovery of the amount. The defence set up was that the suit was barred by lapse of time. *Held* that the Collector was not a depositary under the meaning of cl. 15, s. 1, Act XIV of 1859; that the cause of action did not arise on the demand for, and refusal of, payment, but on adjustment of the account; and that the case came under cl. 16, s. 1. GABIND CHANDRA *v.* COLLECTOR OF DACCA

[3 B. L. R., Ap., 57 : 11 W. R., 491

In another case the Collector was held to be a depositary within cl. 15 of s. 1, Act XIV of 1859, as to a claim for malikana. GOVERNMENT *v.* RHOOP NARAIN SINGH . . . **2 W. R., 162**

3. ———— *Collector—Depositary—Suit to recover surplus sale-proceeds of sale for arrears of revenue.*—Where *A* instituted a suit in November 1889 to recover from the Secretary of State in Council the surplus sale-proceeds of three talukhs sold for arrears of Government revenue on 3rd October 1877, which sale-proceeds were in the hands of the Collector,—*Held* that the Collector was not a depositary of the money within the meaning of art. 145 of sch. II. SECRETARY OF STATE FOR INDIA *v.* FAZAL ALI . **I. L. R., 18 Calc., 234**

See SECRETARY OF STATE FOR INDIA *v.* GURU PROSHAD DHUR . **I. L. R., 20 Calc., 51**

1. ———— **art. 146**—*Suit to recover possession of mortgaged property—Demand.*—In 1842 *H C* executed, in favour of the plaintiff, his brother, who was in possession of the family property as kurta and administrator of the estate of their father, a mortgage of his (*H C*'s) share of the estate in consideration of R3,700 advanced to him by the plaintiff. In the mortgage-deed the money was expressed to be payable "on demand." In 1847 an amicable partition of the family property was proposed, and it was agreed that a certain portion should be allotted to the plaintiff in satisfaction of the debt due to him by *H C*, but this arrangement was never carried out. In a suit brought in 1876 against the representative of *H C* for foreclosure of the mortgage, the plaintiff, who had admittedly been since 1842 in possession of the family property, alleged that no payment had ever been made in respect of the mortgage, nor any demand for payment, until 1876. The defendant contended that the suit was barred by lapse of time. *Held*, on the construction of the mortgage-deed, and under the circumstances of the case, *per* GARTH, *C.J.*, that a demand was necessary; *per* MARKBY, *J.*, that the words "on demand" did not postpone the date of payment, and that the mortgage-money became payable at once. *Per* GARTH, *C.J.*, and MARKBY, *J.*—A demand was made in 1847 on the agreement to partition the property. The suit therefore was barred by Act XIV of 1859, as being brought more than twelve years after the cause of action arose. That Act not only barred the remedy, but extinguished the right, and therefore the plaintiff could derive no advantage from the extended period of limitation given by art. 149 of Act IX of 1871, which repealed the Act of 1859. Art. 149 of Act IX of 1871, moreover, only applies to cases in which some part of the principal or interest of the mortgage-debt has been paid. RAM CHUNDER GHOSAUL *v.* JUGGUTMONMOHINEY DABEE

[I. L. R., 4 Calc., 283 : 3 C. L. R., 336

2. ———— **and arts. 144, 132**—*Suit for foreclosure.*—The period of limitation prescribed for a suit for foreclosure by the Limitation Act (IX of 1871) is either twelve years under art. 132, or sixty years under art. 149, of sch. II of that Act. GANPAT PANDURANG *v.* ADARJI DADABHAI

[I. L. R., 3 Bom., 312

1. ———— **art. 147**—*Mortgage—Sale or foreclosure—Adverse possession.*—In 1823 the trustees of a marriage settlement invested the trust funds in the mortgage of a house and premises at Entally, in the neighbourhood of Calcutta. The mortgagor was the first tenant-for-life under the settlement, and it was agreed that he should be entitled to remain in the house as long as he pleased, the rent of the premises being set off against the income of the trust funds to which he was entitled under the settlement. In execution of a money-decree against the mortgagor, his right, title, and interest in the premises were purchased by the judgment-creditor, a lady who, at the time of execution and sale, lived in the mortgagor's house. After the purchase, all parties continued to live in the house as before. The mortgagor died on the 14th of August 1867, and on the 13th of August 1879 the present suit for sale or foreclosure was instituted by the plaintiff, in whom the legal and beneficial interest in the trust funds had become vested. *Held* that the position of the judgment-creditor under the sale of 1866 was not adverse to the plaintiff or those under whom he claimed; that the suit was not barred by limitation; and that plaintiff was entitled to a decree for sale. *Anandmayi Dasi* v. *Dharendra Chandra Mukerji, 8 B. L. R., 122*, distinguished. MANLY *v.* PATTERSON

[I. L. R., 7 Calc., 394

2. ———— **and art. 132**—*Suit to enforce payment of money charged upon immoveable property—Suit by a mortgagee for sale.*—A suit upon a bond for money payable on demand by which immoveable property is hypothecated as security for the debt, wherein the relief prayed is recovery of the amount with interest by establishment of the right to enforce the hypothecation by auction-sale of the interest of the obligor in such property, is governed by art. 147, and not by art. 132, of Act XV of 1877 (Limitation Act). SHIB LAL *v.* GANGA PRASAD

[I. L. R., 6 All., 551

3. ———— *Mortgagor and mortgagee—Suit to follow mortgaged property.*—*A* mortgaged his property to *B* in 1867 by a simple mortgage. In 1868 *A* sold the property to *C*. In 1870 *B* brought a suit on his mortgage against *A* only, and obtained a mortgage-decree. In 1883 *A* brought a suit against *C* to enforce his lien against the mortgaged property. *C* pleaded that the suit was barred by limitation under cl. 132 of the Limitation Act (Act XV of 1877). *Held* that the suit was governed by art. 147, sch. II of Act XV of 1877, and therefore was not barred by limitation. BROJO LAL SINGH *v.* GOUR CHARAN SEN . **I. L. R., 12 Calc., 111**

4. ——— *Mortgage—Mortgagee, Suit by a, to realize mortgage-debt by sale of mortgaged property, under power of sale—Cause of action—Construction.*—By a mortgage-bond the first defendant mortgaged, on the 1st January 1864, certain property to plaintiffs' deceased father, with an implied power to sell the same if the debt was not satisfied at the expiration of seven years from that date. On the 2nd January 1883, the first plaintiff filed a suit in his own name, as manager of the family, to have the debt realized by the sale of the mortgaged property. The third defendant insisted upon plaintiff's other two brothers being joined as co-plaintiffs, and they were so joined on the 1st March 1883, at which date both the lower Courts were of opinion that the suit was barred under s. 22 and art. 132 of the Limitation Act (XV of 1877). On appeal by the plaintiffs to the High Court,—*Held,* reversing the lower Courts' decrees, that plaintiffs' suit was governed by art. 147 of the Limitation Act (XV of 1877), and therefore not barred. By the instrument sued on, the property in question was mortgaged to the plaintiffs' father with an implied, if not express, power to sell the same in the event of the mortgage-debt not being paid at the expiration of seven years from the date of the mortgage. The period of limitation was sixty years from the 1st January 1871. GOVIND BHAICHAND *v.* KALNAK

[I. L. R., 10 Bom., 592

5. ——— **and art. 132**—*Suit on a mortgage-bond —English mortgage—"Mortgage" and "Charge"—Transfer of Property Act, ss. 58, 60, 67, 83, 86, 87-89, 92, 93, 100.*—A suit on a mortgage-bond to enforce payment by sale of premises hypothecated is governed by art. 132, and not art. 147, of the Limitation Act. *Brojo Lal Sing* v. *Gour Charan Sen, I. L. R., 12 Calc., 118,* overruled. *Shib Lal* v. *Ganga Pershad, I. L. R., 6 All., 551,* dissented from. The clear distinction drawn for the first time between "mortgage" and "charge" in the Transfer of Property Act is not observed in the Limitation Act. Art. 147 of the Limitation Act relates to special kind of mortgage known as English mortgage, and includes only that class of suits in which the remedy is either foreclosure or sale in the alternative. GIRWAR SINGH *v.* THAKUR NARAIN SINGH

[I. L. R., 14 Calc., 730

6. ——— **and art. 132**—*Mortgage as distinguished from a charge.*—In 1867 the defendant borrowed R125 from the plaintiff and gave him a bond agreeing to pay interest at two per cent. per month. The bond provided that the whole debt, including principal and interest, was to be repaid within four years from the date of its execution. It further stated that certain property had been mortgaged to the plaintiff as security for the loan, and that, if the principal and interest were not paid within the time fixed, the plaintiff was to take up the management of the property. It also contained the following clause: "We will redeem the mortgaged property on the day on which we shall pay the amount of the principal and the amount of the interest that may be found due on making up the account." In 1886 the plaintiff sued the defendants to recover by sale of the property the sum of R250 as principal and interest due on the bond. It was contended that the bond created merely a charge upon the property in question, and was not a mortgage, and that the suit was barred by art. 132 of sch. II of the Limitation Act (XV of 1877). *Held* that the document was a mortgage, and that the suit was not barred, being governed by art. 147, and not by art. 132, of sch. II of the Limitation Act. MOTIRAM *v.* VITAI . . . . **I. L. R., 13 Bom., 90**

7. ——— *Mortgage as distinguished from a charge—Suit to enforce mortgage lien by sale of mortgaged property—Construction of mortgage.*—A bond contained the following stipulation as regards the liabilities of the sureties: "In respect of this we have given to you in writing as a nazar gahan (*i.e.,* sight mortgage) the fields which belong to ourselves, and which we ourselves are enjoying. If we do not pay according to contract, you may sell the said fields through the Court and recover the amount. If any balance remains, we will pay it off personally or by means of our other property." *Held* that the above stipulation created a mortgage and not a mere charge on the fields in question, and that art. 147 of sch. II of the Limitation Act (XV of 1877) applied to a suit by the obligee against the surety under the bond to enforce his lien by sale of the property mortgaged. ONKAR RAMSHET MARWADI *v.* GOVARDHAN PARSHOTAMDAS . . **I. L. R., 14 Bom., 577**

8. ——— *Mortgage—Bond—Charge on immoveable property—Limitation Act, art. 132.*—Where a bond given for a loan contained the following condition as to security and repayment of the money: "The security pledge (taran gahan) for this is our own property, Survey Nos. 170 and 778 in the village ped, on all the land of which two numbers do you take satisfaction for the said money; and if it should be insufficient, I will personally make satisfaction,"—*Held* that the transaction was a mortgage governed by art. 147, sch. II of the Limitation Act (XV of 1877), and not a charge governed by art. 132. *Khemji* v. *Rama, I. L. R., 10 Bom., 519,* and *Rangasami* v. *Muttukumarappa, 10 Mad., 509,* dissented from. *Motiram* v. *Vitai, 13 Bom., 90; Venkatesh* v. *Narayan, I. L. R., 15 Bom., 183;* and *Bavaji* v. *Tatya, P. J., 1891, p. 35,* followed. DATTO DUDHESHWAR *v.* VITHU

[I. L. R., 20 Bom., 408

9. ——— *Usufructuary mortgage—Personal covenant to pay.*—Where a usufructuary mortgage contains a personal undertaking to pay the amount secured thereby, the limitation applicable to a suit brought on the mortgage is governed by art. 147, Limitation Act XV of 1877. *Sivakami Ammal* v. *Gopala Savundram Ayyan, I. L. R., 17 Mad., 131,* referred to. UDAYANA PILLAI *v.* SENTHIVELU PILLAI . **I. L. R., 19 Mad., 411**

LIMITATION ACT, 1877—*continued.*

10. ———— *Equitable mortgage by deposit of title-deeds—Suit by equitable mortgagee for foreclosure and sale—Right of suit.*—An equitable mortgagee by deposit of title-deeds is a mortgagee within the meaning of art. 147, sch. II of the Limitation Act (XV of 1877), and the period of limitation for a suit by such a mortgagee is sixty years, as therein prescribed. A mortgagee by deposit of title-deeds has the right to sue for foreclosure or sale. MANEKJI FRAMJI *v.* RUSTOMJI NASERWANJI MISTRY . . . **I. L. R., 14 Bom., 269**

11. ———— *Mortgage-bond containing a power of sale in case of default—Suit by a mortgagee to recover the mortgage-debt from mortgaged property and from mortgagor personally—Personal remedy against mortgagor.*—Where certain land was given as security for repayment of a loan under an instalment bond which contained an express provision for sale of the property in case of default, it was *held* that the bond was a mortgage-bond, and that art. 147 of the Limitation Act (XV of 1877) applied to a suit to recover the instalments due under the bond by sale of the mortgaged property. *Held* also that the limitation for the personal remedy against the mortgagor was three years. BULAKHI GANU SHET *v.* TUKARAMBHAT

[I. L. R., 14 Bom., 377

12. ———— *Bonds creating interest in land, Construction of—Mortgage—Charge on immoveable property.*—Bonds by which the property mentioned therein is declared to be a security for a loan have been always regarded in the Bombay Presidency as creating the relationship of mortgagor and mortgagee, and fall under art. 147 of sch. II of the Limitation Act (XV of 1877). VENKATESH SHETTI *v.* NARAYAN SHETTI

[I. L. R., 15 Bom., 183

13. ———— **and art. 144**—*Suit for foreclosure or sale—Transfer of Property Act (IV of 1882), ss. 58 (c), 67, 87—Mortgage by conditional sale—Decree for foreclosure and possession.*—On 28th March 1871 the defendant's father borrowed a sum of money from the plaintiff's father and placed him in possession of certain land under an instrument of mortgage, which provided for the application of the usufruct in liquidation of the interest and then in reduction of the principal: the instrument also contained a covenant for the repayment, in four years, of the balance that might then be due by the mortgagor, and a stipulation that, on default, the mortgagor was to surrender the property to the mortgagee as if it had been sold to him. In 1874, the mortgagor resumed possession without discharging the mortgage-debt. The mortgagee having died, his sons, on 14th April 1888, filed the present suit on the mortgage and prayed for a decree for foreclosure or sale. *Held* that the suit was not barred by limitation, and the plaintiffs were entitled to a decree for foreclosure with a direction that possession be delivered to them. AMMANNA *v.* GURUMURTHI **I. L. R., 16 Mad., 64**

14. ———— *Suit for sale of mortgaged property—Bom. Reg. V of 1827, s. 15, cl. 3—Special agreement.*—Plaintiff brought this suit in 1895 on a mortgage-bond, dated 1870, to recover the balance due on the mortgage by sale of the mortgaged property, or, in the alternative, for possession of the property until payment of the balance. The mortgage contained a stipulation that, on default of payment of interest by the mortgagor, the mortgagee should take possession and hold possession in lieu of interest, and that such possession should continue until the mortgagor paid the principal and interest that remained unpaid when the mortgagee took possession. The Judge dismissed the suit, holding that the claim for possession was time-barred, and the claim for the sale of the property could not be enforced, as the mortgage-bond contained a special agreement which took the case out of cl. (3) of s. 15 of Bombay Regulation V of 1827. On appeal,—*Held*, reversing the decree, that s. 15 of Bombay Regulation V of 1827 was not applicable, as the mortgagee never was in possession, and that the claim to enforce the mortgage security by sale was not barred. SIDHESVAR *v.* BABAJI

[I. L. R., 23 Bom., 781

15. ———— *Mortgage by conditional sale—Mortgagee in possession—Suit for foreclosure and recovery of possession—Redemption.*—A mortgagee by conditional sale, who was put into possession of the mortgaged property from the date of the mortgage and who is entitled under the deed to hold possession, is entitled, when wrongfully dispossessed, to recover possession of the property by a suit brought within time, although his claim for foreclosure may be barred by limitation. The possession recovered is, however, possession as mortgagee subject to the mortgagor's right of redemption. AMAN ALLI *v.* AZGAR ALI MIA . **I. L. R., 27 Calc., 185**

———— **art. 148 (1871, art. 148; 1859, s. 1, cl. 15).**

See CASES UNDER S. 19—ACKNOWLEDGMENT OF OTHER RIGHTS.

1. ———— *Suit for redemption—Nature of title of mortgagee.*—The period of limitation for a suit to redeem a mortgage of immoveable property is sixty years, and this apparently without reference to the nature of the title the mortgagee in possession is asserting. *Semble*—It makes no difference that the hostile possession is supposed to have commenced on a claim of the defendant to a title altogether inconsistent with the mortgage. TANJI *v.* NAGAMMA . . . . . **3 Mad., 137**

2. ———— *Relation of trust.*—Cl. 15, s. 1, Act XIV of 1859, applied when there was some relation of trust, whether the property was given in mortgage or pawn, or simply deposited for safe custody. RUTTON MONEE DEBAI *v.* GUNGA MONEE DEBIA CHOWDHRAIN . **3 W. R., 94**

3. ———— *Suit by mortgagor for possession of mortgaged property.*—In a suit by a mortgagor after a mortgage has been satisfied, for the recovery of the mortgaged property, the period of limitation applicable is that prescribed by cl. 15

of s. 1 of Act XIV of 1859. LALL DOSS *v.* JAMAL ALI . . **B. L. R., Sup. Vol., 901** [**9 W. R., 187**

4. ———— *Laches—Estoppel.*—The laches of a mortgagor in taking no steps for many years to enforce his alleged rights may afford evidence against the existence of those rights, but cannot estop him from asserting them, if they do exist, at any time within the period of sixty years allowed by s. 1, cl. 15, Act XIV of 1859. JUGGERNATH SAHOO *v.* MAHOMED HOSSEIN [**14 B. L. R., 386 : 23 W. R., 99** **L. R., 2 I. A., 49**

5. ———— *Suit by a mortgagor for recovery of possession from a mortgagee holding over after expiry of the term of a usufructuary mortgage.*—When a mortgagee in possession under a usufructuary mortgage, holds over after the time limited in the mortgage-deed for surrender of the property, his possession does not, by that fact alone, become adverse to the mortgagor, who still has a period of sixty years within which to sue for recovery of possession. *Jaggurnath Sahoo* v. *Mahomed Hossein, 14 B. L. R., 386 : L. R., 2 I. A., 49,* referred to. POKHPAL SINGH *v.* BISHAN SINGH [**I. L. R., 20 All., 115**

6. ———— *Act XIV of 1859, s. 1, cl. 15—Act IX of 1871, s. 29 and art. 148—Usufructuary mortgage—Extinction of mortgagor's title—New starting point by acknowledgment.*—The representatives in estate of a mortgagor, who executed a usufructuary mortgage, dated 17th October 1788, sued the heirs of the mortgagee in 1893, alleging payment of the mortgage in 1881, and claiming the possession of the mortgaged property or other relief. The suit, in the absence of acknowledgment made within sixty years satisfying the requirements of the law of limitation for extension of that period, was barred on the 17th October 1848, by the effect of Act XIV of 1859, s. 1, cl. 15, which barred the suit after the 1st January 1862. Afterwards, by the effect of Act IX of 1871, s. 29, the right of property in the mortgagor was extinguished. In none of the documentary evidence adduced by the plaintiffs was there shown to have been made during the sixty years from the date of the mortgage onwards any written acknowledgment satisfying the requirements of the above cl. 15, and thereby giving ground for computing limitation from the date of such acknowledgment. Nor did the fact that a lease was made on the 8th January 1872 of some of the mortgaged property by one of the then mortgagees to one of the mortgagors, the lessor describing himself as usufructuary mortgagee, preclude the defendants from asserting their true title. The description neither estopped the alleged mortgagee from denying that he was in that character at the time of this suit, nor was it a representation which required that he should make it good. It was no essential part of a contract between these parties, and it did not affect the issue now raised. The judgment in *Citizens Bank of Louisiana* v. *First National Bank of New Orleans, L. R., 6 E. & I., App.*, 352, referred to. FALIMATUNISSA BEGUM *v.* SUNDAR DAS . . **I. L. R., 27 Calc., 1004** [**L. R., 27 I. A., 103** **4 C. W. N., 565**

Upholding the decision of the High Court in SUNDAR DASS *v.* FATIMATNISSA **1 C. W. N., 153**

7. ———— *Permissive occupation of house—Suit to recover house from heirs of tenant.*—About twenty-five years before suit brought,—*R*, being possessed of a house, allowed *K* to occupy it without paying rent, on condition that *K* would keep it in repair, and restore it to *R* on demand. Nine years afterwards, and without any demand having been made by *R*, *K* died, and his heirs continued to occupy the house, apparently on the same terms as *K* had done. In a suit brought by *R* against the heirs of *K* to recover possession of the house, it was held that *K* could not be deemed to have been a depositary of the house within the meaning of s. 1, cl. 15, of Act XIV of 1859, and the case was therefore governed by s. 1, cl. 12, of that Act. RADHABHAI *v.* SHAMA [**4 Bom., A. C., 155**

8. ———— *Conditional sale—Suit for redemption.*—Redemption by the mortgagor of mortgaged premises held by a mortgagee under a gahan lahan mortgage is not barred by the mortgagee's possession of the premises for the period of twelve years after the date on which, according to the terms of the mortgage-deed, the mortgage is to be converted into a sale. Such a case is governed by the provisions of Act XIV of 1859, s. 1, cl. 15. KRISHNAJI *alias* BABAJI KESHAV *v.* RAVJI SADASHIV . . **9 Bom., 79**

See SHANKARBHAI GULABBHAI *v.* KASSIBHAI VITHALBHAI . . . . . . **9 Bom., 69**

RAMJI BIN TUKARAM *v.* CHINTO SAKHARAM [**1 Bom., 199**

RAMSHET BACHASHET *v.* PANDHARINATH [**8 Bom., A. C., 236**

9. ———— *Suit for redemption—Adverse possession.*—A mortgagor sued his mortgagee to redeem, joining as defendant the person in possession of the mortgaged land, who claimed to hold adversely to both the mortgagor and the mortgagee. *Held* that the possession of the last defendant being a trespass not on the possession of the mortgagor, who had only the equitable estate, but on the possession of the mortgagee, in whom the legal estate was vested, and the person in possession not pretending to be a *bonâ fide* purchaser from the mortgagee, he did not come within the exception in s. 5 of Act XIV of 1859; that the trespasser could only succeed *to such estate* as the mortgagee possessed; and consequently that the limitation applicable to the suit as against him was sixty years according to s. 1, cl. 15, of Act XIV of 1859, the effect of which was not altered by any hostile possession commenced on a title independent of the mortgage. VITHOBA BIN CHABU *v.* GANGARAM BIN BIRAMJI . . . . . . **12 Bom., 180**

10. ———— *Right of purchaser.*—Where *B*, an old judgment-creditor of *K*'s father, took out execution against *K*, whose rights in an estate

were accordingly sold and bought by *B* himself, *B* bought not *K*'s right of suit (which as against a mortgagee would be governed by a limitation of sixty years), but a right determined by a decree to which cl. 15, s. 1, Act XIV of 1859, would not apply. RAM SARUN SINGH *v.* MAHOMED AMEER . **13 W. R., 78**

11. ———— *Mad. Reg. II of 1802, s. 18, cl. 4—Right of redemption of otti mortgage.*—In 1841 *A* established her proprietary right to lands as against *B* and an otti mortgagee then in possession. In 1844 *B* obtained a decree against the mortgagee in a suit to which *A* was not a party, and assigned his rights under the mortgage to *C*, who continued to hold as *B*'s assignee down to 1860. *Held* that, unless *A* was aware, or might by ordinary diligence have been aware, of the suit of 1844, her right to redeem the lands was not barred by the lapse of twelve years from the decree in that suit. PUDIYAKOVILAGALLA *v.* ALLUNANNALATTA KADINNI

[1 Mad., 143

12. ———— *Suit for redemption—Assertion of adverse title.*—It was held (in accordance with the opinion of the Full Bench) that the mere assertion of an adverse title will not enable a mortgagee in possession to abbreviate the period of sixty years which the law allows to a mortgagor to prosecute his right to redeem and seek his remedy by suit. *Ramdyal* v. *Jawahir Ram, S. D. A., N. W., 1861, 22nd of April 1861,* overruled. SHEOPAL *v.* KHADIM HOSSEIN . . . **7 N. W., 220**

13. ———— *Suit for redemption, 456 (a), of mortgage—Adverse possession—Title, Assertion of.*—The mere assertion of an adverse title by a mortgagee in possession does not make his possession adverse, or enable him to abbreviate the period of sixty years which the law allows to a mortgagor to prosecute his right to redeem and seek his remedy by suit. *Sheopal* v. *Khadim Hossein, 7 N. W., 220,* followed. Where accordingly certain immoveable property was mortgaged in June 1854 for a term which expired in June 1874, and in July 1863 the equity of redemption of such property was transferred by sale to the mortgagees by a person who was not competent to make such transfer, and the mortgagees set up a proprietary title to such property in virtue of the sale,—*Held* in a suit to redeem such property instituted in March 1877 that such suit was not barred, because it was not instituted within twelve years from the date of the deed of sale. ALI MUHAMMAD *v.* LALTA BAKHSH . **I. L. R., 1 All., 655**

14. ———— *Suit for redemption.*—Art. 148, sch. II of the Limitation Act, 1871, applies to suits for redemption, and to such suits instituted against mortgagees, or persons claiming under them, except purchasers for value; but it does not apply to suits against strangers, nor to suits which are not suits for redemption. AMMU *v.* RAMAKRISHNA SASTU

[I. L. R., 2 Mad., 226

15. ———— **and art. 145**—*Right to officiate as priest, Nature of suit to establish—Immoveable property.*—A right to officiate as priest at funeral ceremonies of Hindus is in the nature of immoveable property, and a suit for redemption of such right therefore falls under art. 181, and not under art. 145, of the Limitation Act. RAGHOO PANDEY *v.* KASSY PAREY

[I. L. R., 10 Calc., 73: 13 C. L. R., 233

16. ———— *Mortgage—Subsequent agreement conveying to mortgagee for a term of years—Effect of such agreement—"Once a mortgage always a mortgage"—Suit by heirs of mortgagor to recover the property—Usufructuary mortgage.*—Where, after the expiration of the period prescribed for redemption, the mortgagor and mortgagee agreed that the mortgagee should continue in absolute possession for a fixed term, and then restore the property free from the mortgage lien,—*Held* that the agreement was distinct from the original mortgage, and was not intended to be a mortgage, but a conveyance for a term of years, and a suit to recover the property must be brought within twelve years from the expiration of the term stipulated in the agreement. GOPAL SITARAM GUNE *v.* DESAI

[I. L. R., 6 Bom., 674

17. ———— **and art. 134**—*Joint mortgage—Redemption by one mortgagor—Suit by other mortgagor for his share—Suit for redemption—Transfer of Property Act (IV of 1882), ss. 95, 100.*—*K* and *J* jointly mortgaged 36 sihams or shares of an estate to *C* giving him possession. *C* transferred his rights as mortgagee to *T* and *M*. In execution of a decree for money against *K* held by *M*, *K*'s rights and interests in the mortgaged property were sold, and were purchased by *P*, whose heirs paid the entire mortgage-debt. *R*, an heir of *J*, sued the heirs of *P* to recover from them possession of *J*'s sihams in the mortgaged property, on payment of a proportionate amount of the mortgage-money paid by *P*. The plaintiff alleged that the mortgage to *C* had been made forty years before suit. The defendants contended that a much longer period had expired since the date of the mortgage; that forty-one years had elapsed since *C* transferred his rights as mortgagee; that they had redeemed the property twenty-one years ago and had been since its redemption in proprietary and adverse possession of the sihams in suit; and that the suit was barred by limitation. Neither party was aware of the date of the mortgage, and neither adduced any proof on the point. *Held*, applying the equitable principle adopted in ss. 95 and 100 of the Transfer of Property Act (IV of 1882), that the owner of a portion of a mortgaged estate, which has been redeemed by his co-mortgagor, has the right to redeem such portion from his co-mortgagor, and a suit brought for that purpose would be in the nature of a suit for redemption, and would naturally fall within the definition of No. 148, sch. II of the Limitation Act (XV of 1877); and it was not possible for one of two mortgagors, redeeming the whole mortgaged property behind the back of the other, to change the position of that other to something less than that of a mortgagor, or to abridge the period of limitation within which he ought to come in to redeem. *Held* therefore that art. 148, and not art. 134, of sch. II of the Limitation Act was applicable to the suit. *Umrunnissa* v. *Muhammad Yar Khan, I. L. R., 3 All., 24,* distinguished. *Pancham*

Singh v. *Ali Ahmad, I. L. R., 4 All., 58,* referred to. NURA BIBI *v.* JAGAT NARAIN

[I. L. R., 8 All., 295

18. ——— *Mortgage—Redemption by co-mortgagor—Suit by other mortgagors against redeeming mortgagor for redemption of their shares.*—Where one of several co-mortgagors redeems the whole mortgage, he thereby puts himself into the position of the mortgagee as regards that portion of the mortgaged property which represents the interests of the other co-mortgagors, and the period of limitation applicable to a suit for redemption brought by the other co-mortgagors is that provided for by art. 148 of sch. II of the Limitation Act (XV of 1877). Such period begins to run from the date when the original mortgage was redeemable, and not from the date of its redemption by the aforesaid co-mortgagor. In 1828 one of several co-mortgagors redeemed an usufructuary mortgage executed in 1822 and obtained possession. The other mortgagors brought a suit against the heir of the redeeming mortgagors in 1886 for redemption of their shares in the mortgaged property. *Held* that the limitation applicable to the suit was that provided by art. 148, sch. II of the Limitation Act (XV of 1877); that time ran, not from the date of the redemption in 1828, but from the time when it would have run against the original mortgagee if he had been a defendant, *i.e.*, the date of the original mortgage of 1822; and that the suit was therefore barred by limitation. *Nura Bibi* v. *Jagat Narain, I. L. R., 8 All., 295,* and *Raghubir Sahai* v. *Bunyad Ali, Weekly Notes, All., 1886, p. 152,* followed. *Umr-un-nissa* v. *Muhammad Yar Khan, I. L. R., 3 All., 24,* distinguished. *Ram Singh* v. *Baldeo Singh, Weekly Notes, All., 1885, p. 300,* referred to. ASHFAQ AHMAD *v.* WAZIR ALI

[I. L. R., 11 All., 423
I. L. R., 14 All., 1

19. ——— *Suit for redemption—Mortgagee purchasing equity of redemption from one without title to it—Adverse possession of mortgagee against true owner of equity of redemption.*—In the absence of any act showing that the mortgagee is asserting himself against the owner of the equity of redemption, his possession is not adverse against the latter as regards limitation. The mere assertion of his claim by the mortgagee would not affect the right of the real owner of the equity of redemption where a person having no right in the property pretends to sell to the mortgagee the equity of redemption. PANDU LAKSHMAN MASUREKAR *v.* ANPURNA . . **I. L. R., 21 Bom., 793**

20. ——— *Limitation Act (IX of 1871), s. 148—Acknowledgment of title by one of several mortgagees as agent for the others—Acknowledgment by one of several heirs of the mortgagee—Redemption, Suit for.*—Under art. 148 of the Limitation Act (IX of 1871), an acknowledgment of the mortgagor's title by one of several mortgagees as agent for the others is wholly ineffectual, and does not bind the rest. So, too, is an acknowledgment by one of several heirs of the original mortgagee without effect. The expression "some persons claiming under him" in art. 148 of the Act means some person claiming under him the entirety of the mortgagee's rights. The property in dispute was mortgaged by *H B* to the firm of *K B* in 1816. In 1830 *J*, one of the sons and heirs of *K*, who was then manager of the firm, on behalf of the whole family, sub-mortgaged the property in dispute to a third party, under a bond which recited the original mortgage by *H B* to *K*. In 1885 the defendant, who was a descendant of *K*, redeemed the sub-mortgage effected by *J*. In 1887 the plaintiff, having purchased the equity of redemption from *H B*'s descendants, filed the present suit for redemption of the mortgage of 1816. The plaintiff relied on the acknowledgment made by *J* in 1830 as giving a fresh starting point to limitation. *Held* that the suit was barred by limitation. The acknowledgment by *J*, whether as manager of the firm or as one of the heirs of the original mortgagee, was not sufficient under art. 148 of the Limitation Act (IX of 1871). BHOGILAL *v.* AMRITLAL . . . . **I. L. R., 17 Bom., 173**

21. ——— **and art. 132**—*Interest—Mortgagee's right to interest in a redemption suit—Extent of the right—Transfer of Property Act (IV of 1882), s. 58.*—In 1882 the plaintiffs sued to redeem a mortgage effected in 1833. The Court of first instance allowed the mortgagee interest from the date of the bond. The Appellate Court reduced the interest awarded to the period of six years. *Held*, reversing the decision of the lower Appellate Court, that the mortgagee was entitled to claim interest from the date of the bond up to the date of the decree. Art. 148, and not art. 132, applies to such a suit; but no provision of limitation is made by the article for the payment of interest on the sum due to the mortgagee. In s. 58 of the Transfer of Property Act, the mortgage-money is interpreted to include the interest due, and no limit to the payment of interest is fixed. DAUDBHAI RAMBHAI *v.* DAUDBHAI ALLIBHAI

[I. L. R., 14 Bom., 113

——— art. 149 (1871, art. 151; 1859, s. 17).

1. ——— *Suit by or on behalf of Secretary of State for India.*—Art. 149 of the Limitation Act applies only to suits brought by, or on behalf of, the Secretary of State, nor to a suit brought by a Municipality. SECRETARY OF STATE FOR INDIA *v.* KOTA BAPANAMMA GARU

[I. L. R., 19 Mad., 165

2. ——— *Suit to establish right to julkur—Beng. Reg. II of 1805, s. 2.*—A suit by Government to establish its right and title to a julkur was barred by limitation under s. 2, Regulation II, 1805, if brought after the expiration of sixty years' adverse possession against Government. COLLECTOR OF RUNGPORE *v.* PROSUNNO COOMAR TAGORE

[5 W. R., 115

3. ——— *Suit for costs—Public right—Exemption from limitation.*—In a suit for the recovery of costs incurred by the Government of Bengal, in virtue of the Stat. 3 & 4 Wil. IV, c. 41, authorizing the Crown to appoint the East India Company to take charge of appeals and bring them to a hearing,—*Held* the recovery of such costs did not constitute a "public right" exempting from

limitation within Regulation II of 1805. GOVERNMENT OF BENGAL *v.* SHURRUFFUTOONISSA
[3 W. R., P. C., 31
8 Moore's I. A., 225

4. ——— *Suit by Government for maintenance of a ghatwali tenure in which alteration has been effected by fraud of the zamindar.*—Where a zamindar sold a ghatwali mehal as a mal mehal, and not merely his right to receive the quit-rent from the ghatwal, and the vendee in collusion with the former ghatwal granted him a mokurari tenure, thus changing the nature of the tenure from a ghatwali into a mal tenure,—*Held* that the Government had a right to sue so as to maintain its own nominee in possession of the land as ghatwal, and that the limitation of sixty years was applicable to such a suit. PETUMBER DEY *v.* JUGGUNNATH ROY . . . . . . **13 W. R., 130**

5. ——— and s. 28—*Suit by Crown for declaration of title and possession of forest land—Mad. Reg. II of 1802—Survival of right—Limitation Act, 1859.*—In a suit instituted in March 1879 by the Crown for a declaration of title to certain forest land and for possession of a portion thereof, the defendants alleged that the land has been in their possession for more than sixty years. *Held* that it was incumbent on the Crown, under art. 149 of sch. II of the Indian Limitation Act, 1877, to show possession of the proprietary rights claimed within sixty years, or, if the defendants proved possession, that such possession commenced or became adverse within such period. The District Court having held that, up to April 1st, 1873, when the Limitation Act of 1871 came into force, the limitation for such a suit was twelve years from the time when the cause of action arose, and that the suit was barred by adverse possession for twelve years prior to April 1st, 1873,—*Held* that, even if Regulation II of 1802 applied to claims by the Crown, inasmuch as the Regulation only barred the remedy and did not extinguish the right, and Act XIV of 1859 did not extend to such a claim, the right subsisted when the Limitation Act of 1871 came into operation, and as long as that Act was in force; and that the Crown, being entitled under that Act to sue within sixty years from the date of the cause of action, and under s. 28 of the Limitation Act of 1877 to sue within two years from the 1st of October 1877, the suit was not barred. SECRETARY OF STATE FOR INDIA *v.* VIRA RAYAN
[I. L. R., 9 Mad., 175

6. ——— *Suit by Government for recovery of stamp duty in pauper suit.*—Five years after the dismissal of a pauper suit, from the decree in which no appeal had been preferred, Government sought recovery of the stamp duty by attachment and sale of the pauper plaintiff's property. *Held* that the claim, being a "public claim" within s. 17, Act XIV of 1859, was not barred. COLLECTOR OF SOUTH ARCOT *v.* THATHA CHARRY . **8 Mad., 40**

SHAMI MAHOMED *v.* MAHOMED ALI KHAN
[2 B. L. R., Ap., 22 : 11 W. R., 67

7. ——— *Suit after dispossession—Disputes of private owners—Right of Government.*—A dispute between two private owners, whether as to boundaries of lands, cannot divest the title of either to possession in favour of the Government if the Government have merely a rent or jumma. The title to sue for dispossession of the lands belongs in such a case to the owner whose property is encroached upon. If he suffers his right to be barred by limitation, the practical effect is the extinction of his title in favour of the party in possession, but his cause of action cannot be kept alive longer than the legal period of limitation of twelve years by the expedient of inducing the Collector to make common cause with him. GUNGA GOBIND MUNDUL *v.* COLLECTOR OF THE 24-PERGUNNAHS
[7 W. R., P. C., 21 : 11 Moore's I. A., 345

8. ——— *Lessee under Government.*—The mere fact that the plaintiff claims as a lessee under Government does not entitle him to the benefit of s. 17, Act XIV of 1859. ASU MIA *v.* RAJU MIA . . **1 B. L. R., A. C., 34 : 10 W. R., 76**

9. ——— *Suit by purchase of Government rights in a khas mehal.*—A suit by the purchaser of the rights of Government in a khas mehal to obtain possession is governed, not by the limitation of sixty years, but by that of twelve years. HOSSEIN BUKSH *v.* AMEENA KHATOON
[20 W. R., 231

BUNDI ROY *v.* BUNSEE THAKOOR **24 W. R., 64**

10. ——— *Suit by mutwalli for endowed property.*—Since the passing of Act XX of 1863, a mutwalli, or manager of a Mahomedan endowment, cannot be considered to be an officer of Government (a position he was held to have in the Privy Council case of *Jewan Doss Sahoo* v. *Kubeeroddeen, 6 W. R., P. C., 3 : 2 Moore's I. A., 390*), and therefore the ordinary rules of limitation apply to a suit by him for endowed property. LALL MAHOMED *v.* LALL BRIJ KISHORE . . **17 W. R., 430**

11. ——— *Encroachment on public highway—Suit by Municipality to remove encroachment—Limitation Act, art. 144—Title by adverse possession.*—The Municipality of Madras sued to recover, as forming part of a highway, a strip of land adjoining the house of the defendant on which a pial had been erected more than forty-five years before the suit. *Held,* assuming that the land in question was originally included in the street, that the defendant had acquired a title by adverse possession against the municipality, which was not entitled to call in aid the provisions of the Limitation Act, sch. II, art. 149. MUNICIPAL COMMISSIONERS *v.* SARANGAPANI MUDALIAR **I. L. R., 19 Mad., 154**

——— **art. 151.**

See DIVORCE ACT, s. 55.
[I. L. R., 22 Bom., 612

——— **art. 152.**

See APPEAL—DECREES.
[I. L. R., 23 Calc., 279, 406

——— *Appeal from decree or order—Period from which time runs.*—The time for presenting an appeal against a decree or order is thirty days from the date of such decree or order (art. 152 of the Limitation Act (XV of 1877). The date of the decree or order is the date on which judgment is pronounced. YAMAJI *v.* ANTAJI

[I. L. R., 23 Bom., 442

——— **art. 155 (1871, art. 153).**

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.

[I. L. R., 2 Calc., 436

——— *Appeal in criminal case—Appeal from the Resident's Court, Bangalore.*—A person who was being defended by Counsel on a criminal charge interfered in the examination of a witness and made a defamatory statement with regard to his character. He was now charged with defamation and convicted in the Resident's Court at Bangalore. On an appeal to the High Court, preferred more than sixty days after the conviction, it was contended that it was not an appeal under the Criminal Procedure Code, but under the Extradition Act; and sixty days' limitation therefore did not apply to it. *Held* that the appeal should be admitted. HAYES *v.* CHRISTIAN

[I. L. R., 15 Mad., 414

——— **art. 156**—*Burma Courts Act, 1875, ss. 49, 97—Appeal from Recorder of Rangoon.*—An appeal from the Court of the Recorder of Rangoon to the High Court is an appeal under the Civil Procedure Code, and must be made within the time prescribed by art. 156, sch. II of the Limitation Act. AGA MAHOMED HAMADANI *v.* COHEN

[I. L. R., 13 Calc., 221

——— **art. 158**—*Application to set aside award—Ground for setting aside award—Civil Procedure Code, ss. 521, 522.*—Where, in accordance with an award irregularly made, a decree was passed by the Court from which the defendant appealed,—*Held* that the defendant was not precluded from appealing to the Judge from the first Court's decree, because he had not applied to set aside the award within the ten days allowed by art. 158, sch. II of the Limitation Act, inasmuch as that article applied to applications referred to in s. 522 of the Civil Procedure Code, *i.e.*, applications to set aside an award on any of the grounds mentioned in s. 521,—and the defendant did not contest the award on any of those grounds. MUHAMMAD ABID *v.* MUHAMMAD ASGHAR

[I. L. R., 8 All., 64

——— **art. 159**—*Suit under Ch. XXXIX, ss. 532 538, of the Civil Procedure Code (1882)—Application for leave to defend suit—Date of service of summons—Sheriff's return of service.*—In a suit under Ch. XXXIX of the Civil Procedure Code (summary procedure on negotiable instruments) the defendant obtained an *ex-parte* order on the 9th January 1896 for leave to appear and defend the suit. The plaintiff on the 23rd January 1896 obtained an order calling on the defendant to show cause why the order of the 9th January 1896 should not be set aside on the ground that the application was not made within ten days from the date of the service of summons. The date of service as shown in the Sheriff's return was the 23rd December 1895. The defendant alleged he had not come to know of the service till the 5th January 1896, as he was not at that time residing at his dwelling-house when the service was alleged to have been effected. *Held* that, as regards limitation, the only date to which reference could be made was the date shown in the Sheriff's return, and that the Court could not at the present stage of the case allow the defendant to show a state of things different from that appearing in his petition. MADHUB LALL DURGUR *v.* WOOPENDRANARAIN SEN . . . **I. L. R., 23 Calc., 573**

——— **art. 162.**

See DIVORCE ACT, s. 16.

[I. L. R., 6 Bom., 416

——— **art. 164 (1871, art. 157; Civil Procedure Code, 1859, s. 119).**

1. ——— *Obligation on defendant against whom ex-parte decree has been passed.*—The object of s. 119, Act VIII of 1859, was to make it imperative on a defendant against whom an *ex-parte* decree had been passed, and who desired to come in and set aside that decree, to apply to the Court as soon as possible after he had notice of the passing of the decree,—*i.e.*, within a reasonable time not exceeding thirty days from the first actual execution of process to enforce the judgment. GOLAM AHYAH *v.* SHAM SOONDER KOONWAREE

[7 W. R., 375

2. ——— *Meaning of "executing" process of judgment.*—Process of enforcing a judgment (within thirty days from which a defendant may apply to set aside an *ex-parte* decree) has not been executed within the meaning of s. 119, Act VII of 1859, until the proceedings in execution have been brought to a termination by a sale of the property attached. RADHA BINODE CHOWDHRY *v.* MUDHOO SOODUN SIRCAR . . **7 W. R., 198**

3. ——— *Act X of 1859, s. 58—Ex-parte decree, Application to set aside.*—Process for enforcing judgment was executed within the meaning of s. 119 of Act VIII of 1859 and s. 58 of Act X of 1859, when an attachment of the property of the defendant had taken place; and any application by the defendant under those sections to set aside an *ex-parte* decree must be made within thirty and fifteen days, respectively, from the date of the attachment. RADHA BINODE CHOWDHRY *v.* DIGAMBUREE DOSSEE. NUND KISHORE DOSS *v.* MAHARAJA OF BURDWAN

[B. L. R., Sup. Vol., 947: 9 W. R., 236

4. ——— The thirty days "after any process for enforcing the judgment has been executed," within which a defendant might apply under s. 119, Code of Civil Procedure, for an order to set aside an *ex-parte* decree, meant thirty days after the execution of any process against the person or

LIMITATION ACT, 1877—*continued.*

property of the defendant. Shib Chunder Bhadooree *v.* Luckhee Debia Chowdhrain **[6 W. R., Mis., 51**

Not process only against the person. Bruhm Pargash *v.* Dumree Lall **[1 N. W., Ed. 1873, 133**

See Sookh Moyee Dossee *v.* Nurmooda Dossee **[15 W. R., 210**

and Kalee Prosad *v.* Digambur Chatterjee **[25 W. R., 72**

5. ———— *Notice of ex-parte decree* —It is not necessary that the judgment-debtor should have special notice of any process for enforcing an *ex-parte* decree; he is bound to seek the remedy provided by s. 119, Act VIII of 1859, within thirty days after execution of any process to enforce the judgment. Shumboo Chunder Holder *v.* Ram Lall Ghose . **13 W. R., 436**

6. ———— *Application for setting aside ex-parte judgment after expiration of time limited.*—A Judge has no jurisdiction to grant an application, made by a defendant against whom an *ex-parte* judgment has been passed, to set aside the judgment after the expiration of the thirty days allowed by s. 119 of the Code of Civil Procedure for making such applications. Such an application must be made within thirty days after the first process for enforcing the judgment against such defendant has been executed. Keshavram valad Hirachand *v.* Ramchandra Trimbak **[8 Bom., A. C., 44**

Anoragee Kooer *v.* Abdoollah Khan **[26 W. R., 99**

7. ———— *Application to set aside ex-parte decree after thirty days have expired.*—An application by a party to set aside an *ex-parte* decree, which application he has had an opportunity of making within time and has neglected to do so, should not be entertained on the supposition that there has been collusion to defeat the defendant's rights. Anoragee Koer *v.* Adoollah Khan **[26 W. R., 99**

8. ———— *Application to restore suit after dismissal of ex-parte case.*—Where the suit was dismissed in accordance with the terms of an order that the Official Assignee should give security for the costs of the defendant within fourteen days and should be made a party to the suit within one month, and that in default of such security the suit should be set down for dismissal within eight days after the expiration of the time so limited, and the Official Assignee did not apply, within thirty days of the passing of the order of dismissal, either to the Court making the order or to the Appellate Court, for its reversal,—*Held* that an application to the Appellate Court for reversal of an order discharging a rule *nisi* for the reversal of the order of dismissal, and for the restoration of the suit to the board for hearing, was barred. Ibrahim bin Mahasim *v.* Abdur Rahiman bin Alli. Gamble *v.* Abdur Rahiman bin Alli . . . . . **12 Bom., 257**

LIMITATION ACT, 1877—*continued.*

9. ———— *Execution of ex-parte decree —Notice of execution.*—Notice of execution of decree is not sufficient "process for enforcing" it within the meaning of art. 157, sch. II, Act IX of 1871. Such process means actual process by attachment in execution of the person or property of the debtor. Poorno Chunder Coondoo *v.* Prosonno Coomar Sikdar . . **I. L. R., 2 Calc., 123**

10. ———— Where property had been attached in execution of a decree,—*Held* that the date on which the property was attached, and not the date of the sale in execution, being the date of executing the first process for enforcing the decree, was the date from which limitation should be computed under art. 164, sch. II of Act XV of 1877. *Pachu* v. *Jaikishen, Weekly Notes, All., 1884, p. 322,* referred to. Har Prasad *v.* Jafar Ali . **I. L. R., 7 All., 345**

11. ———— *Ex-parte judgment, Application for an order to set aside—Civil Procedure Code, s. 108—"Execution of process for enforcing the judgment."*—An *ex-parte* order was made against *S*, to whom a certificate under Act XL of 1858 had been granted, revoking such certificate, and granting it to *A* and directing *S* to deliver the property of the minor to *A* and to render an account of all moneys received and disbursed within thirty days. In pursuance of this order, a precept or injunction was served on *S* informing her that the certificate granted to her had been revoked and had been granted to *A*, and directing her to deliver the property of the minor to *A* and to render him accounts of all moneys realized and expended within one month. *Held* that such precept or injunction was a "process for enforcing" such *ex-parte* order, and that it was "executed" when it was served on *S* within the meaning of art. 164 of the Limitation Act, 1877. Sunraj Kuari *v.* Ambika Prasad Singh . . . . **I. L. R., 6 All., 14**

12. ———— *Code of Civil Procedure (Act X of 1877), s. 108—Ex-parte decree—Setting aside ex-parte decree.*—An *ex-parte* decree was obtained against a defendant who applied to have it set aside under s. 108 of the Civil Procedure Code. The application was made more than thirty days from the date of attaching the defendants' property in execution of the decree, but within thirty days of the service of the sale proclamation. *Held* that the application was barred by limitation under art. 164, sch. II, Act XV of 1877. In the matter of Bhaobunessury. Bhaobunessury *v.* Judobendra Narain Mullick . . **I. L. R., 9 Calc., 863**

13. ———— *Ex-parte decree—Application to set aside ex-parte decree—Presidency Small Cause Court Act (XV of 1882), s. 37.*—S. 37 of the Presidency Small Cause Courts Act (XV of 1882) does not apply to an *ex-parte* decree. An application to set aside an *ex-parte* decree passed by a Presidency Court of Small Causes falls within the terms of s. 108 of the Code of Civil Procedure (XIV of 1882), and the period of limitation for such an application is thirty days as prescribed by art. 164 of the Limitation Act. Roshanlal *v.* Lachmi Narayan . . . . **I. L. R., 17 Bom., 507**

LIMITATION ACT, 1877—*continued.*

14. ——————— *Execution of process for enforcing the judgment—Civil Procedure Code, s. 108—Application to set aside a decree passed ex-parte.*—The action of an amin appointed under *s.* 396 of the Code of Civil Procedure in a partition suit to demarcate the shares assigned to the respective parties to the suit is not the executing of a process for enforcing the judgment within the meaning of art. 164 of the second schedule to the Indian Limitation Act, 1877. *Dwarka Nath Misser* v. *Barinda Nath Misser, I. L. R., 22 Calc., 425,* referred to. MUHAMMAD KHAN *v.* HANWANT SINGH

[I. L. R., 20 All., 311

——————**art. 165 (1871, art. 158).**

1. ——————— *Application for restitution by person dispossessed—Holiday.*—In calculating the period of limitation prescribed in sch. II of Act IX of 1871 for applications as well as for suits and appeals, the day on which the order or decree appealed against was made should be excluded. Consequently, where a person having been dispossessed of property held by him under a mortgage on the 14th of December 1875 applied on the 14th January of 1876 for restitution, the 13th having been a Court holiday, it was held that his application was within the limitation of thirty days prescribed by art. 158, sch. II of Act IX of 1871. GURJAR *v.* BARVE . **I. L. R., 2 Bom., 673**

2. ——————— *Dispossession under sale in execution of decree—Summary order.*—A person purchased certain property at a sale in execution of a decree in November 1878: his purchase was confirmed and he obtained a certificate of sale on the 23rd May 1879, from which date he remained in possession. The judgment-debtor applied unsuccessfully to have the sale set aside for irregularity. He had applied, before the sale took place, to stay the sale on the ground that the right to apply for execution was barred. This application was dismissed, but was allowed on appeal. It did not appear that the auction-purchaser was a party to the proceeding, or that he was cognizant of the application. Two years from the date of the sale, and one and a half years from its confirmation, the judgment-debtor on a summary application obtained an order setting aside the sale and putting the auction-purchaser out of possession. *Held* that the order was erroneous, the Judge having no power, after the sale had been confirmed, to set aside the sale by a summary order, and that under art. 165 of Act XV of 1877 the application for such an order was barred. MAHOMED HOSSEIN *v.* KOKIL SINGH . **I. L. R., 7 Calc., 91: 9 C. L. R., 53**

3. ——————— *Dispossession in execution—Application on behalf of a minor objecting to dispossession.*—Limitation Act, 1877, sch. II, art. 165, is applicable to a case where the applicant is a party to the decree which is being executed as well as when he is a stranger. But an application made on behalf of a minor objecting to dispossession more than thirty days after it took place is not barred by limitation by reason of Limitation Act, 1877, s. 7. RATNAM AYYAR *v.* KRISHNA DOSS VITAL DOSS

[I. L. R., 21 Mad., 494

LIMITATION ACT, 1877—*continued.*

——————**art. 166 (1871, art. 159).**

——————— *Execution—Sale in execution, the judgment-debtor being ignorant of the execution proceedings through the fraud of the decree-holder —Setting aside proceedings in execution—Civil Procedure Code (XIV of 1882), ss. 294, 311.*—In 1879 *D* obtained a decree against *S.* *S* gave security for the satisfaction of the decree, whereupon *D* agreed not to take proceedings in execution. In breach of this agreement, *D* in the same year applied for execution and sold certain immoveable property belonging to *S*, of which *K* became the purchaser. *K* did not apply for possession until 1883, in which year he applied for and obtained possession of the property. *S* alleged that he then for the first time became aware of the sale, and that by the fraud of *D* and *K* he had been kept in ignorance of the execution proceedings taken by *D* in breach of the abovementioned agreement, and within thirty days after *K* obtained possession, he (*S*) applied for a reversal of the orders which had been passed in the aforesaid fraudulent proceedings. The Subordinate Judge held that the application was barred by art. 166 of sch. II of the Limitation Act (XV of 1877), and referred the applicant to a separate suit to set aside the sale. On application to the High Court,—*Held* also that art. 166 of sch. II of the Limitation Act (XV of 1877), did not apply. That article, as amended by s. 108 of Act XII of 1879, only applies to applications made under s. 311 or s. 294 of the Civil Procedure Code, seeking to set aside a sale on the ground of a material irregularity in publishing or conducting the sale, or on the ground that the decree-holder has purchased without the permission of the Court. SAKHARAM GOVIND KALE *v.* DAMODAR AKHARAM

[I. L. R., 9 Bom., 468

——————**art. 167 (1871, art. 160).**

1. ——————— *Symbolical possession.*—A purchaser of immoveable property, sold in execution of a decree must, under Act XV of 1877, sch. II, art. 167, if obstructed or resisted in endeavouring to obtain possession, apply, within thirty days, to the Court under the directions of which the execution-sale was held, to be put into actual possession; and if he omits to do so within thirty days from the time when his taking possession was first obstructed or resisted, his only remedy is by a civil suit. The plaintiffs, on the 31st January 1863, purchased a half share in a certain house at a sale in execution of a decree, but took no steps at the time to take possession of it. In 1869 the Nazir of the Court was directed to put them into possession, and gave them symbolical possession. Afterwards, in 1871, the plaintiffs again, with the assistance of the Nazir, entered upon, and for the space of about a minute remained in possession of, one of the rooms in the house, until they were turned out by the defendants. On the 18th of November 1876, the plaintiffs filed a suit, praying for a declaration of right and for a partition, and to be put into separate possession of the share that might be allotted to them on such partition. *Held* that neither the symbolical possession given to them in 1869 by the Nazir nor the

momentary and partial possession which they had obtained in 1871 was sufficient to save limitation; and that, as their suit was brought on the 18th November 1876, more than twelve years after the 31st January 1863, when they first became entitled to possession, it was now barred by limitation. SHOTEENATH MOOKERJEE *v.* OBHOY NUND ROY

[I. L. R., 5 Calc., 331

2. ——————— *Warrant for possession—Obstruction in getting possession—Civil Procedure Code, 1877, s. 328.*—Where a warrant for possession of land in execution of a decree was not executed owing to the resistance of the judgment-debtors in September 1880, and no complaint was made under s. 328 of the Code of Civil Procedure, 1877, but a fresh warrant for possession was applied for by and granted to the decree-holders and resistance was again made in January 1881.—*Held* that a complaint by the decree-holders as to the second obstruction, made within thirty days of the second obstruction, was not barred by reason of art. 167 of sch. II of the Limitation Act. RAMASEKARA PILLAI *v.* DHARMARAYA GOUNDAN . **I. L. R., 5 Mad., 113**

3. ——————— *Civil Procedure Code, 1882, ss. 318, 334—Petition by purchaser at Court-sale for possession—Obstruction to execution of decree—Appeal against order.*—On an application made in 1888 under the Civil Procedure Code, s. 318, by the purchaser at a Court-sale (who was the assignee of the decree which was being executed), praying for delivery of possession of the property purchased, it appeared that the sale took place in 1885, that it was confirmed in 1886, and that in January 1887 an order was made for delivery of possession to the purchaser. The judgment-debtor had resisted the purchaser's efforts to obtain possession in 1887, and set up in bar of the application in 1888 an oral agreement alleged to have been made between him and the purchaser. The application was rejected. *Held* that the application, not being a complaint of obstruction, was not barred by limitation, and should be heard and determined on the merits. MUTTIA *v.* APPASAMI

[I. L. R., 13 Mad., 504

4. ——————— *Minor—Purchase on behalf of a minor during minority—Agent of minor, Omission of, to apply within thirty days to remove obstruction of third party in execution-proceedings—Minor's right to apply for possession within three years from the time he comes of age—Civil Procedure Code (XIV of 1882), s. 335.*—In 1877, at a sale held in execution of a decree, certain property was purchased on behalf of the applicant, who was then a minor, by the agent nominated by his guardian. An order for delivery of possession was made; but a third party having obstructed, the order was returned unexecuted. No further proceedings were taken by the agent. The applicant, having come of age, applied for delivery of possession within three years from the date of his attaining majority, but more than thirty days after the date of the obstruction and more than thirty days after he came of age. The Subordinate Judge rejected the application as barred, being of opinion that the omission to apply, within thirty days from the date of the obstruction, on the part of the applicant's agent, as well as the applicant's omission to do so within a similar period after he came of age, barred the applicant, whose remedy lay in a fresh suit. *Held* by the High Court that the application was rightly rejected. It was virtually an attempt to renew the old proceedings, and was barred by art. 167 of sch. II of the Limitation Act. If the applicant intended to proceed summarily under the Civil Procedure Code, he should have taken proceedings within a month after he came of age. VINAYAKRAV AMRIT *v.* DEVRAV GOVIND **I. L. R., 11 Bom., 473**

——————— **art. 168 (1871, art. 161; Civil Procedure Code, 1859, s. 347).**

1. ——————— *Time for appeal—Civil Procedure Code, 1859, s. 347.*—To bring an appellant within the terms of s. 347 of the Code of Civil Procedure, 1859, so as to give the Court jurisdiction, his application for re-admission of the appeal dismissed for default of prosecution had to be made within thirty days from the date of the dismissal. MITTOO KHAN *v.* RUHMAN KHAN **8 W. R., 361**

In such an application the Judge is bound to see whether the reasons set forth for re-admission are satisfactory or not. SHOMAED ALI SOWDAGUR *v.* EUSOOF KHAN CHOWDHRY . **15 W. R., 80**

2. ——————— *Application for re-admission of appeal.*—The time allowed by s. 347 of Act VIII of 1859 within which to apply for the re-admission of an appeal dismissed for default of prosecution should not, where the appellant's pleader has died without his hearing of it, be counted as commencing until the appellant has an opportunity of coming in under the provision of Regulation II of 1827, s. 54, cl. 2. EX-PARTE ALIKHAN UMARKHAN

[4 Bom., A. C., 92

3. ——————— *Application for re-admission of appeal dismissed on failure to deposit costs of paper-book—High Court Rules, Part II, Ch. VIII, Rule 17—Civil Procedure Code (1882), s. 558.*—The appellant in an appeal from an original decree having failed to deposit the estimated amount of costs for the preparation of the paper-book, the appeal was dismissed under Rule 17 of the High Court Rules, Part II, Ch. VIII. An application for re-admission of the appeal was then made on behalf of the appellant; and a rule was granted by a Division Bench calling upon the opposite side to show cause. *Held* (by PRINSEP and GHOSE, *JJ.*) that the application was not one under s. 558 of the Civil Procedure Code; that it was not barred under art. 168 of the Limitation Act; that it was an application under the Rules of the Court; and that the law of limitation did not apply to such an application. RAMHARI SAHU *v.* MADAN MOHAN MITTER

[I. L. R., 23 Calc., 389

See FATIMUNNISSA *v.* DEOKI PERSHAD

[I. L. R., 24 Calc., 350

IKBAL HOSSAIN *v.* DEOKIE PROSHAD

[1 C. W. N., 21

LIMITATION ACT, 1877—*continued.*

——— **art. 170 (1871, art. 162).**

——— **and art. 178**—*Application for leave to appeal in formâ pauperis.*—Plaintiffs filed a suit for partition, which was dismissed on the 9th December 1890. On the 17th March 1891, plaintiffs presented an appeal to the High Court on a Court-fee stamp of R10. On the 18th January 1892, the High Court held that the memorandum of appeal was insufficiently stamped, being chargeable with an *ad valorem* stamp on the value of the plaintiffs' share. On the 16th February 1892, plaintiffs applied for leave to appeal *in formâ pauperis.* This application was granted *ex-parte.* At the hearing of the appeal, however, the respondent contended that the pauper appeal was time-barred. *Held* that the application for leave to appeal *in formâ pauperis,* having been presented beyond the thirty days allowed by art. 170 of the Limitation Act (XV of 1877), was barred by limitation. The pauper appeal could not therefore be proceeded with. Art. 178 of the Limitation Act had no application to the present case. MAHADEV BALVANT *v.* LAKSHMAN BALVANT . **I. L. R., 19 Bom., 48**

——— **arts. 171, 171A, and 171B.**

See ABATEMENT OF SUIT—APPEALS.
[I. L. R., 7 All., 693, 734

See ABATEMENT OF SUIT—SUITS.
[I. L. R., 5 Calc., 139 : 4 C. L. R., 374

1. ——— **art. 171**—*Death of appellant—Civil Procedure Code, 1877, ss. 365 and 587—Application for substitution of heir to allow execution to proceed.*—A suit was instituted and a decree obtained in the Court of first instance while Act VIII of 1859 was in force, but the second decree was made and the second or special appeal preferred after Act X of 1877 became law. Pending the hearing of such special appeal, on the 21st April 1878, the plaintiff, who was also appellant, died, and on the 16th August in the same year, or more than sixty days after his father's death, his son and sole heir applied to the Court to be substituted as appellant in place of the deceased, for the purpose of prosecuting the appeal. *Held* that the application was not made under s. 365, but under s. 587 of Act X of 1877, as incorporated with the former section, and was therefore not barred by art. 171, sch. II of Act XV of 1877. Where the language of an Act of Limitation specifies the particular cases for which a period of limitation is provided, the Court ought not to interpret that language so as to include cases not falling within the strict meaning of the words used. IN THE MATTER OF RAM SUNKER BHADOORY . **3 C. L. R., 440**

2. ——— *Abatement of suit—Death of sole plaintiff after decree—Civil Procedure Code, 1877, ss. 365, 372.*—A sole plaintiff having died after decree, an application was made more than sixty days after his death by his legal representative for an order that his name might be substituted on the record for that of the original plaintiff, and that a sum of money, to which the original plaintiff, if alive, would have been entitled, might be paid to him, the legal representative. *Held* that s. 372 of the Civil Procedure Code did not apply to the case, that section contemplating a proceeding before the determination of the suit; and further that the application was barred by Act XV of 1877, sch. II, art. 171. *Held* also that s. 232 had no application. S. 365 of the Civil Procedure Code (amended by Act XII of 1879, s. 61) does not apply to the case of a sole plaintiff dying after decree, the right to sue being merged in the decree. CALLY CHURN MULLICK *v.* BHUGGOBUTTY CHURN MULLICK . . **5 C. L. R., 108**

3. ——— *Death of plaintiff and substitution of his representatives as party to suit.*—If a plaintiff dies after decree, his representatives are not bound to apply within sixty days to be made parties to the suit, but have the same time to file an appeal as the plaintiff would have had. The Civil Procedure Code, ss. 363, 365, and the Limitation Act, sch. II, art. 171, do not apply to the case of a plaintiff dying after decree. RAMANADA SASTRI *v.* MINATCHI AMMAL . **I. L. R., 3 Mad., 236**

4. ——— *Civil Procedure Code, 1877, ss. 363, 365—Abatement of execution proceedings—Representative.*—The provision of the Limitation Act (XV of 1877), sch. II, art. 171, which gives a period of sixty days to a person claiming to be the legal representative of a deceased plaintiff under s. 363 or 365 of the Code of Civil Procedure, does not apply to the representative of a deceased judgment-creditor claiming admission to continue execution-proceedings commenced by him. Such a representative may come in at any time, subject always to the same conditions as would have applied to the plaintiff himself. GULABDAS *v.* LAKSHMAN NARHAR
[I. L. R., 3 Bom., 221

5. ——— **and art. 171B**—*Act XII of 1879, ss. 60 and 108—Deceased defendant—Application to make legal representative defendant.*—Subsequently to the institution of the plaintiffs' suit, one of the defendants died, and his son, as his legal representative, was made a defendant in his stead. The new defendant objected (*inter aliâ*) that his father had been dead more than six months before the application of the plaintiffs to make him a defendant, and that therefore the suit should abate as provided by the last clause of s. 368 of the Civil Procedure Code, Act X of 1877 (introduced by the amending Act XII of 1879), and art. 171B of the Limitation Act XV of 1877, which prescribes a period of sixty days within which an application should be made to have the representative of a deceased defendant made a defendant to a suit. When the amending Act XII of 1879 was passed,—that is, on the 29th of July 1879,—the original defendant had been dead more than six months; but the plaintiff made an application to have the representative of the deceased defendant made a defendant before the publication of the Act in the local Gazette. *Held* that the provisions of art. 171B of the Limitation Act should not have retrospective effect, and that the plaintiffs' application was not time-barred. KHUSALBHAI *v.* KABHAI . **I. L. R., 6 Bom., 26**

6. ——— *Civil Procedure Code (Act XIV of 1882), ss. 3, 368, 582—Respondent, Death of—Practice—Substitution of parties.*—Having regard to s. 3 of Act XIV of 1882, it is clear that the word "Code" in sch. II, art. 171B, of Act XV of 1877 applies to the present Code of Civil Procedure, Act XIV of 1882; and that therefore the word "defendant" in s. 368 of that Code, when read with s. 582, must be held to include "respondent." IN THE MATTER OF THE PETITION OF SOSHI BHUSAN CHAND. SOSHI BHUSAN CHAND *v.* GRISH CHUNDER TALUKHDAR . . . . . **I. L. R., 11 Calc., 694**

7. ——— **and arts. 171A, 171B**—*Civil Procedure Code (Act XIV of 1882), s. 582—Respondent, Decease of, after appeal filed—Defendant.*—*Held* by the Full Bench the word "defendant" in art. 171B of the Limitation Act does not include a respondent. S. 582 of Act XIV of 1882 affects only proceedings under the Code, and does not extend the operation of any portion of the Limitation Act. UDIT NARAIN SINGH *v.* HAROGOURI PROSAD **[I. L. R., 12 Calc., 590**

8. ——— **and art. 171B**—*Application to sue in formâ pauperis—Death of opponent. Substitution of heirs—Subsequent granting of application—Code of Civil Procedure, 1882, ss. 48, 368, and 410.*—Neither art. 171B of sch. II of Act XV of 1877 nor any other section of the Law of Limitation applies to an inquiry into a claim to sue in *in formâ pauperis,* and there is no limitation of time within which a mere applicant to sue as a pauper is bound to apply for the substitution of the name of a deceased opponent's heir in place of such opponent. Art. 171B applies to applications made under s. 368 of the Code of Civil Procedure, which section only applies to the case of the death of a party to a suit, presupposing therefore the institution of a suit; and in the case of an application to sue *in formâ pauperis,* no suit is instituted until the application is granted, when by s. 410 it is deemed the plaint in the suit. JANARDAN VITHAL *v.* ANANT MAHADEV **[I. L. R., 7 Bom., 373**

9. ——— *Appeal, Abatement of—Application for declaration of insolvency—Appeal from order rejecting application—Death of decree-holder-respondent—No application by appellant for substitution of deceased's representative—Civil Procedure Code, ss. 344-348, 350, 351, 368.*—The decree-holder-respondent, in an appeal from an order refusing an application by the judgment-debtor for declaration of insolvency under s. 344 of the Civil Procedure Code, died, and the judgment-debtor, appellant, took no steps to have the legal representative of the deceased substituted as respondent in his place. *Held* that art. 171B, sch. II of the Limitation Act (XV of 1877), applied to the case, and that, as no one had been brought on the record to represent the deceased respondent within the period prescribed, the appeal must abate. *Per* MAHMOOD, *J.*, that whatever the position of the parties might have been in the regular suit in the insolvency proceedings, the judgment-debtor occupied a position analogous to that of a plaintiff, and the decree-holder occupied the position of a defendant. *Narain Das* v. *Lajja Ram, I. L. R., 7 All., 693,* in which MAHMOOD, *J.*, differed from the decision of the Full Bench, distinguished. RAMESHAR SINGH *v.* BISHESHAR SINGH **[I. L. R., 7 All., 734**

10. ——— **and art. 171B.**—*Per curiam* (KERNAN, *J.*, dissenting).—An application by an appellant to make the representative of a deceased respondent party to the appeal does not fall under art. 171B, but under art. 178 of sch. II of the Limitation Act, 1871. LAKSHMI *v.* SRI DEVI **[I. L. R., 9 Mad., 1**

11. ——— *Civil Procedure Code (XIV of 1882), ss. 368, 582—Decease of respondent after appeal filed.*—The word "defendant" in art. 171B of sch. II of the Limitation Act (XV of 1877) does not include "respondent." BALKRISHNA GOPAL *v.* BAL JOSHI SADASHIV JOSHI **[I. L. R., 10 Bom., 663**

12. ——— **art. 171B**—*Appeal—Death of defendant-respondent—Civil Procedure Code, ss. 368, 582.*—Art. 171B, sch. II of the Limitation Act (XV of 1877), applies to applications to have the representative of a deceased defendant-respondent made a respondent. BALDEO *v.* BISMILLAH BEGAM **[I. L. R., 9 All., 118**

13. ——— *Death of defendant-respondent—Application by plaintiff-appellant to have representative of deceased substituted as respondent—Civil Procedure Code, ss. 3, 368, 582.*—*Held* by the Full Bench (MAHMOOD, *J.*, dissenting) that art. 171B of the second schedule of the Limitation Act does not apply to the death of a respondent, whether plaintiff or defendant in the original suit; and that art. 178 applies to an application made by a plaintiff-appellant to bring upon the record the representation of a deceased defendant-respondent. *Narain Dass* v. *Lajja Ram, I. L. R., 7 All., 693,* and *Balkrishna Gopal* v. *Bal Joshi, Sadashib* v. *Joshi, I. L. R., 10 Bom., 663,* referred to. *Baldeo* v. *Bismillah Begam, I. L. R., 9 All., 118,* and *Rameshar Singh* v. *Bisheshar Singh, I. L. R., 7 All., 734,* overruled. *Held* by MAHMOOD, *J.*, *contra,* that the word "defendant" in art. 171B includes a defendant-respondent, and, reading art. 171B with cl. 2 of s. 3 in conjunction with ss. 368 and 582 of the Civil Procedure Code, includes also a plaintiff-respondent; and that an application made by a plaintiff-appellant more than sixty days after the defendant-respondent's death to have the representative of a deceased made a respondent is barred by limitation, and the appeal is liable to abatement. *Soshi Bhusan Chand* v. *Grish Chunder Taluqdar, I. L. R., 11 Calc., 694,* referred to. DEBI DIN *v.* CHUNNA LAL . . . . . **I. L. R., 10 All., 264**

14. ——— **and art. 178**—*Death of plaintiff-respondent—Application by defendants-appellants for substitution of legal representative—Civil Procedure Code, ss. 3, 368, 582.*—The judgment of the majority of the Full Bench in *Narain Dass* v. *Lajja Ram, I. L. R., 7 All., 693,* only decided that art. 171B, sch. II of the Limitation Act of 1877, did not apply to an application by a defendant-appellant to have the representative of a deceased

LIMITATION ACT, 1877—*continued.*

plaintiff-respondent made a respondent. Art. 178 applies to such applications. So *held* by the Full Bench, MAHMOOD, *J.*, dissenting. *Held* by MAHMOOD, *J.*, that by reason of s. 3 (read with ss. 368 and 582) of the Civil Procedure Code, the word "defendant" in art. 171B of the Limitation Act necessarily includes a plaintiff-respondent. *Soshi Bhusan Chand* v. *Grish Chunder Taluqdar, I. L. R., 11 Calc, 694,* referred to. CHAJMAL DAS *v.* JAGDAMBA PRASAD . **I. L. R., 10 All., 260**

15. ———————— *Application by representative of judgment-creditor to continue execution of decree.*—The provision of the Limitation Act (XV of 1877), sch. II, art. 171, which gives a period of sixty days to a person claiming to be the legal representative of a deceased plaintiff under s. 363 or 365 of the Code of Civil Procedure, does not apply to the representative of a deceased judgment-creditor claiming admission to continue execution proceedings commenced by him. The Code of Civil Procedure (Act X) of 1877 does not provide that applications for execution shall, like suits, abate by the death of the judgment-creditor; such representative may therefore come in at any time, as his coming in is contemplated in art. 179, explanation I of sch. II of the Limitation Act, subject always to the same conditions as would apply to his principal. GOLABDAS *v.* LAKSHMAN NARHAR . . . **I. L. R., 3 Bom., 221**

——————— **art. 173 (1871, art. 164).**

1. ———————— *Mofussil Small Cause Courts Act, XI of 1865, s. 21—New trial—Review.*—Where the circumstances of a case in a mofussil Small Cause Court admit a new trial, an application for such new trial is governed by s. 21 of Act XI of 1865, which is still in force notwithstanding the right of review given by s. 623 of the Civil Procedure Code. But where the circumstances of a case do not admit of a new trial, but do admit of a review, then the time within which an application for review should be made is to be governed by art. 173, sch. II of Act XV of 1877. MADON MOHON PODDAR *v.* PURNO CHANDRA PURBOT

[I. L. R., 10 Calc., 297

2. ———————— *Amendment of decree by orders in execution.*—Where the first Court's decree in favour of the plaintiff was upheld in appeal, but in the course of the execution proceedings the lower Appellate Court held that its judgment did not mean to uphold that decree in its entirety, it was held that this order was in the nature of an amendment of the decree, and that the ninety days allowed for an application for review should count from the date of such order. BULOBHUDDUR MAHANTEE *v.* MUDHOOSOODUN PANDEY . . . **23 W. R., 433**

——————— **art. 175.**

See DECREE—ALTERATION OR AMENDMENT OF DECREE.

[I. L. R., 14 Calc., 348

See LIMITATION ACT, 1877, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES . **I. L. R., 14 Calc., 348**

LIMITATION ACT, 1877—*continued.*

——————— **art. 175A.**

See ABATEMENT OF SUIT—APPEALS.

[I. L. R., 23 Mad., 125

——————— **art. 175C.**

See ABATEMENT OF SUIT—APPEALS.

[I. L. R., 11 All., 408

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENT.

[I. L. R., 11 All., 408

——————— **and art. 178**—*Substitution of the heirs of deceased defendant—Civil Procedure Code, 1889, ss. 368, 372—Substitution of parties.*—After the institution of a suit for dissolution of a partnership, two of the defendants died. More than a year after their death, the plaintiffs applied to have the legal representatives of the deceased entered on the record. The Subordinate Judge granted this application, holding that the case was governed by s. 372 of the Code of Civil Procedure (Act XIV of 1882), and that the application was therefore within time under art. 178 of the Limitation Act (XV of 1877). *Held* that the case was governed by s. 368, and not s. 372, of the Civil Procedure Code. The application for substitution of the heirs of the deceased defendants ought to have been made within six months, as provided by art. 175C of the Limitation Act and was barred unless the delay was sufficiently explained. JAMNADAS CHHABILDAS *v.* SORABJI KHARSEDJI

[I. L. R., 16 Bom., 27

——————— **art. 176 (1871, art. 165)**—*Application—Filing award by arbitrators—Civil Procedure Code, 1877, s. 516.*—The act of an arbitrator, in handing in an award to the proper officer of the Court for the purpose of the award being filed, cannot be considered as an "application" within the meaning of the Limitation Act. ROBARTS *v.* HARRISON

[I. L. R., 7 Calc., 333: 9 C. L. R., 209

1. ——————— **art. 177**—*Civil Procedure Code, s. 598—Application for certificate for appeal to Privy Council.*—In computing the period of limitation for an application for a certificate admitting an appeal to Her Majesty in Council, the time occupied in obtaining copies of the decree and judgment sought to be appealed against cannot be excluded, s. 12 not being applicable. ANDERSON *v.* PERIASAMI

[I. L. R., 15 Mad., 169

2. ———————— *Civil Procedure Code, s. 599—General Clauses Act (I of 1868), s. 3, cl. (1)—Civil Procedure Code Amendment Act (VII of 1888), s. 57—Application for leave to appeal to Her Majesty in Council.*—S. 599 of Act No. XIV of 1882 is not inconsistent with art. 177 of sch. II of Act XV of 1877 as read in conjunction with the provisions contained in the sections of that Act which are applicable to art. 177. The limitation therefore for an application for leave to appeal to Her Majesty in Council is six months from the date of the decree to appeal from which leave is sought. The provisions of the second paragraph of s. 5 of Act XV of 1877 do not extend to applications for

leave to appeal to Her Majesty in Council. *Fazal-un-nissa Begam* v. *Mulo, I. L. R., 6 All., 250; Burjore* v. *Bhagana, I. L. R., 10 Calc., 557 : L. R., 11 I. A., 7; Lakshmi* v. *Ananta Shanbaga, I. L. R., 2 Mad., 230;* and *Ganga Gir* v. *Bulwant Gir, Weekly Notes, All., 1881, p. 130,* referred to. IN THE MATTER OF THE PETITION OF SITA RAM KESHO **[I. L. R., 15 All., 14**

3. ———— *Civil Procedure Code (1882), ss. 596, 598, and 599—Limitation Act (XV of 1877), s. 7—Application to admit appeal to Privy Council—Disability by reason of minority—Deduction of time.*—In 1885 the High Court in appeal passed a decree to which a minor under the Court of Wards was a party. Having attained his majority in 1894, he sought to appeal to Her Majesty in Council, and presented an appeal within six months of the date when he attained majority. On an application under the Civil Procedure Code, s. 598,—*Held* that the application was barred by limitation. THURAI RAJAH *v.* JAINILABDEEN ROWTHAN **[I. L. R., 18 Mad., 484**

4. ———— **and s. 12**—*Application for leave to appeal to Privy Council—Time requisite for obtaining copy of judgment.—Held* (per STUART, *C.J.*, SPANKIE, *J.*, dissenting) that, in computing the period of limitation prescribed by art. 177, sch. II of Act XV of 1877, for an application for leave to appeal to Her Majesty in Council, the time requisite for obtaining a copy of the judgment on which the decree against which leave to appeal is sought is founded, cannot be excluded under the provisions of s. 12 of Act XV of 1877. JAWAHIR LAL *v.* NARAIN DAS . **I. L. R., 1 All., 644**

5. ———— *Application for leave to appeal to Privy Council—Time for presentation of application—Limitation Act (XV of 1877), ss. 5 and 12—Civil Procedure Code (1882), s. 598.*—An application for leave to appeal to the Privy Council must be made within six months from the date of decree. Such an application is not an appeal, and in computing the period of limitation the time required for obtaining a copy of the decree cannot be excluded. MOROBA RAMCHANDRA *v.* GHANASHAM NILKANT NADKARNI . **I. L. R., 19 Bom., 301**

———— art. 178.

Applications to enforce a "summary decision" were provided for in s. 22 of Act XIV of 1859, and this was continued in art. 166 of Act IX of 1871, the period of limitation being one year. The provision was omitted in the present Act, but this article (178) including "applications for which no period of limitation is provided elsewhere in the schedule" has been inserted. Applications formerly coming under s. 22 of the Act of 1859 and art. 166 of the Act of 1871, if not otherwise expressly provided for, would presumably therefore now come under art. 178.

1. ———— *Act XIV of 1859, s. 22—Summary decision.*—The words "summary decision," as used in s. 22, Act XIV of 1859, meant a decision of the Civil Court not being a decree made in a regular suit or appeal. Under s. 22, Act XIV of 1859, the period for enforcement of such decision was one year from the time it was passed. RAMDHAN MANDAL *v.* RAMESWAR BHATTACHARJEE **[2 B. L. R., A. C., 235 : 11 W. R., 117**

2. ———— *Act XIV of 1859, s. 22—Decree under Act XIX of 1841—Summary order.*—A decree passed under Act XIX of 1841 on a claim to a certain share of property by right of succession was a summary order, and therefore subject to the limitation of one year provided by s. 22, Act XIV of 1859. MAZEDOONISSA BEEBEE *v.* FUEZUN BEEBEE **[4 W. R., Mis., 6**

3. ———— *Summary decision under Beng. Reg. VII of 1799.*—To a process of execution to enforce a summary decision of the revenue authorities under Regulation VII of 1799, Act XIV of 1859 is held applicable; and no proceeding in execution having been taken out to enforce such decision or to keep the same in force within one year next preceding the application for such execution, it was held barred by limitation. LUCHMEE KANT GHOSE *v.* BAMUN DASS MOOKERJEE . **17 W. R., 472**

4. ———— *Act XIV of 1859, s. 22—Summary decision.—Semble*—An order under s. 246 of the Civil Procedure Code was a summary decision within the meaning of s. 22 of the Limitation Act. MANCHARAM KALLIANDAS *v.* RATILAL LALSHANKAR **[6 Bom., A. C., 39**

5. ———— *Act XIV of 1859, s. 22—Summary decision.*—An order awarding possession under s. 15, Act XIV of 1859, was a summary award to which the provisions of s. 22 were applicable. A summary decision is not a final one on the matter at issue between the parties. IN THE MATTER OF NUBOO KISHEN MOOKERJEE . **11 W. R., 188**

6. ———— *Act XIV of 1859, s. 22—Order for costs in execution of decree.*—An order for costs made as a contested matter in execution of a decree was not a "summary decision or award" within s. 22, Act XIV of 1859, but an "order" under s. 20. *Puresh Narain Roy* v. *Dalrymple, 9 W. R., 458,* followed. MOHAN LALL SUKUL *v.* ULFUTUNNISA **[5 B. L. R., 164 note : 11 W. R., 98**

7. ———— *Act XIV of 1859, s. 22—Order dismissing application for execution.*—An order of a Court dismissing an application for execution of a decree, on the ground that it was barred by the Law of Limitation, was not a "summary decision" within the meaning of s. 22. It was an order within the meaning of s. 20 of that Act. DHIRAJ MAHTAB CHAND BAHADOOR *v.* BACHARAM HAZRA **[5 B. L. R., 162 : 13 W. R., F. B., 74**

8. ———— *Act XIV of 1859, s. 22—Summary order.*—A judgment-creditor having in execution taken possession of lands in excess of his decree, objection was raised and a case instituted in which adjudication was made in favour of the judgment-debtor, the order for restoration of the excess land being confirmed in appeal. *Held* that this

order was not a summary one within the meaning of s. 22, and that an application for its execution was governed by the three years' limitation. ROOP MUNGUL SINGH *v.* CHOORAMUN SINGH
[16 W. R., 182

9. ——— *Act XIV of 1858, s. 22—Decree under Registration Act, 1866, s. 53.—Quære*—Whether a decree passed under s. 53 of the Registration Act was or was not a summary decree within the meaning of Act XIV of 1859, s. 22. HURNATH CHATTERJEE *v.* FUTTICK CHUNDER SUMADAR
[18 W. R., 512

10. ——— *Act IX of 1871, art. 166—Application for execution of decree—Registration Act, 1866, s. 53.*—An application for the execution of a decree made under s. 53 of Act XX of 1866 fell within art. 166, and not within art. 167, sch. II of Act IX of 1871. *Jai Shankar* v. *Tetley, I. L. R., 1 All., 586*, dissented from. A proceeding under s. 53 of Act XX of 1866, though in the nature of a suit, was not a regular suit, and a decree made in such a proceeding was a decision of a Civil Court other than a decree passed in a regular suit. On the 13th July 1872 the appellant obtained a decree, under s. 53, Act XX of 1866, on a bond specially registered under s. 52 of that Act. He applied for the execution of it,—first on the 2nd September 1872 and again on the 18th August 1875. The Court made an order on the 15th November 1875, dismissing the proceedings on his second application for execution. The decree not being fully satisfied, he again applied for its execution on the 11th September 1878. *Held* that the application of the 11th September 1878 was barred both under s. 22 of Act XIV of 1869 and art. 166 of sch. II of Act IX of 1871, no proceedings having been taken to enforce the summary decree within one year next preceding the said application. BHIKHAMBHAT *v.* FERNANDEZ . . . **I. L. R., 5 Bom., 672**

See contra, JAI SHANKAR *v.* TETLEY
[I. L. R., 1 All., 586

11. ——— *Act XIV of 1859, s. 22—Registration Act (XX of 1866), s. 53—"Decree" made upon a registered obligation—Summary decision.*—A summary decision means a decision arrived at by a summary proceeding, and a "decree" made under s. 53 of Act XX of 1876 was a summary decision. S. 20 of Act XIV of 1859 was intended to apply to decisions, whether called judgments, decrees, or orders, made in a regular suit; and s. 22 of the same Act was intended to apply to all other decisions. A decree made in 1867 under s. 53 of Act XX of 1866 held to be subject, as regards its execution, to the law of limitation provided in Act XIV of 1859, s. 22. MINA KONWARI *v.* JUGGAT SETANI
[I. L. R., 10 Calc., 196 : 13 C. L. R., 335
L. R., 10 I. A., 119

12. ——— *Application to pass judgment in terms of an award—Civil Procedure Code, 1859, s. 327 ; 1877, s. 526.*—At the request of the applicants, the lower Court filed an award on the 20th December 1866, but no judgment was passed in terms of it. Several applications for execution of the award were subsequently made and granted. The last application was made in 1880, and was rejected on the ground that there was no decree to execute. The order was confirmed by the High Court on appeal. The applicants then applied to the lower Court to pass judgment in terms of the award. The Court rejected the application as barred under the Limitation Act, XV of 1877, sch. II, art. 178. The applicants appealed. *Held* by SARGENT, *C.J.*, and KEMBALL, *J.*, that, looking to the provisions of the Codes of Civil Procedure of 1859 and 1877 with respect to the filing of awards in Court and the proceedings thereon, it appeared to be the duty of the Court, under both Codes, to proceed to pass judgment according to the award as soon as it was ordered to be filed, without waiting for any application that should be done, though such application was, as a matter of practice, usual ; and that being so, such an application was one which, under the authority of *Kylasa Goundan* v. *Ramasami Ayyan, I. L. R., 4 Mad., 172*, and *Vithal Janardan* v. *Vithojirav Putlajirav, I. L. R., 6 Bom., 586*, was not within the contemplation of the Limitation Act. *Held* further that the same effect should be given to the language of s. 327 of Act VIII of 1859 and s. 526 of Act X of 1877. The expression "may be enforced" in the concluding part of s. 327 ought to be read as "shall be enforced" as far as it applies to the Court, although the enforcement by execution of the decree must always, of course, be permissive, as regards the plaintiff. IHSWARDAS JAGJIVANDAS *v.* DOSIBAI
[I. L. R., 7 Bom., 316

13. ——— *Application for certificate to collect debts of deceased person.*—Art. 178 of sch. II of the Limitation Act, 1877, does not affect an application under Act XXVII of 1860 for a certificate to collect debts due to the estate of a deceased person. JANAKI *v.* KESAVALU
[I. L. R., 8 Mad., 207

14. ——— *Application for probate.*—The Limitation Act is not applicable to an application for probate ; such an application therefore is not barred by art. 178 of sch. II of that Act. IN THE MATTER OF THE PETITION OF ISHAN CHUNDER ROY **I. L. R., 6 Calc., 707 : 8 C. L. R., 52**

15. ——— *Application for probate or letters or certificate of administration.*—Art. 178 of sch. II of Act XV of 1877 has reference only to applications under the Civil Procedure Code (Act X of 1877), and does not apply to applications for probate or letters or certificates of administration. BAI MANEKBAI *v.* MANEKJI KAVASJI
[I. L. R., 7 Bom., 213

16. ——— *Applications for probate or letters or certificates of administration.*—Applications for probate or letters or certificates of administration do not fall within the provisions of art. 178 of the Limitation Act. KASHI CHUNDRA DEB *v.* GOPI KRISHNA DEB **I. L. R., 19 Calc., 48**

17. ——— *Applications for probate.*—The Limitation Act does not apply to applications for probate, and the applications referred to in art. 178 of sch. II of that Act are applications under the Code of Civil Procedure. *Janaki* v. *Kesavalu, I. L. R., 8 Mad., 207 ; Bai Manekbai* v. *Manekji Kavisji, I. L. R., 7 Bom., 213 ;* and *In the matter of the petition of Ishan Chunder Roy, I. L. R., 6 Calc., 707,* followed. GNANAMUTHU UPADESI v. VANA KOILPILLAI NADAN

[I. L. R., 17 Mad., 379

18. ——— *Application for certificate of sale—Civil Procedure Code, 1859, s. 259.*—The provisions of the Limitation Act relating to applications do not extend to an application by a purchaser of land at a Court-sale under a decree to obtain a certificate. KYLASA GOUNDAN v. RAMASAMI AYYAN

[I. L. R., 4 Mad., 172

19. ——— *Certificate of sale, Application for.*—Art. 178, sch. II of the Limitation Act (XV of 1877), is not applicable to applications for certificates of sale. The provisions of the Limitation Act (XV of 1877) do not apply to applications to a Court to do what it has no discretion to refuse, nor to applications for the exercise of functions of a ministerial character. VITHAL JANARDAN v. VITHOJIRAV PUTLAJIRAV **I. L. R., 6 Bom., 586**

DEVIDAS JAGJIVAN v. PORJADA BEGAM

[I. L. R., 8 Bom., 377

20. ——— *Certificate of sale, Application for.*—Where an application for a certificate of sale was made five years and a half after the confirmation of the sale,—*Held* that it was barred by art. 178 of sch. II of Act XV of 1877. TUKARAM v. SATVAJI KHANDAJI . . **I. L. R., 5 Bom., 206**

21. ——— *Application for a certificate of sale—Accrual of cause of action.*—The applicant purchased certain land at a Court-sale on the 17th February 1876. The sale was confirmed on the 20th March of the same year. The purchaser did not apply for a certificate of sale until the 10th March 1880. *Held* that the application was barred by the Limitation Act, XV of 1877, sch. II, art. 178. *Held* also that the purchaser's right to a certificate of sale accrued to him under ss. 256, 257, and 259 of the Civil Procedure Code, Act VIII of 1859, on the 20th March 1876, when the sale was confirmed. IN RE KHAJA PATTHANJI . **I. L. R., 5 Bom., 202**

22. ——— *Civil Procedure Code (Act XIV of 1882), s. 318—Purchaser at Court-sale—Certificate of confirmation of sale—Application for possession of purchased property—Date of accrual of right to apply for possession.*—The right of a purchaser to apply for possession under s. 318 of the Civil Procedure Code (Act XIV of 1882) accrues to him when the certificate "has been granted,"—that is to say, when it has been issued to him, and the period of limitation for such an application is to be computed from that day. KASHINATH TRIMBAK JOSHI v. DUMING ZURAN . . **I. L. R., 17 Bom., 228**

23. ——— *Application for possession after sale in execution of decree—Period from which limitation runs.*—The right to apply for possession after a sale in execution of a decree accrues on the date the certificate of sale is issued not on that on which the sale was confirmed; the period of limitation therefore counts from the former date. BASAPA v. MARYA . **I. L. R., 3 Bom., 433**

24. ——— *Application for possession by purchaser at a Court sale—Civil Procedure Code, Act XIV of 1882, s. 318.*—An application by a purchaser at a Court-sale to be put into possession is barred under art. 178, sch. II of Limitation Act, XV of 1877, if made more than three years after the grant of the certificate of sale. *Vithal Janardan* v. *Vithojirav Putlajirav, I. L. R., 6 Bom., 586,* distinguished. HANMANTRAV PANDURANG JOGLEKAR v. SUBAJI GIRMAJI . **I. L. R., 8 Bom., 257**

25. ——— *Insolvent judgment-debtor—Application by creditor to prove claim.*—In July 1878 a person was declared an insolvent under the provisions of Ch. XX of the Civil Procedure Code. Only one creditor then proved his debt, and no schedule was framed. This creditor having applied for the sale of property belonging to the insolvent, another creditor, in May 1883, applied to prove his debt and to have his name inserted in the schedule which the Court then ordered to be framed. *Held* that the application was governed by art 178 of the Limitation Act, 1877; and that, the right to apply having accrued at the date of the declaration of insolvency, the application was beyond time. PARSHADI LAL v. CHUNNI LAL . . . **I. L. R., 6 All., 142**

26. ——— *Application to amend decree—Act X of 1877 (Civil Procedure Code), s. 206.*—An application to amend a decree, which is found to be at variance with the judgment, in accordance with the provisions of s. 206 of the Civil Procedure Code, is an application of the kind mentioned in art. 178 of sch. II of Act XV of 1877, and as such subject to the limitation of three years. IN THE MATTER OF THE PETITION OF GAYA PRASAD v. SIKRI PRASAD . . . **I. L. R., 4 All., 23**

27. ——— *Application to bring decree into conformity with judgment—Civil Procedure Code, 1882, s. 206.*—Applications to the Court under s. 206 of the Code of Civil Procedure are not governed by the Limitation Act. JIVRAJI v. PRAGJI

[I. L. R., 10 Mad., 51

28. ——— *Decree, Application to correct errors in—Civil Procedure Code (Act XIV of 1882), s. 206—Practice.*—An application, under s. 206 of the Civil Procedure Code (Act XIV of 1882), to correct errors in a decree, not being one within the purview of art. 178, sch. II of the Limitation Act (XV of 1877), is not governed by any limitation, and can be made at any time such errors are discovered. *Gaya Prasad* v. *Sikri Prasad, I. L. R., 4 All., 23,* dissented from. SHIVAPA v. SHIVAPANCH LINGAPA

[I. L. R., 11 Bom., 284

29. ——— *Civil Procedure Code, s. 206—Amendment of decree.*—Art. 178 of sch. II of the Limitation Act (XV of 1877) applies only to applications made to a Court to exercise powers which, without being moved by such application, it is not bound to exercise, and not to applications made to a Court to do acts which it has no discretion to refuse to do. It does not govern an application

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under s. 206 of the Civil Procedure Code for amendment of a decree, so as to bring it into conformity with the judgment, it being the bounden duty of a Court, of its own motion, to see that its decrees are in accordance with the judgments, and to correct them if necessary. *Gaya Prasad* v. *Sikri Prasad, I. L. R., 4 All., 23,* dissented from. *In re petition of Kishan Singh, Weekly Notes, All., 1883, p. 262; Kylasa Goundan* v. *Ramasami Ayyan, I. L. R., 4 Mad., 172;* and *Vithal Janardan* v. *Vithojirav, Putlajirav I. L. R., 6 Bom., 586,* referred to. Darbo *v.* Kesho Rai . . **I. L. R., 9 All., 364**

30. ———— *Amendment of decree—Civil Procedure Code, 1882, s. 206—Suit for mesne profits while plaintiff is out of possession.*—There is no limitation for an application under s. 206 of the Civil Procedure Code to amend a decree, it being the duty of the Court to amend it whenever it is found to be not in conformity with the judgment. *A* instituted a suit for declaration of title and for possession. The decree, which was finally confirmed by the High Court, gave her the declaration sought for, but it contained no direction as to the possession, although the judgment stated that she was entitled to possession. *A's* son (having been substituted in her place) applied to have the decree amended. The lower Appellate Court held that the application was barred by limitation. The High Court on appeal upheld the lower Court's order not on the ground of limitation, but on the ground that the application to amend the decree had been made in the wrong Court. *A's* son then instituted a fresh suit against the same parties for declaration of title, perpetual injunction, and for mesne profits. *Held* that the plaintiff was entitled to have the decree amended under s. 206, Civil Procedure Code, and that, though the plaintiff's claim to possession was barred, yet his right was not extinguished, and he, having therefore a subsisting title, was entitled, though out of possession, to maintain the suit so far as it sought to recover mesne profits. Kalu *v.* Latu . **I. L. R., 21 Calc., 259**

31. ———— *Decree as originally framed incapable of execution—Amendment of decree—Application for execution of amended decree.*—Where a decree as originally framed was found by the High Court to be incapable of execution, and was not finally amended by that Court, so as to become capable of execution, until nearly twelve years after it was passed, it was *held* that an application to execute such decree which was made within three years from the date of the amendment of the decree was within time, the rule of limitation applicable being that prescribed by art. 178 of sch. II of Act XV of 1877. Muhammad Suleman Khan *v.* Muhammad Yar Khan . . **I. L. R., 17 All., 39**

32. ———— *Application for order absolute for sale of mortgaged property—Transfer of Property Act (IV of 1882), s. 89.*—Art. 178 of sch. II of the Limitation Act, 1877, does not apply to an application for an order absolute for the sale of mortgaged property under s. 89 of the Transfer of Property Act, 1882. *Bai Manekbai* v. *Manekji Kavasji, I. L. R., 7 Bom., 213,* approved. Ranbir Singh *v.* Drigpal . . **I. L. R., 16 All., 23**

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Contra, Chunni Lal *v.* Harnam Dass
[I. L. R., 20 All., 302

33. ———— *Transfer of Property Act (VI of 1882), s. 89—Application for an order absolute for sale of mortgaged property.*—An application under s. 89 of the Transfer of Property Act (IV of 1882) to have a mortgage-decree for sale made absolute is not governed by art. 178, sch. II of the Limitation Act, 1877. That article is limited to applications under the Code of Civil Procedure. *Bai Manekbai* v. *Manekji Kavasji, I. L. R., 7 Bom., 213,* and *Ranbir Singh* v. *Drigpal, I. L. R., 16 All., 23,* approved. In dealing, however, with such an application, the Court may be guided by considerations as to whether any delay on the part of the mortgagee has not been unreasonable, so as to bring it within the rules applied in such cases by Courts of equity. So long as the final order for sale is not passed, the suit may properly be regarded as pending. Tiluck Singh *v.* Parsotein Proshad . **I. L. R., 22 Calc., 924**

34. ———— *Application for a decree under s. 90—Transfer of Property Act (IV of 1882).*—*Held* that the limitation governing an application for a decree under s. 90 of the Transfer of Property Act is that prescribed by art. 178 of the second schedule to the Limitation Act, 1877. Ram Sarup *v.* Ghaurani . **I. L. R., 21 All., 453**

35. ———— *Application for resale in execution of decree—Continuous proceedings.*—Upon an application made on the 28th August 1891, for execution of a mortgage decree, the mortgaged property was sold, and the judgment-debtors purchased it benami at a low price. Thereupon the decree-holders made an application, on the 12th November 1891, asking the Court to set aside the benami purchase and resell the property. The first Court found that the purchase was not benami, and confirmed the sale on the 12th April 1892, but the lower Appellate Court came to a contrary conclusion, and set aside the sale on the 22nd July 1892. The High Court, in second appeal, accepted the finding of the Appellate Court as regards the purchase being benami, but upheld the sale with the remark that the said property and any other property of the debtors might be sold in satisfaction of the mortgage-debt. This judgment was passed on the 4th August 1893. On an application for execution made on the 3rd December 1894, an objection was raised on the ground of limitation. *Held* that the application of the 3rd December 1894 might be regarded as a continuation of the application of the 12th November 1891, for resale of the property; and as the decree-holders were precluded by the first Court's finding of the 12th April 1892, from asking for sale until it was reversed by the lower Appellate Court on the 22nd July 1892, and finally by the High Court on the 4th August 1893, the application was in time under art. 178, sch. II, Act XV of 1877. *Pyaroo Tuhovildarinee* v. *Nazir Hossein, 23 W. R., 183; Chandra Prodhan* v. *Gopi Mohan Shaha, I. L. R., 14 Calc., 385; Paras Ram* v. *Gardner, I. L. R., 1 All., 355; Kalyanbhai Dipchand* v. *Ghanasham, Lal Jadunathji, I. L. R., 5 Bom., 29;* and *Chintamon*

Damodar Agashe v. *Balshastri, I. L. R., 16 Bom., 294,* referred to. Raghunath Sahay Singh *v.* Lalji Singh . . **I. L. R., 23 Calc., 397**

36. ——————— *Renewal of application for execution after intermediate proceedings.*—Certain holders of a decree for sale under s. 88 of the Transfer of Property Act applied for execution of their decree on the 6th of January 1887, and the application was granted. A third party, however, appeared and filed an objection under s. 278 of the Code of Civil Procedure, which was allowed. Thereupon the decree-holders brought a suit under s. 283 of the Code. They obtained a decree on the 5th of June 1888; but the intervenor appealed, and the final decree in appeal was not passed until the 28th of May 1892. On the 27th of April 1892, the decree-holders again applied for execution of the decree. *Held* that execution was time-barred under art. 178 of the second schedule to Act XV of 1877. Desraj Singh *v.* Karam Khan . **I. L. R., 19 All., 71**

37. ——————— *Application to set aside a sale by a person interested in the sale—Bengal Tenancy Act (VIII of 1885), s. 173—Limitation Act, art. 166.*—An application to set aside a sale under s. 173 of the Bengal Tenancy Act is governed by art. 178, sch. II of the Limitation Act, and should be made within three years from the date when the right to apply accrues. Chand Monee Dasya *v.* Santo Monee Dasya . **I. L. R., 24 Calc., 707**
[1 C. W. N., 534

38. ——————— *Application to set aside sale on ground of fraud.*—An application to set aside a sale on the ground of fraud is governed by art. 178 of the Limitation Act. *Nemai Chand Kanji* v. *Deno Nath Kanji, 2 C. W. N., 691,* referred to. Bhubon Mohun Pal *v.* Nunda Lal Dey
[I. L. R., 26 Calc., 324

See Moti Lal Chakrabutty *v.* Russick Chandra Barraji . . **I. L. R., 26 Calc., 326 note**

which places such an application under art. 95 of the Limitation Act.

39. ——————— Where a judgment-debtor applies to have an execution-sale set aside and alleges circumstances which, if found in his favour, would amount to fraud on the part of the decree-holder or auction-purchaser, the period of limitation is that provided in art. 178, and not that in art. 166, of sch. II of the Limitation Act. Nemai Chand Kanji *v.* Deno Nath Kanji . . **2 C. W. N., 691**

Luchmipat *v.* Mandil Koer **3 C. W. N., 333**

40. ——————— *Limitation Act, 1877, s. 8—Mesne profits, Decree for—Execution of decree—Application for assessment of mesne profits—Joint decree-holders—Minor Right of, to execute whole decree when remedy of major joint-decree-holder is barred.*—In execution of a decree for possession of certain lands and for mesne profits, dated the 15th August 1878, possession having been obtained in August 1880, two decree-holders, one of whom was a minor, applied on the 4th April 1882 for ascertainment of the amount of such mesne profits. Upon that application the amin was directed to ascertain the amount due, but after repeated reminders had been sent him, and no report being submitted, the execution-case was struck off the file on the 9th October 1882. The minor judgment-creditor having attained his majority on the 17th April 1885, an application was made by both decree-holders for execution of the decree by ascertainment of the amount of mesne profits and for the recovery of the amount when so ascertained. The judgment-debtors pleaded limitation. *Held* that the application was not an application for execution of the decree. The decree was divisible into two parts, and the present application must be treated as for the purpose of obtaining a final decree regarding the mesne profits, the previous decree having been in that respect merely interlocutory. *Baroda Sundari Dabia* v. *Fergusson, 11 C. L. R., 17,* and *Dildar Hosain* v. *Mujeedunnissa, I. L. R., 4 Calc., 529,* followed. *Hem Chunder Chowdhry* v. *Brojo Soondury Debee, I. L. R., 8 Calc., 89,* dissented from. *Held* also that the provisions of art. 178 of sch. II of the Limitation Act apply to an application by a decree-holder to make a decree complete (*Baroda Soonduri Dabia* v. *Fergusson, 11 C. L. R., 17,* upon this point dissented from); and further that s. 8 of that Act had no application to the case, and that therefore, so far as the application of the major decree-holder was concerned, his remedy was barred, as his application should have been made within at least three years from the date of the delivery of possession of the lands decreed. *Held* further that under s. 7 of the Limitation Act the remedy of the minor decree-holder was not barred, as the other decree-holder could not give a valid discharge without his concurrence (*Ahamudden* v. *Grish Chunder Chamunt, I. L. R., 4 Calc., 350,* distinguished), and that, under s. 231 of the Code of Civil Procedure, he was entitled to execute the whole decree, as, though the remedy of the major decree-holder was barred, his right was not extinguished. Anando Kishore Dass Bakshi *v.* Anando Kishore Bose . . **I. L. R., 14 Calc., 50**

41. ——————— **and art. 179**—*Application for ascertainment of mesne profits—Civil Procedure Code (Act XIV of 1882), ss. 211, 212.*—Neither art. 178 nor art. 179 of the Limitation Act applies to an application to ascertain the amount of mesne profits awarded by a decree in accordance with the provisions of s. 211 or s. 212 of the Code of Civil Procedure. Puran Chand *v.* Roy Radha Kishen
[I. L. R., 19 Calc., 132

Pryag Singh *v.* Raju Singh
[I. L. R., 25 Calc., 203

42. ——————— *Decree for possession and mesne profits from date to be fixed in execution—Civil Procedure Code, 1882, s. 211.*—Where a decree directed that plaintiffs should get mesne profits from a certain date till delivery of possession, the amount to be fixed in execution,—*Held* that the decree was necessarily subject to the limitation laid down in s. 211 of the Civil Procedure Code (Act XIV of 1882), and that mesne profits for more than three years from the date of the decree should not be awarded, even though possession was not delivered during that period. NARAYAN GOVIND MANIK *v.* SONO SADASHIV . . . . **I. L. R., 24 Bom., 345**

43. ———— **and art. 179**—*Application for recovery of whole amount of decree under agreement—Civil Procedure Code, s. 257A.*—On the 27th August 1878 the holder of a decree for money and the judgment-debtor agreed that the amount of the decree should be payable by instalments, and that, if default were made in payment of any one instalment, the whole decree should be executed. The Court executing the decree sanctioned this agreement. On the 28th November 1881, default having been made, the decree-holder applied for recovery of the whole amount of the decree. *Held* that the application was not one to which art. 179, sch. II of the Limitation Act, 1877, was applicable, but art. 178, and the period of limitation began to run from the date of default. The principle recognized in *Raghubans Gir* v. *Sheosaran Gir, I. L. R., 5 All., 243,* and *Kalyanbhai Dipchand* v. *Ghanashamlal Jadunathji, I. L. R., 5 Bom., 29,* applied. SHAM KARAN *v.* PIARI . . . **I. L. R., 5 All., 596**

44. ———— *Plaint in a suit treated as an application under s. 244, Civil Procedure Code, 1882.*—Where a suit is filed under circumstances in which the proper remedy is an application under s. 244 of the Code of Civil Procedure, and the Court in the exercise of its discretion treats the plaint in the suit as an application under s. 244, the rule of limitation applicable will be that appropriate to applications under s. 244, namely, that prescribed by art. 178 of the second schedule to the Limitation Act, 1877. *Jhamman Lal* v. *Kewal Ram, Weekly Notes, All., 1899, p. 219,* and *Biru Mahata* v. *Shyama Churn Khawas, I. L. R., 22 Calc., 483,* referred to. LALMAN DAS *v.* JAGAN NATH SINGH

[I. L. R., 22 All., 376

45. ———— *Decree prohibiting execution till the expiration of a certain period.*—A decree, which was passed on the 8th December 1881, in a suit on a simple mortgage-bond contained the following provision: "If the judgment-debt is not paid within four months, the decree-holder shall have the power to recover it by a sale of the mortgaged property." On the 17th February 1885, the decree-holder applied for execution of the decree. *Held* that, inasmuch as the decree provided expressly that the decree-holder might not apply for its execution till after the expiry of four months from its date, the limitation of art. 178, sch. II of the Limitation Act, and not of art. 179, should be applied to the case; and the application for execution, having been made within three years from the 8th April 1882, when the right to ask for execution accrued, was not barred by limitation. THAKAR DAS *v.* SHADI LAL . . . . **I. L. R., 8 All., 56**

46. ———— *Decree for possession of immoveable property, execution being contingent on non-payment of annuity.*—Where a decree was for possession of immoveable property, but its execution was contingent on default being made by the judgment-debtor in the payment year by year of a certain annuity to the decree-holder,—*Held* that the decree-holder was not obliged to execute such decree once and for all upon the occurrence of the first default, but might execute it on occasion of any subsequent default; also that the limitation applicable to the execution of such decree was that provided for by art. 178 of sch. II of the Limitation Act, 1877. *Thakar Das* v. *Shadi Lal, I. L. R., 8 All., 56,* referred to. MUHAMMAD ISLAM *v.* MUHAMMAD AHSAN

[I. L. R., 16 All., 237

47. ———— *Application for execution of decree.*—An application for execution of a decree, made on the 29th May 1874, having been rejected, an appeal was preferred to the High Court, which reversed the order of the lower Court. The property of the judgment-debtor had been attached previously to the application for execution, and part of it was afterwards sold on the 6th September 1875. A subsequent application to have a further portion of the attached property sold was rejected on the 17th September 1875, on the ground that not only part of the property, but the whole of it might have been sold on the 6th September. There being nothing to show that the attachment had ever been withdrawn on the 31st December 1877, the judgment-creditor applied that the property of his debtor might be sold in execution of the decree. *Held* that nothing had been done by the judgment-creditor since his application for execution, of the 29th May 1874, "to enforce the decree or kept it in force" (as defined by the Full Bench decision in *Chunder Coomer Roy* v. *Bhogobutty Prosunno Roy, 1 C. L. R., 23: I. L. R., 3 Calc., 235*); that the right to apply to have the property sold accrued upon the attachment, and accordingly that the present application, inasmuch as it had been made more than three years from the date of the attachment, was barred by limitation under art. 178, sch. II of Act XV of 1877. JOOBRAJ SINGH *v.* BUHOORIA ALUMBASEE KOER

[7 C. L. R., 424

48. ———— *Application for execution—Intermediate suit—Fresh application—Revival of application.*—On the 27th March 1878, the holder of a decree applied for execution. On the 27th May 1878, the Court made an order directing that the application should be struck off, as the record of the former execution proceedings was in the Appellate Court, and that the decree-holder should make a fresh application when such record was returned. On the 28th May 1881 the decree-holder renewed the application in accordance with such order. *Held*, on the question whether this application was barred by limitation, that it was not an application within the meaning of art. 179, sch. II of Act XV of 1877, but one to which art. 178 would apply; that limitation began to run when the record was returned, and that therefore (three years not having elapsed from that time) the application in question was within time. *Kalyanbhai Dipchand* v. *Ghanashamlal Jadunathji, I. L. R., 5 Bom., 29,* and *Paras Ram* v. *Gardner, I. L. R., 1 All., 355,* referred to. RAGHUBANS GIR *v.* SHEOSARAN GIR

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49. ——— *Application for revival of execution stayed by injunction.*—A decree was made against *B, K,* and *Z.* On the 13th May 1879, application was made for execution of the decree against *B* and *K.* In August 1879 *Z,* who had preferred an appeal in the suit, applied on that ground for the stay of execution, and on the 22nd August 1879 the Court on the same ground ordered execution to be stayed. On the 16th December 1879, *Z*'s appeal was dismissed. On the 24th June 1882 an application for execution of the decree against *B* and *K* was made. *Held* that such application might be regarded as one for revival of the proceedings in execution which had been stayed by injunction, to which art. 178, sch. II of the Limitation Act, 1877, was applicable, and such application was therefore within time. The principle of decision in *Raghubans Gir* v. *Sheosaran Gir, I. L. R., 5 All., 243,* and *Kalyanbhai Dipchand* v. *Ghanashamlal Jadunathji I. L. R., 5 Bom., 29,* followed. BUTI BEGAM *v.* NIHAL CHAND . . **I. L. R., 5 All., 459**

50. ——— *Application for execution of decree by revival of proceedings after removal of injunction.*—On the 28th May 1878 application was made for execution of a decree, in pursuance of which certain property was attached and proclaimed for sale. On the day fixed for the sale the Court issued an injunction to stay the same until a suit, which certain persons who claimed the property had instituted, had been decided. On the 14th September 1882, the suit having been finally decided on the 24th January 1881, the decree-holder applied for execution. *Held* that the application might properly be considered to be for revival of the former proceedings after removal of the injunction, to which art. 178 of the Limitation Act, 1877, rather than art. 1879, was applicable, and was within time from the date of accrual of the right to apply on the final decision of the suit. BASANT LAL *v.* BATUL BIBI **[I. L. R., 6 All., 23**

51. ——— *Decree — Execution — Attachment set aside—Time occupied in suing to declare property liable to attachment.*— An application for execution of a decree having been made in 1880, certain land was attached as being the property of the judgment-debtor (deceased). His children thereupon claimed the land, and the attachment was raised. Upon this the judgment-creditor sued to establish his right to sell the land in execution and obtained a decree in 1882, which was confirmed on appeal in 1883. In 1885 the judgment-creditor again applied for attachment and sale of the same land. *Held* that the application could not be considered as one for the revival of former proceedings, that art. 178 was not applicable to it, and that the application was barred by limitation. *Basant Lal* v. *Batul Bibi, I. L. R., 6 All., 23,* distinguished. NARAYANA *v.* PAPPI BRAHMANI **[I. L. R., 10 Mad., 22**

52. ——— *Application under s. 411, Civil Procedure Code, 1877—Court-fees payable to Government under decree.*—Government is not entitled to any exemption from the provisions of the Limitation Act, 1877, relating to applications. *Held* therefore that an application by Government under s. 411 of the Code of Civil Procedure to recover the amount of Court-fees from a party ordered by the decree to pay the same was subject to the provisions of art. 178 of the Limitation Act, 1877. APPAYA *v.* COLLECTOR OF VIZAGAPATAM **[I. L. R., 4 Mad., 155**

53. ——— *Application for refund of excess payment—Accrual of right to apply.*—The judgment-debtors against whom a decree had been executed applied for a refund of money which they alleged had been recovered in execution by the decree-holders in excess of what was actually due under the decree. Upon this application an account was taken by order of the Court. *Held* that the limitation applicable to the case was that provided by art. 178, sch. II of the Limitation Act, and that the right to apply for the refund of the excess amount paid in execution accrued at the time when the account was taken and stated on the application of the judgment-debtors in the course of the proceedings in execution. MULA RAJ *v.* DEBI DIHAL **[I. L. R., 7 All., 371**

54. ——— *Application under Civil Procedure Code, s. 583—Application for refund of moneys levied under decree reversed on appeal.*—*Semble*—An application for refund of moneys levied in execution of a decree subsequently reversed on appeal is not governed by art. 179, but by art. 178, of sch. II of the Limitation Act. KURUPAM ZAMINDAR *v.* SADASIVA . . **I. L. R., 10 Mad., 66**

HARISH CHANDRA SHAHA *v.* CHANDRA MOHAN DASS . . . . **I. L. R., 23 Calc., 109**

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55. ——— *Civil Procedure Code, s. 315—Sale in execution set aside—Application by purchaser for refund of purchase-money—Accrual of right to apply—Delay—Costs.*—A suit by a judgment-debtor whose sír land had been sold in execution of a decree to have the sale declared void and illegal, on the ground that the sír was incapable of sale, was decreed on appeal by the High Court on the 13th June 1884. On the 11th June 1887, the purchaser at the sale applied, under s. 315 of the Civil Procedure Code, for a refund of the purchase-money. *Held* that the limitation applicable was that provided by art. 178 of sch. II of the Limitation Act (XV of 1877); that the right to apply accrued on the passing of the High Court's decree, and the application was therefore not barred by limitation; but that, looking to the great delay there had been on the part of the applicant, he should not be allowed any costs. GIRDHARI *v.* SITAL PRASAD **[I. L. R., 11 All., 372**

56. ——— *Application to revive a case and restore it to the board.*—After a decree had been made in a suit, the case was in 1875 struck out of the board for want of prosecution. No steps were taken to have it restored. In 1879 both the plaintiff and defendant died. In the same year the heirs of the plaintiff instituted a suit against the

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administrator of the defendant for the purpose of having the decree in the original suit carried out. This suit was dismissed by the Court of first instance under s. 13 of the Code of Civil Procedure, but the Appellate Court, holding that the original suit was subsisting and might be reconstituted, directed that the plaintiffs should be allowed to amend their plaint by putting it into the form of a petition under s. 372 of the Code. On a petition by the plaintiffs praying that the original suit might be revived and restored to the board,—*Held* that the application was not barred under art. 178 of sch. II to the Limitation Act of 1877. Even if art. 178 was applicable, the application would not be barred, limitation running from the time when the suit was allowed to be reconstituted. The Legislature did not intend to include in the Limitation Act every application to a Court with reference to its own list of causes, such as applications to transfer a case from one board to another, to transfer a case to the bottom of the board, change of attorneys, and so forth. GOVIND CHUNDER GHOSWAMI *v.* RUNGUNMONEY

[I. L. R., 6 Calc., 60 : 6 C. L. R., 345

57. ——————— **and arts. 171 and 171A** —*Application to revive suit—Right to apply—Pending suit.*—The right to apply in a pending suit, —*i.e.*, a suit in which no final order has been made, —is a right which accrues from day to day, and therefore the periods of limitation provided in arts. 171, 171A, and 178 do not apply in an application to revive such a suit. KEDARNATH DUTT *v.* HARA CHAND DUTT . . **I. L. R., 8 Calc., 420**

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58. ——————— *Revival, Application for —Civil Procedure Code, 1877, s. 371.*—An application by the legal representative of the plaintiff to revive a suit which has abated on the death of the plaintiff may be granted if made within three years from the time when the right to apply accrued, if the applicant can show that he was prevented from sufficient cause from continuing the suit. BHOYRUB DOSS JOHURRY *v.* DOMAN THAKOOR

[I. L. R., 5 Calc., 139 : 4 C. L. R., 374

59. ——————— *Death of plaintiff-respondent—No application for substitution—Application by defendant-appellant for hearing of appeal.* —*Held* by the Full Bench that, inasmuch as art. 178, and not art. 171B, of the second schedule of the Limitation Act applied to the case of a deceased respondent, whether plaintiff or defendant in the suit, an application by a defendant-appellant to have his appeal heard in the absence of any representative of the deceased plaintiff-respondent could not be allowed until the period prescribed by art. 178 had expired without the legal representatives of the deceased applying to be brought on the record in his place. RAM SARUP *v.* RAM SAHAI . . . **I. L. R., 10 All., 270**

60. ——————— **and art. 179**—*Injunction restraining execution—Revival of proceedings by representative of decree-holder—Substitution of name of representative on the record.*—*J* obtained a decree against the firm of *M R* in 1863, and on the 16th September 1869 applied for execution by attachment and sale of certain immoveable property. The property was attached, but the sale was delayed by various causes until the 5th February 1876, when it was ordered to take place on the 18th March 1877. Meanwhile *P* brought a suit against *J*, and on 14th March 1876 he obtained an injunction restraining *J* from proceeding, *pendente lite*, to the sale of the attached property. *J* appealed against the order granting the injunction, which, however, was confirmed on the 26th June 1878. Meanwhile, on the 22nd January 1877, *J* had died, and thereupon the proceedings in the matter of the injunction as well as in *P*'s suit were carried on by *G* as his representative. On the 19th January 1880, *P*'s suit was dismissed, and with it the injunction of the 14th March 1876 fell to the ground. On the 5th February 1880, *G* applied to have his name substituted for that of *J* in the application for execution of the 16th September 1869, and to proceed with the case; and on the 19th February 1880 this application was granted, and an order made that execution should be proceeded with on *J*'s application of September 1869. *K*, as representing the firm of *M R*, appealed. *Held* that *G* was entitled to execution. Where an application for execution has been made and granted, but the right to execute has been subsequently suspended by an injunction or other obstacle, the decree-holder may apply for a revival of the proceedings within three years from the date on which the right to apply accrues, *viz.*, the date on which the injunction or other obstacle is removed (art. 178 of sch. II of Act XV of 1877). Where a decree-holder, whose right of execution has been thus temporarily suspended, dies, his representative has the same rights as he had himself to apply for and obtain a revival of the proceedings. It was contended in the above case that *G* had no right to apply for a revival of proceedings, unless his name was substituted on the record as *J*'s representative; that as his right to apply for such substitution accrued immediately upon *J*'s death, which had happened more than three years previously, so much of his application of 3rd February 1880 as related to the substitution of names was barred by art. 178 of sch. II of Act XV of 1877; and that consequently the other portion of his application which related to execution was necessarily inadmissible, inasmuch as it depended upon the substitution of *G*'s name, which it was too late to effect. *Held* that, under the circumstances of the case, *G*'s right to apply for the entry of his name in the place of that of *J* could not be regarded as having accrued immediately upon *J*'s death. At that time *J*'s application for execution, being suspended by the injunction, was to all intents and purposes non-existent. It could not be revived until the injunction was removed. During the continuance of the injunction, an application by *G* for the entry of his name could not have been entertained by the Court, inasmuch as *J*'s application for execution was in abeyance and would never be revived at all in the event of *P* succeeding in his suit; and even if *P* failed, it might also happen that *J*'s application would not be revived in favour of *G*, for even if he were *J*'s representative at the date of his application, he might be dead before the decision of *P*'s suit. KALYANBHAI DIPCHAND *v.* GHANASHAMLAL . . . **I. L. R., 5 Bom., 29**

61. ——— *Death of sole defendant —Legal representative—Civil Procedure Code (Act X of 1877), ss. 368, 372.*—In a suit for the recovery of land against a sole defendant, the latter died before the hearing. Sixty-three days after the death of the defendant, the plaintiff applied to the Court to enter on the record the legal representative of the deceased defendant. On the 22nd of November 1880 the Court rejected the application under the provisions of Act XV of 1877, sch. II, art. 171*b*, and ordered the suit to abate. On the same day the plaintiff applied to the Court to set aside the order directing the suit to abate, but this application was also rejected on the 20th of September 1881. On appeal to the High Court,—*Held* that the application which was rejected on the 22nd of November 1880 was an application under s. 372, and not under s. 368, of the Code of Civil Procedure; and that the applicant was entitled to make the application within three years, as allowed by Act XV of 1877, sch. II, art. 178. *Gocool Chunder Gossamee* v. *Administrator General of Bengal, I. L. R., 5 Calc., 726,* referred to. BENODE MOHINI CHOWDHRAIN *v.* SHARAT CHUNDER DEY CHOWDHRY

[I. L. R., 8 Calc., 837 : 10 C. L. R., 449
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62. ——— *Application for fresh summons—Filing of plaint.*—A plaint was filed on 12th March 1875, and the summons to the defendant to appear and answer issued on 13th March 1875. With the exception of an application for substituted service made on 20th March 1875, and which was refused, no further steps were taken in the matter until 21st March 1878, when the plaintiff applied for a fresh summons to issue, the time for the return of the first summons having long since expired. *Held* that the mere filing of a plaint, or the naked fact that a plaint is on the file, will not of itself prevent the operation of the law of limitation, and that, as no steps had been taken to renew the summons for three years, and as no sufficient case to excuse the delay had been made out, the application was out of time, and should be refused. RAMKISSEN DOSS *v.* LUCKEYNARAIN . . . . **I. L. R., 3 Calc., 312**

63. ——— *Application for summons after period of limitation had expired—Rules of High Court (4th December 1875), 1, 2, 5.*—In a suit upon a promissory note, dated the 4th June 1873, payable three months after date, the plaint was filed on the 22nd November 1873, but no summons to appear was isued until the 13th September 1878, when a Judge's order for the issue of a summons was obtained *ex-parte*. *Held* that the suit was not barred by limitation. GEERENDER COOMAR DUTT *v.* JUGGADUMBA DABEE . **I. L. R., 5 Calc., 126**

64. ——— *Per curiam* (KERNAN, J., dissenting).—An application by an appellant to make the representative of a deceased respondent party to the appeal does not fall under art. 171B, but under art. 178, of sch. II of the Limitation Act, 1871. LAKSHMI *v.* SRI DEVI **I. L. R., 9 Mad., 1**

65. ——— *Sale in execution of decree —Interest of purchaser—Second sale of same property in execution of subsequent decree—Interest of purchaser at such subsequent sale subject to interest of purchaser under prior sale—Registered certificate of second sale—Act VIII of 1859—Civil Procedure Code (XIV of 1882), s. 294—Purchase by decree-holder at execution-sale—Right to set aside such purchase.*—In 1884 the plaintiff brought the present suit against the defendant to recover possession of a certain house which he had purchased at a sale held on the 15th March 1880, in execution of a money-decree obtained against one *C*. He obtained a certificate of sale on the 3rd January 1880, which was registered on the 13th of the same month. The defendant had previously purchased the same property at a sale held on the 22nd November 1875, in execution of a decree obtained by him as mortgagee against the said *C*. The defendant had obtained a certificate of sale and was put into possession, but had not then registered the certificate. He subsequently obtained another certificate, which was registered in June 1882. In a suit by the plaintiff for possession it was contended that, under s. 294 of the Civil Procedure Code (Act XIV of 1882), the defendant took nothing by his purchase, as he was the holder of the decree in execution of which the property was sold. *Held* that this objection could not now be made, as the right of the judgment-debtor (*C*) and of the plaintiff, as purchaser of his rights, to have the defendant's purchase set aside on this ground, had been barred by limitation long before this suit was brought. The purchase by the defendant was not void *ab initio*, but only voidable "on the application of the judgment-debtor or other person interested in the sale. *Javarbhai* v. *Haribai, I. L. R., 5 Bom., 575.* Further, such an application was a matter in execution falling under s. 244 of the Civil Procedure Code, and therefore, even if not barred before the passing of the Limitation Act (XV of 1877), would be barred by art. 178 of that Act not later than 1st October 1880. CHINTAMANRAV NATU *v.* VITHABAI . . . **I. L. R., 11 Bom., 588**

66. ——— *Execution of decree—Decree payable by instalments—Instalment, Default in payment of.*—When a decree or order makes a sum of money payable by instalments on certain dates, and provides that, in default of payment of any instalment, the whole of the money shall become due and payable and be recoverable in execution, by art. 178, sch. II of the Limitation Act, limitation begins to run from the date of the first default, unless the right to enforce payment in default has been waived by subsequent payment of the overdue instalment on the one hand and receipt on the other. *R* obtained a decree against *D C* and *K G* for a sum of money on 21st June 1880. On 25th May 1882 an order was made in terms of the petition of both parties, providing

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that the amount of the decree should be paid by five instalments, the first instalment being due in July 1882, and that in default of payment of any instalment the whole amount should be due and recoverable in execution. Default was made in payment of the first instalment, nor was there any subsequent payment of that or any other instalment. On 30th July 1886 *R* applied for execution of the four last instalments, alleging that the first had been paid. *Held* that the application was barred by limitation under art. 178, sch. II, Limitation Act, 1877. *Hurronath Roy* v. *Maher-oollah, B. L. R., Sup. Vol., 618 : 7 W. R., 21; Dalsook Ruttan Chand* v. *Chugan Narrun, I. L. R., 2 Bom., 356 ; Shib Dat* v. *Kalka Persad, I. L. R., 2 All., 443 ; Cheni Bas Shaha* v. *Kadum Mundul, I. L. R., 5 Calc., 97 ; Asmutullah Dalal* v. *Kali Churn Mitter, I. L. R., 7 Calc., 56 ; Nil Madhub Chuckerbutty* v. *Ram Sodoy Ghose, I. L. R., 9 Calc., 857 ; Ram Kulpo Bhattacharji* v. *Ram Chunder Shome, I. L. R., 14 Calc., 352 ;* and *Chunder Komal Das* v. *Bisassurree Dassia, 13 C. L. R., 243,* referred to. MON MOHUN ROY *v.* DURGA CHURN GOOEE . . . **I. L. R., 15 Calc., 502**

67. ——————— *Sanction to prosecution—Application for such sanction—Criminal Procedure Code, s. 195.*—Rules of limitation are foreign to the administration of criminal justice, and it is only by express statutory provision that any rule of limitation could be made applicable to criminal cases. Art. 178, sch. II, Limitation Act (XV of 1877), must be construed with reference to the wording of the other articles, and can relate only to applications *ejusdem generis*. A suit was instituted for possession of certain land on which stood a factory. In proof of the claim, the plaintiffs filed in Court a sarkhat or lease which was pronounced by the Munsif to be a forgery. Plaintiffs appealed up to the High Court, where, on the 24th June 1886, the Munsif's decree was affirmed. Defendants then applied to the Munsif for sanction to prosecute the plaintiffs for the offence of using a forged document knowing the same to be forged. The Munsif refused to sanction the prosecution prayed for; but on application to the Sessions Judge such sanction was granted. On application to revise the Sessions Judge's order granting sanction, it was contended that, after the lapse of nearly three years, sanction to prosecute should not have been granted. *Held* that there is no fixed period of limitation for making application for sanction under s. 195 of the Criminal Procedure Code. QUEEN-EMPRESS *v.* AJUDHIA SINGH

[I. L. R., 10 All., 350

68. ——————— *Application to rescind leave to sue—Decree—Order.*—The granting of leave to sue is neither a decree nor an order, and the period of limitation for an application to rescind it is that provided by art. 178 of the Limitation Act (XV of 1877), *viz.*, three years. KESSOWAJI DAMODAR JAIRAM *v.* LUCKMIDAS LADHA

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——— **art. 179 (1871, art. 167 ; 1859, s. 20).**

Col.

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5 B. L. R., Ap., 59

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION.

1. ———— *Application for execution of decree on specially registered bond under Registration Act (1866), ss. 52, 53.—Held* that art. 167, and not art. 166, sch. II of Act IX of 1871, applied to an application for the execution of a decree made under the provisions of s. 53 of Act XX of 1866 upon a bond specially registered under the provisions of s. 52 of that Act. Jai Shankar *v.* Tetley . . . **I. L. R., 1 All., 586**

But *see* Bhaikambat *v.* Fernandez **[I. L. R., 5 Bom., 673**

2. ———— *Order for costs by High Court on appeal.*—An order for costs made by the High Court on appeal came within the scope of art. 167 of the Limitation Act of 1871, sch. II. Hurbuns Lall *v.* Sheonarain Singh **21 W. R., 391**

3. ———— *Application for execution of decree for costs when rejecting petition to appeal to Privy Council.*—The period of limitation within which application must be made for execution of an order for costs passed by the High Court when rejecting a petition for leave to appeal to the Privy Council is that specified in sch. II, art. 167, of Act IX of 1871. Hurro Pershad Roy Chowdhry *v.* Bhupendro Narain Dutt **[I. L. R., 6 Calc., 201: 7 C. L. R., 79**

4. ———— *Application to ascertain how much judgment-creditor has been paid.*—An application asking the Court to ascertain and determine how much a judgment-creditor has been overpaid is not barred by the lapse of the time allowed for execution of a decree if the applicant has not been guilty of laches, and if he has come with due diligence. Muthoora Pershad Singh *v.* Shumboo Geer . . . . . . **22 W. R., 211**

5. ———— *Decree in force at passing of Act XIV of 1859.*—Where a decree was in force at the passing of Act XIV of 1859, it would be barred after three years; but if steps had been taken, and an application made within that period, a second application would fall within the rule laid down in s. 20 of that Act. Gregory *v.* Joychunder Banerjee **[1 Ind. Jur., N. S., 80**

6. ———— *Decree in force at passing of Act XIV of 1859.*—In 1845 *K* and *M* obtained a joint decree for possession and mesne profits against *N*. In 1846 possession was taken, and the case was struck off in 1847. In 1850 *K* alone applied for execution and was refused, he not being the sole decree-holder. *K* disappeared in June in 1851, and was never afterwards heard of. In February 1852 *S S*, wife of *K*, and *R*, uncle of *K*, applied to execute the decree, alleging that it had been transferred in gift to them by *K*, but their application was rejected, because *M* had not joined; and, secondly, because no order could be passed in the absence of *K*. On 28th December 1861 *S S* again applied for execution of the whole decree, claiming her husband's share as his heir, and *M*'s under a deed of gift, and her application was rejected on the ground that, as twelve years from the disappearance of her husband had not expired, and she had not performed the ceremony of kooshaputra, she could not claim as his representative. An appeal from this order was rejected on 6th December 1862. In 1863 *S S* applied for a certificate, under Act XXVII of 1860, to collect the debts due to her husband, which was granted in July in 1864. The present application was made by *S S* and *M* on the 23rd August 1864, *S S* having performed kooshaputra on 18th June 1863. The Court found that the various attempts to execute were made *bonâ fide*. *Held* first that the decree was in force at the time of the passing of Act XIV of 1859; secondly, that the present application, having been made within three years of the proceedings in 1861, was in time, under s. 20 of that Act. Pogose *v.* Boistub Lall **[2 Ind. Jur., N. S., 1: 6 W. R., Mis., 104**

7. ———— *Application for execution of decree.*—Application for execution of a decree passed on 13th May 1869, and for which the period of limitation was three years, was made on 13th May 1872. *Held* the execution was barred by art. 167, sch. II of Act IX of 1871, notwithstanding the suit had been instituted before 13th April 1873. Nundo Coomar Mookerjee *v.* Issur Chunder Bhuttacharji . . . **12 B. L. R., Ap., 9**

8. ———— *Period from which limitation runs—Payments since that date.*—Limitation Act (No. IX of 1871) governs applications to execute decrees made before the Act, and, in computing the period of limitation, the Act directs the date of the prior application to be taken, and that date cannot be altered because intermediate payments may have been made on account of maintenance. Naranappa Aiyan *v.* Nama Ammal *alias* Parvathy Ammal **[8 Mad., 97**

See Krishna Chetty *v.* Rami Chetty **[8 Mad., 99**

Mahalakshmi Ammal *v.* Lakshmi Ammal **[8 Mad., 105**

Collector of South Arcot *v.* Thatacharry **[8 Mad., 40**

9. ———— *Application for execution of decree—General Clauses Consolidation Act, 1868, s. 6.*—An application for execution of a decree being made on the 27th September 1871,—*Held* not to be a suit within the meaning of s. 1, cl. (*a*), of Act IX of 1871, and therefore barred under sch. II, art. 167, of that Act, as having been made more than three years after the date of the last preceding application. The application of the 27th September 1871 could not be regarded as a mere continuation of a proceeding pending—*viz.*, of a former application of the 7th January 1868—within the meaning of Act I of 1868, s. 6, at the time when the new Limitation Act came into operation, though the order on the latter application, having been made on the 31st March 1870, would possibly have been a sufficient proceeding within the 20th section of Act XIV of

1859 to constitute a fresh terminus whence time might run under that Act. Govind Lakshuman *v.* Narayan Mareshvar . . . . **11 Bom., 111**

Balkrishna *v.* Ganesh . **11 Bom., 116 note**

10. ——— *Act IX of 1871, s. 1—Execution of decree in suit instituted before 1st April 1873.*—An application for execution of a decree is an application in the suit in which that decree has been obtained. From this, and from the enactment in s. 1 of Act IX of 1871 that nothing contained in s. 2, or in Part II of that Act, shall apply to suits instituted before the 1st April 1873, it follows that nothing contained in sch. II of that Act extended to an application for execution of a decree in a suit instituted before that date. No such application was barred by s. 20 of Act XIV of 1859, if made within three years from the date of a proceeding within the meaning of that section. Although the execution of a decree may have been actuallly barred by time at the date of an application made for its execution, yet, if an order for such execution has been regularly made by a competent Court, having jurisdiction to try whether it was barred by time or not, such order, although erroneous, must, if unreversed, be treated as valid. Mungul Pershad Dichit *v.* Grija Kant Lahiri **I. L. R., 8 Calc., 51 : 11 C. L. R., 113 [L. R., 8 I. A., 123**

Reversing on appeal, Mungul Pershad Dichit *v.* Shama Kant Lahiri Chowdhry **[I. L. R., 4 Calc., 708**

11. ——— *Application for execution —Act IX of 1871, s. 1.*—The time prescribed by the Limitation Act (IX of 1871) within which applications for execution may be made governs all such applications made during the time that Act was in force. Unnoda Pershad Roy *v.* Koorpan Ali **[I. L. R., 3 Calc., 518 : 1 C. L. R., 408**

12. ——— *Application for execution—Law in force at time of application.*—The law of limitation applicable to proceedings in execution is not the law under which the suit was instituted, but the law in force at the date of the application for execution, in absence of a legislative provision to the contrary (such as that contained in s. 1 of Act IX of 1871). Gurupadapa Basapa *v.* Virbhadrapa Irsangapa **I. L. R., 7 Bom., 459**

13. ——— *Execution of decree—Limitation applicable to execution of a decree passed previous to the 1st October 1877—Limitation Act (XV of 1877), art. 179—General Clauses Consolidation Act (I of 1868), s. 6, Effect of.*—In execution of a decree, dated the 17th January 1877, the judgment-creditor applied on the 13th May 1878 to have the property of his judgment-debtor sold on the 16th September 1878. Subsequently, on the 2nd June 1881, he made a further application to have the decree executed. *Held* that the case was governed by the provisions of art. 167 of Act IX of 1871, and not by those of art. 179 of Act XV of 1877; and that, as the application had not been made within any one of the periods given in the third column of art. 167, it was barred by limitation. *Held* also, following *Mungul Pershad Dichit* v. *Grija Kant Lahiri, I. L. R., 8 Calc., 51,* that, although there is no corresponding provision in Act XV of 1877 to that contained in s. 1 of Act IX of 1871, all applications for execution of a decree are applications in the suit which resulted in that decree. Behary Lall *v.* Goberdhun Lall **[I. L. R., 9 Calc., 446 : 12 C. L. R., 431**

14. ——— *Execution of decree, Application for—Step in aid of execution—Repeal, Effect of.*—On the 28th September 1877 an application was made for execution of a decree. On the 8th July 1878 the decree-holder deposited R2 as nilamee fees, that is to say, costs for bringing certain property to sale in execution of the decree. On the 28th March 1881 a further application for execution of the decree was made. *Held* that the deposit of R2 as nilamee fees on the 8th July 1878 was a step in aid of execution of a decree, and that the application of the 28th March 1881, being within three years from the date of the deposit, was not barred by limitation. *Quære*—Whether, inasmuch as Act IX of 1871 is repealed by Act XV of 1877, and the latter Act contains no provision similar to that contained in s. 1 of Act IX of 1871, Act XIV of 1859 can be said to have been repealed in respect of suits instituted before the 1st of April 1873. Radha Prosad Singh *v.* Sundur Lall . . . . **I. L. R., 9 Calc., 644**

15. ——— *Act IX of 1871, s. 1—Application for execution of decree passed before Act of 1877 came into force—Application to keep alive decree.*—The plaintiff obtained a decree against the defendant in 1872. He first applied for its execution in 1874, and his application was disposed of on the ground that the requisite Court-fee had not been paid. His next application was in 1876, and it was disposed of because no property could be found to satisfy the decree. His third application, made on the 10th of March 1879, was one asking merely that the decree might be kept alive. He now applied for the fourth time on the 26th of November 1881, and sought execution of the decree. *Held* that the law of limitation applicable to proceedings in execution is not the law under which the suit was instituted, but the law in force at the date of the application for execution, in absence of a legislative provision to the contrary (such as that contained in s. 1 of Act IX of 1871). The law of limitation therefore to be applied to the application of the 10th March 1879 was Act XV of 1877; and, inasmuch as that application did not ask for any step to be taken towards executing the decree, it was not in accordance with art. 179, sch. II of Act XV of 1877, and did not save the present application from being barred. *Mungul Pershad Dichit* v. *Grija Kant Lahiri, I. L. R., 8 Calc., 51,* explained. Gurupadapa Basapa *v.* Virbhadrapa Irasangapa . . . **I. L. R., 7 Bom., 459**

16. ——— *Proceeding to enforc judgment.*—Act XV of 1877 operates from the dat

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION—*continued.*

on which it came into force as regards all applications made under it. *Behary Lall* v. *Goberdhun Lall, I. L. R., 9 Calc., 446,* dissented from. An application for execution was made on the 2nd of March 1872. In the execution-proceedings certain properties were attached and a sale-proclamation was issued. A claim to a portion of the properties was then preferred by third parties and allowed on the 17th of June 1872. The decree-holder failed to take necessary measures to bring the remainder of the property to sale, and the case was struck off on the 4th of July 1872. A subsequent application for execution was made on the 14th of June 1875. *Held* that the subsequent application was not barred by the provisions of s. 20, Act XIV of 1859. BECHARAM DUTTA *v.* ABDUL WAHED . . **I. L. R., 11 Calc., 55**

17. ——————— *Applications under s. 89, Transfer of Property Act (IV of 1882).*—Art. 179, sch. II of the Limitation Act (XV of 1877), applies to applications under s. 89 of the Transfer of Property Act. BHAGAWAN RAMJI MARWADI *v.* GANU **[I. L. R., 23 Bom., 644**

18. ——————— *Decree of Small Cause Court transferred to High Court for execution—Civil Procedure Code (Act VIII of 1859), ss. 287, 288; (Act XIV of 1882), ss. 227, 228—Order in suit liable to be questioned by third persons not parties to suit—Revivor.*—Having regard to the provisions of ss. 227 and 228 of the Code of Civil Procedure (Act XIV of 1882), the period of limitation applicable to the execution of a decree, transmitted by one Court to another for execution, depends on the character of the Court which passed the decree and not on the character of the Court executing it. *S*, a judgment-creditor, who had obtained his decree in the Calcutta Court of Small Causes on the 29th July 1884, had it transferred to the High Court for execution, and took certain proceedings there to execute it, which resulted in an order passed on the 13th June 1885, for payment out to him of certain moneys realized in the proceedings in part satisfaction of his decree. Payment was actually made on the 8th August 1885. The next step in execution was an application made on the 14th September 1888; the usual notice was issued, and no cause being shown by the judgment-debtor, an order was made on the 19th December for the attachment of certain moneys in the hands of a receiver belonging to the judgment-debtor. These moneys were also attached by other judgment-creditors. The question was then referred to the Registrar to enquire and report who, under the provisions of s. 295 of the Code of Civil Procedure, were entitled to share in such moneys, and in what proportion. It was objected that *S* was not entitled to share on the ground that on the 14th September 1888 the right to execute his decree was barred by limitation. The question was referred by the Registrar to the Court. *Held* that, as under art. 179, sch. II of Act XV of 1877, the period applicable to decrees of the Small Cause Court was three years, the application of the 14th September 1888 was barred by limitation, and that *S* was not entitled to share under the provisions of s. 295. *Held* further that, the order of the 19th December 1888 having been made out of time, though on notice to the judgment-debtor, there was nothing to prevent a third party questioning its propriety, though the parties to the suit might be precluded from doing so. Had it been otherwise,—*Quære*—Whether it would have had the effect of reviving the decree. *Ashootosh Dutt* v. *Doorga Churn Chatterjee, I. L. R., 6 Calc., 504,* doubted. TINCOWRIE DAWN *v.* DEBENDRO NATH MOOKERJEE . . . **I. L. R., 17 Calc., 491**

2. PERIOD FROM WHICH LIMITATION RUNS.

(*a*) GENERALLY.

19. ——————— *Meaning of the words "date of the decree."*—The words "date of the decree" in sch. II, art. 179, of the Limitation Act mean the date the decree is directed to bear under s. 205 of the Code of Civil Procedure, and that is the date on which the judgment was pronounced; therefore an application to execute a decree, if not made within three years from the date when the judgment was pronounced, is barred by limitation. *Bani Madhub Mitter* v. *Matungini Dassi, I. L. R., 13 Calc., 104,* referred to. GOLAM GAFFAR MANDAL *v.* GOLJAN BIBI . . **I. L. R., 25 Calc., 109**

AFZUL HOSSAIN *v.* UMDA BIBI . **1 C. W. N., 93**

20. ——————— *Decree specifying a certain time for execution—Construction—Condition precedent.*—The plaintiff obtained a decree on the 25th July 1882, which directed that he should give the defendant possession of certain parcels of land at the end of next Margashirsha (*i.e.*, 9th January 1883), and that, on his doing so, the defendant should remove certain hedges and sheds, and restore the land in suit to the plaintiff. On the 9th December 1885 the plaintiff applied to execute the decree. The defendant resisted the application as being time-barred. He contended that, the plaintiff having failed to deliver up the land in his possession within the time specified in the decree, he had lost his right to execute the decree. *Held* that the application was not time-barred. The specification of the end of Margashirsha had merely the effect of postponing the operation of the decree till that time, and the plaintiff had three years from that date within which he might seek execution. The mention of a term when a particular right is to become enforceable is not a condition precedent, whether the enforcement be otherwise subject to a condition or not. NARAIN CHITKO JUVEKAR *v.* VITHUL PARSHOTAM . . **I. L. R., 12 Bom., 23**

21. ——————— *Execution of decree determining rights of rival religious sects—Decree, whether executory or declaratory—How far a sect bound by decree against some of its members.*—In a suit determined in 1840, in which various members of the Vadagalai sect residing in a certain village were plaintiffs, and various members of the Tengalai sect residing in the same village were defendants, it was held that an image of a priest revered by the latter sect was not entitled to a place in a certain temple of the village, or to public worship in a certain street, or to procession in the streets of the village; and it was directed that, if the defendants continued to make the image an object of public worship, it should be removed. In 1888 various members of the Vadagalai sect, asserting that the members of Tengalai sect had acted in contravention of the decree in the above suit, filed an execution-petition therein, praying that various members of the Tengalai sect be arrested, and "that the image of their priest, which they attempt to worship publicly, be removed until they obey the terms of the decree." It appeared that in 1868 the District Magistrate had granted an application to restrain the Tengalais from acting contrary to the above decree. The execution-petition was dismissed by the District Court. *Held* the petition was rightly dismissed, since the execution of the decree was barred by limitation, which began to run at all events from 1868, and the decree, if it was capable of execution at all, could not be executed against the parties to the present petition. SADAGOPACHARI *v.* KRISHNAMACHARI

[I. L. R., 12 Mad., 356

(*b*) CONTINUOUS PROCEEDINGS.

22. ———— *Order refusing execution operating as stay of process.*—A decree-holder applied for the sale of certain property then under attachment in the suit. The Court refused to issue process for the sale, on the ground that the property could not be sold, as certain claims and suits respecting it were still pending. The claims and suits having been determined, the application was renewed. More than three years had elapsed between the date of the order on the first application and the date of the renewed application. *Held* that the second application was not barred, the order on the first application operating simply as a temporary stay of process for the sale of the property, and there being a pending proceeding to enforce the decree during the stay. RAGAVA PISHARDI *v.* AYUMANJURI MANKAL THUPAN *alias* VLLIA THAMBRAKLE . . . . **4 Mad., 261**

23. ———— *Continuing attachment—Process to enforce decree.*—An attachment of property in execution of a decree operates *de die in diem* as process of execution upon a decree. Where therefore the late Sudder Court, by an order dated 25th July 1855, directed that the judgment-debtor should be allowed to remain in the enjoyment of property then under attachment, that an order for the sale of the property should be stayed, but that the attachment should continue in force until the further order of the Court; and on 10th May 1868 the High Court made an order setting aside the order of the Sudder Court, and stated that the assignee of the execution-creditor should be left at liberty to apply for execution of the decree,—*Held,* on an application made reversing the decision of the Court below, that the right to enforce payment of the amount due under the decree was not barred. BROOKS *v.* PATTAMMARI NANJAPPA NAICK . . **4 Mad., 316**

But *see* RADHIKA CHOWDHRAIN *v.* LUKHEE CHUNDER GHOSE . . . . **13 W. R., 513**

24. ———— *Continued proceeding—Application struck off.*—The effect of an order striking off execution-proceedings in consequence of an adverse decision against the decree-holder under Act VIII of 1859, s. 246, is not to dispose finally of the application for attachment and sale; and if the result of a regular suit prosecuted with due diligence is a final decree in his favour, and he makes an application for the execution of this decree, such application, whatever its form, is in substance one for the continuation of the former proceedings, and is therefore not an application to execute the decree within the meaning of Act IX of 1871, sch. II, art. 167. PYAROO TUHOVILDARINBE *v.* NAZIR HOSSEIN

[23 W. R., 183

25. ———— *Application for execution "struck off the file"—Further application for execution—Renewal of previous application.*—An application for execution of a decree of a District Munsif was made in April 1893, but was struck off the file on 20th July 1893, on a stay of execution having been ordered by the Subordinate Judge. After the termination of the proceedings in the Subordinate Court, the decree-holder applied again for execution on 6th July 1896. *Held* that the latter application should be regarded as a continuation of the former, and was not barred by limitation. SASIVARNA TEVAR *v.* ARULANANDAM PILLAI

[I. L. R., 21 Mad., 261

26. ———— *Decree-holder, Refund by, of money paid to satisfy decree—Revival of original decree—Application to execute.*—A decree having been satisfied by the decree-holder obtaining an order for the payment to him of a certain sum of money which was deposited in Court in his judgment-debtor's name, the decree-holder, owing to subsequent proceedings of the son of the judgment-debtor, had to refund the money which he had received. He then applied again for execution, but, many years having elapsed since the last proceedings, was met with the objection that his decree was barred by limitation. *Held* that, on a proceeding such as this, the old decree, which had been satisfied, could not revive. ABDOOL JULEEL *v.* KANCHUN DOSSEE . . . . . **24 W. R., 143**

27. ———— *Separate decrees—Continued application.*—Where a plaintiff obtained separate decrees against several persons in respect of several duties which they were to perform separately, and the plaintiff chose to proceed in the first instance against some, and not against others, in taking out execution,—*Held* that the proceedings in taking at different times were not continuous proceedings in execution, and that limitation would run separately from the date of the latest action in each case. CHOWDHRY HUREEHUR SINGH *v.* HRIDOY NARAIN [25 W. R., 310

28. ———— *Application for execution of decree—Decree barred by lapse of time.*—In a decree for possession passed on 19th December 1874, the enquiry into the mesne profits was reserved for the execution stage. Possession having been taken, execution was taken out for costs, but owing to disputes among the judgment-creditors the amount deposited in Court was not paid out till 7th February 1868. After this, on 1st June 1870, application for further execution was made by assessment of mesne profits, upon which attachment was effected. *Held* that, as the application of 1st June 1870 was not for a continuation of the original suit, but for execution of the decree, the judgment-creditor was bound by the rules relating to execution; but that, even if treated as an application for adjustment of the wasilat, it was rightly rejected by reason of the great and needless delay. WODOY TARA CHOWDHRANI *v.* ABDUL JUBBUR CHOWDHRY . **24 W. R., 339**

29. ———— *Application for execution of decree—Continued application.*—An application which is pending must be looked upon as a continuous proceeding until it is disposed of. SHURUT CHUNDER SEN *v.* ABDOOL KHYR MAHOMED MOHUTESUR BILLAH . . . . **23 W. R., 327**

30. ———— *Continued application—Proceeding to enforce decree.*—It was the object of the Legislature in Act XIV of 1859, s. 14, with regard to the limitation for the commencement of a suit, to exclude the time during which a party to the suit may have been litigating, *bonâ fide* and with due diligence, before a Judge whom he has supposed to have had jurisdiction, but who yet may not have had it. The same principle prevails in the construction of s. 20 with regard to executions. *Held* accordingly that a proceeding, taken *bonâ fide* and with due diligence, before a Judge whom the judgment-creditor believed, *bonâ fide*, though erroneously, to have jurisdiction,—in this case the Judge himself also having believed that he had jurisdiction, and having acted accordingly,—was a proceeding to enforce the decree within the meaning of s. 20. HIRA LAL *v.* BADRI DAS . **I. L. R., 2 All., 792**

31. ———— *Application for execution of decree.*—On the 26th June 1867 a decree-holder applied for execution of his decree. A notice was thereupon issued to the judgment-debtor to show cause, on the 13th of July 1867, why the decree should not be executed against him. The judgment-debtor not appearing to show cause on the 13th July 1867, the Subordinate Judge of Surat ordered a warrant to be issued. Subsequently, on the same day (13th July 1867), the decree-holder applied to the Court to stop all further proceedings in the case on the ground that the judgment-debtor had promised to satisfy the decree. The decree, however, remaining unsatisfied, the judgment-creditor, on the 12th July 1870, presented a second application for execution. The Subordinate Judge rejected it as barred under s. 20 of Act XIV of 1859, as it was beyond three years from the 26th June 1867, the date of the previous application. On appeal the District Judge confirmed the order. On special appeal the High Court reversed the orders of both the lower Courts and held the proceedings to have commenced on the 26th June 1867, and continued till the 13th July 1867, on which day the judgment-debtor was to show cause, and up to which day therefore the judgment-creditor must be considered as going on with one and the same proceeding, as the first Court actually made an order for a warrant to issue on that day. DAMODHAR LAKHMIDAS *v.* GULABDAS LALCHAI [9 Bom., 254

32. ———— *Decree remaining under attachment.*—The period during which a decree remains under attachment should not be deducted from the time within which proceedings must be taken for the execution of the decree. *Chandi Prosad Nandi* v. *Raghunath Dhar, 3 B. L. R., Ap., 52,* dissented from. AZMUDDIN *v.* MATHURADAS GOVARDHANDAS GULABDAS . . . . . **11 Bom., 206**

33. ———— *Application for execution of decree—Continuing proceedings.*—A decree-holder applied for execution on the 10th of October 1871. On the 24th of February 1872 he made an application to the Court executing the decree that the case should be taken off the file for the present, but that the attachment which had been issued should be kept in force. The application was granted, but the formal order, as drawn up, though it recited the application, was merely to take the case off the file. On the 6th of February 1875 the decree-holder applied for further execution. It was objected that execution of the decree was barred by limitation, but it was held that limitation did not apply, as the petition was for the continuance of the suspended proceedings and not for fresh execution. GOLAMI SAHU *v.* CHUTTER BHOOJ PATUCK . . . **3 C. L. R., 261**

34. ———— *Application for execution of decree—Reversal of sale in execution.*—*A* obtained a decree against *B* on the 21st of June 1871, and applied for execution on the 10th of July following. On the 2nd of October of the same year property attached under such execution was sold, and the sale-proceeds being paid over to *A*, the execution-proceedings were struck off the file on the 28th of July 1872. On the 14th of May 1873 *B* obtained an order setting aside the sale and for refund of the sale-proceeds. *A* thereupon, on the 22nd of December 1874, again applied to execute his decree. *Held* that such application was in substance one simply to continue the proceedings already set on foot by the first application for execution, and therefore the right to execute the decree was not barred by the law of limitation. ISSURREE DASSEE *v.* ABDOOL KHALAK [I. L. R., 4 Calc., 415 : 3 C. L. R., 46

35. ———— *Execution of decree—Proceedings to enforce decree.*—*Held* by a Full

Bench (PEARSON, *J.*, dissenting) that an application to execute a decree against judgment-debtor's property, made more than three years after the last application for execution, was not barred by limitation under art. 167, sch. II, Act IX of 1871, when the last application was interrupted by a successful objector against whom the decree-holder had to bring a regular suit and succeeded in obtaining a decree; and that the renewed application to execute within three years from the date of the decree in the said suit was not a fresh application for execution against the judgment-debtor, but a continuance or revival of the previous application interrupted by the objector. *Per* PEARSON, *J.*, *contra*, that under art. 167, sch. II, Act IX of 1871, execution of decree was barred. PARAS RAM *v.* GARDNER . **I. L. R., 1 All., 355**

36. ——— *Continuation of previous application.*—In June 1892, an application was made for execution of a decree, and it was dismissed, the applicant being relegated to a suit to establish his right. He did not sue, but in September 1892 he put in a fresh application to execute, which was dismissed. He then sued, and in March 1895 a decree was passed in his favour. He now put in a petition in October 1895, praying that his petition of September 1892 be revived or continued. *Held* that the petition was a fresh application and not a continuation of the former proceedings, and that it was barred by limitation. SURYANARAYANA PANDARATHAR *v.* GURUNADA PILLAI

[I. L. R., 21 Mad., 257

37. ——— *Execution stayed by reason of injunction for more than three years—Revival of previous application.*—A decree-holder, in execution of his decree, attached a decree held by his judgment-debtor. On the 3rd of July 1888, the decree-holder applied for execution of his decree by enforcement of the second decree, and in pursuance of this application obtained attachment of certain property as belonging to the judgment-debtor under the second decree. Subsequently a suit was filed by the son of such judgment-debtor claiming the property as his own, and in that suit an injunction was granted staying execution under the application of the 3rd of July 1888, until the suit was decided. The application for execution was meanwhile struck off, but the attachment was maintained. On the 19th of March 1892 the suit was dismissed, and the injunction came to an end. On the 29th of October 1892 a fresh application was made for execution. *Held* that this second application was not barred by limitation, but was to be regarded as an application to renew the proceedings commenced by the former application, which had been suspended by the act of the Court, and not by anything for which the decree-holder was responsible. *Peary Mohun Chowdry* v. *Romesh Chunder Nundy, I. L. R., 15 Calc., 371; Kalyanbhai Dipchand* v. *Ghanashamlal Jadunathji, I. L. R., 5 Bom., 29*; and *Paras Ram* v. *Gardner, I. L. R., 1 All., 355,* referred to. LAKHMI CHAND *v.* BALLAM DAS

[I. L. R., 17 All., 425

38. ——— *Resistance and obstruction to execution of decree—Suit under s. 331 of Civil Procedure Code (1882) to remove obstruction—Failure of such suit—Subsequently application for execution of original decree.*—On the 7th March 1889, a decree-holder presented a darkast for execution of a decree which awarded him possession of certain immoveable property. This darkhast was opposed by a third party, who was in possession of the property. The decree-holder thereupon applied to the Court to have the obstruction removed. This application was registered under s. 331 of the Code of Civil Procedure (Act XIV of 1882), as a suit between the decree-holder as plaintiff and the party who offered the obstruction as a defendant. On the 22nd January 1891, the decree-holder withdrew this latter suit. Thereupon his darkhast of the 7th March 1889 was struck off the file. On the 12th November 1892, he presented a second darkhast for execution. *Held* that the second darkhast was barred by limitation. The decree-holder having failed to remove the obstruction under s. 331 of the Code of Civil Procedure, the second darkhast could not be treated as a continuance or revival of the first. *Kalyanbhai* v. *Ghanashamlal, I. L. R., 5 Bom., 29,* and *Chintaman* v. *Balshastri, I. L. R., 19 Bom., 294,* distinguished. SHRIVRAM CHINTAMAN *v.* SARASVATIBAI . **I. L. R., 20 Bom., 175**

39. ——— *Suit to set aside an order in a claim case—Continuation of previous application.*—Upon an application for execution, dated the 13th March 1891, the judgment-debtor's property having been attached, a claim was preferred by a third party and allowed. The decree-holder brought a suit for a declaration that the property belonged to the judgment-debtor, and the suit was decreed. The decree-holder thereupon made an application for execution on the 16th July 1894, more than three years after his previous application. *Held* that the order in the claim case operated as a temporary bar to the execution proceedings, and it was not until the removal of that bar by a suit which the decree-holder was compelled to institute that he was placed in a position to proceed with the execution. The present application, made subsequently to the removal of the bar, should be treated as a continuation of the previous application which was admittedly in time; and the execution was not barred by limitation. *Raghunandun Pershad* v. *Bhugoo Lall, I. L. R., 17 Calc., 268,* distinguished. *Pyaroo Thovildarinee* v. *Nazir Hossein, 23 W. R., 183; Paras Ram* v. *Gardner, I. L. R., 1 All., 355*; and *Kalyanbhai Dipchand* v. *Ghanshamlal Jadunathji, I. L. R., 5 Bom., 29,* referred to. RUDRA NARAIN GURIA *v.* PACHU MAITY . **I. L. R., 23 Calc., 437**

40. ——— *Decree for possession with mesne profits till delivery of possession—Darkhast for execution—Obstruction in execution—Application for removal of obstruction registered as a suit—Disposal of the darkhast.*—The plaintiffs, having obtained a decree for possession of certain

lands with mesne profits till delivery of possession, applied for execution. An obstruction having been caused to the execution, plaintiffs applied for the removal of the obstruction, and their application was registered as a suit under s. 331 of the Civil Procedure Code (Act XIV of 1882), and their darkhast for execution was disposed of by the Court. The suit was decided in plaintiffs' favour, and they having applied for execution, it was contended that the application was time-barred, as it was presented after the expiration of three years from the time of the disposal of the original darkhast, and it was wrong to grant mesne profits for more than three years from the date of the decree, though possession was not delivered during that period. *Held* that, when litigation under s. 331 of the Civil Procedure Code (Act XIV of 1882) is pending, the proceedings in execution are suspended during that litigation; the application therefore was not barred, but was to be considered as a renewal of the former application before the obstruction to execution took place. NARAYAN GOVIND MANIK *v.* SONO SADASHIV

[I. L. R., 24 Bom., 345

41. ———————— *Application for execution of decree—Revival—Dekkan Agriculturists' Relief Act, 1879 and 1881, s. 48.*—On 20th July 1871 the plaintiffs obtained a decree against the defendants for the sum of R4,083 and for the sale of their mortgaged property. On the 16th July 1877 the plaintiffs applied for execution. The application was granted, the property was attached, and the sale was fixed for the 30th November 1878. On the 18th November 1878 one of the defendants applied for a postponement of the sale until harvest time, when he said he would pay the amount of the decree. The sale was accordingly, with the plaintiffs' consent, postponed to the 31st May 1879. On the 13th June 1879 the plaintiffs informed the Court that negotiations were proceeding between themselves and the defendants for the settlement of the decree, and prayed that their application of the 16th July 1877 might be struck off; adding that, if the negotiations failed, they would present a fresh application. The negotiations for settlement proved abortive, and the case being one to which the Dekkan Agriculturists' Relief Act (XVII of 1879) applied, the plaintiffs took steps to obtain a conciliator's certificate. These proceedings occupied the period from 3rd July 1880 to the 9th January 1881. The certificate was granted on the 1st December 1881. On the 13th December 1881, more than three years after the date of the previous application, *viz.*, 16th July 1877, the plaintiffs made the present application for execution. The defendants contended that it was barred by limitation. *Held* that the application was not barred. As it was understood between the parties, when the application of the 16th July 1877 was struck off on the 13th June 1879, that, if negotiations failed, a fresh application should be presented, the application of the 13th December 1881 was to be regarded as an application for the revival of the old execution proceedings. But, in any case, the application, by the defendant, of the 18th November 1877, for a postponement of the sale of his property when he promised to pay the amount of the decree, was an admission of the plaintiff's right to execute the decree within the contemplation of s. 19 of the Limitation Act (XV of 1877), and created a new period of limitation, which would ordinarily have expired on the 18th November 1881. As, however, by the provisions of the Dekkan Agriculturists' Relief Act the period during which the conciliator was endeavouring to effect an amicable settlement—*viz.*, from 8th July 1880 to 1st December 1881—would have to be deducted, the present application was within time. VENKATRAV BAPU *v.* BIJESING VITHALSING . . . **I. L. R., 10 Bom., 108**

42. ———————— *Civil Procedure Code, s. 583—Execution of decree—Decree enforcing the right of pre-emption—Non-payment of purchase-money decreed by Appellate Court—Restitution of purchase-money paid under lower Court's decree—Application for restitution—Revival of application.* —A decree for pre-emption was passed conditionally upon payment by the decree-holder of R1,139, and in July 1880 the plaintiff paid this amount into Court, and it was drawn out by the defendant in August 1881. Meanwhile, in July 1881, the High Court in second appeal raised the amount to be paid by the plaintiff to R2,400, but the plaintiff allowed the time limited for payment of the excess difference to elapse without paying it, and the decree for pre-emption thereupon became dead. In May 1883 the plaintiff applied in the execution department for the refund of the deposit which had been drawn and retained by the defendant. This application was granted, and the defendant ordered to refund, and this order was confirmed on appeal in January 1885, and by the High Court in second appeal in May 1885. Meanwhile the first Court had suspended execution of the order pending the result of the appeal, and in December 1884 removed the application temporarily from the "pending" list. In February 1885 the plaintiff applied for restitution of the amount deposited, asking for attachment and sale of property belonging to the defendant. This application was dismissed as barred by limitation. *Held* that this application was only a revival of the application of May 1883, which was within time. *Held* also that the plaintiff was, in the sense of s. 583 of the Civil Procedure Code, "a party entitled to a benefit by way of restitution under the decree" of the High Court of July 1881; that it was a necessary incident of that decree that he was entitled to restitution of the sum which he had paid as the sufficient price under the decree of the lower Appellate Court; that he was competent under s. 583 to move the local Court to execute the appellate decree in this respect in his favour "according to the rules prescribed for the execution of decree in suits;" that he did this in May 1883 by an application made according to law in the proper Court in the sense of art. 179 of the Limitation Act; and that his present application to the same effect, being within three years from that application, was within time. NAND RAM *v.* SITA RAM **I. L. R., 8 All., 545**

Contra, KURUPAM ZAMINDAR *v.* SADASIVA **I. L. R., 10 Mad., 66**

HARISH CHANDRA SHAHA *v.* CHANDRA MOHAN DASS . . . . **I. L. R., 28 Calc., 109**

43. ——————— *Application for execution of decree—Step in aid of execution.*—*G* sued *K* as the legal representative of her deceased husband, *S*, on a bond executed by *S* in his favour, and obtained a decree. Subsequently he sued *K* on a bond which she had personally executed in his favour, and obtained a decree. On the 7th September 1875 he applied for execution of both these decrees, and *S*'s landed estate, which stood recorded in *K*'s name, was attached. This estate was sold on the 20th February 1877, being put up for sale in one lot, in satisfaction of both decrees, in accordance with an application made by *G* on the 16th February, and was purchased by *G* for the amount of the decrees. This sale was subsequently confirmed, and on the 10th December 1877, satisfaction of the decrees was entered up, and the execution proceedings struck off the file. Subsequently three of the heirs of *S* in one case, and two in another, instituted suits against *G* claiming to recover from him such portion of the proceeds of the sale of *S*'s property as had been appropriated to the discharge of *G*'s decree against *S*, and such heirs obtained decrees for certain sums, which *G* was obliged to pay. *G* thereupon, on the 16th May 1879, applied for execution of his decree against *S*. *Held* that such application was not one in continuation of that made on the 7th September 1875, but was a fresh application, and the application made by *G* on the 16th February 1877 was not one for a step in aid of execution within the meaning of art. 179, sch. II of Act XV of 1877, from which limitation could be computed, and the application of the 16th May 1879 was barred by limitation. *Pyaroo Tuhobildarinee* v. *Nazir Hossein, 23 W. R., 183; Paras Ram* v. *Gardner, I. L. R., 1 All., 355;* and *Issurree Dassee* v. *Abdul Khalak, I. L. R., 4 Calc., 415,* distinguished by STRAIGHT, *J.* KHAIR-UN-NISSA *v.* GAURI SHANKAR . **I. L. R., 3 All., 484**

44. ——————— *Futile attachment of property—Subsequent application for arrest.*—In 1874 the appellant attached certain immoveable property of his judgment-debtor, the respondent. The attachment was disputed, and ultimately, on the 16th July 1875, was raised. In the same year the appellant brought a suit for a declaration that the property in question was liable to attachment, which was finally rejected on the 8th July 1880. On the 30th November following, the appellant applied for the arrest of the respondent. The lower Court rejected the application as not being made within three years of the decree, as provided by Act XV of 1877, sch. II, art. 179. On appeal to the High Court,—*Held* that the execution process last applied for was distinct in its nature from, and in no way a continuance or revival of, the previous proceedings in execution, and was therefore made too late, more than three years having elapsed since the passing of the decree. KRISHNAJI RAGHUNATH *v.* ANANDRAV BALLAL KOLHALKAR **I. L. R., 7 Bom., 293**

45. ——————— *Application for execution of a different nature from preceding application.*—A decree-holder in execution of his decree applied, on the 11th January 1888, for arrest of the judgment-debtor. On the 25th February 1888, in consequence of the record of the case being required in the High Court, the Court executing the decree struck off that application *suo motu.* On the 23rd February 1892 the decree-holder again applied for execution of his decree, but this time by attachment and sale of the judgment-debtor's property. *Held* that the second application could not be regarded as a continuance of the former application, and that execution of the decree was time-barred. *Krishnaji Raghunath Kothavle* v. *Anandrav Ballal Kolhalkar, I. L. R., 7 Bom., 293,* followed. HAR SARUP *v.* BALGOBIND **I. L. R., 18 All., 9**

46. ——————— *Application for execution of decree.*—On the 16th September 1879 *A*, in execution of a decree against *V*, applied for attachment and sale of certain land, and on the 8th of January 1880 the sale was confirmed. The purchaser, having learnt that *V* had no title to the land, brought a suit and obtained a decree cancelling the sale on the 2nd April 1881, and on the 2nd of November 1881 obtained an order for restitution of the purchase-money, which was thereupon paid to him by *A*. On the 2nd March 1883, *A* applied for execution of the decree by arrest of *V*. *Held* that this application was barred by limitation. *Khair-un-nissa* v. *Gauri Shankar, I. L. R., 3 All., 484,* followed. *Paras Ram* v. *Gardner, I. L. R., 1 All., 355,* distinguished. VIRASAMI *v.* ATHI . . **I. L. R., 7 Mad., 595**

47. ——————— *Application for execution of decree—Decree for possession upon payment of mortgage amount and value of improvements—Final decree on ascertaining value of improvements.*—In a decree for redemption of a Malabar kanam (mortgage), it was ordered on the 12th December 1879 that the defendants should put the plaintiff in possession of the land upon payment by plaintiff to defendant No. 1 of the mortgage amount, and of the value of improvements, to be determined in execution, to such of the defendants as should be found entitled. On the 12th August 1880 the plaintiff applied for execution, and on the 23rd September 1881 an order was passed that execution should issue on payment into Court by the plaintiff of the mortgage amount and the value of improvements which had then been ascertained. The plaintiff having failed to deposit the said amount, the application for execution was struck off the file on the 10th November 1881. On the 8th December 1883 the plaintiff applied again for execution, and objection was taken that the application was barred by limitation. *Held* that the application was not barred by limitation. *Dildar*

Hossein v. *Mujeedunnissa, I. L. R., 4 Calc., 629,* approved. Krishnan *v.* Nilakandan
[I. L. R., 8 Mad., 137

48. ———— *Execution of decree—Arrears of rent, Decree for—Beng. Act VIII of 1869, s. 58—Application for execution—Suspended proceedings, Effect of.*—*G* obtained an *ex-parte* decree in 1882 for a sum less than R500 as arrears of rent. Execution was taken out on the 19th May 1885. On the 28th June *C*, the judgment-debtor, applied to have the decree set aside, whereupon the application for execution was struck off. On the 21st November *C's* application for a re-hearing was rejected. On the 3rd February 1886, *G* applied for the execution of his decree. *Held* that the decree-holder was entitled to execution, the application of the 3rd February being a continuation of the proceedings commenced on the 19th May, which had been suspended by the order of the Court of the 20th June. Chandra Prodhan *v.* Gopi Mohun Shaha
[I. L. R., 14 Calc., 385

Chandra Kant Bannerjee *v.* Surji Kanto Rai Chowdhury . **I. L. R., 14 Calc., 387 note**

49. ———— *Decree—Execution—Attachment set aside—Time occupied in suing to declare property liable to attachment not excluded from computation.*—An application for execution of a decree having been made in 1880, certain land was attached as being the property of the judgment-debtor (deceased). His children thereupon claimed the land, and the attachment was raised. Upon this, the judgment-creditor sued to establish his right to sell the land in execution and obtained a decree in 1882, which was confirmed on appeal in 1883. In 1885 the judgment-creditor again applied for attachment and sale of the same land. *Held* that the application was barred by limitation. *Basant Lal* v. *Batul Bibi, I. L. R., 6 All., 23,* dissented from. Narayana *v.* Pappi Brahmani
[I. L. R., 10 Mad., 22

50. ———— *Darkhast presented in 1890, in legal continuance of a darkhast of 1882—Obstruction to execution of decree for partition.*—A darkhast is not necessarily cancelled by being taken off the file. Its effect must be determined by the special circumstances of each case. *A* obtained a decree for partition in 1881, and on the 11th March 1882 presented a darkhast for complete execution of the decree. Having attempted to take possession of a moiety of a house to which he was entitled under the decree, he was obstructed by *S*, and it became necessary for him to file an ejectment suit against *S* before proceeding further with the execution of his partition decree. In August 1885 a second appeal in this ejectment suit was pending in the High Court, and *A*, on the 1st August 1885, obtained an order in the execution-matter, which recited the fact of the second appeal, and that *A* desired that the darkhast should "for the present be cancelled," and ordered that "further execution be stopped." Other litigation between *A* and *S* took place, which was finally closed on the 31st October 1889. On the 3rd January 1890 *A* presented a darkhast for the execution of the decree of 1881. It was contended that execution was barred, and that the order of 1st August 1885 had cancelled the darkhast of 11th March 1882. *Held* that the present application was not barred, the darkhast being in legal continuance of the darkhast of 1882. Chintaman Damodar Agashe *v.* Balshastri . . . . **I. L. R., 16 Bom., 294**

(*c*) Where there has been an Appeal.

51. ———— cl. 2—*Period from which limitation runs.*—The words "judgment, decree, or order" in s. 20 meant a judgment, decree, or order which could be enforced by execution. Bipro Doss Gossain *v.* Chunder Sikur Bhuttacharjee
[B. L. R., Sup. Vol., 718: 2 Ind. Jur., N. S., 248: 7 W. R., 521

The three years' limitation prescribed by s. 20, Act XIV of 1859, counted from the date of the final decree of the Appellate Court, in a case in which the judgment-debtor had appealed against the original decree. Huree Bungsho Banerjee *v.* Ramessur Banerjee . . . . **6 W. R., Mis., 38**

Shami Mahomed *v.* Mahomed Ali Khan
[2 B. L. R., Ap., 22: 11 W. R., 67

Grish Chunder Banerjee *v.* Bhanoo Motee Chowdhrain . . . . **11 W. R., 329**

Mahomed Busseeroollah *v.* Ram Kant Chowdhry . . . . . . **16 W. R., 266**

Buldeo *v.* Guj Singh
[1 N. W., Ed. 1873, 240

Provided (as was held under Act XIV of 1859) the decree-holder had opposed the appeal. Bukronath Chuckerbutty *v.* Nilmonee Singh Deo
[18 W. R., 7

Ram Ruttun Banerjee *v.* Ameeroolmolk Bunwaree Gobind . . . **6 W. R., Mis., 95**

Where the appeal was dismissed for default, it was held the order was not a new decree from which limitation began again to run. Virasamy Mudali *v.* Manommanyammal . . . **4 Mad., 32**

Bipro Doss Gossain *v.* Chunder Sikur Bhuttacharjee **B. L. R., Sup. Vol., 718:**
[2 Ind. Jur., N. S., 248: 7 W. R., 521

Under the present Act, it expressly counts from the date of the order made on appeal, which is in accordance with the cases of Aruna Chella Thudayan *v.* Veludayan . . **5 Mad., 215**

and Bapurav Krishna *v.* Madhavrav Ramrav
[5 Bom., A. C., 214

52. ———— *Period from which limitation runs.*—Where a contest is raised between a decree-holder and judgment-debtor as to service of notice, execution proceedings cannot be carried on further till the question is decided; and limitation in respect to future proceedings must run from the date of such decision. Suroop Chunder Roy *v.* Goluck Chunder Dhur . . **14 W. R., 477**

53. ——— *Final decision of Court where proceedings are contested.*—So long as an actual contest is going on between a decree-holder and judgment-debtor as to the judgment, limitation must be computed from the final decision of the Court. Dhiraj Mahtab Chund Bahadur *v.* Bulram Singh Baboo

**[5 B. L. R., 611 : 14 W. R., P. C., 21
13 Moore's I. A., 479**

Chotay Lal *v.* Ram Dyal . **2 N. W., 482**

Modhoosoodun Mookerjee *v.* Kirtee Chunder Ghose . . . . . . **18 W. R., 7**

54. ——— *Date of final decree.*—A suit was dismissed with costs in a Court of Small Causes, after which an application for a new trial was rejected, and subsequently another application was made for a new trial and referred by the Judge to the High Court, the result being the rejection of the application. After this, defendant applied for execution for the costs. *Held* that the decree became final and conclusive when the Judge rejected the last application in accordance with the decision of the High Court, limitation beginning to run from the date of such rejection. Pran Kisto Banerjee *v.* Nuzimooddeen . . . . . **9 W. R., 397**

55. ——— *Decree of Small Cause Court.*—Where a Court of Small Causes delivered final judgment and decree on the whole matter in dispute, and more than a year, but less than three years, had elapsed from the date of the decree without any proceeding having been taken upon it,—*Held* that s. 20, Act XIV of 1859, applied and not s. 22, and that the plaintiff's application for a warrant in execution of the decree was not barred by lapse of time. Punchanada Chetti *v.* Raman Chetti

[1 Mad., 446

56. ——— *Application for execution recognizing decree on appeal.*—An application for execution of the decree in the original suit and proceedings thereon, which, without formally and expressly asking for execution of the decrees in regular and special appeal, recognized those decrees, and sought relief consistent with the final decree, can be judicially recognized as a proceeding for the purpose of executing the final decree. Azmuddin *v.* Mathuradas Govardhandas Gulabdas

[11 Bom., 206

57. ——— *Application for execution of decree.*—A decree was passed in June 1851. Application was made for execution on the 21st July 1861, and from that date applications were made at various intervals, each less than three years, up to 1868. Upon different grounds all the applications were rejected, but the last order was reversed on appeal by the Civil Judge. *Held* that the last application was not barred by the Limitation Act. Karuppanan *v.* Muthunnan Servey

[5 Mad., 105

58. ——— *Execution of decree.*—The words "where there has been an appeal" in cl. 2, art. 167 of sch. II of Act IX of 1871, contemplate and mean an appeal from the decree, and do not include an appeal from an order dismissing an application to set aside a decree under s. 119 of Act VIII of 1859. Sheo Prasad *v.* Anrudh Singh

[I. L. R., 2 All., 273

59. ——— *Execution of decree —"Where there has been an appeal."*—The words "where there has been an appeal" in cl. 2, art. 179 of sch. II of Act XV of 1877, do not contemplate and mean only an appeal from the decree of which execution is sought, but include, where there has been a review of the judgment on which such decree is based, and an appeal from the decree passed on such review, such appeal. *Held* therefore where there had been a review of judgment, and an appeal from the decree passed on review, and such decree having been set aside by the Appellate Court, application was made for execution of the original decree, that time began to run, not from the date of that decree, but from the date of the decree of the Appellate Court. *Sheo Prasad* v. *Anrudh Singh, I. L. R., 2 All., 273,* distinguished. Narsingh Sewak Singh *v.* Madho Das . **I. L. R., 4 All., 274**

60. ——— *Presentation of appeal—Civil Procedure Code (Act XIV of 1882), s. 541—Execution of decree.*—The words "appeal presented" in the Limitation Act, 1877, mean an appeal presented in the manner prescribed in s. 541 of the Code of Civil Procedure. The words "where there has been an appeal," in art. 179, cl. 2, of sch. II of the Limitation Act, 1877, mean where a memorandum of appeal has been presented in Court. In execution of a decree against which an appeal has been presented, but rejected on the ground that it was after time, limitation begins to run from the date of the final decree or order of the Appellate Court. Akshoy Kumar Nundi *v.* Chunder Mohun Chathati . . **I. L. R., 16 Calc., 250**

61. ——— *Application for execution of decree for refund of costs—Proceedings to determine whether exemption from costs was personal or in representative character.*—On an application for refund of money deposited as costs, which was alleged to be barred by limitation,—*Held* that, as litigation was protracted between the parties for many years, and the question of liability for costs remained unsettled all that time, limitation would run, not from the date of the original order entitling applicant to a refund, but from the date of the conclusion of the proceedings in the final appeal. Mullick Mamomed Yakoob *v.* Chowdhry Shaikh Zuhoorul Huq . . . . . **25 W. R., 309**

62. ——— *Date of final decree.*—*A* obtained a joint and several money-decrees against four defendants on the 12th November 1872. One of the defendants preferred an appeal, and the decree as against him was set aside by the High Court on the 19th February 1875. Subsequently, on the 1st of August 1876, *A* sued out execution against the three defendants who had not appealed. *Held* that *A's* suit was not barred by limitation, as the final decree in the original suit within the meaning of art. 167 of Act IX of 1871 was the decree as amended by the High Court on the 19th of February 1875. GUNGAMOYEE DASSEE *v.* SHIB SUNKUR BHUTTACHARJEE . . . **3 C. L. R., 430**

63. ———————— *Execution of decree —Final decree of Appellate Court.*—The Munsif gave the plaintiffs in a suit for possession of land and for mesne profits a decree for possession, but dismissed the claim for mesne profits. An appeal was preferred to the Judge, who affirmed the decree for possession and remanded the case to the Munsif, under s. 351 of Act VIII of 1859, to determine the mesne profits due to the plaintiffs. The Munsif gave the plaintiffs a decree for certain mesne profits. Subsequently a special appeal was preferred to the High Court against the Judge's decree. While this was pending, an appeal was preferred to the Judge against the decree of the Munsif for mesne profits, and on the 7th June 1873 the plaintiff again obtained a decree for mesne profits. Finally, on the 6th March 1874, the High Court modified the Judge's decree for possession, but did not interfere with the order of remand. *Held,* on the plaintiffs applying for execution of the Judge's decree, dated 7th June 1873, that the limitation for the execution of such decree ran, not from the date of such decree, but from the date of the High Court's decree, which was the "final decree of the Appellate Court," and the only "final decree," within the meaning of art. 167, sch. II of Act IX of 1871. IMAM ALI *v.* DASAUNDHI RAM . . **I. L. R., 1 All., 508**

64. ———————— *Execution of joint decree against two or more defendants.*—In a suit for possession of land brought by *A* against *B, C,* and *D,* a decree was passed on the 14th of April 1874 for possession and costs against *B, C,* and *D* jointly. This decree was afterwards reversed on an appeal by *B,* who alone claimed the property. *A* then preferred a special appeal to the High Court, and on the 29th June 1877 the decision of the Judge was reversed, and the decree of the Court of first instance restored. On the 30th December 1878 *A* applied to the Court of first instance for execution to issue against *C* and *D* for the costs specified in the decree passed on the 14th April 1874. *C* and *D* successfully objected in the Court of first instance and the lower Appellate Court that, more than three years having elapsed since the date of the decree, the decree for costs could not be executed, the application for execution being barred by art. 179 of sch. II of Act XV of 1877. *Held* on appeal to the High Court that, inasmuch as *B's* appeal had related to the whole case, and the decree obtained by him dismissing the suit would, if not reversed, have deprived *A* of his right to any costs at all, *A,* upon succeeding in getting the original decree restored upon special appeal to the High Court, was entitled to execute such restored decree at any time within three years of the order of the High Court. MULLICK AHMED ZUMMA *alias* TETUR *v.* MAHOMED SYED

[I. L. R., 6 Calc., 194 : 6 C. L. R., 573

65. ———————— *"Appellate Court" —Execution of decree.*—The meaning of para. 2 to art. 179 of the second schedule of Act XV of 1877 is, that where there has been an appeal, the period of limitation is to run from the date when the Court to which that appeal has been preferred passes an order disposing of the appeal. The words "Appellate Court" signify the Court or Courts to which the appeal, mentioned in the article, has been preferred. WAZIR MAHTON *v.* LULIT SINGH

[I. L. R., 9 Calc., 100

66. ————————*Execution of decree— Rejection of appeal as not being properly stamped —"Where there has been an appeal," etc.*—Where an application for appeal was presented to the High Court, but rejected owing to the memorandum of appeal being insufficiently stamped,—*Held* that, under such circumstances, there had not been an appeal or a final decree or order of an Appellate Court within the meaning of art. 179 (2) of the Limitation Act, so as to give a period from which limitation for execution of the decree appealed from could run. DIANAT-ULLAH BEG *v.* WAJID ALI SHAH

[I. L. R., 6 All., 438

67. ———————— *Starting point for limitation where an appeal has abated.*—*Held* that the order of an Appellate Court abating an appeal, because no representative of the appellant was on the record, was not the "final order or decree of the Appellate Court" within the meaning of cl. 2, art. 179, sch. II to the Indian Limitation Act, 1877, but that limitation would run from the date of the original decree. FAZAL HUSEN *v.* RAJ BAHADUR

[I. L. R., 20 All., 124

68. ————————*Application for execution of decree.*—*B,* the mortgagee of certain property, sued *N,* the mortgagor, and *T,* to whom a part of the mortgaged property had been transferred by sale, for the mortgage-money and the sale of the mortgaged property. On the 24th September he obtained a decree, which directed *N* to pay the money, and that it might be realized by the sale of the mortgaged property. *T* appealed, contending that, as the instrument of mortgage was not registered, it was not receivable as evidence of the mortgage, and therefore the sale of the property had been improperly ordered. *N* did not appeal. The Court of first appeal allowed this contention and set aside the order for the sale of the property. The mortgagee preferred a second appeal, and on the 15th January 1880 the Court of last appeal modified the decree of the lower Court, directing that a part of the mortgage-money might be recovered by the sale of the mortgaged property. On the 14th September 1882 *B* applied for execution of the decree against *N.* *Held* that the period of limitation for the application was governed by art. 179 of the Limitation Act, and such period would run from the final decree of the Appellate Court. BASANT LAL *v.* NAJMUNNISSA BIBI **I. L. R., 6 All., 14**

69. ——— *Date from which limitation runs—Application to take money out of Court.*—Plaintiff obtained a decree against defendant on the 24th November 1875, and on the 14th October 1876 he got execution and sold some lands of the defendant. On 9th February 1877 he applied to the Court for payment thereout of moneys lodged by the purchaser, and on that day got the money. In the meantime an appeal was presented by the defendant and dismissed on the 28th March 1877. The present application for execution was made on the 7th February 1880. *Held* that art. 179, cl. 2, of the Limitation Act of 1877, which fixes the date of the order of the Appellate Court, when there is an appeal, as the point from which the three years is to count, applied, and that the plaintiff was therefore in time. When there is no appeal, the date of the decree or of application is the point from which limitation counts, but not when there is an appeal. *Held* further that the application by plaintiff to the Court (9th February 1877) for the money paid in by the purchaser was a step taken to aid in the execution of the decree. VENKATARAYALU *v.* NARASIMHA . . **I. L. R., 2 Mad., 174**

70. ——— *Decree of High Court confirmed by Privy Council, Application for execution of.*—Where a judgment-debtor who has appealed to the Privy Council obtains a rule *nisi* from the High Court suspending execution until security is given, and this rule is subsequently made absolute, it does not operate against the decree-holder in the matter of time: limitation not running against him until the result of the appeal is known, or the rule otherwise falls to the ground. GUNESH DUTT SINGH *v.* MUGNEERAM CHOWDHRY . **19 W. R., 186**

71. ——— *Application for execution of decree—Order of Privy Council.*—*Held* that the words "appeal" and "Appellate Court," art. 179 (2), sch. II of Act XV of 1877, include an appeal to Her Majesty in Council. *Held* therefore, where an appeal had been preferred to Her Majesty in Council from a decree of the High Court, dated the 18th August 1871, and the High Court's decree was affirmed by an order of Her Majesty in Council, dated the 12th August 1876, and application for execution of the High Court's decree was made on the 15th July 1879, that under art. 179 (2), sch. II of Act XV of 1877, the limitation of such application must be computed from the date of the order of Her Majesty in Council. NARSINGH DAS *v.* NARAIN DAS . . . . **I. L. R., 2 All., 763**

72. ——— *"Appeal"—"Appellate Court"—Order of Privy Council—Application for execution of decree.*—The term "appeal" in art. 167 of sch. II of the Limitation Act (IX of 1871) includes an appeal to the Privy Council; and the term "Appellate Court" in the same article includes the Judicial Committee of the Privy Council sitting for the purpose of hearing appeals from orders passed by British Courts in India. Where an appeal had been perferred to Her Majesty in Council from a decree of the High Court reversing the decree of the Court of first instance, and the High Court's decree was affirmed by an order of Her Majesty in Council dated the 15th February 1873, and an application for execution for the High Court's decree was made on the 17th November 1875, more than three years after the date of the decree, but within that period of the order of Her Majesty in Council,—*Held* that, under art. 167 of sch. II, Act IX of 1871, the limitation for such application must be computed from the date of the order of Her Majesty in Council, and consequently that the application for execution was not barred. GOPAL SAHU DEO *v.* JOYRAM TEWARY **[I. L. R., 7 Calc., 620: 9 C. L. R., 402**

73. ——— *Appeal by one of several defendants—Execution of decree—Application for execution against defendant who has not appealed.*—On the 11th July 1877 a decree was made against *B* and *J*, the defendants in a suit, against which *J* alone appealed, such appeal not proceeding on a ground common to him and *B*. The Appellate Court affirmed such decree on the 20th November 1877. On the 23rd September 1880 the holder of such decree applied for execution against *B*. *Held* that, so far as *B* was concerned, limitation should be computed from the date of such decree, and not from the date of the decree of the Appellate Court, and such application was therefore barred by limitation. SANGRAM SINGH *v.* BUJHARAT SINGH . **I. L. R., 4 All., 36**

74. ——— *Appeal by some only and not all of the defendants—Amendment of decree—Review of judgment.*—On the 7th July 1864 a District Court gave the plaintiff in a suit a decree against all the defendants, including *B*. All the defendants appealed to the Sudder Court from such decree, except *B*. The Sudder Court, on the 6th March 1865, set aside such decree and dismissed the suit. The plaintiff appealed to Her Majesty in Council from the Sudder Court's decree, all the defendants except *B* being respondents to this appeal. Her Majesty in Council, on the 17th March 1869, made a decree reversing the Sudder Court's decree and restoring that of the District Court. On the 9th October 1869 the plaintiff applied for execution of the District Court's decree, and such decree was under execution up to July 1872. On the 9th October 1874 the plaintiff applied for amendment of such decree in certain respects, it being incapable of execution in those respects. *B* was a party to this proceeding. On the 16th August 1876 such decree was amended; and the plaintiff subsequently applied for its execution as amended against all the defendants. *Held* that the application of the 9th October 1869 was within time, computing from the date of the decree of Her Majesty in Council. *Chedoo Lal* v. *Nand Coomar Lal, 6 W. R., Mis., 60.* Also that the application to amend such decree, being substantially one for review of judgment, gave under art. 167, sch. II of Act IX of 1871, a period from

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

which limitation would run in respect of the subsequent application for execution, which was therefore within time. KISHEN SAHAI *v.* COLLECTOR OF ALLAHABAD . . . **I. L. R., 4 All., 137**

See KALI PROSUNNO BASU ROY *v.* LAL MOHAN GUHA ROY . . . **I. L. R., 25 Calc., 258**
[2 C. W. N., 219

75. ———— *Appeal against whole decree by one defendant only—Execution of decree—Execution against judgment-debtor who did not appeal.*—A plaintiff obtained on the 14th September 1881 a decree against two defendants, the decree as against the first defendant being one for partition; and as against the second defendant (who had set up a julkur right on the lands claimed to be partitioned, and had contended that partition could not be had, and had obtained a partial decree, but had been ordered to pay partial costs to the plaintiff), being one for costs. The first defendant alone appealed against this decree, but unsuccessfully, his appeal being dismissed on the 18th January 1884. The decree-holder applied for execution of his decree, as against the second defendant for costs in December 1886. *Held* that the application was not barred, for that limitation ran from the 18th January 1884. NUNDUN LALL *v.* RAI JOYKISHEN
[I. L. R., 16 Calc., 598

76. ———— *Appeal against part of decree—Execution against judgment-debtors whose interests were not sought to be affected by the appeal.*—In a suit for land against several defendants, plaintiff obtained, on 14th June 1884, a decree against the shares of defendants Nos. 3 and 4, the shares of defendants Nos. 5 and 9 being exonerated. The decree-holder appealed against that portion of the decree which exonerated the shares of defendants Nos. 5 and 9, defendants Nos. 3 and 4 being brought on to the record of the appeal as respondents. The appeal having been dismissed, the decree-holder applied on 20th October 1887 for execution against the shares of defendants Nos. 3 and 4. *Held* the application for execution was barred by the Limitation Act, 1877, sch. II, art. 179. MUTHU *v.* CHELLAPPA . . . **I. L. R., 12 Mad., 479**

77. ———— *Appeal against part of decree—Execution against judgment-debtors who were not joined in the appeal.*—By a decree of a Court of first instance, dated the 16th August 1880, R15,260-5-6 was found due against *A*, and R20,099-2-6 against *A* and *B* jointly, the suit being dismissed as against two other defendants who were alleged to have been sureties. The plaintiff appealed against so much of this decree as dismissed the suit against the alleged sureties, not making either *A* or *B* parties respondents; this appeal was dismissed on the 1st May 1882. On the 27th April 1885 plaintiff applied for execution against *A* and *B*. *Held* that the application was barred under art. 179 of the Limitation Act. RAGHUNATH PERSHAD *v.* ABDUL HYE
[I. L. R., 14 Calc., 26

78. ———— *Execution of decree—"Appeal—"Final decree or order"—Decree against defendants severally—Appeal by some only of the judgment-debtors—Civil Procedure Code, s. 544.*—Where a decree for possession of immoveable property was passed not jointly, but severally, as against all the defendants individually, and specifically stated the proportions of which they were severally in possession, as also the costs separately payable by each of them to the plaintiff; and where two only of the defendants appealed on pleas which did not assail the decree in respect of any right or ground common to the appellants and all or any of the non-appealing defendants, but referred merely to the specific property alleged to be in the appellants' hands. *Held* by the Full Bench (BRODHURST and MAHMOOD, *JJ.*, dissenting) that a first application for execution of the original decree against those defendants who had not appealed from it, and which was made five years after the date of the decree, was barred by limitation, and cl. 2 of art. 179, sch. II of the Limitation Act (XV of 1877), did not apply so as to make time run from the proceedings in the appeal preferred by the other defendants. That clause applies only to those cases in which the parties to the execution proceedings were parties to the appeal, or to the class of cases to which s. 544 of the Civil Procedure Code applies. *Wise* v. *Rajnarain Chuckerbutty, 1 B. L. R., F. B., 259: 10 W. R., 30,* and *Mullick Amed Zumma* v. *Mahomed Syed, I. L. R., 6 Calc., 194,* approved. *Held* by BRODHURST and MAHMOOD, *JJ., contra,* that art. 179, cl. 2, must be construed as applying without any exceptions to decrees from which an appeal has been lodged by any of the parties to the litigation in the original suit. *Nur-ul-Hasan* v. *Muhammad Hasan, I. L. R., 8 All., 573,* followed. MASHIAT-UN NISSA *v.* RANI . . . . **I. L. R., 13 All., 1**

79. ———— *Date of final decree or order of the Appellate Court—Execution of decree.*—Certain plaintiffs obtained a decree for pre-emption in respect of four villages. The defendant appealed, and the lower Appellate Court dismissed the appeal. The defendant again appealed, but in his appeal only questioned the decision of the lower Appellate Court in respect of two of the villages in suit. In this second appeal the plaintiff's suit was dismissed as to one of the villages with regard to which the appeal was preferred, and the defendant's appeal was dismissed as to the other. *Held* that in respect of all the three villages as to which the final decree stood in favour of the plaintiff, limitation began to run against the decree-holders from the date of the decree in second appeal, and not as to two of them from the date of the lower Appellate Court's decree. *Hur Proshaud Roy* v. *Enayet Hossein, 2 C. L. R., 471; Sangram Singh* v. *Bujharat Singh, I. L. R., 4 All., 36;* and *Mashiat-un-nissa* v. *Rani, I. L. R., 13 All., 1,* distinguished. BADI-UN-NISSA *v.* SHAMS-UD-DIN
[I. L. R., 17 All., 108

80. ———— *Final decree of the Appellate Court—Appeal as to portion of the claim* *disallowed.—A* brought a suit against *B* for a sum of money, and obtained a decree for a portion of the amount claimed. On the 30th November 1891, the plaintiff appealed as to the balance of his claim; but the appeal was dismissed by the District Court on the 1st June in 1892 and by the High Court on the 31st May 1894. On an application, on the 1st June 1895, by the assignee of the original decree-holder, to execute the said decree, an objection was raised by the judgment-debtor that execution was barred by lapse of time. *Held* that art. 179, sch. II, cl. (2), of the Limitation Act applied to the case, the period of limitation ran from the date of the final decree of the Appellate Court, and the application for execution, being within three years from that date, was within time. *Sakhalchand Rikhawdas* v. *Velchand Gujar, I. L. R., 18 Bom., 203,* followed. HARKANT SEN *v.* BIRAJ MOHAN ROY **[I. L. R., 23 Calc., 876**

81. ———— *Appeal by one of several defendants against part of the decree.*—The plaintiff obtained a joint decree against defendants for possession of immoveable property and damages on 21st May 1886. Against that decree all the defendants, except defendant No. 1 appealed, and on 2nd July 1887 so much of the decree was reversed as made the appealing defendants liable for damages, but was affirmed in all other respects. A second appeal by the plaintiff from the decree of the Appellate Court was dismissed by the High Court on 9th July 1888. An application for execution of the decree was made by the plaintiff on 7th July 1891, within three years from the date of the final decree dated 9th July 1888. Defendant No. 1 objected that limitation as against him would run from 21st May 1886, there being no appeal by or against him from the decree of that date. *Held* that limitation against defendant No. 1 would run from date of decree in appeal, therefore the application for execution was not barred by limitation. *Gunga Mooye* v. *Shib Sunker, 3 C. L. R., 430,* followed. *Mashiat-un-nissa* v. *Rani, I. L. R., 13 All., 1,* distinguished. GOPAL CHUNDRA MANNA *v.* GOSAIN DAS KALAY **[I. L. R., 25 Calc., 594**
2 C. W. N., 556

82. ———— *Ex-parte decree—Application to set decree aside—Appeal from order rejecting application—Subsequent application for execution of decree more than three years after date of decree.*—The plaintiff obtained an *ex-parte* decree against the defendant on the 16th March 1886. The defendant applied to have the decree set aside. His application was finally rejected by the Appellate Court on 5th March 1887. The decree-holder presented a darkhast for execution of the decree on 24th September 1889. *Held* that the darkhast was time-barred under art. 179, cl. 2, of the Limitation Act (XV of 1877). The appeal referred to in that clause is clearly an appeal from the decree or order sought to be executed, and not an appeal from an order of the Court refusing to set it aside. The unsuccessful attempts made by the defendants to set aside the *ex-parte* decree could not have the effect of extending the period prescribed by law for execution of the decree. JIVAJI *v.* RAMCHANDRA . **I. L. R., 16 Bom., 123**

83. ———— *Execution of decree—Appeal by plaintiff against part of decree making all defendants respondents—Execution of part of decree not appealed against.*—On the 23rd March 1886 the plaintiff obtained a decree in the Court of first instance against five defendants, declaring his right to certain specific immoveable property, which was, however, modified on an appeal preferred by the defendants, the decree of the lower Appellate Court giving the plaintiff a decree for only two-thirds of the property claimed, and dismissing his suit in respect of the remaining one-third in favour of defendants Nos. 2 and 4. The lower Appellate Court's decree was dated the 13th July 1886. Against that decree plaintiff preferred a second appeal to the High Court, making all the defendants respondents, which appeal was, however, dismissed on the 16th June 1887. The plaintiff on the 13th June 1890 applied for execution of the decree in his favour in respect of the two-thirds of the property held to belong to him, and defendants Nos. 1 and 5 objected on the ground that the right to execution was barred, limitation running from the 13th July 1886, the date of the lower Appellate Court's decree in the plaintiff's favour. *Held* that limitation ran from the 16th June 1887, and that the application was not therefore barred. All the defendants were parties to the second appeal, and the Court to which the application was made for execution was not bound, before allowing execution, to go into all the circumstances of that appeal and consider whether the decree of the lower Appellate Court in favour of the plaintiff for the two-thirds of the property was or was not practically secure; the High Court had all the parties before it, and, if it had been right to do so, might have altered the decree against any of them. *Quære*—Whether under such circumstances the Legislature could have intended the Court executing a decree to go into questions so complicated as to whether in such a case the whole decree was or might have been or become imperilled in the Court of Appeal, and whether the plain words of art. 179 might not be followed with less of possible inconvenience and complexity, even though in some cases it might result in execution of a decree going against a defendant a little more than three years after such decree was practically secure against him. *Nundun Lall* v. *Rai Joykishen, I. L. R., 16 Calc., 598,* cited with approval. KRISTO CHURN DASS *v.* RADHA CHURN KUR . **I. L. R., 19 Calc., 750**

84. ———— *Appeal against part of decree only—Appeal dismissed—Application for execution of original decree.*—On the 26th June 1891, in a suit against seven persons who were members of a Mahomedan family, the plaintiff obtained a decree on a mortgage. The decree directed the sale of $\frac{65}{72}$ of the mortgaged property, but it exonerated from liability the share of a female member (defendant No. 2) of the family, which was $\frac{7}{72}$ of the whole estate. The plaintiff appealed as to the $\frac{7}{72}$ share only. He made all the defendants respondents to the appeal, but the name of the first defendant was afterwards struck out, as he could not be served with notice. His interests, however, were identical with those of defendants Nos. 3 to 7. On the 30th July 1892 the plaintiff's appeal was dismissed. On the 3rd July 1895 the plaintiff applied for execution of the original decree. The defendants contended that, as the appeal related only to that part of the decree which related to the $\frac{7}{72}$ share of the second defendant, the rest of the decree was unaffected by the appeal, and that consequently the plaintiff's application for execution of that decree was barred under art. 179 of the Limitation Act (XV of 1877), not having been made within three years from the 26th June 1891. *Held* that the application was not barred. The date of the appellate decree, and not that of the original decree, was the date from which limitation began to run. *Per* PARSONS, *J.*—The word "appeal" in art. 179 does not mean only an appeal against the whole decree and by which the whole decree is imperilled, it means any appeal by any party. *Per* RANADE, *J.*—Except in the case where a nominally single decree awards separate reliefs against separate defendants, the words of art. 179 must be construed in their natural sense as permiting an extension of limitation where an appeal is preferred and is not withdrawn. ABDUL RAHIMAN *v.* MAIDIN SAIBA

I. L. R., 22 Bom., 500

85. ———————— *Final decree of Appellate Court—Decree against joint defendants—Appeal by one of two defendants against part of the decree—Decree against non-appealing defendant "imperilled."*—Plaintiff having, on 31st March 1891, obtained in a District Munsif's Court a decree rendering liable the property of two defendants, the second defendant appealed, making the plaintiff alone respondent, with the result that the District Court set aside the decree against the second defendant, and remanded the suit for trial as to his liability. Plaintiff appealed unsuccessfully to the High Court against this order of remand, the first defendant again not being made a party. On 23rd July 1894 the District Munsif delivered a revised judgment, in which he again held the second defendant's share liable, but gave both defendants two months' time for payment, which provision was not contained in the original decree. This revised judgment was upheld by the District Court on appeal on 25th March 1895, and by the High Court on second appeal on 22nd February 1897, with the modification that the decree as against second defendant should be treated as a money-decree. First defendant was again not a party to either appeal. On 7th August 1897, plaintiff applied for execution, whereupon first defendant pleaded limitation. *Held* that the decree as against the first defendant was not barred by limitation, inasmuch as it had been imperilled by the appeal on the second defendant. *Per* MOORE, *J.*—Under art. 179, cl. (2), of sch. II of the Limitation Act, it is immaterial whether some only or all of several judgment-debtors prefer an appeal. There is only one decree that can be executed, and that is the final decree of the Appellate Court. *Per* O'FARRELL, *J.*—On the general question as to the construction of art. 179, sch. II of the Limitation Act, the plain words of the Act have been unduly narrowed by the decision in *Muthu* v. *Chellappa, I. L. R., 12 Mad., 479;* the consideration of such subtle points as whether a decree was or was not "imperilled" by an appeal was foreign to the intention of the Legislature. VIRARAGHAVA AYYANGAR *v.* PONNAMMAL

I. L. R., 23 Mad., 60

86. ———————— *Application for possession and mesne profits after execution of decree is barred.*—*A*, as purchaser of a decree against *B*, applied for execution thereof, and, having caused five fields of *B* to be sold in execution, purchased four of them at the Court-sale, and one from an execution-purchaser. On 10th July 1871, however, the High Court, in an appeal by *B*, held *A*'s application for execution to have been time-barred, and reversed the orders of the two lower Courts. *A* having been put in possession of the fields under the orders of lower Courts, *B*, on a reversal of those orders by the High Court, applied on 9th July 1874 to have the fields restored to him, together with the mesne profits accruing during the time of his dispossession. The first Court awarded the fields to *B* with mesne profits; but the District Judge on appeal held *B*'s application barred under Act IX of 1871, sch. II, cl. 166. *Held* by the High Court that the exception in cl. 166 of sch. II of the Limitation Act, IX of 1871, was not restricted to any particular species of appeal; that *B*'s application fell within cl. 167, and not within cl. 166; and therefore was not barred. UMIASHANKAR LAKHMIRAM *v.* CHOTALAL VAJERAM . **I. L. R., 1 Bom., 19**

87. ———————— *Application for execution of decree.*—*A*, the judgment-debtor, opposed an application made by *B*, the judgment-creditor, for execution under a decree. This objection was overruled on the 17th January 1876. The appeal by *A* from this order (*B* being represented and opposing *A*'s appeal at the hearing) was dismissed on the 2nd October 1877. On a second application for execution made by *B* on the 18th March 1879,—*Held* that such application was barred under art. 179, sch. II, Act XV of 1877. KRISTO COOMAR NAG *v.* MAHABAT KHAN . **I. L. R., 5 Calc., 595**

88. ———————— *Appellate order in execution.*—The holder of a decree for possession and partition of a share of certain immoveable property, dated the 19th January 1878, applied for execution on the 2nd February 1878. An order was made by the Court of first instance, from which the decree-holder appealed. The Appellate Court, on the 18th September 1878, reversed the order of the first Court, and directed that the partition of the property should be effected by lots, and remanded the case for that purpose. The first Court proceeded to carry out the order of the Appellate Court, but eventually struck off the case, on the 15th February 1879, as the decree-holder failed to appear personally when ordered to do so. On the 13th September 1881 the legal representative of the deceased decree-holder, who had meantime died, applied, with reference to the order of the Appellate Court dated the 18th September 1878, to have lots drawn in accordance with that order. *Held*, on the question whether this application was barred by limitation, that, if it were regarded as nothing more than an application for execution of the original decree, it might be barred, inasmuch as it had been made more than three years after the date of the last application, and it was doubtful whether the 2nd clause in the 3rd column of art. 179, sch. II of Act XV of 1877, would apply, since the appeal there referred to is probably an appeal from the decree or order of which execution is being taken, referred to in the first clause of that article, and not an appeal in course of execution of that decree or order; that, however, the order of the Appellate Court, dated the 18th September 1878 was itself of the nature of a decree and capable of execution, and for the execution of which an application could be made to which that article would apply; that the application in question should be ragarded as one for execution of that order; and that therefore, so regarding, it was within time. HULASI *v.* MAIKU . . . **I. L. R., 5 All., 236**

89. ——— *"Decree"—Order rejecting memorandum of appeal for deficiency of Court fee.*—An appeal from a decree, dated the 18th July 1879, was rejected by the High Court on the 11th June 1880, in consequence of the failure of the appellants to pay additional Court-fees declared by the Court to be leviable. On the 23rd December 1882 an application was filed by the decree-holder for execution of the decree. *Held*, with reference to Act XV of 1877 (Limitation Act), sch. II, art. 179 (2), that the order of the 11th June 1880, rejecting the appeal on the ground of deficient payment of Court-fee, was equivalent to a decree, and therefore the application, being made not more than three years from the date of that order, was not barred by limitation. RUP SINGH *v.* MUKHRAJ SINGH . . . **I. L. R., 7 All., 887**

90. ——— *Application for execution of decree—Order staying execution.*—The plaintiff obtained an *ex-parte* decree on 7th of February 1876, of which he applied for execution on the 31st of May 1876. Thereupon the defendant applied to set aside the decree, on the ground that he had had no notice of the suit, and an order was made staying the execution of the decree. The defendant's application was rejected on the 15th of November 1876, and an appeal by the defendant, pending which the stay of execution was continued, was dismissed on the 19th of December 1877. Previously,—*viz.*, on the 21st of February 1877,—the execution case had been struck off the file. *Held* that, notwithstanding the application was made more than three years after the decree, and the plaintiff was not entitled to any deduction of the time during which the execution was stayed by order of Court, an application for execution made on the 10th of December 1880 was, under art. 179 of Act XV of 1877, not barred, the decree not being final until the order dismissing the appeal on the 19th of December 1877. LUTFUL HUQ *v.* SUMBHUDIN PATTUCK

[I. L. R., 8 Calc., 248: 10 C. L. R., 143

91. ——— *Execution of decree.*—Art. 179, cl. (2), of the Limitation Act (XV of 1877) must be construed as intended to apply without any exceptions to decrees from which an appeal has been lodged by any of the parties to the original proceedings, and should certainly be applied to cases where the whole decree was imperilled by the appeal. A suit for pre-emption was decreed against the vendors, the purchaser, and another set of preemptors in March 1882. The last-mentioned defendants alone appealed, and their appeal was dismissed in May 1882. In May 1885 the decree-holders applied for execution of the decree. The application was objected to by the purchaser as barred by limitation, having been filed more than three years from the passing of the decree, and it was contended that art. 179, cl. (2), did not apply to the case, inasmuch as the purchaser did not appeal from the original decree. *Held* that art. 179, cl. (2), of the Limitation Act was applicable, and that the application, being made within three years from the Appellate Court's decree, was not barred by limitation. *Hur Prasad Roy* v. *Enayat Hossein, 2 C. L. R., 471,* and *Sangram Singh* v. *Bujharat Singh, I. L. R., 4 All., 36,* distinguished. *Mullick Ahmed Zumma* v. *Mahomed Syed, I. L. R., 6 Calc., 194,* and *Ram Lal* v. *Jagannath, Weekly Notes, All., 1884, p. 138,* relied on. NUR-UL-HASAN *v.* MUHAMMAD HASAN . . **I. L. R., 8 All., 573**

92. ——— *Adjudication that execution is barred by limitation—Finality of order—Civil Procedure Code, s. 206—Amendment of decree.*—An application to execute a decree passed in April 1880 was made on the 19th February 1884, and rejected on the 26th March 1884 as being beyond time. This order was upheld on appeal in March 1885. While the appeal was pending, the decree-holder in May 1884 applied to the Court of first instance to amend the decree under s. 206 of the Civil Procedure Code, and in December 1884 the application was granted. In April 1885 an application was made for execution of the amended decree, the decree-holder contending that limitation should be calculated from the date of the amendment, and that art. 178 of the Limitation Act (XV of 1877) applied to the case. *Held* that art. 179, and not art. 178, was applicable; that the order rejecting the application of the 19th February 1884 became final on being upheld on appeal; that the amendment could not revive the decree or furnish a fresh starting-point of limitation; and that the application was therefore time-barred. *Mungul Persad Dichit* v.

Grija Kant Lahiri, I. L. R., 8 Calc., 51, and *Ram Kirpal* v. *Rup Kuari, I. L. R., 6 All., 269,* referred to. TARSI RAM *v.* MAN SINGH

[I. L. R., 8 All., 492

See DAYA KISHOR *v.* NANKI BEGAM

[I. L. R., 20 All., 304

(*d*) WHERE THERE HAS BEEN A REVIEW.

——— **cl. 3.**—The provision of the article where there has been a review is opposed to the decisions of CHOWDHRY JUNMENJOY MULLICK *v.* BISSAMBHAR PANJAH . **5 W. R., Mis., 45**

GOUR MOHUN SHAHA *v.* GOUR MOHUN GHOSE

[5 W. R., Mis., 11

but in accordance with most of the decisions.

93. ——— *Rejection of application for review—Time during which review was pending—Application for refund of moneys levied under decree reversed on appeal.*—Where a review of judgment has been applied for, and, after notice to the other side, refused, the period during which such application was pending cannot be excluded in computing the period of limitation for execution of the decree under art. 179 (3) of sch. II of the Limitation Act. *Semble*—An application for refund of moneys levied in execution of a decree subsequently reversed on appeal is not governed by art. 179, but by art. 178, of sch. II of the Limitation Act. KURUPAM ZAMINDAR *v.* SADASIVA

[I. L. R., 10 Mad., 66

94. ——— *Order allowing amendment of a decree—Review of judgment—Code of Civil Procedure (Act XIV of 1882), ss. 623, 624, and 206.*—An order granting an application for amendment of a decree under s. 206 of the Code of Civil Procedure is an order passed upon review of judgment within the meaning of art. 179, sch. II, cl. (3), of the Limitation Act; therefrom an application for execution of a decree within three years from such an order is not barred by limitation. *Kishen Sahai* v. *Collector of Allahabad, I. L. R., 4 All., 137,* referred to. KALI PROSUNNO BASU ROY *v.* LAL MOHUN GUHA ROY . **I. L. R., 25 Calc., 258**

[2 C. W. N., 219

95. ——— *Calculation of time where decree has been wrongly varied.*—*Per* SUBRAMANIA AYYAR, *J.*—That where a decree which is at variance with the judgment is brought into conformity with the latter under s. 206 of the Code of Civil Procedure, the date of the rectification is immaterial with reference to the calculation of the time in which any appeal may be preferred against such decree. But where a decree is wrongly varied, a party affected by such variation should be entitled to calculate the time during which an appeal may be preferred as commencing from the date of the variation. PARAMESHRAYA *v.* SESHAGIRIAPPA

[I. L. R., 22 Mad., 364

96. ——— *Order amending decree—Compromise after decree—Subsequent application for execution of amended decree.*—After a decree for land against four defendants, a compromise was made between the plaintiff and the third defendant. The first and fourth had acknowledged the plaintiff's right. The second and third had defended the suit, and the decree had been made and affirmed on appeal to the High Court, jointly and severally against the first three and conditionally against the fourth. An application by the second and third defendants for leave to appeal to Her Majesty was withdrawn, the two parties to the compromise having obtained an order for amendment of the decree in its terms. For the execution of the decree against the three defendants, other than the third, as to the proportionate part of the property sued for, and not the subject of the compromise, the decree-holder afterwards obtained an order. This order was reversed by the High Court. Hence this appeal. *Held* that the order directing the amendment of the decree in the terms of the compromise was beyond the powers of the High Court, and was without operation either in favour of or against those defendants who had not been parties to the petition for that amendment. *Held* also on the decree-holder's petition for execution of the decree that the period of limitation commenced from the date of the primary, and not of the amended, decree of the High Court. Execution was therefore barred by limitation. Instead of attempting the alteration in the decree, the High Court could properly have made the compromise a rule of Court, and have stayed all proceedings against the defendant who was a party to it, except for the purpose of enforcing it against him. KOTAGHIRI VENKATA SUBBAMMA RAO *v.* VELLANKI VENKATARAMA RAO

[I. L. R., 24 Mad., 1
L. R., 27 I. A., 197
4 C. W. N., 725

(*e*) WHERE PREVIOUS APPLICATION HAS BEEN MADE.

97. ——— **cl. 4**—*Decree not liable to be enforced.*—S. 20, Act XIV of 1859, was not applicable to a decree until the liability under it has become enforceable by process of execution. GOPALA SETTY *v.* DAMODARA SETTY . **4 Mad., 173**

98. ——— *Application for execution of decree—"Suit."*—*Per* GARTH, *C.J.*, and MARKBY and AINSLIE, *JJ.* (KEMP and MACPHERSON, *JJ.*, dissenting)—The periods of limitation prescribed in sch. II of Act IX of 1871 are to be computed subject to the provisions contained in the body of the Act. *Per curiam.*—The word "suit" as used in the Act does not include "application." DHONESSUR KOOER *v.* ROY GOODER SAHOY . **I. L. R., 2 Calc., 336**

99. ——— *Application to execute decree.*—Where an application was made and proceedings taken to enforce or keep in force a decree, limitation runs from the date of such application, not from

LIMITATION ACT, 1877—*continued.*

2. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

the date of the proceedings. Faez Buksh Chowdhry *v.* Sadut Ali Khan . **23 W. R., 282**

The contrary was held under Act XIV of 1859, s. 2.

See Ramanuja Aiyangar *v.* Venkata Charry [**4 Mad., 260**

100. ———— *Application by Government for execution of decree.*—Under Act IX of 1871, Government is bound to make an application for execution within the same time as any other person. Collector of Beerbhoom *v.* Sreehurry Chuckerbutty . . . **22 W. R., 512**

101. ———— *Application for execution of decree—Presentation of application to enforce decree.*—*Held* by the Full Bench that the date on which an application for the execution of a decree is presented, and not any date on which such application may be pending, is "the date of applying" within the meaning of art. 167, sch. II of Act IX of 1871. Fakir Muhammad *v.* Ghulam Husain . . . **I. L. R., 1 All., 580**

102. ———— *Application for execution of decree.*—If a decree has once been allowed to expire, no subsequent application, although made *bonâ fide*, can revive it. Mungol Prashad Dichit *v.* Shama Kanto Lahory Chowdhry [**I. L. R., 4 Calc., 708**

S. C. Ishana Dabia *v.* Grija Kant Lahiry Chowdhry . . . **3 C. L. R., 572**

But held by the Privy Council in appeal that, although the execution of a decree may have been actually barred by lapse of time at the date of an application made for its execution, yet if an order for such execution has been regularly made by a competent Court having jurisdiction to try, whether it was barred by time or not, such order, though erroneous, must, if unreversed, be treated as valid. Mungul Persad Dichit *v.* Grija Kant Lahiri [**I. L. R., 8 Calc., 51**
L. R., 8 I. A., 123 : 11 C. L. R., 113

103. ———— *Admission of previous application by competent Court.*—In an application for execution of a decree, it was held that, whether rightly or wrongly, a previous application having been admitted and registered and attachment having been ordered to issue, it was not open to the judgment-debtor to question the validity of the proceedings on the ground of the execution being barred by limitation. *Mungal Pershad Dichit* v. *Girja Kant Lahiri, I. L. R., 8 Calc., 51 : L. R., 8 I. A., 123,* referred to. Norendra Nath Pahari *v.* Bhupendra Narain Roy **I. L. R., 23 Calc., 374**

104. ———— Application for execution of a decree must be made within three years of a previous application as required by Act IX of 1871, sch. II, art. 167. *Umiashankar Lakhmiram* v. *Chottalal Vajeram, I. L. R., 1 Bom., 19,* held not to apply. Giri Dharee Singh *v.* Ram Kishore Narain Singh . . . . **1 C. L. R., 252**

LIMITATION ACT, 1877—*continued.*

4. PERIOD FROM WHICH LIMITATION RUNS—*continued.*

Abdul Hekim *v.* Asseeutoollah **25 W. R., 94**

Nilmoney Singh Deo *v.* Ramjeebun Surkel [**8 C. L. R., 335**

Wodoy Tara Chowdhrain *v.* Abdool Jubbur Chowdhry . . . . **24 W. R., 339**

105. ———— *Civil Procedure Code (Act XIV of 1882), s. 230.*—On 15th February 1872 the plaintiff obtained against the defendant a decree for possession upon his mortgage, and in attempting to take possession was obstructed by *N*, another mortgagee of the defendant, whereupon the plaintiff applied for removal of the obstruction, but his application was rejected on the ground that *N* was in possession as mortgagee, and that the plaintiff was not entitled to possession until *N's* mortgage was redeemed. The plaintiff did not apply for execution any further. In 1884 the defendant paid off *N's* mortgage, and on 27th August 1885 the plaintiff presented an application for execution of his decree of 1872. On reference to the High Court,—*Held* that the execution of the decree was barred, no application for execution having been made since *1873*. The previous application for execution not having been made under s. 230 of the Civil Procedure Code (Act XIV of 1882), the general law of limitation, as laid down in art. 179 of Act XV of 1877, governed the case. Annaji Apaji *v.* Ramji Jivaji [**I. L. R., 10 Bom., 348**

106. ———— *Application for execution made within time of a previous barred application in which execution was allowed.*—An application for the execution of a decree, though made within three years from the date of a previous application, was barred, under s. 20 of Act XIV of 1859, if the previous application were barred, even though execution was allowed to issue on such application. Gopal Govind *v.* Ganeshdas Tejmal [**8 Bom., A. C., 97**

107. ———— *Application for execution of decree already barred—Limitation Acts (IX of 1871), sch. II, art. 167; (XV of 1877) ss. 2, 3.*—No process can legally issue upon an application for the execution of a decree already barred by limitation, nor can an application made under such circumstances be a valid application, or one which under the Act would give the execution-creditor a fresh period of limitation. Shumbhunath Shaha *v.* Guruchurn Lahiri . **I. L. R., 5 Calc., 894**
[**6 C. L. R., 437**

108. ———— *Application made within three years of previous barred application—"Application in accordance with law."*—An application for execution of decree was made in 1885, and the second in 1891. The latter was at first allowed, but subsequently struck off for some default of the applicant. The third application was made in 1893. *Held* that the second application having been made at a time when it was barred by reason of the three years' period having been exceeded, the third was barred, though presented within three years of the second. The phrase "in accordance with law" in art. 179 of the Limitation Act was adjectival not only to the words "to the proper Court for execution," but also to the words "to take some step in execution." BHAGWAN JETHIRAM *v.* DHONDI **[I. L. R., 22 Bom., 83**

109. ——————— *Decree for possession and mesne profits reversed as to possession—Decree partly in favour of plaintiff and partly in favour of defendant—Application for restitution of possession—Civil Procedure Code (Act XIV of 1882), s. 583.*—*A* obtained a decree against *B* for possession and for R27 mesne profits. In execution he got possession. On appeal, however, the decree was reversed so far as it ordered possession to be given to him, and the amount of mesne profits awarded to him was reduced to R13-8-0. The appellate decree was passed on the 6th June 1889. On the 18th December 1891, the defendant *B* applied to be restored to possession. That application was dropped, but on 24th September 1894 he again applied for restitution. In an application made on the 24th September 1895, —*Held* on review, reversing a previous order, that the defendant's application was not barred by limitation. JEDDI SUBRAYA VENKATESI SHANBAG *v.* RAMRAO RAM CHANDRA MURDISHVAR **[I. L. R., 22 Bom., 998**

110. ——————— *Time runs from making of application, not from hearing of it and order on it.*—An application for execution of a decree, dated 11th August 1891, was made on the 11th of January 1893; notice under s. 248, Civil Procedure Code, was issued on the judgment-debtor on the same day, and he showed cause on the 3rd of March 1893, and the order for attachment was made on the same day. *Held* that a subsequent application for execution on the 21st of February 1896 was out of time; the three years' period of limitation should be computed from the 11th January 1893, that is, the date when the application was made, and not from the 3rd of March when the application was heard and order made. *Luchmee Buksh Roy* v. *Runjeet Ram Pandey, 13 B. L. R., 177; Fikir Muhammed* v. *Ghulam Hossain, I. L. R., 1 All., 580,* referred to. SARAT KUMARY DASSI *v.* JAGAT CHANDRA ROY **[1 C. W. N., 260**

111. ——————— *Execution of decree declaring right to maintenance—Annual payment.* —A decree-holder, having obtained in 1874 a decree entitling her to a certain sum to be paid annually by the judgment-debtor, applied for execution of the decree on the 11th of March 1875, but made no further application until July 1882. *Held* that this application was barred by limitation. *Semble*—The decree being a declaratary decree, a suit to enforce the annual right to maintenance would lie. SABHANATHA DIKSHATAR *v.* SUBHA LAKSHMI AMMAL **[I. L. R., 7 Mad., 80**

112. ——————— *Application within time.*—Where a Judge finds that an application for execution is within time, and there is no appeal from his finding, his successor is not justified in going behind his order. DHEERAJ MAHTAB CHUND *v.* MOOBLEEDHUR GHOSE . . **15 W. R., 67**

113. ——————— *Suit on decree—Steps to enforce decree.*—The plaintiff sued to recover arrears of rent at an enhanced rate, basing the claim on a decree obtained by him in 1866 declaring his right to such rent. *Held* that the right was not extinguished, because the plaintiff thought fit not to take any steps to enforce it for some four years subsequent to the date of the decree. JAI CHAND *v.* BEHARI . . . . . **7 N. W., 177**

114. ——————— *Application for execution of decree.*—Application for execution of a decree obtained in 1858 under the old law as to limitation was made in January and disposed of in February 1864, and a subsequent application was made in November 1867. *Held* that the first application was in time, but the second application was barred by s. 20, Act XIV of 1859. VIRABHADRA RAU *v.* RAMAIYA *alias* BABPAUTULA **[4 Mad., 148**

115. ——————— *Obligation to show application is within time.*—A decree-holder applying on December 24th, 1864, to execute his decree passed on December 7th, 1861, was bound, under s. 20, to show that he had taken some proceeding within three years next before the application to keep alive the decree. BHARUT SINGH *v.* SADUT ALI **[6 W. R., Mis., 20**

KOOL CHUNDER CHUCKERBUTTY *v.* KUMUL CHUNDER ROY . . . **6 W. R., Mis., 17**

116. ——————— *Application within time.*—An application made on the 8th January 1875 to execute a decree, the last preceding application having been made on the 8th January 1872, was held to be within the time allowed by art. 167, sch. II of Act IX of 1871. DHONESSUR KOOER *v.* ROY GOODER SAHOY . . **I. L. R., 2 Calc., 336**

(*f*) DECREES FOR SALE.

117. ——————— *Decree for sale on a mortgage—Order absolute for sale—Transfer of Property Act (IV of 1882), ss. 88 and 89.*—The period of limitation for execution of a decree for sale under s. 88 of the Transfer of Property Act begins to run from the date of the granting of an order absolute for sale under s. 49 of the Act, without which order the decree cannot be executed, and not from the date of the decree itself. *Oudh Behari Lal* v. *Nageshar Lal, I. L. R., 13 All., 278,* and *Mulchand* v. *Mukta Pal Sing, Weekly Notes, All. (1896), 100,* referred to. MAHABIR PRASAD *v.* SITAL SINGH . . **I. L. R., 19 All., 520**

118. ——————— *Decree for sale on mortgage—Order absolute for sale—Transfer of Property Act (IV of 1882), s. 89.*—An application for an order absolute for sale under s. 89 of the Transfer of Property Act, 1882, is an application to

2. PERIOD FROM WHICH LIMITATION RUNS—*concluded.*

which art. 179 of the second schedule to the Indian Limitation Act, 1877, applies. *Oudh Behari Lal* v. *Nageshar Lal, I. L. R., 13 All., 278,* referred to. *Ranbir Singh* v. *Drigpal Singh, I. L. R., 16 All., 23,* overruled. CHUNNI LAL *v.* HARNAM DAS

[I. L. R., 20 All., 302

119. ———— *Transfer of Property Act (IV of 1882), s. 87—Application for order absolute for foreclosure.*—An application for an order under s. 87 of Act IV of 1882 is, like an application for an order under s. 89 of the said Act, subject to the limitation prescribed by art. 179 of the second schedule to Act XV of 1877. *Oudh Behari Lal* v. *Nageshar Lal, I. L. R., 13 All., 278,* and *Chunni Lal* v. *Harnam Das, I. L. R., 20 All., 302,* referred to. PARMESHRI LAL *v.* MOHAN LAL . . . . **I. L. R., 20 All., 357**

3. NATURE OF APPLICATION.

(*a*) GENERALLY.

120. ———— *"Proceeding" under Act XIV of 1859, s. 20.*— The word "proceeding" in s. 20, Act XIV of 1859, meant a proceeding not barred by the law of limitation, and under which process of execution might lawfully have issued if the proceeding had been opposed. BISSESSUR MULLICK *v.* DHIRAJ MAHTAB CHAND

[B. L. R., Sup. Vol., 967 : 10 W. R., F. B., 8

RADHOO CHOWDHRAIN *v.* HEET LALL ROY

[11 W. R., 209

121. ———— *Application to keep decree in force—Intention to enforce it.*—In order to keep a decree alive, it was, under s. 20, Act XIV of 1859, not necessary that the application for execution should be made with the intention of enforcing the decree at that time. All that the section required was that some proceeding should have been taken to enforce the decree or to keep it in force within three years. KONDARAJU VENKATA SUBBAIYA *v.* RAMA KRISHNAMMA *alias* URUPKRISTNAIYA **4 Mad., 75**

KULLYAN SINGH *v.* BAHADUR SINGH

[Agra, F. B., 163 : Ed. 1874, 122

The proceeding need not be successful. KALEE KISHORE BOSE *v.* PROSONO CHUNDER ROY

[10 W. R., 248

AKBER GAZEE *v.* NUFEEZUN . **8 W. R., 99**

ESHAN CHUNDER BOSE *v.* JUGGOBUNDHOO GHOSE

[8 W. R., 98

But *see* LALLA BISHEN DYAL SINGH *v.* RAM SUNKUR TEWAREE . . **6 W. R., Mis., 38**

and JUNARDUN DOSS MITTER *v.* RAJAH ROOKNEE BULLUB . . . . . **6 W. R., Mis., 48**

The proceedings could be withdrawn when they appeared to be useless, and it was not necessary to prosecute them to a termination. KULLYAN SINGH *v.* BAHADUR SINGH

[Agra, F. B., 163 : Ed. 1874, 122

122. ———— *Execution of decree—Limitation—Effect of dismissal of application for execution duly made.*—If an application for execution of a decree is duly made so as to satisfy the terms of art. 179, paras. 4 and 5 of sch. II of Act XV of 1877, but is dismissed, such dismissal does not prevent the application from furnishing a point of time for the beginning of a new term of limitation. SHANKAR BISTO NADGIR *v.* NARSINGHRAO RAMCHANDRA . **I. L. R., 11 Bom., 467**

123. ———— *Civil Procedure Code (Act X of 1877), s. 374.*—The rule laid down in s. 374 of the Code of Civil Procedure (Act X of 1877), that where a suit is withdrawn with leave to bring a fresh suit, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought, applies to applications for execution; and therefore in counting the time of three years prescribed by the Limitation Act XV of 1877, sch. II, art. 179, cl. 4, an application allowed to be withdrawn must be discarded as if it had never been presented. PIRJADE *v.* PIRJADE . **I. L. R., 6 Bom., 681**

124. ———— *Execution of decree—Application withdrawn by decree-holder—Limitation—Civil Procedure Code, ss. 374, 647.*—The holder of a decree for money, dated the 7th June 1879, applied on the 20th July 1880 for execution thereof, but it appeared that in certain particulars the decree required correction, and it was therefore ordered, at the request of the pleader for the decree-holder, that the application should be dismissed and the decree returned to him for amendment. The next application for execution of the decree was made by the decree-holder on the 19th February 1883. *Held* that, the application of the 20th July 1880 having been put in and afterwards taken back by the decree-holder, the proceeding became to all intents and purposes as though no application had been made; that therefore it could have no effect as an application made in accordance with law for execution within the meaning of art. 179, sch. II of the Limitation Act; that, applying the rule contained in s. 374 of the Civil Procedure Code, in accordance with s. 647, to the application for execution of the 19th February 1883, the question of limitation must be determined as if the first application had never been filed; and that the application now in question was consequently barred by limitation. *Ramanandan Chetti* v. *Periatambi Shervai, I. L. R., 6 Mad., 250,* dissented from. *Pirjade* v. *Pirjade, I. L. R., 6 Bom., 681,* referred to. KIFAYAT ALI *v.* RAM SINGH

[I. L. R., 7 All., 359

125. ———— *Application to execute decree—Abandonment of former application.*—A decree-holder, having first asked the Court to attach certain immoveable properties, applied subsequently for the issue of a warrant of arrest, and finally prayed the Court not to proceed with those two applications, but to allow him to attach certain other properties; and this prayer was allowed. *Held* that this was

LIMITATION ACT, 1877—*continued.*

3. NATURE OF APPLICATION—*continued.*

virtually an abandonment of the two original applications which were virtually struck off, and that the last application was the one which came within the meaning of the Limitation Act, 1871, art. 167. Lala Hurre Sunkur Sahoy *v.* Krishna Kant Dutt . . . . . . **25 W. R., 106**

126. ——— *Application for execution—Withdrawal of application—Subsequent application for execution more than three years after date of last proceeding—Civil Procedure Code (Act XIV of 1882), s. 374.*—The plaintiff obtained a decree in 1874, and applied for its execution, first on the 4th of August 1875, then on the 6th of July 1878, and again on the 23rd of July 1880. The third application was withdrawn with permission to apply again. On the 30th November 1882, the plaintiff made his present application. *Held* that the present application was not time-barred. The rule laid down in s. 374 of the Civil Procedure Code (Act XIV of 1882)—that where a suit is withdrawn with leave to bring a fresh suit, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought—does not apply to applications for execution. *Pirjade* v. *Pirjade, I. L. R., 6 Bom., 681,* dissented from. Tarachand Megraj *v.* Kashinath Trimbak [**I. L. R., 10 Bom., 62**

127. ——— *Application for execution withdrawn by decree-holder—Civil Procedure Code, ss. 373, 374, 647.*—S. 647 of the Civil Procedure Code makes ss. 373 and 374 applicable to proceedings in execution of decree. *Kifayat Ali* v. *Ram Singh, I. L. R., 7 All., 359,* and *Pirjade* v. *Pirjade, I. L. R., 6 Bom., 681,* followed. *Tara Chand Megraj* v. *Kashinath Trimbak, I. L. R., 10 Bom., 62,* and *Ramanandan Chetti* v. *Periatambi Shervai, I. L. R., 6 Mad., 250,* dissented from. A first application for execution of a decree was withdrawn by the decree-holder on account of formal defects, the Court returning the application, but without giving permission to the decree-holder to withdraw with leave to take fresh proceedings. *Held* that, with reference to the second paragraph of s. 373 read with s. 647 of the Code, the decree-holder was precluded from again applying for execution; but that, even assuming that permission to apply again could be inferred from the action of the Court in returning the application, s. 374 was applicable so as to make a subsequent application presented five years after the decree barred by limitation, with reference to art. 179 of the Limitation Act. Sarju Prashad *v.* Sita Ram . . . **I. L. R., 10 All., 71**

128. ——— An application for execution cannot be thrown out summarily as barred by limitation, because the decree-holder has failed to find any of his judgment-debtor's property, or been baffled in his endeavours to satisfy his decree. Dheeraj Mahtab Chand *v.* Moorleedhur Ghose [**15 W. R., 67**

129. ——— *Obligations of Court and creditor to issue execution.*—Though it is the duty of the Court to issue process after application has been made for execution, yet the law fully intends that when the decree-holder sees that the Court has taken no steps to issue any process, he shall be diligent and move the Court from time to time, as required, to keep him within the period of limitation. Gooroo Dass Dutt *v.* Wooma Churn Roy **13 W. R., 83**

130. ——— *Question of bonâ fides—Act XIV of 1859, s. 20.*—Under Act XIV of 1859, no proceeding was effectual unless it was *bonâ fide.* Ram Sahai Sing *v.* Sheo Sahai Sing [**B. L. R., Sup. Vol., 492: 1 Ind. Jur., N. S., 42**

Tabbur Singh *v.* Motee Singh . **8 W. R., 306**

S. C. on review . . . . **9 W. R., 443**

Golam Asgar *v.* Lakhimani Debi [**2 B. L. R., Ap., 24**

Gunga Narayan Chowdhry *v.* Phul Mohammed Sirkar . . . . **2 B. L. R., Ap., 45**

Bharotea Debea *v.* Kurronamoyee Dossia [**10 W. R., 229**

Kalee Kishore Bose *v.* Prosono Chunder Roy . . . . . . **10 W. R., 248**

It was doubted whether the question of *bonâ fides* was one of law or of fact. Tabbur Singh *v.* Motee Singh . . . . . **9 W. R., 443**

The Court generally presumed that proceedings in a suit were *bonâ fide,* and it lay on the party who impugned them to show or suggest something from which the Court could infer that they were not *bonâ fide.* Tabbur Singh *v.* Motee Singh [**9 W. R., 443**

Dheraj Mahtab Chund *v.* Modhoo Soodun Bonnerjee . . . . . **15 W. R., 162**

Lootf Ali *v.* Aboo Bibee . **15 W. R., 203**

Ameerun Bibee *v.* Shibpershad Thakoor [**8 W. R., 199**

Seith Kishen Chand *v.* Kour Askunder Gir [**1 N. W., 95: Ed. 1873, 145**

And then, of course, the decree-holder had an opportunity of explaining fully and clearly all his acts. Seetanath Mundle *v.* Anund Chunder Roy [**15 W. R., 5**

Uddoyto Churn Sahoo *v.* Ram Dhun Roy [**16 W. R., 296**

As to what was evidence of *bonâ fides* or the contrary:—

Kripa Moyee Dossee *v.* Poorun Chunder Roy [**11 W. R., 403**

Titooram Bose *v.* Tarineechurn Ghose [**15 W. R., 127**

Ram Soondar *v.* Ram Canto . **11 W. R., 8**

and Ram Dhun Goor *v.* Gooroodossee Dossee [**13 W. R., 40**

Bharotea Debea *v.* Kurrona Moyee Dassia [**10 W. R., 229**

Taruck Chunder Chuckerbutty *v.* Huro Chunder Chuckerbutty . **15 W. R., 473**

Raj Coomar Baboo *v.* Judoo Bungshee **[14 W. R., 112**

Ameer Ali *v.* Sahib Singh . **15 W. R., 530**

In the matter of Kaleedass Ghose **[15 W. R., 356**

Kisto Kant Bural *v.* Nistarinee Debia **[8 W. R., 268**

In judging of the *bonâ fides* of proceedings to obtain execution of a decree, the whole course of those proceedings was to be regarded. The fact that unexplained delays have occurred during the proceedings in execution of the decree, or that some of the proceedings were ineffectual, is not necessarily evidence of a want of *bonâ fides*. Benoderam Sen *v.* Brojendro Narain Roy **[13 B. L. R., P. C., 169 : 21 W. R., 97**

S. C. in lower Court, Brojendro Narain Roy *v.* Benode Ram Sein . . . **11 W. R., 269**

Under the present Act, no question of *bonâ fides* arises.

131. ———— *Sufficiency or otherwise of mere applications—Act XIV of 1859, s. 20.*—Under Act XIV of 1859, there were contrary decisions as to whether a mere application for execution was a proceeding to enforce the decree. Cases which held it insufficient were—

Chunder Coomar Roy *v.* Shurut Soondery Debia . . . . . **6 W. R., Mis., 37**

Gossain Gopal Dutt *v.* Court of Wards **[21 W. R., 418**

Idoo *v.* Besharoolla . **2 W. R., Mis., 10**

Raj Bullob Buye *v.* Taranath Roy **[3 W. R., Mis., 2**

Sheo Pertab Lal *v.* Issur Roy **[5 W. R., Mis., 23**

See also Abdool Hekim *v.* Aseentoollah **[25 W. R., 94**

Contra, Gour Mohan Bandopadhya *v.* Tara Chand Bandopadhya **[3 B. L. R., Ap., 17 : 11 W. R., 567**

Varada Chetty *v.* Vaiyapury Mudali **[4 Mad., 151**

Luchmun Singh *v.* Narain . **2 N. W., 185**

Chumun Bhugut *v.* Mudun Mohan **[2 N. W., 186**

Hur Sahoy Singh *v.* Gobind Sahoy **[21 W. R., 244**

See also Tabbur Singh *v.* Motee Singh **[9 W. R., 443**

Mahomed Baker Khan *v.* Sham Dey Koer **[12 W. R., 2**

Rajeeb Lochun Saha Chowdhry *v.* Maseyk **[18 W. R., 193**

An application for execution of a decree followed by issue of notice was held to be a proceeding to keep alive the decree. Luckee Narain Chuckerbutty *v.* Ram Chand Sircar . **6 W. R., Mis., 63**

Shoo Chand Chunder *v.* Grant **7 W. R., 10**

An application by a decree-holder for issue of notice and for enforcement of the decree by possession was held to be a proceeding to keep the decree in force. Mookta Kashee Dabee *v.* Gunga Dass Roy . . . . . . **14 W. R., 483**

Also an application for execution, and order to deposit tullubana followed by such deposit, and service of notice, was sufficient. Trilochun Chatterjee *v.* Radhamoni Dossee . **6 W. R., Mis., 74**

132. ———— **and s. 19**—*Execution of decree, Application for.*—The mere payment of a Court-fee in connection with execution proceedings, with a view to obtain leave to bid for property then up for sale in execution of a decree, does not constitute "the taking of some step in aid of execution" within the meaning of art. 179, sch. II of the Limitation Act (Act XV of 1877), so as to prevent the execution of the decree being barred within three years from the date of such payment. Toree Mahomed *v.* Mahomed Mabood Bux **[I. L. R., 9 Calc., 730 : 13 C. L. R., 91**

133. ———— *Application made to keep in force decree.*—A judgment-creditor, on finding that his judgment-debtor has no property on which he can lay hands for the purposes of execution, can always file an application simply to keep in force his decree. Nilmoney Singh Deo *v.* Nilcomul Tuffadar . . . . . **25 W. R., 546**

134. ———— *Nature of application under s. 179, cl. 4, of the Limitation Act, 1877.*—To satisfy the requirements of art. 179 (4) of sch. II of the Limitation Act (XV of 1877), there must be an application to the proper Court, and time runs from the date of the application, and not of the order made upon it. The application need not, however, necessarily be in writing; where the law does not require a writing, an oral application satisfies its requirements. Where an order made in aid of execution is of such a nature that the Court would not have made it without an application by the judgment-creditor, it may be presumed that due application had been made for it. Trimbak Bepigi Patvardhan *v.* Kashinath Vidyadhar Gosavi **[I. L. R., 22 Bom., 722**

135. ———— *Civil Procedure Code, ss. 231, 232, 623—Joint decree-holders—Assignment by operation of law of a share in a decree.*—A Hindu obtained in 1878 a decree for partition of certain property, and he now applied in 1888 to have it executed. He relied in bar of limitation on an application for execution made by his son, who had obtained a decree against him in 1881 in a partition suit, whereby his right was established to one-fifth of whatever should be acquired by the father by virtue of the decree of 1878. The father's application for execution in 1888 was held to be barred by limitation in *Ramasami* v. *Anda Pillai, I. L. R., 13 Mad., 347.* On review it appeared that the son had applied for execution of the whole decree, stating that his father would not join him in such application, and that notice was given to the father. *Held* (1) that the son was an assignee by operation of law of one-fifth of the judgment-debt in the suit of 1878; (2) that his application accordingly kept the decree alive under Limitation Act, 1877, sch. II, Act. 179, cl. 4, and the father's application in 1888 was not barred by limitation. In this view no question arose as to the effect of expl. I, art. 179 (as to joint decrees): the application by the son for execution as transferee of part of the decree, having been an application in accordance with law, was sufficient to keep the decree alive. RAMASAMI *v.* ANDA PILLAI **[I. L. R., 14 Mad., 252**

Reversing on review the decision in RAMASAMI *v.* ANDA PILLAI . . **I. L. R., 13 Mad., 347**

136. ———————— *Civil Procedure Code (Act XIV of 1882), ss. 232, 248—Application for execution by transferee of decree—Benamidar.*—The words "in accordance with law" in art. 179 of sch. II of the Limitation Act mean in accordance with the law relating to execution of decrees. Under s. 232 of the Civil Procedure Code, the Court executing the decree after giving notice to the decree-holder and judgment-debtor and hearing their objections if any, has an absolute discretion to allow, or to refuse to allow, execution to proceed at the instance of a person to whom a decree has been transferred by an assignment in writing. When therefore a decree is transferred (really or nominally) by assignment in writing, and the ostensible transferee executes the decree with the permission of the Court, the proceedings taken and the application on which they are based are in accordance with law as between such transferee and the judgment-debtor, although he may be merely a benamidar, and such proceedings and application, if made in proper time, are sufficient to keep the decree alive. *Denonath Chuckerbutty* v. *Lalit Coomar Gangopadhya, I. L. R., 9 Calc., 633,* and *Gour Sundar Lahiri* v. *Hem Chunder Chowdhry, I. L. R., 16 Calc., 355,* distinguished. *Abdul Kureem* v. *Chukhun, 5 C. L. R., 253,* referred to. *Purna Chandra Roy* v. *Abhaya Chandra Roy, 4 B. L. R., App. 40,* and *Nadir Hossein* v. *Pearoo Thovildarince, 14 B. L. R., 425, note : 19 W. R., 255,* followed. Under the circumstances, application for execution by the transferee of a decree was held to be not barred under art. 179 of sch. II of the Limitation Act. BALKISHEN DAS *v.* BEDMATI KOER . **I. L. R., 20 Calc., 388**

See MANIKKAM *v.* TATAYYA **[I. L. R., 21 Mad., 388**

137. ———————— *Application in accordance with law—Succession Certificate Act (VII of 1889), s. 4—Application for execution by legal representative of decree-holder without certificate.*—An application for execution of a decree made by the legal representatives of a deceased decree-holder, without the production of a certificate under the Succession Certificate Act (VII of 1889), is nevertheless one made "in accordance with law" within the meaning of art. 179, cl. 4, of the Limitation Act (XV of 1877). BALKISHAN SHIWA BAKAS *v.* WAGARSING . . **I. L. R., 20 Bom., 76**

138. ———————— *Application in accordance with law—Civil Procedure Code (Act XIV of 1882), ss. 365, 366—Succession Certificate Act (VII of 1889), s. 4, cl. b and (iii).*—On the 10th January 1890 the heirs of a deceased decree-holder (who herself had last applied for execution on the 19th March 1887) made an application for execution of a decree asking for the arrest of the judgment-debtor. At the time of this application the heirs had neither taken out a certificate under Act VII of 1889 nor had they applied for substitution of their names on the record. The Munsif directed the applicants to obtain a certificate, and on their failing to do so, he rejected their application for execution on the 21st January 1890. On the 13th September 1890 the heirs, having obtained a certificate under Act VII of 1889, but not having substituted their names on the record, applied for execution against the properties of the judgment-debtor. *Held* that the application of the 10th January 1890 was one made in accordance with law, within the meaning of art. 179, cl. 4, of the Limitation Act, and that therefore the application of the 13th September 1890 was not barred. HAFIZUDDIN CHOWDHRY *v.* ABDOOL AZIZ **[I. L. R., 20 Calc., 755**

139. ———————— *Application for restitution under a decree—Civil Procedure Code (1882), s. 583—Period of limitation.*—Applications made to obtain restitution under a decree in accordance with Civil Procedure Code, s. 583, are proceedings in execution of that decree, and are governed by the Limitation Act, sch. II, art. 179. VENKAYYA *v.* RAGAVACHARLU . **I. L. R., 20 Mad., 448**

(*b*) IRREGULAR AND DEFECTIVE APPLICATIONS.

140. ———————— *Irregular application for restoration of execution case.*—Where certain execution-proceedings had been struck off the file and the decree-holder applied that they might be restored, his petition containing not one of the particulars set forth in s. 207 of the Code of Civil Procedure, it was held that his application was not an application to execute the decree within the meaning of the Procedure Code. RAMDHUN ROY *v.* ABDOOL GUNEE . . . . . . **9 W. R., 390**

141. ———————— *Application for execution of decree irregularly made.*—Where an application for execution of a decree was defective in regard to many particulars required by the terms of s. 212, Act VIII of 1859, and asked also for execution of a share only of the decree, it was held not to be a proceeding within the meaning of s. 20, Act XIV of 1859. Where an application for execution by a party representing himself to be the purchaser of a decree was rejected on account of the applicant's failure to produce evidence, as he was directed to do, in support of his claim, it was held not to be a proceeding properly taken to enforce a decree. ODOYCHAND LUSKUR *v.* NOBOCOOMAR PORAMANICK [10 W. R., 428

142. ———— *Civil Procedure Code, 1859, s. 212—Application to execute decree.*—Under Act IX of 1871, sch. II, art. 167, an application for executing a decree is not a proper one unless it is in accordance with the Code of Civil Procedure, s. 212. *Quære*—What is the effect of that Act upon the High Court's decision as to the *bonâ fides* of proceedings to keep a decree in force? GOUREE SUNKUR TRIBEDEE *v.* AMAN ALI CHOWDHRY [21 W. R., 309

143. ———— *Application for execution of decree—Proceeding to enforce decree.*—The "application" spoken of in art. 167, cl. 4, of sch. II to Act IX of 1871 is not merely such an application as is contemplated by s. 212 of Act VIII of 1859, but includes an application to keep in force a decree or order. The language of art. 167, cl. 4, of sch. II to Act IX of 1871 is wide enough to include any application to enforce or keep in force decrees or orders, and consequently an application to enforce or keep in force a decree by the attachment of a portion of the property of the defendant will keep the decree alive against the residue of his property or his person. An order for attachment of a pension in satisfaction of a decree, obtained on the 10th December 1863, was made on 16th April 1869. After the passing of the Pensions Act (XXII of 1871), the Deputy Collector refused to continue paying the pension to the decree-holder, and returned to the Court the warrant of execution issued under the order of 16th April 1869; and an order, finally disposing of the application for attachment, was made on 14th June 1872. On 19th June 1872 the decree-holder presented a fresh application, praying that the attachment of the pension might be continued, and a letter be written to the Collector, directing him to continue to pay the pension to the decree-holder, as directed by the order of 16th April 1869. *Held* that such last-mentioned application came within cl. 4 of art. 167 of sch. II to Act IX of 1871, and that consequently an application, on 24th July 1874, for execution of the decree of 10th December 1863 was not barred. *Held* also that the decree might properly be enforced against property of the defendant, mentioned in the application of 1874, other than the property mentioned in the applications of 1869 and 1872. JAMNA DAS *v.* LALITRAM I. L. R., 2 Bom., 294

144. ———— *"Applying to enforce the decree"—Application "to keep the decree in force"—Act VIII of 1859, s. 212.*—The words "applying to enforce the decree" in Act IX of 1871, sch. II, art. 167, mean the application (under s. 212, Act VIII of 1859, or otherwise) by which proceedings in execution are commenced, and not applications of an incidental kind made during the pendency of such proceedings. In cases governed by Act IX of 1871, a decree-holder who has applied to the Court *simpliciter* "to keep the decree in force" may, within three years from the date of such last-named application, obtain execution of his decree. CHUNDER COOMAR ROY *v.* BHOGOBUTTY PROSONNO ROY [I. L. R., 3 Calc., 235 : 1 C. L. R., 23

PRABHACARAROW *v.* POTANNAH [I. L. R., 2 Mad., 1

145. ———— *Application for execution of decree—Non-compliance with provision of Civil Procedure Code, 1877, s. 235.*—An application for execution of a decree which does not comply in every particular with the requirements of s. 235 of the Code of Civil Procedure, and which, having been returned to the judgment-creditor for amendment, has not been proceeded with, may still suffice, under cl. 4, art. 179 of sch. II of the Limitation Act, to keep the decree alive. RAMANANDAN CHETTI *v.* PERIATAMBI SHERVAI [I. L. R., 6 Mad., 250

146. ———— *Formal defect in application for execution—Application not in accordance with s. 235 (f) of the Civil Procedure Code.*—On an application for execution of a decree it appeared that the only previous application for execution which had been made within a period of three years had been defective, by reason of its not containing the particulars required by Civil Procedure Code, s. 235 (*f*), and had been returned for amendment, but had not been amended. *Held* that the present application was not barred by limitation. RAMA *v.* VARADA [I. L. R., 16 Mad., 142

147. ———— *Proceedings to keep alive decree—Irregularities.*—Proceedings in execution originating in illegality, and which have been the subject of contests by the judgment-debtor, and are still under consideration in appeal, cannot be regarded as *bonâ fide* proceedings to keep alive the decree. TILUCK CHUNDER GOOHO *v.* GOURMONEE DEBEE . . . . . 6 W. R., Mis., 91

But *see* GOURMONEE DEBEE *v.* NEEL MADHUB GOOHO . . . . . 5 W. R., Mis., 3

148. ———— *Application for execution of decree.*—An application for execution of a decree was made in February 1868, and proceedings sufficient to bar limitation under Act XIV of 1859 were going on till 30th September 1871. The next application for execution of the decree, made in October 1872, was held to be barred under Act IX of 1871, as more than three years had elapsed on that day from the date of the application in February 1868. *Held,* following *Gouree Sunker* v. *Arman Ali, 21 W. R., 309,* that an informal application, made on 30th September 1871, in the nature of a petition to the Subordinate Judge to give effect to the application of February 1868 by overruling certain objections of the Collector and enforcing execution of the decree, was not an application for the execution of a decree such as could bar limitation under Act IX of 1871. JIBHAI MAHIRPATI *v.* PARBHU BAPU . . . . . I. L. R., 1 Bom., 59

149. ——— *Application for execution.*—A *bonâ fide* application for execution held to be a proceeding within the meaning of s. 20, Act XIV of 1859, even though it had to be amended by order of Court. MAHOMED SAMEE BHOOYA *v.* ALAHEE BUKSH CHOWDHRY . **10 W. R., 346**

150. ——— *Proceedings to keep decree in force—Application for execution and notice.*—An application for execution was made by a mooktear, and admitted by the Judge, who ordered a notice to issue to the judgment-debtor. *Held* that such application could not afterwards be set aside for irregularity, and that it was sufficient to keep the decree alive. DHANPAT SING *v.* LILANAND SING

[2 B. L. R., Ap., 18 : 11 W. R., 28

151. ——— *Application for execution insufficiently stamped.*—An insufficiently-stamped application for execution of a decree may, under s. 179 of sch. II of the Limitation Act, 1877, suffice to keep the decree alive. RAMASAMI AYYAN *v.* SESHAYYANGAR . **I. L. R., 6 Mad., 181**

152. ——— *Failure to produce certificate.*—The Civil Judge rejected an application for execution of a decree, on the ground that it was barred by the Law of Limitation (s. 20, Act XIV of 1859). A prior application was made in 1864, and less than three years before the present application, but the Civil Judge treated the former application as nugatory, because it was not accompanied by a certificate which the applicant had been directed to produce by an order of Court made upon the petitioner's application for execution in 1862. *Held* by the High Court that the applicant's right to have process of execution issued was not barred. KENDIGA MADI CHETTI *v.* SOOBBAMMA . **5 Mad., 453**

See LAKSHAMMA *v.* VENKATARAGAVA CHARIAR

[4 Mad., 89

153. ——— *Application for execution of decree.*—An application for execution having been made within three years from the date of confirmation of a decree, and notice served, the case was struck off on account of the decree-holder's default to pay the necessary fees. A second application made within three years of the first application was also struck off, because the judgment-creditor did not send a person to point out the judgment-debtor. A third application was then made within three years of the second. *Held* that the third application was in time, and that no question of *bonâ fides* arose in the case. MARACHO KOOER *v.* CHUTOORBHOOJ SAHOY . . . . . **24 W. R., 459**

154. ——— *Application under s. 232, Civil Procedure Code, 1877.*—Where an application for execution of a decree made under s. 232 of the Civil Procedure Code was disallowed, on the ground that the applicants had not shown, as they alleged, that they were the persons beneficially interested in a transfer of the decree taken in the benami name of a third person, and within three years from the date of such application a subsequent application was made by them, in which their allegation was proved to be correct,—*Held* that the former application had been a proper application within the meaning of the section, and that the latter was therefore under art. 179, sch. II of the Limitation Act (XV of 1877), within time. ABDUL KUREEM *v.* CHUKHUN . . . . . **5 C. L. R., 253**

155. ——— *Application "in accordance with law"—Civil Procedure Code, s. 341—Transfer of Property Act (IV of 1882), s. 99.*—The expression "applying in accordance with law" in Act XV of 1877, sch. II, art. 179 (4), means applying to the Court to do something in execution which by law that Court is competent to do. It does not mean applying to the Court to do something which, either to the decree-holder's direct knowledge in fact or from his presumed knowledge of the law, he must have known the Court was incompetent to do. *Held* therefore that an application to have the judgment-debtor arrested in execution of decree, which was in contravention of the terms of s. 341 of the Civil Procedure Code, and an application to bring mortgaged property to sale, which was in contravention of s. 99 of the Transfer of Property Act IV of 1882, were not applications "in accordance with law" within the meaning of art. 179 (4) of sch. II of the Limitation Act. CHATTAR *v.* NEWAL SINGH

[I. L. R., 12 All., 64

156. ——— *Application for execution of decree—Omission to specify mode of execution—Application to wrong Court.*—A bare request in an application for the execution of a decree that the amount of the decree might be recovered, without any specification of the mode in which the Court was desired to aid in its recovery, is not an application for the execution of, or a proceeding to enforce, or keep in force, the decree, and the defect is not cured by the circumstance that the application asked or suggested that a notice should be issued to the judgment-debtor. FRANKS *v.* NUNEH MAL

[7 N. W., 79

157. ——— *Informal application for execution of decree.*—An application for execution of a decree having been made on the 26th September 1879 within time, but not in the form prescribed by the Civil Procedure Code, the Court allowed it to remain on the file until it should have been amended, and it was accordingly amended on the 21st April 1881, more than three years after the date of the decree. *Held* that the former application could not be treated as a nullity, but must, though informal, be taken as a step in execution. MAHOMED *v.* ABEDOOLLAH . . . **12 C. L. R., 279**

158. ——— *Omission to describe the property to be attached—Civil Procedure Code, 1882, s. 245—Limitation.*—A decree-holder, on the 8th July 1885, applied for execution of a decree dated the 10th July 1873, omitting to set out specifically in such application a description of the immoveable property sought to be attached. On the 24th July he applied for and obtained one month's time to file a list of these properties; and on the 7th

August, after filing the list, applied for the attachment and sale of such properties. The judgment-debtor contended that execution was barred by limitation. *Held* that the omission to file on the 8th July the list describing specifically the properties sought to be attached, as a mere defect of description which could be remedied under s. 245 of the Code of Civil Procedure by allowing an amendment to be made; and further that the two applications of the 8th and 24th July should be considered as one entire application dating from the date of the 8th July. *Mahomed* v. *Abedoollah, 12 C. L. R., 279,* followed. MACGREGOR *v.* TARINI CHURN SIRCAR

[I. L. R., 14 Calc., 124

See the Full Bench case of ASGAR ALI *v.* TROILOKYA NATH GHOSE **I. L. R., 17 Calc., 631**

159. ——————— *Defective application returned for amendment—Civil Procedure Code (1882), ss. 235 and 245.*—In execution of a decree, the judgment-debtor's property was put up to sale on the 15th December 1890, but no sale took place, and the case was struck off. On the 7th October 1893, an application for execution was presented, but all the particulars required under s. 235 of the Civil Procedure Code not having been given, the application was returned to the decree-holder for amendment under s. 245 and a week's time, from 30th October, was allowed for the purpose. The amended application was not put in within the time fixed, but on the 10th January 1894 a fresh application was presented in due form with the application of the 7th October 1893, attached thereto. *Held* the application of the 7th October 1893 was not made "in accordance with law" within the terms of art. 179 (4), sch. II of the Limitation Act (XV of 1877), and the execution was barred by limitation. *Kifayat Ali* v. *Ram Singh, I. L. R., 7 All., 359; Pirjade* v. *Pirjade, I. L. R., 6 Bom., 681; Asgar Ali* v. *Troilokyanath Ghose, I. L. R., 17 Calc., 631,* referred to. *Syud Mahomed* v. *Syud Abedoolah, 12 C. L. R., 279,* distinguished. *Fuzloor Ruhman* v. *Altaf Hossein, I. L. R., 10 Calc., 541,* commented on. *Rama* v. *Varada, I. L. R., 16 Mad., 142,* and *Ramanadan* v. *Periatambi, I. L. R., 6 Mad., 250,* dissented from. GOPAL SAH *v.* JANKI KOER **I. L. R., 23 Calc., 217**

160. ——————— *Application for execution of decree not materially defective—Application returned for amendment—Code of Civil Procedure (Act XIV of 1882), ss. 235 and 248.*—The plaintiff obtained a joint decree against defendants for possession of immoveable property and damages on 21st May 1886. Against that decree all the defendants except defendant No. 1 appealed, and on 2nd July 1887 so much of the decree was reversed as made the appealing defendants liable for damages, but was affirmed in all other respects. A second appeal by the plaintiff from the decree of the Appellate Court was dismissed by the High Court on 9th July 1888. An application for execution of the decree was made by the plaintiff on 7th July 1891 within three years from the date of the final decree, dated 9th July 1888. The prayer was for issue of notice on the judgment-debtor for delivery of possession, for attachment and sale of certain immoveable properties, for realization of costs and damages decreed. Notice under s. 248 of the Code of Civil Procedure was issued on the judgment-debtors on 8th September 1891. The judgment-debtors objected that, as the application did not contain the right number of suit and date of decree, it was not in accordance with law, and as no other application had been made within three years from date of decree, the execution was barred by limitation. *Held* that material defects only could vitiate an application, and as the defects in the present application for execution were not material, it was not barred by limitation. *Asgar Ali* v. *Troilokya Nath Ghose, I. L. R., 17 Calc., 631,* and *Gopal Shah* v. *Janki Koer, I. L. R., 23 Calc., 217,* distinguished. GOPAL CHUNDRA MANNA *v.* GOSAIN DAS KALAY

[I. L. R., 25 Calc., 594
2 C. W. N., 556

161. ——————— *Application for execution giving wrong date of decree—Amendment allowed after limitation—Amendment relating back to former applications.*—*J* obtained a decree on two mortgage-bonds on the 25th November 1885. That decree was set aside, but another decree was passed in his favour on the 21st of September 1886. The decree-holder made several applications to execute the decree, but in each described the decree as of the 25th November 1885. On the third application the judgment-debtor objected that the application was time-barred. The application was allowed to be amended, but the amendment took place after the expiry of limitation. *Held* that the amendment would relate back to the preceding applications, and execution of the decree was not time-barred. *Ajudhia Ram* v. *Muhammad Munir, Weekly Notes, All., 1893, p. 112,* followed. JIWAT DUBE *v.* KALI CHARAN RAM

[I. L. R., 20 All., 478

162. ——————— *Application in accordance with law.*—In execution of a decree, dated 7th May 1877, an application was made under a general power-of-attorney from *A* and *B*, the decree-holders, on the 19th February 1878. *B* died on the 12th February, but this fact was unknown to the pleaders who made the application. The next application was made on the 28th July 1880. On an objection taken that the latter application was barred by limitation, on the ground that the former application was a void application,—*Held* that the application of the 19th February 1878 was an application in accordance with law within the meaning of cl. 4, art. 179, sch. II of the Limitation Act, XV of 1877. AMIRUNNISSA CHOWDHRANI *v.* AHSANULLAH CHOWDHRI . . . . **13 C. L. R., 18**

163. ——————— *Execution of decree—Amendment of revenue record—Application for execution not "in accordance with law."*—The holders of a decree made by a Civil Court, which directed, *inter alia,* that they should be maintained in possession of a share of a village, by cancelment of

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3. NATURE OF APPLICATION—*continued.*

the order of the settlement officer directing the entry of the judgment-debtor's name in the revenue registers in respect of such share, applied for execution of such decree, improperly asking the Court executing the decree to order the Collector to amend such entry by the substitution of their names for that of the judgment-debtor in respect of such share, instead of asking it to send such officer a copy of such decree for his information, with a view to such amendment. *Held* that such application, not being one in accordance with law within the meaning of art. 179, sch. II of Act XV of 1877, was not one which would keep such decree in force. MUHAMMAD UMAR *v.* KAMILA BIBI . **I. L. R., 4 All., 34**

164. ———— *Informal application for execution.*—An application for execution of a decree having been made on the 19th January 1882 within time, but not in the form prescribed by the Civil Procedure Code, inasmuch as it did not contain the right number of the suit in which the decree was passed, an order was made on the 19th January directing the petitioner to amend the application within four days by giving the correct number. That order was not complied with, and the petition was left on the file of the Court without being disposed of in any way till the 21st September 1882, on which date, more than three years having then elapsed since the date of the decree, it was returned to the vakeel of the petitioner for amendment within eight days. The required amendment was made, and the application again placed on the file of the Court on the 22nd September. On an objection being taken that the decree was barred, and the execution could not issue,—*Held*, following the principles laid down in the case of *Mahomed* v. *Abedoollah, 12 C. L. R., 279,—viz.*, that it was the duty of the Court to dismiss the application when it found that it was informal, and thus to give the applicant an opportunity of putting in a proper application, and that the decree-holder should not be made to suffer for such omission on the part of the Court,—that the former application could not, though informal, be treated as a nullity; and that the application on the 22nd September must be taken as having been presented with the object of amending the original informal application; and that it was in continuation of the execution proceeding commenced, however informally, on the 19th January 1882; and that consequently the decree was not barred. *Held* also that the fact of the application having been returned to the vakil for amendment instead of being amended while on the file of the Court, made no difference to the application of the above principle. FUZLOOR RUHMAN *v.* ALTAF HOSSEN . . **I. L. R., 10 Calc., 541**

165. ———— *Dekkan Agriculturists' Relief Act, XVII of 1879, s. 22—Conciliation agreement—Civil Procedure Code (Act XVI of 1882), s. 261—Application for attachment of an agriculturist's property.*—A conciliation agreement, dated the 2nd October 1880, between the decree-holder and the judgment-debtor, stipulating that the former should allow a remission of R10 and the latter should execute a document for the remaining sum of R90, to be paid in 1882, was filed in Court on 20th November 1880. In 1883 the decree-holder presented two applications for satisfaction of the agreed debt of R90 by attachment of the debtor's property, which applications were granted, but were not proceeded with through some default of the decree-holder. On 4th June 1885 the decree-holder made the present application, praying that under ss. 261 and 262 of the Civil Procedure Code (Act XIV of 1882) an order directing the judgment-debtor to execute a bond in terms of the conciliation agreement might be made, or that the Court might execute one on his behalf. On reference by the Subordinate Judge under s. 617 of the Civil Procedure Code (Act XIV of 1882) to the High Court,—*Held* that the applications in 1883 for attachment of the debtor's property were not "in accordance with law," being forbidden by the Dekkan Agriculturists' Relief Act, XVII of 1879, s. 22; and that the present application under s. 261 of the Civil Procedure Code (Act XIV of 1882) was therefore too late under cl. 4, art. 179 of sch. II of the Limitation Act XV of 1877. CHATUR KHUSHALCHAND *v.* MAHADU BHAGAJI

[I. L. R., 10 Bom., 91

166. ———— *Application by pleader for execution after decree-holder's death.*—Where a decree-holder died without taking out execution of his decree, and two days after his death his pleader made an application for execution on his behalf, this being the first application of the kind,—*Held* that, inasmuch as the authority of a pleader ceases at the moment of his client's death, the application was invalid, and was not such an application or step in aid of execution of the decree as could save a subsequent application for execution by the decree-holder's heirs from being barred by limitation. KALLU *v.* MUHAMMAD ABDUL GHANI

[I. L. R., 7 All., 564

167. ———— *Decree in favour of firm in name of agent—Application for execution by another agent.*—A decree was passed in favour of a firm in the name of an agent of the firm. The second and subsequent applications for execution were made by an agent of the firm other than the agent named in the decree. Certain persons, alleging that they were the proprietors of the firm, applied for execution of the decree. The application was refused, on the ground that the proceedings in execution taken by the last-mentioned agent were invalid, and execution of the decree was therefore barred by limitation. *Held* that such proceedings, however irregular, were not invalid. LACHMAN BIBI *v.* PATNI RAM . . **I. L. R., 1 All., 510**

168. ———— *Legal representative applying for execution without her name being on the record.*—*A* obtained a decree against *B* in June 1879, and in execution thereof some time in 1879 attached certain moneys in Court which belonged to his judgment-debtor, and obtained an order for payment out to him. Before receiving payment, *A* died, and the execution-proceedings were struck off on the 31st January 1880. On the 14th June 1880 and on the 22nd June 1881, the widow of *A*, who had taken out probate, applied to withdraw this money from Court, and on the 1st of April 1882 applied for a copy of the decree obtained by *A* for the purposes of execution. At the time of these three applications the widow had not applied for substitution of her name on the record in the place of her deceased husband. On the 5th January 1884 the widow applied to have her name substituted on the record, and for execution. *Held* that the application was barred, as the previous applications were not, under the circumstances, steps in aid of execution. GUNGA PERSHAD BHOOMICK *v.* DEBI SUNDARI DABEA

[I. L. R., 11 Calc., 227

169. ———————— *Applications for execution made without any representative of the deceased judgment-debtor being brought on to the record—Civil Procedure Code (1882), ss. 234 and 248.*—Applications for the execution of a decree made after the death of the judgment-debtor, and without either any representative of the judgment-debtor being brought upon the record, or there being any subsisting attachment of the property against which execution is sought, are not good applications for the purpose of saving limitation, *Sheo Prasad* v. *Hira Lal, I. L. R., 12 All., 440,* distinguished. MADHO PRASAD *v.* KESHO PRASAD

[I. L. R., 19 All., 337

170. ———————— *Application for execution against wrong person—Decree against a minor—Application for execution against minor's mother personally, but not as his guardian.*—On the 31st July 1879 a decree was passed against *N*, a minor, represented by his mother and guardian *C*. In December 1880 the first application for execution was made. Through mistake execution was sought against *C* herself as 'widow of *B*,' and not as guardian of the minor *N*. That application was granted, and certain property belonging to the minor was attached. On the 29th November 1883 the second application for execution was made against the minor as represented by his guardian *C*. The present application for execution was made on the 3rd December 1884. This application was rejected as time-barred by the District Court on appeal, on the ground that the first application, having been made against a wrong person, could not be taken into account; that therefore it could not keep the decree alive, and that the present application was barred. *Held,* reversing the decision of the lower Court, that the decree-holder ought not to be deprived of the fruit of his decree on account of a technical defect in his application of 1880. The minor was substantially and for all practical purposes represented by his mother. HARI *v.* NARAYAN . . . **I. L. R., 12 Bom., 427**

171. ———————— *Application for relief outside the decree—"Step in aid of execution."*—The application for execution contemplated in clause (4) of art. 179 of sch. II of the Limitation Act (XV of 1877) must be one made in accordance with law, and asking to obtain some relief given by the decree, and to obtain it in the mode that the law permits. A decree provided that the defendant should pay the plaintiff R156 within one month, and that, on receipt of this sum, the plaintiff should execute a deed of sale to the defendant. The decree was dated 29th January 1881. The first application for execution was made on the 24th January 1884, but dismissed for plaintiff's default. The plaintiff made a second application, dated 22nd January 1887, praying to be put in possession of a certain house which was not awarded by the decree. This application was rejected. On the 23rd June 1887 the plaintiff made a third application for execution of the decree. *Held* that this application was barred by limitation, having been made more than three years after the date of the first application. The intermediate application was not an application for execution, nor a step in aid of execution, of the decree, inasmuch as it asked for what the decree did not give. It could not therefore keep the decree alive under art. 179, sch. II of the Limitation Act (XV of 1877). PANDARINATH BAPUJI *v.* LILACHAND HATIBHAI

[I. L. R., 13 Bom., 237

4. STEP IN AID OF EXECUTION.

(*a*) GENERALLY.

172. ———————— *Proceeding to enforce decree by interested party.*—In order to enforce, or to keep in force, a decree, it was not necessary that the proceeding alluded to in s. 20, Act XIV of 1859, should have been taken by the particular party seeking to execute: it was sufficient if any one interested had taken any proceeding. NARAIN ROY *v.* SREENATH MITTER . . . . **9 W. R., 485**

173. ———————— *Right to enforce decree.*—In order to keep a decree alive, s. 20 of Act XIV of 1859 does not require more than that some actual proceeding should be taken, which, if successful, would result in the discharge or partial discharge of the judgment-debt. The proceeding need not be by a person legally and rightfully entitled to the decree. NADIR HOSSEIN *v.* PEAROO THOVILDARINEE **14 B. L. R., 425 note: 19 W. R., 255**

174. ———————— *Defect in application for execution.*—Where there has been in fact an application for execution made by the party entitled to make it, it is to be regarded as a step in aid of execution within the meaning of the Limitation Act, art. 179, although by mistake a deceased judgment-debtor is named as the person against whom execution is sought. SAMIA PILLAI *v.* CHOCKALINGA CHETTIAR

[I. L. R., 17 Mad., 76

175. ———————— *Application not by decree-holder in the record—Application to execute decree.*—An application not made by the decree-holder at the time on the record cannot be considered to be an application to execute the decree. DURIAO ROY *v.* DOOLLA ROY . . . **24 W. R., 10**

176. ———————— *Proceedings to keep decree in force.*—A decree was obtained on 6th

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

June 1861, and in February 1864 a pretended purchaser of it sought execution. On 15th March 1864 the original decree-holder herself applied for execution of the same decree against certain of the judgment-debtors without mentioning the appellant, who was one of them. Subsequent proceedings at different times were taken between her and the alleged purchaser in order to ascertain which of them was really entitled to execution of the decree, and on the 6th March 1867 her representatives got a decree setting aside the alleged purchase, and declaring that they might execute the decree of 6th June 1861. Accordingly, on 31st August 1868, an application was made by her representatives for that purpose. Between the 15th March 1864 and 31st August 1868 no proceedings had been taken in execution. *Held* that the application was not barred by limitation; that no execution could be given till it was ascertained who were the actual decree-holders; and that the intermediate proceedings for that purpose were *bonâ fide* proceedings within s. 20, Act XIV of 1859, for the purpose of keeping the decree in force. Abdul Gunny *v.* Pogose

[4 B. L. R., A. C., 1: 12 W. R., 436

177. ———— *Application for execution of decree by benamidar.*—An application for execution of a decree by a mere benamidar is not an application in accordance with law within the meaning of art. 179, cl. 4, of sch. II of the Limitation Act (XV of 1877), such as to afford a fresh starting-point for limitation. Denonath Chuckerbutty *v.* Lallit Coomar Gangopadhya

[I. L. R., 9 Calc., 633: 12 C. L. R., 146

178. ———— *Application for execution by benamidar—Application not in accordance with law.*—In a suit brought for declaration of the plaintiff's right to hold certain property free of a mortgage-decree, which had been purchased by one *G* on 13th August 1878, in execution of which decree several applications were made to have the name of *G* substituted for that of the original decree-holder, but in none of these applications was any further step taken towards execution of the decree, or any order made for substitution of the name of *G* until 18th July 1885, when after notice under s. 232 of the Civil Procedure Code *G*'s name was substituted as decree-holder, and execution taken out against the mortgaged property, *G* was found to be only a benamidar so far as his purchase of the mortgage-decree was concerned. *Held* that, *G* being merely a benamidar, the applications made by him for execution of the decree and for substitution of his name as decree holder under s. 232 of the Civil Procedure Code were not applications made in accordance with law within the terms of art. 179 of the Limitation Act, 1877, so as to prevent the operation of the law of limitation. Execution of the mortgage-decree was therefore barred. *Abdul Kureem* v. *Chukhun, 5 C. L. R., 253; Dinonath Chuckerbutty* v. *Lallit Coomar Gangopadya, I. L. R., 9 Calc., 633: 12 C. L. R., 145;* and *Mis. Ap. 453 of 1885, unreported,* followed. *Purna Chundra Roy* v. *Abhoya Chundra Roy, 4 B. L. R., Ap., 40,* and *Nadir Hossein* v. *Pearoo Thovildarinee, 14 B. L. R., 425,* dissented from.

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

The mortgage-decree having become inoperative, the plaintiff *A*, though a purchaser *pendente lite*, was no longer bound by it, and the defendant therefore was not entitled to enforce the mortgage as against him. Gour Sunder Lahiri *v.* Hem Chunder Chowdhury. Gour Sunder Lahiri *v.* Hafiz Mahamed Ali Khan . . **I. L. R., 16 Calc., 355**

See Balkishen Das *v.* Bedmati Koer

[I. L. R., 20 Calc., 388

179. ———— *Proceeding to enforce decree.*—Steps taken towards placing the assignee of a decree in the position of the original decree-holder did not constitute proceedings to enforce, or to keep in force, the decree within the meaning of s. 20, Act XIV of 1859. Brojo Lall Puramanick *v.* Ram Tarun Gossain . . **10 W. R., 127**

180. ———— *Decree—Application to enforce decree—Application by heir of deceased decree-holder to substitute his name on the record.*—*G* obtained a decree against the defendant on the 29th November 1867, and applied for execution of it on the 23rd July 1870. After *G*'s death, his son made an application, on the 10th March 187 , praying for substitution of his name in the place of his deceased father, and that the money due under the decree should be recovered and paid to him as heir of the original plaintiff. On the 3rd January 1874, and several times subsequently, the son applied for execution of the decree, his last application being in 1878. Both the lower Courts held that the application of the 10th March 1871 was not an application "to enforce or keep in force the decree;" that the application of the 3rd January 1874 was therefore barred by limitation, having been made more than three years after the first application of the 23rd July 1870, and that consequently the subsequent applications were barred. On appeal to the High Court,—*Held* that the application of the 10th March 1871 was an application "to enforce the decree," and fell within art. 167 of sch. II of Act IX of 1871. The High Court accordingly reversed the orders of the Courts below, and directed that the decree should be executed, as prayed by the application of the 3rd January 1874. Govind Shanbhog *v.* Appaya . **I. L. R., 5 Bom., 246**

181. ———— *Dispute between purchaser of decree and third party.*—A dispute between the purchaser of a decree and a third party, and the proceedings connected therewith, cannot be taken to be proceedings within the purview of s. 20, Act XIV of 1859. Narain Acharjee Chowdhry *v.* Mohamoya Dabee Chowdhrain . **10 W. R., 240**

See Brijonauth Chowdhry *v.* Lall Meeah Munneefooree . . . . **14 W. R., 391**

The proceeding must be one against the judgment-debtor. Jado Lall *v.* Radha Kissen Mitter

[17 W. R., 99

(*b*) Striking Case off the File, Effect of.

182. ———— *Striking case off the file—Proceeding to enforce decree.*—Striking a case

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

off the file is not an effectual proceeding to keep a decree in force under the Law of Limitation. MUDUN BHUKUT *v.* DOOAR BHARATEE . **8 W. R., 320**

183. ——— *Striking case off the file.*—The mere pendency of an execution case struck off the file for want of prosecution, or the striking such case off the file, is not a proceeding within the meaning of s. 20, Act XIV of 1859. RAM SAHAI SING *v.* SHEO SAHAI SING. GURUDAS AKHULI *v.* GOBIN NAIK

[B. L. R., Sup. Vol., 492
1 Ind. Jur., N. S., 421 : 6 W. R., Mis., 98

184. ——— *Consent to striking case off the file.*—Consent of the decree-holder to the striking off of an attachment is not a proceeding to enforce a decree, but a relinquishment. TETLEY *v.* PEET SINGH . **Agra, F. B., Ed. 1874, 117**

185. ——— *Striking off execution proceedings.*—A District Judge having held that an application to execute a decree did not prevent the operation of s. 20 of Act XIV of 1859, it having been struck off, because the applicant did not pay batta, the High Court reversed the order, and directed the Judge to determine whether the former application to execute the decree was *bonâ fide,* notwithstanding batta was not paid. DALVI *v.* LAKSHUMAN HARI PATIL . . . . **4 Bom., A. C., 86**

186. ——— *Striking off execution proceedings.*—A decree was passed in 1850, and was in force in 1859, when Act XIV of that year was passed. Between August 1850 and 25th April 1864, nothing effective was done in furtherance of execution. Petitions for execution were filed in May 1861 and August 1862, and the usual orders passed on them, but they were struck off in default. On 25th April 1864 another petition was filed, and notice was served on the debtor. *Held* that at that time the petition for execution was barred by limitation. The decree was not kept alive by the petitions of May 1861 and August 1862, which were struck off in default. SATYASARAN GHOSAL *v.* BHAIRAB CHANDRA BRAHMO

[2 B. L. R., A. C., 196 : 11 W. R., 80

Affirming the decision of the High Court in SUTTO CHURN GHOSAL *v.* BHYRUB CHUNDER BROHMO . . . . . **9 W. R., 565**

187. ——— *Striking off execution proceedings—Bonâ fide proceedings to keep decree in force.*—A decree was obtained on 16th April 1859, and execution was applied for on 28th December 1861, when the applicant was ordered by the Court to produce a certificate of heirship. On his failing to do so, the case was struck off. He next applied for execution on 13th August 1864. *Held* that the proceedings taken in 1861 were not *bonâ fide* proceedings on the part of the Court such as would keep the decree alive, and that the application was barred. LACHMIPAT SINGH ROY *v.* WAHID ALI . **2 B. L. R., A. C., 194 : 11 W. R., 70**

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

188. ——— *Striking off execution proceedings—Bonâ fides.*—Where the representatives of a deceased decree-holder applied for execution of his decree, and were directed to furnish proof that they were the representatives of the deceased, and did so, and then their execution case was struck off the file,—*Held* that the steps taken by them were *bonâ fide* steps taken to keep the decree alive. ADINA BIBI *v.* SUBUBUNNISSA BIBI

[3 B. L. R., Ap., 142

189. ——— *Striking of execution proceedings—Proceeding to enforce decree.*—Application for the execution of a decree was made on the 21st December 1864, and in pursuance of such application the notice required by law was issued to the judgment-debtor. On the 7th February 1865 the Court executing the decree called on the decree-holder to produce proof of the service of such notice within four days. On the 23rd February 1865, in consequence of the decree-holder having failed to produce such proof, the Court dismissed the application. There was no proceedings either of the decree-holder or of the Court between the 7th and the 23rd February 1865. On the 18th February 1868 application was again made for the execution of the decree. *Held* that the proceeding of the Court of the 23rd February 1865, striking off the former application for default of prosecution, was not a proceeding to keep the decree alive, and the latter application was therefore beyond time. RAGHU RAM *v.* DANNU LAL

[I. L. R., 2 All., 285

190. ——— *Striking off execution proceedings—Application for execution of decree.*—On the 16th January 1875 a decree-holder applied for execution of his decree, and the 3rd of March 1875 was fixed for the sale of the judgment-debtor's property. On the last-mentioned date the debtor applied for two months' time, and the decree-holder assented to postponement for that length of time only. The application was granted, and the Court thereupon struck the case off the file. Nothing further was done until the 25th February 1878, when the decree-holder again applied for execution. *Held* that the application of 3rd March 1875 was in fact a step taken in aid of execution of the decree, and that the application of 25th February 1878 was therefore, under Act XV of 1877, sch. II, art. 179, cl. 4, within time. RAJLUKHY DASSEE *v.* RASH MUNJURY CHOWDRAIN . **5 C. L. R., 515**

191. ——— *Application to strike off pending execution with liberty to make fresh application—Application made before Act VI of 1892.*—*Held* that an application made before the passing of Act VI of 1892 by a decree-holder to the Court executing the decree to strike off a pending application for execution with liberty to make a fresh application for execution of the same decree was an application in accordance with law to take a step in aid of execution of the decree within the meaning of Act XV of 1877, sch. II, art. 179, cl. 4. RAM NARAIN RAI *v.* BAKHTU KUAR

[I. L. R., 16 All., 75

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

(c) Resistance to Legal Proceedings.

192. ———— *Proceedings to enforce decree.*—Resistance to legal proceedings taken by another person counted as a proceeding for the purposes of s. 20, Act XIV of 1859. Kalee Kishore Bose *v.* Prosono Chunder Roy **[10 W. R., 248**

193. ———— *Continuance of contest between parties.*—So long as an actual *bonâ fide* contest was going on in Court between a decree-holder and the judgment-debtor as to the judgment, there was a pending "proceeding" within s. 20, Act XIV of 1859, and the period of limitation was to be computed from the Court's decision. The decision in the case of *Ram Sahai Sing* v. *Sheo Sahai Singh, B. L. R., Sup. Vol., 492,* commented on and approved of. Dhiraj Mahtab Chund *v.* Bulram Singh Baboo **[5 B. L. R., 611 : 14 W. R., P. C., 21**
13 Moore's I. A., 479

Chotay Lal *v.* Ram Dyal **2 N. W., 402**

Modhoo Soodun Mookerjee *v.* Kirtee Chunder Ghose . . . . . **18 W. R., 7**

194. ———— *Resisting claim to attach property.*—*Bonâ fide* proceedings in resistance of a claim to attach properties were proceedings to enforce a decree within the meaning of s. 20 of Act XIV of 1859. Becharam Dutta *v.* Abdul Wahed . . . **I. L. R., 11 Calc., 55**

195. ———— *Resisting appeal against decree.*—Resisting an appeal against a decree (which appeal was eventually compromised) was a proceeding, within the meaning of s. 20, Act XIV of 1859, taken to enforce or keep alive the decree. Syud Khan *v.* Jumal Bibee . **5 W. R., Mis., 19**

See Bukronath Chuckerbutty *v.* Nilmonee Singh Deo . . . . . **18 W. R., 7**

Ram Ruttun Banerjee *v.* Ameeroolmolk Bunwaree Gobind . . . . **6 W. R., Mis., 95**

196. ———— *Opposing application for leave to appeal.*—An appeal prosecuted to a decree was a proceeding to enforce a decree within the meaning of s. 20 of Act XIV of 1859. Also held there was such a proceeding where, on the judgment-debtor seeking to obtain leave from the High Court to appeal to the Privy Council, the execution-creditor intervened. Kisto Kinker Ghose Roy *v.* Burroda Caunt Singh Roy **[10 B. L. R., 101 : 17 W. R., 292**
14 Moore's I. A., 465

S. C. in Court below, Kishen Kishore Ghose *v.* Buroda Kant Roy . . **8 W. R., 470**

197. ———— *Appeals against orders.*—Appeals against orders of the Court charged with the execution of a decree, having the effect of restraining execution or stopping further proceedings, were proceedings coming within the terms of s. 20, Act XIV of 1859. Nittyanunda Koondoo *v.* Nugendro Chunder Ghose . . **16 W. R., 299**

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

198. ———— *Appeal from order setting aside attachment.*—So also was an appeal from an order setting aside an attachment. Kallypersaud Singh *v.* Jankee Deo Narain **[7 W. R., 9**

199. ———— *Opposing application for review or petition of appeal.*—If, after a decree upon an application for review of judgment or petition of appeal, the person in whose favour the original decree was given appears in person (whether voluntarily or upon service of notice) to oppose the application, and files a vakalutnama, or does anything for the purpose of preventing the Appellate Court or the Court of review from setting the judgment aside, such an act being an act of the person in whose favour the judgment has been given for the purpose of preventing its being set aside, is an act done for the purpose of keeping the judgment in force. Bhubaneswari Debi *v.* Mahendranath Chowdhry **[3 B. L. R., Ap., 33**

Kalla Chand Paul *v.* Dhiraj Mahatab Chand **[18 W. R., 190**

200. ———— *Opposing application for appeal or review—Decree for costs.*—Where the original suit is pending in appeal, the decree-holder is not obliged to execute his decree for costs until the proceedings are set at rest by the Appellate Court; and if application is made for a review of the order made in appeal, an attempt made to support the original order must be regarded as a proceeding to keep it alive. Mahomed Busseeroollah *v.* Ram Kant Chowdry . . . **16 W. R., 266**

201. ———— *Opposing application for review.*—The words "judgment, decree, or order" in s. 20, Act XIV of 1859, mean a judgment, decree, or order which can be enforced by execution. An application for a review, or a petition of appeal by the person against whom the judgment was given, is not a proceeding by the decree-holder to keep the decree in force. Bipro Doss Gossain *v.* Chunder Sikur Bhuttacharjee . **B. L. R., Sup. Vol., 718**
[2 Ind. Jur., N. S., 248
7 W. R., 521

Luteefun *v.* Rajroop Singh **[10 B. L. R., 361 : 19 W. R., 185**

202. ———— *Opposing application for review.*—But there is such a proceeding if he appear to oppose the application, or does any act to prevent the decree being set aside. Bipro Doss Gossain *v.* Chunder Sikur Bhuttacharjee **[B. L. R., Sup. Vol., 718 : 2 Ind. Jur., 248**
7 W. R., 521

203. ———— *Appearance as respondent in appeal.*—The appearance of the person in whose favour a judgment was given as respondent on an appeal was not an act done for the purpose of keeping the judgment in force within the meaning of s. 20, Act XIV of 1859. Virasamy Mudali *v.* Mannommany Ammal . . . . **4 Mad., 32**

204. ———— *Decree for moveable and immoveable property—Appeal in respect of*

the moveable property—Application for execution as regards immoveable property.—*S M*, on 24th April 1866, obtained a decree against *B M* for possession of certain land and also for certain moveable property. *B M* then appealed to the High Court against the decree so far only as it related to the moveable property. *S M* appeared as respondent. The High Court modified the decree in respect of the moveable property only on the 6th March 1869. On the 26th April 1869 the decree-holder applied to the Court which gave the original decree for execution in respect of the land only. He was refused execution as barred by limitation under s. 20, Act XIV of 1859. *Held* the appearance of *S M*, the decree-holder, as respondent in the appeal preferred by *B M* to the High Court (which was in respect of the moveable property only), was no proceeding to enforce the decree in respect of the land or to keep it in force. The execution of the decree in respect of the land was barred. SRINATH MAZUMDAR *v.* BRAJANATH MAZUMDAR **4 B. L. R., Ap., 99 : 13 W. R., 309**

205. ——— *Appearing as respondent in appeal.*—In this case certain proceedings of the Beerbhoom Courts in 1866 appealed to, and finally decided by, the High Court in 1868 were held to be the proceedings that would, while they were being carried on, have prevented the decree-holder (respondent) from executing his decree, and therefore proceedings that prevented the bar of limitation from applying to the execution of that decree. SREENARAIN MITTER *v.* DHERAJ MAHTAB CHUND . . . . . . **17 W. R., 72**

206. ——— *Proceedings to enforce decree—Opposing right of third party to attached property.*—A decree-holder having sold certain property in execution and purchased it himself, a balance remained due to him under the decree. Some time after, a third party brought a suit to establish his right to the property, the decree-holder and judgment-debtor both being made parties. *Held* that it was right, and, under the circumstances, perfectly equitable, to count the time spent by the decree-holder in that litigation as spent in *bonâ fide* carrying on execution. ROMA NATH JHA *v.* LUCHMIPUT SINGH . . . . . **19 W. R., 418**

207. ——— *Defence to suit.*—A party (*M*), having lent money on the security of land, obtained a decree against the borrower for principal and interest, execution being stayed for six months, and plaintiff's lien on the land maintained. A year after the decree-holder applied for execution, and the estate was attached with a view to sale. Thereupon one *K* claimed the estate as his property, and, the claim being disallowed, commenced a suit in a Civil Court to establish his title, paying in shortly after, under protest, the sum which had accrued under the decree, and that money was taken out with the leave of the Court by the decree-holder (*M*), and satisfaction entered upon the decree. Subsequently *K* obtained a decree, in virtue of which *M* was ordered to refund the money. *Held* that the defence to *K*'s suit by the decree-holder *M* would not be a proceeding taken by him within the meaning of s. 20, Act XIV of 1859, to keep his decree alive. PROSUNNO CHUNDER ROY *v.* MOOKOOND PERSHAD ROY . . . . . . **11 W. R., 210**

208. ——— *Application for execution of decree—Step in aid of execution.*—An application by a decree-holder praying that the objections taken by the judgment-debtor to the sale of property belonging to him in execution of the decree should be disallowed, and the sale be confirmed, is an application from the date of which the period of limitation for a subsequent application for execution of the decree may be computed. KEWAL RAM *v.* KHADIM HUSAIN . . **I. L. R., 5 All., 576**

209. ——— *Application by decree-holder for rejection of petition of judgment-debtor objecting to sale, and for confirmation of sale.*—An application by a decree-holder, praying that a petition of the judgment-debtor to set aside the sale of property belonging to him should be rejected and the sale be confirmed, is an application falling within the meaning of art. 179, cl. 4, of sch. II of the Limitation Act, XV of 1877. An application for execution of the decree made within three years from such a former application is not barred. *Kewal Ram* v. *Khadim Husain, I. L. R.*, 5 *All.*, 576, followed. GOBIND PERSHAD *alias* GOBIND LAL *v.* RUNG LAL . . . **I. L. R., 21 Calc., 23**

210. ——— *Application to take a step in aid of execution—Opposing application to set aside sale in execution of decree.*—The appearance of a decree-holder by his pleader to oppose an application made by the judgment-debtor to set aside a sale in execution of the decree is not an application within the meaning of art. 179 of sch. II of the Limitation Act to take a step in aid of execution. The application contemplated by that article is an application to obtain some order of the Court in furtherance of the execution of the decree. UMESH CHUNDER DUTTA *v.* SOONDER NARAIN DEO **[I. L. R., 16 Calc., 747**

211. ——— *"Step in aid of execution of decree."*—*R*, in a suit against *S* and other persons, obtained a decree on the 24th December 1878, *S* being exempted from the decree, and being awarded costs against the plaintiff. In executing his decree, *R*, on the 16th June 1880, sought to set off all the costs awarded to *S* against the amount due to himself. On the 6th August 1880 *S* preferred objections to this course. On the 19th July 1883 *S* applied for execution of his decree for costs. *Held* that the application was barred by limitation, inasmuch as art. 179 (4) of the Limitation Act requires that the decree-holder should make a direct and independent application for execution on his own account, and it was not sufficient to satisfy the requirements of the law to offer objections under the circumstances under which they were offered in the present case. SHIB LAL *v.* RADHA KISHEN **[I. L. R., 7 All., 898**

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER.

212. ———— *Proceedings to keep decree in force.*—Where a decree-holder is referred to a civil suit by the Court to which he applies for execution, and he accordingly carries on proceedings in order to get full relief under his decree, such proceedings must be held to be in furtherance of execution, and as keeping the decree alive. RADHA GOBIND SHAHA *v.* BROJENDRO COOMAR CHOWDHRY . . **15 W. R., 207**

213. ———— *Application for copy of decree.*—The application by a decree-holder for a copy of a decree with intent to apply for execution is not a step in aid of execution within the meaning of cl. 4 of art. 179 of sch. II of the Limitation Act, 1871. GOPILANDHU *v.* DOMBURU **[I. L. R., 11 Mad., 336**

214. ———— *Application for return of a copy of a decree.*—An application to the Court by a decree-holder asking for the return of the copy of a decree filed with a former darkhast is not a step in aid of execution within the meaning of art. 179 (4) of the Limitation Act (XV of 1877). RAJARAM *v* BANAJI MAIRAL **[I. L. R., 23 Bom., 311**

215. ———— *Application to withdraw a pending proceeding for execution with leave to institute another—Code of Civil Procedure, 1882, s. 373.*—An application to withdraw a pending proceeding for execution, with leave to institute another at some future time, is not a step in aid of execution within the meaning of the Limitation Act, sch. II, art. 179, cl. 4. *Ram Narain Rai* v. *Bakhtu Kuar, I. L. R., 16 All., 75,* dissented from. TARAK CHUNDER SEN *v.* GYANADA SUNDARI **[I. L. R., 23 Calc., 817**

216. ———— *Civil Procedure Code, s. 206—Application to bring decree into conformity with judgment.*—The granting of an application under s. 206 of the Civil Procedure Code to bring a decree into conformity with the judgment does not form the starting-point of a fresh period of limitation in favour of the decree-holder; nor is such an application " a step in aid of execution " within the meaning of art. 179, sch. II of the Limitation Act (XV of 1877). *Kishen Sahai* v. *Collector of Allahabad, I. L. R., 4 All., 137,* distinguished. KALLU RAI *v.* FAHIMAN . **I. L. R., 13 All., 124**

217. ———— *Application dismissed for non-payment of process-fees.*—A decree was passed in 1884 against the Valiya Rajah of Chirakal Kovilagom, since deceased. In 1886 the decree-holder made an application in execution for the attachment of a judgment-debt, but he did not pay the process charges, and the application was dismissed on that ground. *Held* that that application was a step in aid of execution within the meaning of Limitation Act, sch. II, art. 179. KERALA VARMA VALIYA RAJAH *v.* SHANGARAM **[I. L. R., 16 Mad., 452**

218. ———— *Application for lists of properties attached.*—An application by a decree-holder for a list of the properties attached in execution of his decree is not a step in aid of execution within the meaning of the Limitation Act, sch. II, art. 179. *Kunhi* v. *Seshagiri, I. L. R., 5 Mad., 141,* distinguished. RANGA CHARIAR *v.* BALARAMASAMI CHETTI **I. L. R., 21 Mad., 400**

219. ———— *Application to amend decree under s. 206, Civil Procedure Code, 1882—Application to " the proper Court."*—An application under s. 206 of Code of Civil Procedure does not give a fresh starting-point to limitation, and cannot be regarded as an application to a proper Court to take step in aid of execution. *Kishan Sahai* v. *Collector of Allahabad, I. L. R., 4 All., 137; Tarsi Ram* v. *Man Singh, I. L. R., 8 All., 492;* and *Kallu Rai* v. *Fahiman, I. L. R., 13 All., 124,* referred to. DAYA KISHAN *v.* NANHI BEGAM . . . **I. L. R., 20 All., 304**

220. ———— *Suit to set aside order under s. 246, Civil Procedure Code, 1859.*—A suit by a decree-holder to set aside orders passed under s. 246, Act VIII of 1859, and to declare his right to sell a certain estate as the property of his judgment-debtor in execution of his decree, was a proceeding within the meaning of s. 20, Act XIV of 1859, to enforce such decree. RAM COOMAR CHOWDHRY *v.* BROJESSUREE CHOWDHRAIN **[6 W. R., Mis., 14**

KASHEE PERSHAD ROY *v.* SHIB CHUNDER DEB **[2 W. R., Mis., 3**

221. ———— *Execution of decree obtained before the passing of Act XIV of 1859—Suit by decree-holder to declare property liable to attachment.*—Process of execution of a decree obtained before the passing of Act XIV of 1859 might be issued within the time mentioned in s. 21 of that Act without any prior proceeding having been taken; but when it was sought to execute such decree after three years from the time of the passing of the Act, process of execution should not be issued unless some proceeding within the meaning of s. 20 had been taken to enforce the decree or keep it in force within three years next preceding the application for execution. A regular suit by a decree-holder for a declaration that property released from attachment, under s. 246 of Act VIII of 1859, is liable to attachment in execution of his decree, was a proceeding to keep a decree in force within the meaning of s. 20, Act XIV of 1859. KANGELEE CHURN GHOSAL *v.* BONOMALEE MULLICK. MAHABEER PARSAD *v.* PRANPUTTY KOER **[B. L. R., Sup. Vol., 709 : 7 W. R., 515**

DEEGENDUR NARAIN GHOSE *v.* HURKISHORE DUTT . . . . . . **8 W. R., 88**

222. ———— *Suit under s. 246 Act VIII of 1859—Proceeding to enforce decree.* Within three years of his first application in execution of a rent-decree, *A*, the judgment-creditor, made a second application to sell certain lands, the alleged property of *B*, the judgment-debtor. Third parties intervened who established their claim to the land. *A* thereupon brought a regular suit, and succeeded in obtaining a decree declaring the lands in suit to be the property of *B*. Within a year of the date of this decree, but more than three years after his first application for execution, *A* filed a third application for attachment of other lands belonging to *B*. *Held* the application was barred by limitation. RAMSOONDER SANDYAL *v.* GOPESSUR MOSTOFEE

[I. L. R., 3 Calc., 716 : 2 C. L. R., 220

223. ——— *Suit to set aside order in a claim case—Execution of decree—Application in continuation of a previous application for execution.*—Cl. 4, art. 179, sch. II of the Limitation Act, 1877, does not include a suit to set aside an order passed in a claim case. *R* and *L* obtained a decree against *B* on the 7th March 1881, and in execution of that decree certain property belonging to *B* was attached on the 11th June 1883. Thereupon a claim was made to the attached property by third parties, and a two-thirds share therein was released by the Court executing the decree. On the 22nd March 1884 *R* and *L* instituted a suit for a declaration that the entire property was liable to be sold under their decree, and obtained a decree on the 29th March 1886. This decree was reversed by the lower Appellate Court, which upheld the order releasing a two-thirds share of the property, and on 22nd July 1887 the High Court affirmed the decree of the lower Appellate Court. On the 15th August 1887 *R* and *L* applied for execution of their decree in respect of the remaining one-third share. *B* objected that the application was barred. *Held* that the application of the 15th August 1888 was not a continuation of the application of the 11th June 1883. *Payroo Tuhovildarinee* v. *Nazir Hossein, 23 W. R., 183; Issuree Dassee* v. *Abdul Khalak, I. L. R., 4 Calc., 415; Chundra Prodhan* v. *Gopi Mohun Shaha, I. L. R., 14 Calc., 385;* and *Paras Ram* v. *Gardner, I. L. R., 1 All., 355,* distinguished. *Held* also that the institution of the suit on the 22nd March 1884 and the appeal to the High Court from the decree of the lower Appellate Court were not steps in aid of execution. *Akbar Gazee* v. *Bibee Nufeezun, 8 W. R., 99,* distinguished. RAGHUNANDUN PERSHAD *v.* BHUGOO LALL . . . . **I. L. R., 17 Calc., 268**

224. ——— *Proceeding to enforce decree.*—A suit for a declaration of plaintiff's right to assess certain lands as mal having been decreed, some of the defendants applied under s. 119, Act VIII of 1859, and prayed the Court to set aside the decree. The remaining defendants were made parties, and the decree was materially modified. *Held* that, as the decree-holder was taking steps for the purpose of preserving the original judgment intact, he was taking a proceeding to keep the decree alive. POORNANUND SURKHEL *v.* HURO SOONDEREE DEBIA . . . **13 W. R., 208**

225. ——— *Procuring attachment and advertising for sale.*—Where a decree-holder expended money in procuring attachment of his debtor's property and advertising the same for sale, the proceeding was presumed, nothing to the contrary being shown, to be a *bonâ fide* proceeding within the meaning of s. 20, Act XIV of 1859. JUTTADHAREE SINGH *v.* WUZEER SINGH

[12 W. R., 357

226. ——— *Application to arrest judgment-debtor.*—An application to arrest, which is not carried out, is a *bonâ fide* proceeding, taken with the intention of keeping the decree alive, only when the judgment-creditor can show that certain circumstances happened that rendered it unnecessary for him to proceed further against the judgment-debtor in execution of that process. JOYKISHEN SHAHA *v.* BISHOKA MOYEE CHOWDRAIN

[17 W. R., 355

227. ——— *Unsuccessful suit to have property made liable under decree.*—An unsuccessful suit by a decree-holder for the purpose of having specified property made liable under his decree is a proceeding to keep the decree in force. AKBAR GAZEE *v.* NUFEEZUN . . **8 W. R., 99**

ESHAN CHUNDER BOSE *v.* JUGGOBUNDHOO GHOSE . . . . . **8 W. R., 98**

Contra, JUNARDUN DOSS MITTER *v.* RAJAH ROOKNEE BULLUB . . . **6 W. R., Mis., 48**

228. ——— *Unsuccessful application to substitute names as heirs of decree-holder.*—The petitioners applied for the substitution of their names as heirs of a deceased decree-holder, but failed to satisfy the Judge that they were the heirs of the original decree-holder. *Held* that such an infructuous application was not a process to enforce or keep in force a decree within the meaning of s. 20. LALLA BISHEN DYAL SINGH *v.* RAM SUNKUR TEWAREE . **6 W. R., Mis., 38**

229. ——— *Taking out proceeds of previous sale in execution.*—The act of taking out the proceeds of a previous sale in execution of a decree was held not to be a proceeding to keep the decree in force. KISHEN MOHUN JUSH *v.* CHUNDER KANT CHUCKERBUTTY . . **6 W. R., Mis., 49**

230. ——— *Taking out money deposited in Court.*—The taking out by a decree-holder of money deposited in Court by his judgment-debtor was an effectual proceeding under s. 20, Act XIV of 1859, to keep the decree in force. JOGESH PROKASH GANGOOLY *v.* KALEE COOMAR ROY

[8 W. R., 274

231. ——— *Conduct of sale and remission of proceeds to the Collector by Nazir.*—The rule approved by the Privy Council, that any act done by a Court or an officer thereof, or *bonâ fide* by the applicant, for enforcing or keeping in force a decree, satisfies the term "some proceeding" in s. 20, Act XIV of 1859, was held to apply to the act of a Nazir in conducting a sale and remitting the proceeds to the Collector, and to the act of the decree-holder in applying for and drawing out a portion of these proceeds. RAJESHUREE DEBIA *v.* RAJ COOMAREE DOSSEE . . . . . **15 W. R., 182**

232. ——— *Application to take money out of Court—Bonâ fides.*—An execution-sale was stayed by consent for two months, and the execution suit was struck off the file. During such period the execution-creditor applied to the Court to restore his execution suit and to pay to him certain moneys in deposit in Court to the credit of the judgment-debtor in another suit, alleging that he (the execution-creditor) had attached them; but it turned out that he had attached them in another suit. *Held*, the application being *bonâ fide*, the period of limitation began to run from the date of the disposal of the application by the Court. DHUNPUT SINGH ROY *v.* MUDHOMOTTEE DEBIA

[11 B. L. R., P. C., 23 : 18 W. R., 76

Reversing MODHOOMUTTY DEBIA *v.* DHUNPUT SINGH . . . . . **13 W. R., 164**

233. ——— *"Step in aid of execution"—Application for sale-proceeds.*—An application by a decree-holder to be paid the proceeds of a sale of property in execution of the decree is "a step in aid of execution" of the decree within the meaning of art. 179 (4), sch. II of Act XV of 1877 (Limitation Act). PARAN SINGH *v.* JWAHIR SINGH

[I. L. R., 6 All., 366

234. ——— *Application to take money out of Court.*—An application made by a judgment-creditor to take out of Court certain moneys there deposited by his judgment-debtor cannot be considered to be an application to the Court to take a step "in aid of execution," and is not therefore within the meaning of cl. 4 of art. 179, sch. II of Act XV of 1877. *Bunsee Singh* v. *Nuzuf Ali Beg, 22 W. R., 328,* distinguished. HEM CHUNDER CHOWDHRY *v.* BROJO SOONDURY DEBEE

[I. L. R., 8 Calc., 89 : 10 C. L. R., 272

235. ——— *Obtaining money from Court.*—*Held* that obtaining the money from the Court after the execution proceedings were put an end to was not an execution-proceeding at all. WODOY TARA CHOWDHRAIN *v.* ABDOOL JUBBUR CHOWDHRY . . . . . . **24 W. R., 339**

236. ——— *Application to take out money deposited in Court.*—An application made by a judgment-creditor to take out of Court certain moneys, the sale-proceeds realized by the sales of certain properties of his judgment-debtor in a previous execution, cannot be considered to be an application to the Court to take a "step in aid of execution," and is not therefore within the meaning of cl. 4, art. 179, sch. II of Act XV of 1877. *Hem Chunder Chowdhry* v. *Brojo Soondury Debee, I. L. R., 8 Calc., 89; Venkatarayalu* v. *Narasinha, I. L. R., 2 Mad., 174,* dissented from. FAZAL IMAN *v.* METTA SINGH . . . . **I. L. R., 10 Calc., 549**

237. ——— *Request for payment of money realized in satisfaction of a decree.*—A request for the payment of money realized in satisfaction of a decree is sufficient to keep the decree alive, being a step in aid of execution. *Venkatarayalu* v. *Narasimha, I. L. R., 2 Mad., 174,* approved and followed. Whether a particular Act is or is not an application for, or step in aid of, execution depends upon the nature of the act rather than the time at which it may possibly be done. *Hem Chunder Chowdhry* v. *Brojo Soondury Dabee, I. L. R., 8 Calc., 89,* qualified. KOORMAYYA *v.* KRISHNAMMA NAIDU . **I. L. R., 17 Mad., 165**

238. ——— *Oral application by judgment-creditor for payment of money paid into Court.*—An application by a judgment-creditor for the payment to him of money which has been paid into Court on his account in execution of his decree is an application to the Court to take a step in aid of execution of the decree within the meaning of art. 179 of sch. II of the Limitation Act (XV of 1877). BAPUCHAND JETHIRAM GUJAR *v.* MUGUTRAO . . . . **I. L. R., 22 Bom., 340**

239. ——— *Steps taken to get money out of Court after refusal of application.*—Where, by declining to pay to the decree-holder the proceeds of an execution-sale which has been confirmed, a Court obliges him to take steps to satisfy the Court that there is no other claimant, such steps must be considered as a proceeding to enforce the decree and obtain satisfaction thereof. MAHOMED HOSSEIN KHAN *v.* LOOTF ALI KHAN

[18 W. R., 463

240. ——— *Payment out of Court to plaintiffs of money collected by receiver, but not under decree.*—The question whether an application to enforce execution of a decree was barred by limitation depended upon whether a payment out of Court to plaintiffs of money collected by a receiver constituted (with the application alleged to have preceded it) a step in aid of execution within the meaning of art. 179 of sch. II to the Limitation Act. The receiver had been appointed during the pendency of the suit, which was by mortgagees for possession of the mortgaged land and for mesne profits accrued prior to the date of plaint. The receiver remained in possession of the land for a period of six months after decree, when he handed it over to the plaintiffs; and the payment out of Court above referred to was of money which had apparently been collected by the receiver during the said six months, and formed no part of the mesne profits dealt with by the decree. *Held* that such money was not collected or paid in execution of the decree, though the plaintiffs had become entitled to it as a consequence of the decree. It consisted of current profits of the estate, in demanding which plaintiffs had done nothing towards the execution of the decree, which did not deal with such profits, and which could be fully executed without reference to them. And *held* therefore that the payment referred to did not constitute a step in aid of execution, and that the present application was barred by art. 179 of sch. II to the Limitation Act. APPASAMI NAICKAN *v.* JOTHA NAICKAN . . . . . **I. L. R., 22 Mad., 448**

241. ——————— *Proceedings in execution as to mesne profits—Decree for costs.*—Proceedings in execution of a decree as to mesne profits were held to be an effectual proceeding within the meaning of s. 20, Act XIV of 1859, to enforce the same decree as to costs. OOPENDUR MOHUN MUSTAFEE *v.* TRIPP . . . **5 W. R., Mis., 40**

242. ——————— *Decree for possession and mesne profits—Separate applications for execution.*—The holder of a decree for possession and wasilat is not obliged to apply for execution of both within three years from the passing of the decree. He may first apply for execution as to possession and costs, and then, within three years from the date of such application, seek to enforce the decree as to wasilat. BURODAKANT ROY *v.* RAM KISHORE DUTT **[8 W. R., 99**

JOGESH PROKASH GANGOOLY *v.* KALEE COOMAR ROY . . . . . . **8 W. R., 274**

243. ——————— *Application in aid of execution—Possession—Wasilat.*—Where a decree is one for possession with wasilat from the date of dispossession to the date of suit, an application for wasilat, if not made within three years from the first application in execution, is barred. HEM CHUNDER CHOWDHRY *v.* BROJO SOONDURY DEBEE **[I. L. R., 8 Calc., 89**
10 C. L. R., 272

244. ——————— *Application for execution of decree—Application for execution of portion of decree.*—Where a decree-holder, in the execution of a decree for the possession of land, mesne profits, and costs, applied for and obtained possession of the land and costs, and afterwards, within three years applied in execution of the decree for mesne profits, the execution of the decree for mesne profits was not barred by limitation by reason of more than three years having elapsed from the date of the decree. RAM BAKSH SINGH *v.* MADAT ALI **[7 N. W., 95**

245. ——————— *Application for execution not "in accordance with law"—Step in aid of execution—Subsequent application for execution—Objection to the previous application—Estoppel—Res judicata.*—An application for partial execution of a decree, though not "in accordance with law," is a step in aid of execution, as contemplated by cl. 4, art. 179, sch. II of the Limitation Act (XV of 1877). A judgment-debtor, who did not appeal against a previous order for execution of a portion of the decree, and who did not dispute the validity of such order, cannot, in the matter of a subsequent application for execution of the remaining portion of the decree, contend that the first application was not "in accordance with law," and that the subsequent application, being presented after the lapse of three years from the date of the decree, was barred by limitation. DALICHAND BHUDAR *v.* BAI SHIVKOR . . . **I. L. R., 15 Bom., 242**

KALIDAS MANCHAND *v.* VARJIVAN RANGJI **[I. L. R., 15 Bom., 245**

NEPAL CHANDRA SADOOKHAN *v.* AMRITA LAL SADOOKHAN . . . **I. L. R., 26 Calc., 888**

246. ——————— *Proceedings to assess mesne profits.*—Act XIV of 1859, s. 20, applied only to such decretal orders as were complete in themselves and ready to be enforced, and not to so much of a decretal order as directed proceedings to be taken in order to assess the amount of wasilat to be recovered by the judgment-creditor, which were merely a prolongation of the trial, and not proceedings to enforce the decree. FUZEELUN *v.* KERAMUT HOSSEIN **[21 W. R., 212**

BUNSEE SINGH *v.* NUZUF ALI BEG **[22 W. R., 328**

247. ——————— *Decree for possession and mesne profits—Application for execution for mesne profits, which had been omitted in execution of decree—Civil Procedure Code, 1877, s. 230.*—Where a party obtains a decree for possession and mesne profits, under which he obtains possession but fails to prosecute his suit for mesne profits and the execution case is struck off for default,—*Held* that it is very doubtful if, in any case, the effect of such an order would be to prevent the decree-holder again applying for execution of that portion of the decree relating to mesne profits, as long as he keeps within the provisions of the Limitation Act. It is otherwise under s. 230, Act X of 1877. SURDHAREE LALL *v.* GIRINDUR CHUNDER GHOSE **[1 C. L. R., 475**

248. ——————— *Application for ascertainment of mesne profits—Decree for possession and mesne profits—Effect of striking off application for execution—What are proceedings and orders in "execution of decree."*—An application for delivery of possession of land decreed and for ascertainment of mesne profits was made in 1822, more than three years after a previous application for the same purpose, and was "struck off" for non-service of notice. On a fresh application for ascertainment of mesne profits in 1895,—*Held* that that portion of the proceeding or order of 1892 which related to mesne profits was not one "in execution of decree;" that under the circumstances the present application was not barred by that proceeding or order; and that the application was not barred by limitation, although the claim to possession was barred. *Puran Chand* v. *Roy Radha Kishen, I. L. R., 19 Calc., 132,* followed. *Bunsee Singh* v. *Nuzuf Ali Beg, 22 W. R., 328,* distinguished. PRYAG SINGH *v.* RAJU SINGH . **I. L. R., 25 Calc., 203**

249. ——————— *Default in payment of instalments due under decree—Application to make decree absolute under s. 89 of Transfer of Property Act (IV of 1882).*—On the 21st October 1894 the plaintiff and the defendant entered into an amicable agreement before a conciliator for payment of a mortgage-debt due to the former by annual instalments. The agreement was forwarded to the Court on the 21st December 1894, to be filed under s. 44 of the Dekkan Agriculturists' Relief Act (XVII of

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued*

1879). Default having been made in the payment of the instalments, the first of which became due on the 25th January 1895, and which also was not paid, the plaintiff applied for execution by sale of the mortgaged property. The application was made on the 6th September 1897, and it was struck off the file for some formal defect on the 18th November 1897. Subsequently on the 10th October 1898, the plaintiff having applied for an order absolute for sale under s. 89 of the Transfer of Property Act (IV of 1882),—*Held* that art. 179, sch. II of the Limitation Act (XV of 1877), applies to applications under s. 89 of the Transfer of Property Act. *Held* further that in the present case the application of September 1897 should be treated as a step in aid of execution. BHAGAWAN RAMJI MARWADI *v.* GANU **I. L. R., 23 Bom., 644**

250. ———— *Proceedings to execute decree for costs.*—Having obtained possession of property in satisfaction of a decree, the decree-holder had to meet proceedings initiated by a third party under Act VIII of 1859, s. 230, and delayed to execute his decree as far as it related to costs. *Held* that the proceedings in question could not be taken to keep alive the decree or save limitation in respect to the costs. BABOONATH JHA *v.* KHUGPUT DOSS **[19 W. R., 226**

251. ———— *Transmission by Court of decree for execution.*—The transmission by the Court of one district to the Court of another of a copy of its decree, and a certificate under the provisions of ss. 285 and 286 of Act VIII of 1859, with a view to execution in that other district, was a "proceeding" within the meaning of s. 20. Act XIV of 1859. LEAKE *v.* DANIEL . **10 W. R., 337**

252. ———— *Application under Civil Procedure Code, 1859, s. 285.*—*Held* that an application under s. 285 of Act VIII of 1859, being a necessary and decided step towards the execution of the decree, was an application to enforce or keep in force the decree within the meaning of art. 167, sch. II of Act IX of 1871. HUSAIN BAKHSH *v.* MADGE . . . **I. L. R., 1 All., 525**

253. ———— *Application for execution where transfer is only effectual mode—Civil Procedure Code, 1859, s. 285.*—An application for the execution of a decree to the Court by which it was passed, where the decree could only have been effectually executed in manner provided by s. 285, Act VIII of 1859, was not an application which would save limitation. FRANKS *v.* NUNEH MAL **[7 N. W., 79**

254. ———— *Application for transfer of decree.*—*Held* that an application to the Court which passed a decree, that it may be sent for execution to another Court, is an application to keep such decree in force within the meaning of the Limitation Act. COLLINS *v.* MAULA BAKHSH **[I. L. R., 2 All., 284**

255. ———— *Application for transfer of decree under s. 223 of Civil Procedure Code, 1877.*—An application for the transfer of a decree under the provisions of s. 223 and the following section of Act X of 1877 is a step in aid of the execution of the decree within the meaning of cl. 4, art. 179, sch. II of Act XV of 1877. LATCHMAN PUNDEH *v.* MADDAN MOHUN SHYE **[I. L. R., 6 Calc., 513 : 7 C. L. R., 521**

256. ———— *Application for transfer of decree—Civil Procedure Code (1882), s. 223.*—An application to the Court which passed a decree for its transfer to another Court for execution under s. 223 of the Civil Procedure Code is a step in aid of execution, and sufficient to keep the decree alive within the meaning of the Limitation Act, sch. II, art. 179, cl. 4. *Nilmony Singh Deo* v. *Biressur Banerjee, I. L. R., 16 Calc., 744,* explained. *Collins* v. *Maula Baksh, I. L. R., 2 All., 284,* and *Latchman Pundeh* v. *Maddan Mohun Shye, I. L. R., 6 Calc., 513,* referred to and followed. CHUNDRA NATH GOSSAMI *v.* GURROO PROSUNNO GHOSE **[I. L. R., 22 Calc., 375**

257. ———— *Application for transfer of decree.*—An application to the Court which passed a decree for its transfer to another Court under s. 223, Civil Procedure Code, is an application to the proper Court to take a step in aid of execution within the meaning of art. 179, cl. 4, sch. II of the Limitation Act. *Chandra Nath Gossami* v. *Guroo Prosunno Ghose, I. L. R., 22 Calc., 375,* discussed and approved of. ROMA NATH SEN *v.* GOURI SANKAR KHATREE . . . . **2 C. W. N., 415**

258. ———— *Application to re-transfer decree for execution—Civil Procedure Code, 1877, s. 223.*—Where a decree has been transferred by the Court which passed it to another Court for execution, an application to the latter Court to return the decree to the Court which passed it for further execution is a step in aid of execution within the meaning of cl. 4, art. 179, sch. II of the Limitation Act, 1877. KRISHNAYYAR *v.* VENKAYYAR **[I. L. R., 6 Mad., 81**

259. ———— *Transmission of decree for execution—Application for execution of attached decree—Civil Procedure Code, ss. 223, 228, 273.*—A decree was passed on the 20th February 1878 by the Munsif of M. In November 1878 it was, in accordance with the provisions of s. 223 of the Civil Procedure Code, transferred to the Munsif of J. On the 21st January 1879 an application for execution of the decree was made to the Munsif of J, who thereupon issued an order for the attachment of some immoveable property belonging to the judgment-debtor, and also for the attachment of three decrees standing in his Court in favour of the judgment-debtor against other persons. On the 18th March 1882 the decree-holder applied to the Munsif of J to execute one of these decrees in his behalf, and he further asked that whatever might be realized in such execution should go to the account of the decree which had been transferred, and which was being executed. *Held* that an application of the 18th March 1882 was perfectly legal, and such a proceeding as could keep alive the decree of the 20th February 1878; and that a subsequent application for execution, dated the 12th April 1883, was therefore not barred by limitation. An application to execute an attached decree is a "step in aid of execution" of the original decree within the meaning of art. 179, sch. II of the Limitation Act, inasmuch as its object is to obtain money in order to pay off the judgment-debtor. LACHMAN *v.* THONDI RAM . . **I. L. R., 7 All., 382**

260. ——— *Application for transmission of decree.*—Where a decree-holder applied to the Court to transmit the decree to another Court for execution, and on a subsequent date paid into Court postage stamps for the transmission of the records,—*Held* that, if when the postage stamps were paid into Court an application was made to take some step in aid of execution, such application would be sufficient to give a new period of limitation. VELLAYA *v.* JAGANATHA . **I. L. R., 7 Mad., 307**

261. ——— *Application for transmission of decree.*—On the 2nd March 1887 *S* obtained a mortgage-decree against *P* in the Court of the Munsif of Hajipore. On the 9th September 1887 *S* applied for execution, and on the 7th November 1887 the mortgaged property was sold by the Hajipore Court. On appeal, on the 2nd September 1890, the High Court set aside the sale on the ground of want of jurisdiction. Thereupon, on the 6th September 1890, *S* applied to the Hajipore Court to transfer the decree for execution to the Munsif's Court at Muzaffarpore. On the 19th December 1890 *S* applied for execution to the Muzaffarpore Court. *L*, who had meanwhile purchased the mortgaged property from *P*, objected that the application was barred. *Held* that the application was not barred, as the application of the 6th September 1890 was a step in aid of execution. *Nilmony Singh Deo* v. *Biressur Banerjee, I. L. R., 16 Calc., 744,* distinguished. *Latchman Pundeh* v. *Maddan Mohun Shye, I. L. R., 6 Calc., 513,* referred to. RAJBULLUBH SAHAI *v.* JOY KISHEN PERSHAD *alias* JOY LAL

[I. L. R., 20 Calc., 29

262. ——— *Proceedings to get Privy Council decree sent down for execution—Act XXV of 1852, s. 2.*—Proceedings had in the High Court for the purpose of getting a Privy Council order sent down to the lower Court for execution, whether strictly legitimate or not with reference to Act XXV of 1862, s. 2, if *bonâ fide* efforts made by the judgment-creditor to carry into effect that order, must be taken to be proceedings keeping the decree alive. LETHBRIDGE *v.* PROHLAD SEN

[19 W. R., 301

263. ——— *Attempt to settle accounts.*—An attempt at settlement of accounts in Court is sufficient to keep a decree alive. FUZULUTOONISSA *v.* CHUTTER DHAREE SINGH

[6 W. R., Mis., 43

264. ——— *Application for execution after decision of case on solehnamah.*—Where parties to a suit which had been decreed entered after remand into a compromise, and filed a solehnamah, in accordance with which the case was decided,—*Held* that an application to execute the solehnamah was not a proceeding taken on the basis of the decree, and, being therefore illegal, could not keep the decree alive. PREO MADHUB SIRCAR *v.* BISSUMBHUR SIRCAR . . . . . **15 W. R., 514**

265. ——— *Proceedings in execution to enforce barred decree—Compromise of decree, Payments under.*—Where a decree-holder entered into a compromise with the judgment-debtor, agreeing to accept payment by instalments, which was ratified by the Court executing the decree, the case being struck off the execution file on the basis of the compromise, and, more than three years after the date of the Court's order sanctioning the compromise, subsequent proceedings were taken by the decree-holder to enforce the original decree,—*Held* that such subsequent proceedings, when execution of the original decree had been already barred by limitation, could not avail to keep the decree alive. STOWELL *v.* BILLINGS . . . **I. L. R., 1 All., 350**

266. ——— *Application for execution of decree—Partial satisfaction under arrangement made through Court.*—*A*, a judgment-debtor, being arrested in execution of a decree, applied in the year 1873, under s. 273 of Act VIII of 1859, for his discharge. The Court refused to entertain the application except on condition that *A* should pay into Court a certain fixed sum of money per month on behalf of the judgment-creditor. *A*, accepting these terms, was thereupon discharged, and the execution proceedings struck off the file. *A*, in compliance with the directions of the Court, made regular payments into Court until October 1876, when he discontinued payment. *Held*, on an application made in June 1877 by the judgment-creditor for a warrant of further arrest against *A*, that inasmuch as the decree-holder was not seeking to enforce by means of execution the arrangement made by the Court in 1873, but was rather attempting to execute the original decree, such application was barred, more than three years having elapsed since the date of the last application for execution of such decree. HURRONATH BHUNJO *v.* CHUNNI LALL GHOSE

[I. L. R., 4 Calc., 877 : 3 C. L. R., 161

267. ——— *Application to enforce arrangement made through the Court.*—Where the decree-holder sought to enforce the arrangement made by the Court for satisfaction of the decree, limitation was held not to apply. RADHA KISSORE BOSE *v.* AFTAH CHANDRA MAHATAB

[I. L. R., 7 Calc., 61

268. ——— *Kistbandi—Extension of time for limitation by agreement of parties.*—*A* obtained a decree against *B* on the 17th September 1853. The decree was kept in force by sundry proceedings, the last of which was taken on the 30th December 1864. On the 6th February 1865, the parties filed a kistbandi, whereby they agreed that the amount due under the decree should be payable by instalments, the first instalment to fall due on 14th July 1865; at the same time an existing attachment was given up. On 14th July 1868, *A* applied for execution of the decree in respect of six instalments due under the kistbandi. *Held* (Mitter, *J.*, dissenting) the Court could not recognize any arrangement between the parties enlarging the period of limitation allowed by law for the execution of decrees, or which alters the terms of the decree. The filing of the kistbandi and relinquishment of the attachment were not a proceeding to enforce the decree or keep it in force. Execution of the decree was barred by limitation. Krishna Kamal Sing *v.* Hiru Sirdar . . **4 B. L. R., F. B., 101**

S. C. Kristo Komal Singh *v.* Huree Sirdar **[13 W. R., F. B., 44**

269. ——— *Receipt of instalment under compromise out of Court.*—The receipt of instalments by a decree-holder out of Court in pursuance of a compromise made between him and his judgment-debtor is not a proceeding to enforce or keep in force a decree. Nor can the condition in a compromise that on default being made in a certain number of instalments the decree should be executed in full, prevent limitation from running. Aboo Imam *v.* Benee Ram . . . . **5 N. W., 100**

270. ——— *Application reporting adjustment by parties.*—An application by a judgment-debtor stating that the proceedings in execution had been adjusted and he had paid the decree-holder R10 and would pay him the balance of the decretal amount subsequently, and praying that the execution case might be struck off, is an application to "keep in force the decree" within the meaning of art. 167, sch. II of Act IX of 1871, and a "step in aid of execution of the decree" within the meaning of art. 179, sch. II of Act XV of 1877. Ghansham *v.* Mukha **[I. L. R., 3 All., 320**

271. ——— *Execution of decree—Certificate by decree-holder of payment out of Court—Civil Procedure Code, ss. 257, 258.*—*Held*, following *Tarini Das Bandyopadhya* v. *Bishtoo Lal Mukhopadaya, I. L. R., 12 Calc., 608* (Tyrrell, *J.*, doubting), that an application made by decree-holder, the object of which is that the receipt of certain sums of money paid out of Court may be certified, is a "step in aid of execution," such as will keep the decree alive, within the meaning of the Limitation Act (XV of 1877), sch. II, No. 179 (4). *Gansham* v. *Mukha, I. L. R., 3 All., 320,* referred to. Muhammad Husain Khan *v.* Ram Sarup **[I. L. R., 9 All., 9**

272. ——— *Application to record certificate of payment by judgment-debtor in part satisfaction.*—An application by a judgment-creditor to bring an execution proceeding on the file, and to record his certificate of the payment of a sum of money by the judgment-debtor, is an application to take some step in aid of execution of the decree within the meaning of cl. 4, art. 179 of sch. II of the Limitation Act. Tarini Das Bandyopadhya *v* Bishtoo Lal Mukhopadaya **[I. L. R., 12 Calc., 608**

273. ——— *Application by decree-holder under Civil Procedure Code, s. 258 to enter up payment made under decree.*—The expression "step in aid of execution" in Act XV of 1877, sch. II, art. 179, cl. 4, was intended to cover any application made according to law in furtherance of the execution-proceedings under a decree. It includes applications made by a decree-holder under s. 258 of the Civil Procedure Code to enter up part satisfaction of the decree. *Per* Mahmood, *J.*—Provided that the payment asserted in the application was actually made. Sujan Singh *v.* Hira Singh . . . . **I. L. R., 12 All., 399**

274. ——— *Application to record certificate of payment by judgment-debtor in part satisfaction—Civil Procedure Code, s. 258.*—An application made by some of the judgment-debtors (and signed by the decree-holder) to have certain payments, which were made out of Court, certified under s. 258 of the Civil Procedure Code, and that time be allowed to pay the balance of the decree, the attachment put upon their property continuing, is "a step in aid of execution" such as will keep the decree alive within the meaning of the Limitation Act, art. 179, cl. 4. Wasi Imam *v.* Poonit Singh . . **I. L. R., 20 Calc., 696**

275. ——— *Application for sanction to an agreement to give time to a judgment-debtor—Limitation Act, s. 14—Deduction of time of proceeding in Court without jurisdiction.*—On an application made in June 1892 for execution of a decree, for the payment of a sum of money by instalments, passed in 1883 by a subordinate Court, it appeared that the subordinate Court, after executing it in part, had transferred it to the Presidency Court of Small Causes, which proceeded to execute it up to the 23rd February 1887, and that, on a further application made on the 5th March 1888, it was discovered that the transfer of the decree was a mistake, as the amount exceeded R2,000, and the decree was returned to the subordinate Court on the 5th July 1888. On the 26th February 1889, an application was made to the subordinate Court to sanction an agreement to give time for the satisfaction of the judgment-debt under Civil Procedure Code, s. 257A, but sanction was never given, and on the 28th July 1891 the decree-holder applied to have the decree transferred to another Court, and in September applied for execution and realized R250 towards the debt. *Held* by Parker, *J.*, that the time during which the decree was in the Presidency Court of Small Causes should be deducted in the computation of the period of limitation for the present application under Limitation Act, s. 14, cl. 3. *Held* by Shephard and Best, *JJ.*, that, whether or not such deduction should be made, the present application was barred by limitation for the reason that the application on the 26th February 1889 was not a step in aid of execution. Barrow *v.* Javerchund Sett . . . . **I. L. R., 19 Mad., 67**

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

276. ——— *Application for time—Application to review the order striking off the execution case and to restore it to file.*—A decree which directs the realization of the decretal amount by sale, in the first instance, of the mortgaged properties, and afterwards from the persons and other properties of the defendants, is a mortgage decree,—and not "a decree for the payment of money" within the meaning of s. 230 of the Civil Procedure Code. Application for time is not "a step in aid of execution"; but an application for review of an order striking off an execution case and for its restoration to the file is undoubtedly a step in aid of execution within the meaning of the Limitation Act (XV of 1877), sch. II, art. 179. KARTICK NATH PANDEY *v.* JUGGERNATH RAM MARWARI . **I. L. R., 27 Calc., 285**

277. ——— *Agreement to suspend execution.*—An agreement to suspend execution for a specified time was not a "proceeding" within the meaning of s. 20, Act XIV of 1859. MEHEROONISSA *v.* ROUSHAN JEHAN . **17 W. R., 396**

278. ——— *Application to stay execution.*—*Held* that an application by the decree-holder for the stay of execution-proceedings is not an application to enforce or keep in force the decree within the meaning of art. 167, Act IX of 1871. FAKIR MUHAMMAD *v.* GHULAM HUSAIN **I. L. R., 1 All., 580**

279. ——— *Application by decree-holder to release portion of property from attachment and have case struck off the file.*—In execution of a decree, certain property was attached, and the sale-proclamation issued and served. Prior to the sale, the decree-holder applied to the Court executing the decree to release a portion of the property from attachment, and stating that he had, at the request of the judgment-debtor, decided not to proceed with the sale, asked that the sale might be postponed and the case struck off the file; the attachment, so far as the remainder of the property was concerned, being maintained. The application was acceded to and the case struck off the file. On a subsequent application to execute the decree,—*Held* that the above application was not an application to take some step in aid of execution of the decree within the meaning of cl. 4, art. 179 of sch. II of the Limitation Act of 1877, as it had rather the effect of temporarily retarding the execution, and that the application to continue the attachment under the circumstances of the case, even supposing it to have been a substantive application apart from the other prayers coupled with it, had merely the effect of leaving things precisely where they were, and did not advance the execution in any respect whatsoever. ABDUL HOSSEIN *v.* FAZILUN . **I. L. R., 20 Calc., 255**

280. ——— *Application to continue attachment, but to stay sale.*—Under the Civil Procedure Code (Act VIII of 1859), an application to the Court to continue the attachment of immoveable property, but to stay the sale of it, held to be a proceeding to keep in force the decree. NUKANNA *v.* RAMASAMI . . . **I. L. R., 2 Mad., 218**

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

281. ——— *Application by decree-holder for postponement of sale—Application to take some step in aid of execution of decree.*—An application by a decree-holder for the postponement of a sale in execution of the decree, on the ground that he had allowed the judgment-debtor time, is not "an application according to law to the proper Court for execution, or to take some step in aid of execution, of the decree," within the meaning of art. 179, sch. II, Act XV of 1877, and limitation cannot be computed from the date of such an application. MAINATH KUARI *v.* DEBI BAKHSH RAI **I. L. R., 3 All., 757**

282. ——— *Application to postpone sale.*—Certain lands having been attached in execution of a decree, the judgment-debtor applied to the Court to postpone the sale of some of the lands until others had first been sold. The vakeel for the decree-holder consented in part to this application, but insisted that certain other land should also be sold in the first instance. *Held* that this act of the vakeel was a sufficient application to the Court to take a step in aid of execution within the meaning of art. 179 of sch. II of the Limitation Act, 1877. DHARANAMMA *v.* SUBBA . **I. L. R., 7 Mad., 306**

See VELLAYA *v.* JAGANATHA **I. L. R., 7 Mad., 307**

283. ——— *Application to postpone sale on consent of parties.*—Application for execution of a decree was made on the 22nd November 1875, and in pursuance of such application certain property belonging to the judgment-debtor was advertised for sale on the 27th March 1876. On the latter date the parties to such decree made a joint application in writing to the Court, wherein it was stated that the judgment-debtor had made a certain payment on account of such decree, and the decree-holders had agreed to give him four months' time to pay the balance thereof, and it was prayed that such sale might be postponed and such time might be granted. The Court on the same day made an order on such application postponing such sale. The next application for execution of such decree was made on the 17th January 1879. The lower Appellate Court held, with reference to the question whether such application had been made within the time limited by law, that it had been so made, as under art. 179 (6), sch. II of Act XV of 1877, such time began to run from the date of the expiration of the period of grace allowed to the judgment-debtor under the application of the 27th March 1876. *Held* that art. 179 (6) had not any relevancy to the present case; but inasmuch as the proceedings of the 27th March 1876 might be considered as properly constituting a "step in aid of execution" within the meaning of art. 179 (4), the application of the 17th January 1879 was within time. SITLA DIN *v.* SHEO PRASAD . . . . **I. L. R., 4 All., 60**

284. ——— *Oral application for proclamation of sale.*—An oral application, on a sale of immoveable property in the execution of a decree having been adjourned for the fixing of a fresh date for the sale, is an application to enforce the decree within the meaning of art. 167, sch. II of Act IX of 1871. An application to enforce the decree made within three years from the date of such an oral application will therefore be within time. AMAR SINGH *v.* TIKA **I. L. R., 3 All., 139**

See AMBICA PERSAD SINGH *v.* SURDHARI LAL **[I. L. R., 10 Calc., 851**

285. ———— *Application for proclamation of sale—Step in aid of execution.*—An application to a Court to issue a proclamation of sale in respect of property already attached in execution of a decree is an application within the meaning of cl. 4 of art. 179, sch. II of Act XV of 1877, "to take some step in aid of execution of the decree." *Chunder Coomar Roy* v. *Bhogobutty Prosonno Roy, I. L. R., 3 Calc., 235: 1 C. L. R., 23,* explained. AMBICA PERSHAD SINGH *v.* SURDHARI LAL . . . **I. L. R., 10 Calc., 851**

286. ———— *Verbal application for the sale of attached property.*—An application to the Court to order the sale of property which has been attached is an application to take some steps in aid of execution; and as the Civil Procedure Code does not require a formal application, it is immaterial whether the application be a verbal one or in writing. *Ambica Pershad Singh* v. *Surdhari Lal, I. L. R., 10 Calc., 851,* followed. MANEKLAL JAGJIVAN *v.* NASIA RADDHA **[I. L. R., 15 Bom., 405**

287. ———— *Application to execute decree—Application for sale of property under attachment.*—The application contemplated by art. 179 of sch. II of the Limitation Act, and described as "an application for the execution of a decree or order of any Civil Court, etc., etc.," is an application within the terms of s. 235 of the Civil Procedure Code, that is to say, an application setting the Court in motion to execute a decree in any manner set out in the last column of the form prescribed; but having so set the Court in motion, any further application, during the continuance of the same proceeding, is an application to take some step in aid of execution within the terms of cl. 4 in the last column of art. 179 of the Limitation Act. An application, therefore, for the sale of property under attachment is an application merely in aid of an execution then proceeding. CHOWDHRY PAROOSH RAM DAS *v.* KALI PUDDO BANERJEE . . **I. L. R., 17 Calc., 53**

288. ———— *Application to sell attached property subject to a mortgage.*—A judgment-creditor applied, on the 22nd May 1882, for execution of a decree, dated 7th November 1881, and certain property of the judgment-debtor's was attached. Thereupon a claim was preferred by a mortgagee, and on the 10th August 1882 the judgment-debtor admitted the claim and applied that the property might be sold subject to the claimant's mortgage, and the proceeds, if any, paid over to him in part satisfaction of his decree. On the 20th June 1885 another application was made for execution, and on the 29th November 1886 a third application was made. To the latter application objection was taken, and it was contended that the decree was barred by reason of more than three years having elapsed between the application of the 22nd May 1882 and that of the 20th June 1885. *Held* that the application of the 10th August 1882 by the judgment-creditor to allow the sale of attached property subject to the mortgage of the claimant was "a step in aid of execution of the decree" within the meaning of art. 179, sch. II, Act XV of 1877, and that execution of the decree was therefore not barred. LALBADDI MULLICK *v.* KALA CHAND BERA **[I. L. R., 15 Calc., 363**

289. ———— *Application by transferee of decree for sale of hypothecated property—Non-registration of deed of assignment—Civil Procedure Code, s. 232.*—On the 13th November 1886 the assignee of a decree for sale of hypothecated property applied, under s. 232 of the Civil Procedure Code, for execution of the decree, but, objection being raised that the deed of assignment had not been registered, subsequently applied for the return of the deed that it might be registered, and it was returned accordingly. The deed was afterwards duly registered. The next application for execution of the decree was made on the 25th April 1888. *Held* (i) that the deed of assignment was not a document which comprised immoveable property within the meaning of s. 49 of the Registration Act (III of 1877), a decree for sale not being immoveable property as defined in s. 3; (ii) that consequently, although the assignee might not under the latter portion of s. 49 use the deed for the purpose of proving his title, there was no provision in the Act saying that he should not take title under the deed; (iii) that the position of the assignee when he made his application on the 10th November 1886 was that he was unable to prove that there was a title by assignment in himself; (iv) that the subsequent registration cured the absence of registration on the 13th November 1886, and under s. 47 of the Registration Act the document thereupon had full effect, and related back to its execution; (v) that the application of the 13th November 1886 was a step in aid of execution of the decree within the meaning of art. 179, cl. 4, of sch. II of the Limitation Act (XV of 1877), and that the application of the 25th April 1888 was within time. ABDUL MAJID *v.* MUHAMMAD FAIZULLAH . **I. L. R., 13 All., 89**

290. ———— *Application by decree-holder for leave to bid at sale.*—The making of an application by the decree-holder for leave to bid at the sale in execution of his decree is "a step in aid of execution" within the meaning of cl. 4, art. 179, sch. II of the Limitation Act (XV of 1877). BANSI *v.* SIKREE MAL **[I. L. R., 13 All., 211**

291. ———— *Application by decree-holder for leave to bid.*—An application by the decree-holder for leave to bid at the sale in execution of the decree is not a step in aid of execution within the meaning of the Limitation Act, sch. II, art. 179. *Toree Mahomed* v. *Mahomed Mabood, I. L. R., 9 Calc., 730,* and *Ananda Mohan Roy* v. *Hara Sundari, I. L. R., 23 Calc., 196,* referred to. *Bansi* v. *Sikree Mal, I. L. R., 13 All., 211,* dissented from. RAGHUNUNDUN MISSER *v.* KALLYDUT MISSER **[I. L. R., 23 Calc., 690**

292. ———————— *Application by decree-holder for leave to bid at the auction-sale.*—An application by a decree-holder for leave to bid at the sale of his judgment-debtor's immoveable property is an application to the Court to take a step in aid of execution of the decree, and falls within the words of art. 179, cl. 4, of the Limitation Act (XV of 1877). VINAYAKRAO GOPAL DESHMUKH *v.* VINAYAK KRISHNA DHEBRI **[I. L. R., 21 Bom., 331**

293. ———————— *Application by the decree-holder for leave to bid at a sale in execution of his decree—Civil Procedure Code, 1882, s. 294.*—An application for leave to bid at a sale in execution under s. 294 of the Code of Civil Procedure is an application to take some step in aid of the execution of the decree within the meaning of art. 179 (4) of the second schedule of the Indian Limitation Act, 1877. *Bansi* v. *Sikree Mal, I. L. R., 13 All., 211,* followed. *Raghunandan Misser* v. *Kallydut Misser, I. L. R., 23 Calc., 690,* dissented from. DALEL SINGH *v.* UMRAO SINGH **[I. L. R., 22 All., 399**

294. ———————— *Application to receive poundage fee—Application for the return of a decree partially executed by the Court where transferred for execution—Civil Procedure Code (1882), s. 223.*—Neither an application by a decree-holder to receive poundage fees from him in respect of some of his judgment-debtor's property purchased by himself, nor an application for the return to the decree-holder of a decree made to a Court to which it has been transferred for execution, and by which it has been partially executed, is a step in aid of execution within the meaning of the Limitation Act, sch. II, art. 179, cl. 4. *Krishnayyar* v. *Venkayyar, I. L. R., 6 Mad., 81,* distinguished. AGHORE KALI DEBI *v.* PROSUNNO COOMAR BANERJEE **[I. L. R., 22 Calc., 827**

295. ———————— *Application to receive poundage fee—Application to set off the purchase-money against the decree, instead of paying it into Court.*—Neither an application by a decree-holder to receive a poundage fee from him in respect of the judgment-debtor's property purchased by himself, nor an application by him to be allowed to set off the purchase-money against the decree, instead of paying it into Court, is a step in aid of execution within the meaning of the Limitation Act, sch. II, art. 179, cl. 4. *Aghore Kali Debi* v. *Prosunno Coomar Banerjee, I. L. R., 22 Calc., 827,* followed. *Radha Prosad Singh* v. *Sundar Lal, I. L. R., 9 Calc., 644,* distinguished. ANANDA MOHAN ROY *v.* HARA SUNDARI . . **I. L. R., 23 Calc., 196**

296. ———————— *Deposit of process-fee.*—A deposit of a process-fee is a step in aid of execution within cl. 4 of s. 179 of sch. II of the Limitation Act. *Ambica Pershad Singh* v. *Surdhari Lal, I. L. R., 10 Calc., 851,* referred to. NARENDRA NATH PAHARI *v.* BHUPENDRA NARAIN ROY . . . . **I. L. R., 23 Calc., 374**

297. ———————— *Payment of bhatta—Payment of process-fee.—Quære*—Whether the payment of bhatta is sufficient proof of an application to the Court to take the step in respect of which the bhatta is paid. Mere payment of a process-fee under circumstances from which no application can be inferred does not satisfy the requirements of the article. TRIMBAK BAPUJI PATVARDHAN *v.* KASHINATH VIDYADHAR GOSAVI **I. L. R., 22 Bom., 722**

298. ———————— *Payment of process-fee.*—The mere payment of process-fee for the issue of notice for the purpose of an inquiry under s. 287 of the Code of Civil Procedure, or the payment of costs for the issue of a proclamation of sale, unaccompanied by any application, will not operate to give a fresh starting-point for limitation within the meaning of art. 179 (4) of the second schedule to the Indian Limitation Act, 1877. *Har Sahai* v. *Sham Lal, Weekly Notes, All. (1900), 88,* and *Dwarkanath Appaji* v. *Anandrao Ramchandra, I. L. R., 20 Bom., 179,* followed. *Barmha Nand* v. *Sarbishwara Nand, Weekly Notes, All. (1883), 247,* distinguished. *Radha Prosad Singh* v. *Sundar Lall, I. L. R., 9 Calc., 644,* dissented from. THAKUR RAM *v.* KATWARU RAM **[I. L. R., 22 All., 358**

299. ———————— *Payment of deficient Court-fee.*—An application for execution of a decree was presented on the 17th July 1890. A notice under s. 248 of the Code of Civil Procedure (Act XIV of 1882) was issued on the 18th July 1890. The process-fee for service of the notice being deficient, the decree-holder paid the deficiency on the 29th August 1890. On the 22nd August 1893, the decree-holder presented a fresh application for execution. *Held* that the second application for execution was time-barred. The payment of the additional Court-fee was not "a step in aid of execution of a decree" within the meaning of cl. 4, art. 179 of sch. II of the Limitation Act (XV of 1877). DWARKANATH APPAJI *v.* ANANDRAO RAMCHANDRA . . . **I. L. R., 20 Bom., 179**

300. ———————— *Applications to be substituted on the record as a party and for notice of execution to issue to representative of judgment-debtor—Civil Procedure Code (1882), s. 230—Application for execution of decree—Continuous proceedings.*—*A* obtained a decree against *B* upon an award, which directed that the sum of R1,840 awarded to *A* should be recovered with interest by attachment of the mortgaged property and not by a sale, except in case of its being held that the property was not liable to attachment. On the 12th October 1874 *A* applied for execution of the decree, and thereupon the mortgaged property was attached.

and placed under the management of the Collector, who paid the proceeds from time to time into Court till 1891. The Court paid the proceeds to *A* on the 25th February 1876, the 5th February 1877, and the 7th October 1877. In 1878, *A* being dead, his son *C* applied to the Court to be made a party to the record and to be allowed to continue the execution-proceedings. In 1880 *C* applied to the Court under s. 248 of the Code of Civil Procedure (Act XIV of 1882) to issue notice to *D* as *B's* heir and legal representative, to show cause why the decree should not be executed against him. *D* did not appear, and an *ex-parte* order was passed for execution to proceed as against him. The Collector continued in management till the 5th February 1892, when the application (darkhast) of 1874 was withdrawn, and a fresh application was made by *C* on the 12th June 1892. *D* resisted on the ground that the application was time-barred under art. 179 of the Limitation Act (XV of 1877). *Held* that the application of 1892 was not barred by limitation, as the execution proceedings under the first darkhast of 1874 were continuously going on during the whole period that the Collector's management lasted under the orders of the Court, and as each year's payment received by the decree-holder was but a partial step in aid of execution of the decree. *Held* further that the applications made by *C* in 1878 and 1880 were also "steps in aid of execution" within the meaning of art. 179, cl. 4, of the Limitation Act. KESHAVLAL BECHAR *v.* PITAMBERDAS TRIBHUVANDAS

[I. L. R., 19 Bom., 261

301. ———————— *Application for substitution of the heirs of the deceased judgment-debtor—Application in accordance with law—Code of Civil Procedure (1882), ss. 234, 235, 248, and 273.*—An application by the judgment-creditor for substitution of the heirs of the deceased judgment-debtor, though disallowed, is an application in accordance with law to take some step in aid of execution of the decree within the meaning of sub-s. 4 of art. 179 of the Limitation Act. An application by the judgment-creditor for the execution of his decree, which has been attached, as well as an application by him to execute another decree which he had attached in execution of his own decree, though disallowed, are applications in accordance with law. ADHAR CHANDRA DAS *v.* LAL MOHUN DAS

[I. L. R., 24 Calc., 778
1 C. W. N., 676

302. ———————— *Application by decree-holder to be put in possession of property which he has purchased at a sale in execution of his decree.*—An application made by a decree-holder to be put into possession of property which he has purchased at an auction-sale held in execution of his decree is a "step in aid of execution" of that decree, and would afford the decree-holder a fresh starting-point for limitation. *Sujan Singh* v. *Hira Singh, I. L. R., 12 All., 399,* referred to. MOTI LAL *v.* MAKUND SINGH . I. L. R., 19 All., 477

SARIATOOLLA MOLLA *v.* RAJ KUMAR ROY

[I. L. R., 27 Calc., 709
4 C. W. N., 681

(*e*) CONFIRMATION OF SALE.

303. ———————— *Date from which limitation runs.*—Until the order is passed confirming a sale in execution, the decree-holder must be considered to be executing his decree, and limitation begins to run against him only from the date of such order. BROJUNGONA DASSEE *v.* SHONA MOOKHEE DASSEE . . . . . . 15 W. R., 15

304. ———————— *Proceeding to keep decree in force.*—Where there is a sale in execution, the latest act of the decree-holder to keep his decree in force is the sale which took place at his instance, not the confirmation of the sale. MAHARAJAH OF BURDWAN *v.* LUCKHEE MONEE DEBEE

[8 W. R., 359

JUGGUT MOHINEE BIBEE *v.* RAM CHUND GHOSE

[9 W. R., 100

SHIB RAM DEY *v.* BANEE MADHAB MITTER

[11 W. R., 117

305. ———————— *Proceeding to keep decree in force.*—*Held* a confirmation of a sale in execution by the Court was a proceeding under s. 20, Act XIV of 1859, and sufficient to keep a decree in force which had been obtained by the purchaser. CHOWDHRY SHEIKH WAHID ALI *v.* MULLICK ENAYET HOSSEIN ALI

[12 B. L. R., 500 : 20 W. R., 31

GOBIND CHUNDER CHOWDHRY *v.* JOHURULNISSA BIBEE . . . . . 18 W. R., 156

306. ———————— *Proceeding to keep decree in force.*—*Quære*—Whether a mere confirmation of a sale is a proceeding sufficient to keep the decree in force. Where it was confirmed after objection by the judgment-debtor, and the sale-proceeds received by the creditor, it was held that that was a proceeding sufficient to keep the decree alive. GUNGA BISHEN CHUND *v.* DHIRAJ MAHTAB CHAND BAHADUR

[12 B. L. R., 506 note : 10 W. R., 224

307. ———————— *Proceeding to keep decree in force.*—Where the decree-holder takes no step whatever to cause an execution sale to be confirmed, the confirmation of the sale by the Court cannot be regarded as a proceeding on his part towards enforcing the decree. MULLICK ENAET ALI *v.* WAHED ALI . . . 13 W. R., 315

308. ———————— *Proceeding to keep decree in force.*—Confirmation of a sale in execution of a decree by the Court of its own motion, and drawing out the proceeds of sale by the execution-creditor, were not proceedings to enforce such decree, or to keep the same in force, within the meaning of s. 20, Act XIV of 1859. DHIRAJ MAHTAB CHUND BAHADUR *v.* RAM BRAHMA MULLICK

[4 B. L. R., A. C. 15 : 13 W. R., 38

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*continued.*

309. ——— *Application to execute decree—Order confirming sale.*—The mere act of the Court confirming a sale in execution, which act is not shown to have been performed at the instance of the decree-holder upon petition or application, is not an application to the Court to take some step in aid of execution within the meaning of cl. 4, art. 179, sch. II of Act XV of 1877. MOTENDRO CHANDRA GHOSE *v.* MOHENDRO NATH GHOSE [10 C. L. R., 330

310. ——— *Proceeding to enforce decree—Application for copy of decree.*—On the 19th of March 1880 a decree for money was passed, and on the 19th of February 1881 certain property belonging to the judgment-debtor was sold in execution thereof. On the 22nd of April 1881 the Court passed an order confirming the sale. On the 10th of January 1882 the decree-holder applied to the Court for a copy of the decree, in order that he might make a fresh application for execution. On the 28th of March 1884 he applied for execution. The judgment-debtor appeared and pleaded that execution was barred by limitation. The Court of first instance held that execution was not barred on the ground that the passing of the order of the 22nd of April 1881 was sufficient, under the provisions of art. 179, cl. 4, of the Limitation Act of 1877, to keep the decree alive. The lower Appellate Court also held that execution was not barred by limitation, but solely on the ground that the application of the 10th of January 1882 was sufficient to keep the decree alive. It did not appear that the order of the 19th of February 1881 was passed in consequence of any application by the decree-holder, and neither the application of the 10th of January 1882 nor any copy thereof was put in evidence on the present application. *Held,* on appeal to the High Court, that the execution of the decree was barred by limitation. RAJKUMAR BANERJI *v.* RAJLAKHI DABI [I. L. R., 12 Calc., 441

(*f*) MISCELLANEOUS ACTS OF DECREE-HOLDER.

311. ——— *Precept to Collector under Beng. Reg. XLVIII of 1793, s. 24, cl. 2.*—A precept to the Collector under cl. 2, s. 24, Regulation XLVIII of 1793, for mutation of names in the terms of a decree was a process to enforce the decree, and could not, under s. 20, Act XIV of 1859, be issued after a lapse of three years from the passing of the decree. NANERBI KUNWAR *v.* KASTURI KUNWAR . . . 4 B. L. R., A. C., 581

S. C. NAUNHEE KOONWAR *v.* KUSTOOREE KOONWAR . . . . . . 13 W. R., 141

312. ——— *Confiscation of decree—Correspondence relating to right of Government.*—Where a decree had awarded a sum as costs to one who turned a rebel,—*Held* that correspondence relating to the asserted right of Government to get the sum to be realized by the execution of decree did not amount to a proceeding to save limitation. AMEENOODDEEN KHAN *v.* MOOZUFFER HOSSEIN KHAN . . . 3 Agra, Mis., 5

LIMITATION ACT, 1877—*continued.*

4. STEP IN AID OF EXECUTION—*concluded.*

313. ——— *Application for certificate of administration.*—The petitioners, as widow and adopted son of a decree-holder, applied by petition to the District Munsif for execution of the decree on the 17th June 1864. The District Munsif made an order stating that execution would not be granted unless the petitioners obtained a certificate from the District Court under Act XXVII of 1860. In August 1864 an application was made for a certificate to the Civil Court, and an order was made refusing the application, and the order was affirmed on appeal. A second application was made for execution in July 1867. *Held* that the right of the petitioners to obtain execution was barred by s. 20, Act XIV of 1859. *Quære*—Whether a suit on the decree could be maintained. LAKSHAMMA *v.* VENKATARAGAVA CHARIAR . . . . . . 4 Mad., 89

314. ——— *Application in execution proceedings to have witnesses summoned.*—An application by a decree-holder in the course of an investigation into an objection to the attachment of property to have his witnesses summoned is an application within the meaning of cl. 4, art. 179, sch. II of the Limitation Act, 1877. ALI MUHAMMAD KHAN *v.* GUR PRASAD . . . I. L. R., 5 All., 344

315. ——— *Application for certificate showing necessity of copy of revenue register in order to obtain copy—Civil Procedure Code, 1877, s. 230.*—An application by a judgment-creditor to the Court which passed the decree for a certificate that a copy of a revenue register of the land is necessary to enable him to obtain such copy from the Collector's office, and thereupon to execute the decree by attaching the land, is a step in aid of execution within the meaning of cl. 4, art. 179 of sch. II of the Limitation Act, 1877. *Per* INNES, *J.*—The right to execute decrees having been curtailed by s. 230 of the Code of Civil Procedure, 1877, the provisions of the Limitation Act should be construed as far as possible so as to prevent the defeat of *bonâ fide* endeavours to secure the fruits of a decree once obtained. KUNHI *v.* SESHAGIRI . . . I. L. R., 5 Mad., 141

316. ——— *Notice not to pay amount decreed—Deduction of time decree is under attachment.*—A notice or order to a judgment-debtor, *A*, not to pay the amount decreed to his judgment-creditor, *B*, will not in any case serve to keep the decree alive in favour of *C*, a judgment-creditor of *B*, at whose instance the notice or order is issued, much less in favour of other judgment-creditors of *B*, with whom *A* had nothing to do. AZMUDDIN *v.* MATHURADAS GOVARDHANDAS GULABDAS . 11 Bom., 206

5. NOTICE OF EXECUTION.

317. ——— cl. 5—*Issue of notice under s. 216, Civil Procedure Code, 1859.*—The word "proceeding" in s. 20 of Act XIV of 1859, included any *bonâ fide* application, or the last act done by the party, by the Court, or by the officer of the Court, in furtherance of such application; hence it included the issue by the Court of a notice under

s. 216 of the Civil Procedure Code, and the service of it by the officer of the Court. Ram Sahai Singh *v.* Sheo Sahai Singh. Gurudas Akhuli *v.* Gobin Naik . . . . **B. L. R., Sup. Vol., 492: [1 Ind. Jur., N. S., 421: 6 W. R., Mis., 98**

Tabbur Singh *v.* Motee Singh . **9 W. R., 443**

Rajeeb Lochun Saha Chowdhry *v.* Masseyk **[18 W. R., 193**

Mahomed Baker Khan *v.* Sham Dey Koer **[12 W. R., 2**

Subhan Ali *v.* Sufdar Ali . **24 W. R., 227**

Contra, Tabbur Singh *v.* Motee Singh **[8 W. R., 306**

Sham Chand Bysack *v.* Lucas **[5 W. R., Mis., 5**

Girjanund Oopadhya *v.* Chunder Binode Oopadhya . . . . . **5 W. R., Mis., 5**

Kisto Kant Bural *v.* Nistarinee Debia **[8 W. R., 268**

Mazedoonissa Baebee *v.* Fuezen Beebee **[4 W. R., Mis., 6**

318. ——————— *Civil Procedure Code, s. 216, Notice under—Bonâ fides.*—The service of a notice under s. 216 of Act VIII of 1859, if made *bonâ fide* with a view to take further proceedings, was sufficient to keep a decree alive. Dhiraj Mahtab Chand Bahadur *v.* Lakhi Bibi **[6 B. L. R., Ap., 146**

Bhugobutty *v.* Motee Chand Puteedundo **[6 W. R., Mis., 97**

Obhoy Churn Dutt *v.* Modhoo Soodun Chowdhry . . . . **9 W. R., 330**

Chilicany Baskarayeningaru *v.* Pileary Setty Rajavulu Naidu . . . **5 Mad., 100**

Makoondonath Bhadcory *v.* Shib Chunder Bhadoory . . . . . **19 W. R., 102**

319. ——————— *Issue of notice under s. 216, Civil Procedure Code, 1859.*—A notice issued within time under Act VIII of 1859, s. 216, and actually served upon the judgment-debtor, constituted a starting-point for the commencement of a new period of limitation under Act IX of 1871, sch. II, art. 167, any question as to its *bonâ fides* notwithstanding. Koonj Beharee Lall *v.* Girdharee Lall . . . . . . **22 W. R., 484**

Sheo Sahoy Singh *v.* Birj Behary Singh **[23 W. R., 195**

320. ——————— *Issue of notice under s. 216, Civil Procedure Code, 1859.*—A decree-holder applying for the execution of his decree was entitled, under the provisions of Act IX of 1871, to have such execution, upon his showing that his application was made within three years from the date of a previous application to the Court to enforce the same decree, or from the date of issuing notice under s. 216 of the Code of Civil Procedure in the same matter. Eshan Chunder Bose *v.* Prannath Nag **[14 B. L. R., F. B., 143: 22 W. R., 512**

Rohini Nundun Mitter *v.* Bhogoban Chunder Roy . **14 B. L. R., 144 note: 22 W. R., 154**

Shurut Chunder Sen *v.* Abdool Khye Mahomed Mohutessur Billah . . **23 W. R., 327**

321. ——————— *Issue of notice of execution—Execution partly had under Act XIV of 1859.*—In an execution case, in which the notice was served before, but the application for execution was made after, the passing of the present law of limitation,—*Held* that the period within which proceeding should be taken must be reckoned from the date of the notice, and not from the date of application. Bemul Doss *v.* Ikbal Narain **[25 W. R., 249**

Rughoonath Dass *v.* Shiromonee Pat Mohadebee . . . . . . **24 W. R., 20**

322. ——————— *Issue of notice of execution.*—When proceedings have been taken subsequent to an application to execute a decree and to the issue of notice, limitation does not run from the date of such subsequent proceedings, but from the date of the first application to execute the decree, or from the date of the notice, as the case may be. Nilmoney Singh Deo *v.* Nilcomul Tuppadar **[22 W. R., 546**

323. ——————— *Notice to judgment-debtor of execution of decree—Civil Procedure Code, 1859, ss. 212, 216.*—On the 3rd March 1875, an application was made by a decree-holder to the Court executing the decree, which did not, as required by s. 212 of Act VIII of 1859, state the mode in which the assistance of the Court was required, whether by the arrest and imprisonment of the judgment-debtor or attachment of his property, but prayed that the Court would, under s. 216 of that Act, issue a notice to the judgment-debtor to show cause why the decree should not be executed against him. Under this application, notice was issued to the judgment-debtor on the 28th March 1875. On the 27th April 1875, the execution case was struck off the file on the ground that the decree-holder did not desire further proceedings to be taken. *Held per* Pearson and Oldfield, *JJ.*, that for the purposes of art. 167, sch. II of Act IX of 1871, the application was one to enforce or keep in force the decree; and, further, that limitation should be computed from the date the notice to the judgment-debtor was issued. *Franks* v. *Nuneh Mal, 7 N. W., 79,* impugned. *Per* Spankie, *J., contra.* Behari Lal *v.* Salik Ram **[I. L. R., 1 All., 676**

324. ——————— *Service of notice of execution.*—Application for execution of a decree was made on the 10th November 1869, and on the 27th November 1869 notice issued under s. 216 of the Civil Procedure Code, 1859. Again, on the 4th February 1873, application was made for execution, and notice was issued on the 19th February 1873.

under s. 216. A subsequent application for execution was made on the 31st August 1874, and the order for notice to issue under s. 216 was made on the same day. The question raised in appeal against the order to issue execution was whether the plaintiff's right to execution was barred, and had been so when the application, dated 31st August 1874, for execution was made. *Held* on appeal by the High Court (KERNAN and KINDERSLEY, *JJ.*) that, as the application for execution on the 4th February 1873, being more than three years after the date of issuing the last prior notice under s. 216—*viz.*, 27th November 1869—was late under art. 167, paragraph 5, Act IX of 1871, execution was barred by limitation at and before the date of that application, and that this bar was not removed by the circumstance that the judgment-debtor had allowed the service of the notice on him in February 1873 to pass unchallenged. *Chilicany* v. *Rajarulu Naidu, 5 Mad., 100,* distinguished. PROBHACARA ROW *v.* POTANNAH

[I. L. R., 2 Mad., 1

325. ———————— *Service of notice of execution—Civil Procedure Code, 1859, s. 216.*—On the presentation of the last of a series of applications made for the execution of a decree, the Court is competent to consider the question whether, on the date of making a prior application for execution, the decree sought to be enforced was barred by limitation, and that notwithstanding the fact that notice of such prior application had been served on the judgment-debtor under s. 216 of Act VIII of 1859. UNNODA PERSAD ROY *v.* KOORPAN ALLY

[I. L. R., 3 Calc., 518 : 1 C. L. R., 408

326. ———————— *Civil Procedure Code, 1882, s. 248—Notice of valid or invalid application.*—The issuing of a notice under s. 248 of the Code of Civil Procedure gives a fresh starting point for limitation under art. 179, cl. 5, of sch. II of the Limitation Act, 1877, whether such notice is issued on a valid or an invalid application for execution. DHONKAL SINGH *v.* PHAKKAR SINGH

[I. L. R., 15 All., 84

327. ———————— Where an application for notice to issue under s. 248 of the Civil Procedure Code may be found defective, but the defects were held to be not material,—*Held* that, even if such application was defective as an application for execution of the decree, it was still an application to take some step in aid of execution, namely, to issue a notice under s. 248, which was necessary, the decree having been passed more than a year before, and such notice having been issued, it kept the decree alive. *Behari Lall* v. *Salik Ram, I. L. R., 1 All., 675,* and *Dhonkal* v. *Phakkar, I. L. R., 15 All., 84,* referred to. GOPAL CHUNDER MANNA *v.* GOSAIN DAS KALAY . . I. L. R., 25 Calc., 594

[2 C. W. N., 556

328. ———————— *"Date of issuing notice," Meaning of the words—Execution of decree.*—Art. 179, cl. 5, of the Limitation Act (XV of 1877) applies only where the notice under s. 248 of the Code of Civil Procedure (Act XIV of 1882) has been actually issued. If no notice is issued, time cannot be counted from the date of the order of the Court; though it may be that where a notice has been issued, the date of its issue would be the date on which the Court ordered its issue. HARI GANESH *v.* YAMUNABAI . . . I. L. R., 23 Bom., 35

6. ORDER FOR PAYMENT AT SPECIFIED DATE.

329. ———————— cl. 6—*Civil Procedure Code, s. 230 (b)—Execution of decree—Annual payments—" Certain date."*—A decree which directs payment to be made annually to the decree-holder is not a decree which directs payment of money to be made at a certain date within the meaning of s. 230 of the Code of Civil Procedure or cl. 6 of art. 179 of sch. II of the Limitation Act, 1877. Where a decree directed annual payments to be made, and the decree-holder applied for and obtained payment of the money due for 1877 and 1878 in March 1879 by execution, and then applied in July 1882 for the sums due for 1880 and 1881,—*Held* that this application was barred by limitation. YUSUF KHAN *v.* SIRDAR KHAN . . . I. L. R., 7 Mad., 83

330. ———————— *Decree for periodical payments.*—If it can be gathered from a decree that payments are directed to be made on dates or at periods which are sufficiently indicated by the terms of the decree, the requirement of Limitation Act, sch. II, art. 779, cl. 6, are satisfied. KAVERI *v.* VENKAMMA . . I. L. R., 14 Mad., 396

331. ———————— *Execution of decree—Maintenance—Decree for payment of an annuity without specifying date of payment—Default in paying such annuity—Enforcement of payment by execution of decree — Computation of time.*— A Hindu widow obtained a decree, dated 7th September 1865, directing that a sum of R36 should be paid to her every year on account of her maintenance. The judgment-debtors paid the annuity for some years. In 1881 the widow applied for execution of the decree, and recovered three years' arrears. In 1885 payments having again fallen into arrear, she again applied for execution, but her application was rejected as barred by limitation, having been made more than three years after the last preceding application. *Held* that the application was not time-barred. The decree created a periodically recurring right. Though no precise date was specified in the decree for payment of the annuity, the judgment-debtors were liable to make the payment on the day year from its date, and thenceforward on the corresponding date year after year. The decree was, as to each year's annuity, to be regarded as speaking on the day upon which for that year it became operative, and separately for each year. The right to execute occurring on a particular day, limitation should be computed from that day should the judgment-debtor fail to obey the order of the Court. *Sakharam Dikshit* v. *Ganesh Satha, I. L. R., 3 Bom., 193,* followed. *Sabhanatha Dikshatar* v. *Subba Lakshmi Ammal,*

LIMITATION ACT, 1877—*continued.*

6. ORDER FOR PAYMENT AT SPECIFIED DATE—*continued.*

I. L. R., 7 Mad., 80, and *Yusaf Khan* v. *Sirdar Khan, I. L. R., 7 Mad., 83,* distinguished. Lakshmibai Bapuji Oka *v.* Madhavray Bapuji Oka

[I. L. R., 12 Bom., 65

332. ———— *Application for execution of maintenance decree.*—On an application made in 1891 for the execution of a decree passed in 1870, it appeared that the decree directed the payment of maintenance to the plaintiff annually on a specified date, and the present application related to the period of three years from 1888 to 1891. There had been an application for execution in 1873. The next application was made in 1879, and it was dismissed as being barred by limitation. *Held* that the present application was not barred by limitation. Kuppu Ammal *v.* Saminatha Ayyar

[I. L. R., 18 Mad., 482

333. ———— *Decree for redemption—Decree not specifying result of non-payment of mortgage-debt within the time prescribed thereby for payment.*—Where a decree for redemption of a mortgage stated that the amount due under the mortgage should be paid within four months, but omitted to state what the result would be if the mortgage-debt was not so paid,—*Held* that it was competent to the decree-holder to execute such a decree at any time within the period of limitation prescribed by art. 179, sch. II of Act XV of 1877. Bandhu Bhagat *v.* Muhammad Taqi

[I. L. R., 14 All., 350

334. ———— *Decree for redemption—No time fixed in the decree for payment.*—On the 27th June 1885 a consent-decree was passed in a redemption suit to the following effect: "Plaintiffs should pay the sum of R733 to the defendants within a month of this date; in case they do not pay the money, then in the year in the month of Chaitra in which they pay the money, the defendants should give back to them possession of the land; till that time the defendants should pay the Government assessment and enjoy the produce in lieu of interest." On the 27th June 1897 plaintiffs applied for execution of the decree, praying for possession alone on the ground that the redemption money had been paid off by their payments of assessment, etc., on behalf of the defendants. *Held* that the application for exection was time-barred under art. 179 of the Limitation Act (XV of 1877). The words of the decree were vague and indefinite, and were to be considered as really mentioning no time for payment. The decree was therefore to be taken as operating from its date, and to be enforceable only within three years from that time, unless kept alive by application for execution made according to law within the prescribed periods. Maruti *v.* Krishna

[I. L. R., 23 Bom., 592

See Gan Savant Bal Savant *v.* Narayan Dhond Savant . . . **I. L. R., 23 Bom., 467**

Maloji *v.* Sagaji . **I. L. R., 13 Bom., 567**

and Narayan Gobind *v.* Anandram Kojiram

[I. L. R., 16 Bom., 480

335. ———— *Civil Procedure Code, 1882, s. 210—Time granted to debtor—Decree not altered.*—On the 26th of June 1878 a judgment-debtor applied, under s. 210 of the Code of Civil Procedure, for two years' time to pay the amount of the decree, which was dated 12th March 1878. Notice having been given to the judgment-creditor, an *ex-parte* order was made allowing the judgment-debtor two years' time to pay, but the decree itself was not altered in accordance with this order. On the 9th of July 1882 the decree-holder applied for execution of the decree. *Held* that the application was not barred by limitation. Tata Charlu *v.* Konadala Ramachandra Reddi

[I. L. R., 7 Mad., 152

336. ———— *Civil Procedure Code, Act XIV of 1882, s. 210—Petition of judgment-debtor amounting to fresh decree.*—On the 23rd February 1878 an application was made for execution of a decree, dated the 3rd December 1877, in which the decree-holder stated that the judgment-debtor had agreed to pay the balance then due on the 13th August 1878. The application was then struck off on the 26th June 1878. On the 30th June 1881 the decree-holder again applied for execution, and on the 11th July 1881 the judgment-debtor, with the consent of the decree-holder, applied for time to pay the balance due till the 8th September 1881, and that application was also struck off. On the 1st March 1883 the decree-holder again applied for execution. *Held* that the application was not barred by limitation upon the ground that the application by the judgment-debtor, made on the 11th July 1881, alleging that he had come to an arrangement with the decree-holder for the payment of the amount due by instalments, having resulted in its being registered and the proceedings struck off, amounted to a direction that the decretal amount be paid by instalments as stipulated in the petitions, and that, this being so, there was a decree passed on that date under the provisions of the second paragraph of s. 210 of the Code of Civil Procedure, of which the decree-holder was entitled to have execution. Jhoti Sahu *v.* Bhugun Gir . **I. L. R., 11 Calc., 143**

337. ———— *Application for execution of decree—Order on petition to pay by instalments—Civil Procedure Code, s. 210.*—An application to execute a decree, dated 30th August 1880, was made on 25th May 1881. While the application was pending, the judgment-debtor presented a petition to be allowed to pay the debt by instalments, and the decree-holder consenting to this, the Court made the following orders: "According to the application of both parties, it is ordered that the case be struck off, and the decree be returned." The details of the instalments mentioned in the petition were endorsed on the decree by one of the amlahs of the Court, but it did not appear when or by whose order this was done. In an application for execution in accordance with this arrangement made on 7th March 1885,—*Held* that the order was not one recognizing or sanctioning the arrangement within the meaning of s. 210 of the Civil Procedure Code, inasmuch as the Court, at the time it made the order, had no power to make any order for instalments, any application for that purpose being then barred by art. 175 of Act XV of 1877. The application for execution was therefore barred under art. 179 as not having been made within three years of 25th May 1881. *Jhoti Sahu* v. *Bhugun Gir, I. L. R., 11 Calc., 143,* dissented from. Abdul Rahman Sodagur *v.* Dullaram Marwari . . . **I. L. R., 14 Calc., 348**

338. ———— *Order for payment of decree by instalments.*—The provision of s. 20, Act XIV of 1859, applied where there was a present right to execute the decree, and not to cases of an instalment made payable at a future date; in the latter case, application might be made within three years from the date of each instalment becoming due, without being barred by limitation provided in the said section. Ultaf Ali Khan *v.* Ram Lall
[Agra, F. B., 83 : Ed. 1874, 63

339. ———— *Decree awarding payment by instalments.*—When a decree awards payment by instalments, to be made at particular specified dates, the date when each instalment becomes due is to be deemed the date of the decree in respect of that instalment for the purpose of calculating the time within which execution may be issued to enforce payment of it. Uttamram Manikram *v.* Girdharlal Motiram . **6 Bom., A. C., 45**

Ram Sudoy Ghose *v.* Rajbullubh Saha
[15 W. R., 547

Tincowrie Dossee *v.* Umbika Churn Roy Chowdhry . . . . . **23 W. R., 41**

Sheo Jalun *v.* Gunesh . . **2 Agra, 237**

Panamchand valad Surajmal *v.* Bhivraj valad Dashrat . . . **6 Bom., A. C., 38**

340. ———— *Execution of decree for maintenance payable by instalments.*—Process of execution cannot always be issued for three years' arrears under a decree directing annual payment of money for a series of years. The petitioner, who had obtained a decree for an annual sum for maintenance during her life, alleged satisfaction of the decree up to a period less than three years from the date of the application for execution of the decree. The Judge was not satisfied of the alleged satisfaction, and dismissed the application for execution. *Held* that the petitioner was entitled to execution of the decree at any time from the date at which the first instalment became due, but that she was not entitled to have process of execution issued within three years from the date at which the second instalment or subsequent instalments became due. Lakshmi Ammal *v.* Sashadry Aiyangar . . **4 Mad., 275**

See Sinthayee *v.* Thanakapudayen
[4 Mad., 183

341. ———— *Execution of decree payable by instalments.*—The decree provided that the amount should be paid in three instalments, and in default of payment of one instalment the decree-holder was empowered to execute his decree for the whole amount. When the instalment for December 1865 fell due, the judgment-debtor paid a portion and obtained an extension of time up to December 1866. On application on 21st September 1869 for execution of the decree for the instalments of 1866 and 1867,—*Held* that the instalment for 1866 was not barred by lapse of time. Krishna Chandra Shaha *v.* Omed Ali . . **6 B. L. R., Ap., 31**

S. C. Kristo Chunder Shaha *v.* Oomed Ali
[14 W. R., 414

342. ———— *Bond payable by instalments.*—Upon an application for execution being made, the judgment-debtor executed in Court an instalment bond, by which he bound himself to pay his debt by half-yearly instalments in the months of Magh (January and February) and Bhadra (August and September) of each year, and it was stipulated that, on failure to pay a single instalment, the whole of the bond might be realized by execution. A decision was given accordingly, and the instalment-bond was filed. The judgment-debtor did not pay the instalment due in August and September 1864 till a few days after the expiry of that month. He did not pay the instalment of January and February 1865 at all, but subsequent payments were made and accepted. In December 1867 and January 1868 the decree-holder applied to execute the decree and realize the whole amount of the bond. The lower Appellate Court, holding that time ran from the first default in August and September 1864, dismissed the application. *Held* by the High Court on appeal that the application was not barred by s. 20, Act XIV of 1859, and that the time ran from January and February 1865. Upendra Mohan Tagore *v.* Takalia Bepari
[2 B. L. R., A. C., 345

S. C. Woopendro Mohun Tagore *v.* Takalia Beparee . . . . . **11 W. R., 570**

343. ———— *Decree payable by instalments—Limitation Act, 1871, art. 75.*—A decree payable by instalments, with a proviso that, in default of payment of any one instalment, the whole amount of the decree shall become payable at once, is barred, if application for execution be not made within three years from the date on which any one instalment fell due, and was not paid. The payment of instalments subsequent to default in payment of the first instalment at the date specified does not give the judgment-creditor a fresh starting-point. Dulsook Rattachand *v.* Chugon Narrun
[I. L. R., 2 Bom., 356

See Gumna Dambershet *v.* Bhiku Hariba
[I. L. R., 1 Bom., 125

344. ———— *Decree for money payable by instalments—Adjustment of decree—Civil Procedure Code, 1859, s. 206.*—A decree for the payment of money by instalments directed that, if the judgment-debtor failed to pay two instalments in succession, the decree-holder should be entitled to enforce payment of the whole amount due under the decree. The decree-holder, alleging that a portion of the ninth instalment was payable, and that the whole of the tenth (the last) instalment was due, applied to enforce payment of the moneys due under the decree. *Held per* PEARSON, *J.*, that whether former instalments had been paid or not was immaterial, and the application, being within three years from the dates on which the ninth and tenth instalments became due, was, with reference to art. 167, sch. II of Act IX of 1871, within time. SPANKIE, *J.*, refused to interfere in second appeal, inasmuch as the lower Appellate Court had found as a fact that there had been no such default in the payment of the former instalments as was contemplated by the decree. KANCHAN SINGH *v.* SHEO PRASAD

[I. L. R., 2 All., 291

345. ——— *Decree payable by instalments—Default.*—Where a decree was passed by consent in 1872 for payment to plaintiff through the Court of R300 by fifteen annual instalments on February 20 in each year, and in default of payment of any instalment the whole amount became recoverable, and four years' instalments were paid out of Court and default made on February 20, 1877, and plaintiff applied to recover the instalment of 1877 by execution on November 17, 1879, and March 1, 1880, —*Held* that the application of November 1879 was not barred under cl. 6, art. 179, sch. II of the Limitation Act of 1877, inasmuch as, when the Limitation Act, 1877, came into force (October 1, 1877), the application was not barred under cl. 6, art. 167, sch. II of the Limitation Act, 1871. *Held* also that the provision as to the whole amount becoming recoverable at once if default was made, did not affect the admissibility of the application for execution, because that provision had not been enforced, and the obligation to pay by instalments was still subsisting. KARAKAVALASA APPAYYA *v.* KARANAM PAPAYYA

[I. L. R., 3 Mad., 256

346. ——— *Decree for money payable by instalments—Execution of decree.*—*Held*, in the case of a decree for money payable by instalments, with a proviso that in the event of default the decree should be executed for the whole amount, that the decree-holder was strictly bound by the terms of the decree, and not having applied for execution within three years from the date of the first default, the decree was barred. SHIB DAT *v.* KALKA PRASAD . . **I. L. R., 2 All., 443**

347. ——— **and art. 75**—*Decree directing payment to be made at a certain date.*—*L* obtained a decree against *U*, dated the 24th September 1867, for possession of a certain estate, subject to this provision, *viz.*, that if *U* paid in cash into the treasury of the Court, year by year, for *L's* maintenance, so long as she might live, an allowance of R15 per mensem, in three instalments of R60 each, the decree for possession should not be executed, but if default were made in payment of three such instalments, *L* should be entitled to delivery of possession of such estate. The first default was made on the 18th January 1874, but *L* waived the benefit of the proviso. A fresh default was made, and on the 23rd January 1880 *L* applied for possession of such estate. *Held* that the provisions of cl. 8, art. 75, sch. II of Act XV of 1877, were not applicable to this case, but art. 179 (6) of that schedule contained the law which must govern it; and, the date upon which such decree became capable of execution for possession being the 18th January 1874, the date of the first complete default, the application of the 23rd January 1880 was barred by limitation. UGRAH NATH *v.* LAGANMALI

[I. L. R., 4 All., 83

348. ——— *Decree payable by instalments—Execution of whole decree—Payments out of Court—Act X of 1877 (Civil Procedure Code), s. 258.*—A decree payable by instalments provided that, in default in payment of two instalments, the whole decree should be executed. The decree-holder applied for execution of the whole decree on the ground that default had been made in payment of the third and fourth instalments. The judgment-debtor objected that the application was barred by limitation, as he had made default in payment of the first and second instalments, and three years had elapsed from the date of such default. The decree-holder offered to prove that those instalments had been paid out of Court. *Held* that he was entitled to give such proof, in order to defeat the judgment-debtor's plea of limitation, notwithstanding such payments had not been certified. *Fakir Chand Bose* v. *Madan Mohan Ghose, 4 B. L. R., F. B., 130,* followed. SHAM LAL *v.* KANAHIA LAL **I. L. R., 4 All., 316**

349. ——— *Decree payable by instalments—Default—Waiver—Estoppel—Application for execution as provided for in case of default—Application to recover instalments.*—A decree for the payment of money directed that an amount less than the amount sued for should be paid by instalments, and that, if default were made in payment of one instalment, the amount sued for should be payable. Default having been made, the decree-holder, on the 7th May 1877, applied for execution of the decree for the larger amount. It appeared that at this time, although the instalments had not been paid regularly, the decree-holder had received in full all the instalments which had fallen due excepting the instalment falling due in the previous September,—that is, September 1876—of which he had received only a part. The application of the 7th May 1877 was struck off the file. The decree-holder subsequently accepted the remaining instalments, which were paid on due dates. On the 28th August 1878 the decree-holder applied for payment of an instalment which had been paid into Court. On the 8th September 1881 the decree-holder applied for execution of the decree for the larger amount payable thereunder in case of default, with reference to the default in respect of the instalment for September 1876. The Court refused to allow execution to issue for such amount, but allowed it to issue for the balance of the instalment for September 1876. *Per* STRAIGHT, *J.*—That, having by his application of the 7th May 1877 sought to execute the decree for the larger amount payable thereunder in case of default in payment of the instalments of the smaller amount, the decree-holder was not competent afterwards to seek to execute the decree in respect of such instalments; that therefore his application of the 28th August 1878 was not a step in aid of execution of the decree in the shape in which he had previously sought execution, from the date of which limitation could be computed; and that consequently his application of the 8th September 1881 was barred by limitation. *Per Curiam.*—That the decree-holder was not entitled to recover the balance of the instalment for September 1876, regard being had to the limitation prescribed by No. 179 (6), sch. II of the Limitation Act, 1877. RADHA PRASAD SINGH *v.* BHAGWAN RAI . . **I. L. R., 5 All., 289**

350. ———— *Decree payable by instalments—Execution of whole decree—Construction of decree—Payments out of Court—Civil Procedure Code, s. 258.*—A decree passed against the defendant in a suit, dated the 13th March 1877, directed "that the plaintiff should recover the decree-money by instalments, agreeably to the terms of the deed of compromise, and he, in case of default, should recover in a lump sum." The compromise mentioned in the decree provided that the amount in dispute should be paid in ten instalments, from 1284 to 1294 Fasli, the first to be paid on the 27th May 1877 (1284 Fasli), and the remaining nine instalments on Jaith Puranmashi of each succeeding Fasli year. On the 1st September 1883 the decree-holders applied for execution of the decree, alleging that the first four instalments had been paid, but not any of the succeeding instalments, and they claimed to recover, under the terms of the decree, the fifth and all the remaining instalments in a lump sum. The judgment-debtors contended that the application was barred by limitation, as they had not paid a single instalment, and more than three years had elapsed from the date of the first default; and that, even if the first four instalments had been paid, such payments could not be recognized by the Court, as they had not been certified. *Held*, reversing the decision of the lower Appellate Court, that if the four annual instalments had not been paid under the decree, the execution of the decree was barred by limitation. *Held* also that recognition of such instalments was not barred by the terms of s. 258 of the Civil Procedure Code. *Sham Lal* v. *Kanahia Lal, I. L. R., 4 All., 316,* and *Fakir Chand Bose* v. *Madan Mohan Ghose, 4 B. L. R., F. B., 130,* followed. ZAHUR KHAN *v.* BAKHTAWAR . **I. L. R., 7 All., 327**

351. ———— *Decree payable by instalments—Waiver by decree-holder—Payment out of Court—Civil Procedure Code, s. 258.*—An application for execution of a decree payable by instalments was resisted by the judgment-debtor as barred by limitation on the ground that nothing had been paid under the decree, and that the application was made more than three years after the first instalment fell due. The decree-holder pleaded that he had waived the default in payment of the first instalment by accepting such payment shortly afterwards, and that the application was in time, having been made within three years from the date when the second instalment was due. *Held* that the decree-holder could not raise this plea, as the payment in question had not been certified to the Court executing the decree, and therefore could not, under s. 258 of the Civil Procedure Code, be recognized. *Sham Lal* v. *Kanahia Lal, I. L. R., 4 All., 316,* and *Zahur Husain* v. *Bakhtawar, I. L. R., 7 All., 327,* not followed. MITTHU LAL *v.* KHAIRATI LAL

[I. L. R., 12 All., 569

352. ———— *Debt on decree payable by instalments—Failure to pay—Waiver of default.*—The terms of compromise in a suit for money provided that the debt should be paid by monthly instalments, and that, on the failure to pay any three successive instalments, the entire amount should be recoverable by application to execute the full decree. The decree was dated the 12th June 1875, the first instalment was due in July 1875, and the last in October 1877. Default was made in payment of the first three instalments, but the decree-holder did not apply for execution and accepted subsequent payments. On the 13th December 1879 he applied for execution for the amount then remaining due. *Held* that the period of limitation prescribed by art. 179, sch. II of Act XV of 1877, began to run on the third default taking place, and that no subsequent payment could stop limitation once begun. ASMUTULLAH DALAL *v.* KALLY CHURN MITTER

[I. L. R., 7 Calc., 56

353. ———— *Decree payable by instalments.*—On an application, dated 10th Aughran 1288, for execution of a decree which provided, on the basis of a kistbundi, that the amount decreed should be paid in four instalments annually, extending over the years 1284, 1285, 1286, 1287, and that, if there should be default in payment of any instalment, and that instalment should remain unpaid for six months, the whole of the decree should at once become due, it was objected that the application was barred on the ground that, the instalments for 1284 not having been paid, the whole amount of decree had become payable within six months for the first default. The application was to recover the instalments due for 1285, 1286, and 1287. *Held* that the application was not barred, except as to the instalment of 1285, which fell due in Jaith, as it was optional with the decree-holder to realize the whole decree at once upon default being made, or to waive his right to do so and seek to realize instalments as they became due. *Ashmutullah Dalal* v. *Kally Churn Mitter, I. L. R., 7 Calc., 56,* followed. CHUNDER KOMAL DASS *v.* BISSASURREE DASSIA . . . . **13 C. L. R., 243**

354. ———— *Decree payable by instalments—Option to execute—Waiver—Construction of decree.*—Where a decree is made payable by instalments, and contains a provision that, on

LIMITATION ACT, 1877—*continued.*

6. ORDER FOR PAYMENT AT SPECIFIED DATE—*continued.*

failure of any one instalment, the whole is to become due, the question whether the decree-holder may waive the benefit of the provision or must execute his decree within three years from the due date of the first instalment of which default is made in payment is a question purely of construction to be decided on the terms of the whole decree in each case. On an application for execution of a decree made payable by instalments,—*Held* that the application was barred by limitation, on the ground that the judgment-creditor should have applied for execution within three years from the date of the first default in payment. JUDHISTIR PATRO *v.* NOBIN CHANDRA KHELA . . . . **I. L. R., 13 Calc., 73**

355. ——————— *Default in payment of instalments—Right of decree-holder to waive his right to execute entire decree—Waiver.*—A decree dated the 18th July 1883, which was made against *D* and *K* in terms of a solehnamah filed by them, directed payment by instalments in the month of Choitro (Vilaity year) each year, with a proviso that, if default was made in the payment of any instalment, then, without waiting for default in other instalments, the decree-holder should be at liberty to take out execution and realize the whole amount of the kistbandi with interest. *D* admittedly paid the instalments due from him up to Choitro 1292 (March-April 1885) and a portion of that due in Choitro 1293 (March-April 1886), and *K* admittedly paid those due from him up to Choitro 1293 (March-April 1886), and although in the application for execution payments made subsequent to these dates were alleged by the decree-holders to have been made, both lower Courts found such payments not to have been proved. On the 1st September 1890, more than three years after the default made by *D* in Choitro 1293 (March-April 1886) and that made by *K* in Choitro 1294 (March-April 1887), the decree-holder applied for execution of the whole decree with interest after deduction of all instalments alleged by them to have been paid. On second appeal before the High Court it was contended that, although the application to execute the entire decree was barred, yet as the proviso was for the benefit of the decree-holders, they were competent to waive it and claim execution in respect of the instalments that fell due within three years before the date of their application for execution. *Held* that this was not the case made out in the Courts below; and further that the proviso could not be said to be waived, as there had been no acceptance of payment subsequent to the first default, nor a mere abstinence on the part of the decree-holder from seeking the benefit of the proviso, but, on the contrary, there had been an affirmative act done by him showing that he did not waive the benefit of the proviso, but claimed to execute the entire decree. *Mon Mohun Roy* v. *Durga Churn Gooee, I. L. R., 15 Calc., 502,* referred to. BIR NARAIN PANDA *v.* DARPA NARAIN PRODHAN

[I. L. R., 20 Calc., 74

LIMITATION ACT, 1877—*continued.*

6. ORDER FOR PAYMENT AT SPECIFIED DATE—*continued.*

356. ——————— *Decree payable by instalments—Default in payment of first instalment—Right of waiver of default—Payment not certified to Court—Civil Procedure Code (Act VIII of 1859), s. 206; (Act XIV of 1882), s. 258.*—A decree dated 22nd Cheyt 1295 (18th April 1882) provided "that the defendants do pay the decretal money as per instalments given below, otherwise the plaintiff will have the power to cancel the instalments and realize the entire amount." The first instalment was made payable on 30th Cheyt 1295 (26th April 1888), and the other six instalments on the 30th of the mouths of Magh and Bysack in the three following years. In an application made on 9th February 1892 for execution of the decree, the decree-holder stated that only the first instalment had been paid, and asked for execution for the amount remaining due under the decree, and the judgment-debtors denied having paid any of the instalments. *Held* that the clause in the decree to the effect that on non-payment of an instalment by the specified date it should be in the power of the decree-holder to realize the full amount, was not intended to give him the option of waiving the default if he pleased, but that it implied nothing more than the usual condition that on non-payment of an instalment the whole decretal amount would become exigible; if therefore the first instalment had not been paid, the application for execution, not having been made within three years from the date when the whole amount became due, was barred by art. 179 of sch. II of the Limitation Act. *Chandra Kamal Das* v. *Bissessurree Dassia, 13 C. L. R., 243,* dissented from; and the case was remanded for final decision of the question whether or not payment of the first instalment had been made. *Chenibash Shaha* v. *Sridam Mandal, I. L. R., 5 Calc., 97; Asmutullah Dalal* v. *Kally Churn Mitter, I. L. R., 7 Calc., 56; Nilmadhub Chuckerbutty* v. *Ramsodoy Ghose, I. L. R., 9 Calc., 857; Judistir Patro* v. *Nobin Chandra Khela, I. L. R., 13 Calc., 73; Ram Culpo Bhattacharji* v. *Ram Chunder Shome, I. L. R., 14 Calc., 352; Mon Mohun Roy* v. *Durga Churn Gooee, I. L. R., 15 Calc., 502;* and *Bir Narain Panda* v. *Darpanarain Prodhan, I. L. R., 20 Calc., 74,* referred to. *Held* further that, although under the provisions of s. 258 of the Civil Procedure Code the payment in question, if made, could not be recognized as a payment or adjustment of the decree, yet it was competent to the decree-holder to prove such payment for the purpose of showing that the execution of the decree was not barred. There is no material difference in this respect between s. 258 of the Civil Procedure Code (Act XIV of 1882) and s. 206 of the old Code (Act VIII of 1859), on which the case of *Fakir Chand Bose* v. *Madan Mohan Ghose, 4 B. L. R., F. B., 130,* was decided. HURRI PERSHAD CHOWDHRY *v.* NASIB SINGH . . . **I. L. R., 21 Calc., 542**

357. ——————— *Decree payable by instalments with proviso as to execution of entire decree on default in payment of instalments*—

Construction of decree.—Where a decree for money is made payable by instalments with a proviso to the effect that on default being made in payment of the instalments, the decree-holder is entitled to execute the decree for the whole amount due, such a decree is to be construed as much as possible in favour of the decree-holder, and unless the decree clearly leaves the decree-holder no option on the happening of a default but to execute the decree once and for all for the whole amount due under it, the decree-holder may execute it on the happening of the first, second, or any subsequent default, and limitation will run against him in respect of each instalment separately from the time when such instalment may become due. Shankar Prasad *v.* Jalpa Prasad [I. L. R., 16 All., 371

358. ———— *Decree payable by instalments—Waiver of default in payment—Civil Procedure Code (1882), s. 258.*—Where a decree was payable by instalments, and in default it was provided that the whole amount should become due,—*Held* that proof of a part-payment towards an instalment due accepted by the decree-holder (even though it was a payment not certified to the Court under s. 258 of the Civil Procedure Code) would be material as evidence of waiver, and that, if there were such waiver, limitation would not run till the next default. Rajeswara Rau *v.* Hari Babandhu [I. L. R., 19 Mad., 162

359. ———— *Transfer of Property Act (IV of 1882), s. 90—Application for decree against non-hypothecated property—Starting point of limitation.*—Where in a usufructuary mortgage it was covenanted that if the mortgagee was not given possession he should have a right to obtain the sale of the mortgage property, the mortgage-debt meanwhile being payable on a certain specified date, it was *held* that in respect of an application under s. 90 of Act IV of 1882, the mortgaged property having been sold under the above-mentioned covenant and having proved insufficient to satisfy the debt, limitation began to run from the breach of the covenant to pay on due date, and not from the breach of the covenant to put the mortgagee in possession. Sheo Charan Singh *v.* Lalji Mal . . . . I. L. R., 18 All., 371

7. JOINT DECREES.

(*a*) Joint Decree-holders.

The following are the cases decided as to the proceedings in joint decrees under the Acts of 1859 and 1871:—

360. ———— expl. I—*Application by one of several decree-holders.*—Every application made by one or more out of several decree-holders is an application made in the interests of all, and every proceeding taken by one is a proceeding taken for the benefit of all to enforce the judgment, or to keep it in force. Roy Preeonath Chowdhry *v.* Prannath Roy Chowdhry . . 8 W. R., 100

Dhanessuree *v.* Goodhur Sahoy [11 W. R., 421

Bhoobunessuree Debia *v.* Chunder Monee Debia . . . . . . 21 W. R., 243

Huruck Roy *v.* Zuhooree Mull [22 W. R., 468

Oudh Behari Lal *v.* Brajamohan Lal [4 B. L. R., Ap., 41: 13 W. R., 128

Johiroonissa Khatoon *v.* Ameeroonissa Khatoon . . . . . . 6 W. R., Mis., 59

Indurjeet Koonwar *v.* Mazam Ali Khan [6 W. R., Mis., 76

361. ———— *Arrangement by decree-holders amongst themselves.*—In the case of a joint-decree, any arrangement made by the decree-holders amongst themselves as to their relative shares in the amount of the decree would not alter its character, and *bonâ fide* proceedings taken by one of the number to execute the decree would keep alive the rights of all the decree-holders. Indurjeet Kunwar *v.* Mazam Ali Khan . . . . . 6 W. R., Mis., 76

Brijo Coomar Mullick *v.* Ram Buksh Chatterji . . . . . 1 W. R., Mis., 1

362. ———— *Application after death of some of decree-holders—Civil Procedure Code, 1859, s. 207.*—A joint decree for damages was obtained by several plaintiffs in the Court of the Principal Sudder Ameen of Patna in 1854, and was kept alive by endeavours to execute it till 1861. On the 15th June 1861 the Court passed an order modifying the costs of the original decree, but this order was reversed on appeal on the 19th August 1862. Some of the plaintiffs having died in the meantime, an application was made on the 29th July 1863, and an order was passed thereon on the 26th May 1864, whereby the present decree-holders were substituted for the deceased plaintiffs. A new Principal Sudder Ameen was appointed on the 10th December 1864, and he reversed that order, and required from the present decree-holders a certificate of heirship, which they obtained on the 16th September 1865. On the 20th of the same month an order for execution was made by the Principal Sudder Ameen, but it was reversed by the Judge on appeal, on the ground that the order of the 26th May 1864 was not a proceeding within the meaning of s. 20 of Act XIV of 1859; and therefore the application for execution was too late. *Held* that execution might have been obtained under s. 207 of Act VIII of 1859 by the survivors of the original decree-holders for the benefit of all parties interested in it. The order of the lower Appellate Court was reversed. Teja Singh *v.* Rajnarayan Singh . 1 B. L. R., A. C., 62

S. C. Teja Singh *v.* Pokhun Singh [10 W. R., 95

LIMITATION ACT, 1877—*continued.*

7. JOINT DECREES—*continued.*

363. ——— *Separate taking out of execution—Civil Procedure Code, 1859, s. 207.*—Three persons obtained a joint decree. Two of them took out execution and realized each his own share. The third applied for execution within three years from the time of the last proceedings taken by the other two, but after a lapse of three years from the last proceedings taken jointly by all three. *Held* that under s. 207, Act VIII of 1859, there was no severance of the decree, and therefore the proceedings taken by the two kept the decree alive. AZIZUNNISSA KHATUN *v.* SHASHI BHUSHAN BOSE

[2 B. L. R., Ap., 47 : 11 W. R., 343

364. ——— *Separate taking out of execution.*—In a case in which a certain sum was adjudged to five persons as an entire sum to which all of them were jointly entitled, but one moiety to three of them and the other moiety to the remaining two,—*Held* that the effect of the adjudication was the same as if two separate and distinct decrees had been pronounced, and that no action taken by the decree-holders to whom one moiety had been assigned could keep the decree alive for the benefit of the others. CHOOA SAHOO *v.* TRIPOORA DUTT **13 W. R., 244**

365. ——— *Application by one decree-holder for execution.*—Where one of several joint decree-holders made, under Act VIII of 1859, s. 207, proper application for execution, the date on which the application was made was held to constitute a point of time from which would run the limitation of three years provided in Act IX of 1871, sch. II, art. 167. HURUCK ROY *v.* ZUHOOREE MUL . . . . . . **22 W. R., 468**

366. ——— *Application to execute part of decree.*—An application to execute an aliquot part of a decree, though irregular and ineffectual for the purpose, must, if made *bonâ fide* under a misapprehension of the law, be regarded as a proceeding which keeps the decree alive. KOYLAS NATH GHOSE *v.* NITYA SHAMA DASSEE

[15 W. R., 449

SHIB CHUNDER DASS *v.* RAM CHUNDER PODDAR . . . . **16 W. R., 29**

PRAN KISHORE DEB *v.* KISHORE CHUNDER CHOWDHRY . . . . . **16 W. R., 267**

DOYA MOYEE DABEE *v.* NILMONEE CHUCKERBUTTY . . . . . . **25 W. R., 70**

367. ——— *Application for partial execution of joint decree—Costs.*—An application for the partial execution of a joint decree by one of the decree-holders is not an application according to law, and consequently has not the effect of keeping the decree in force. Where a decree of the Sudder Court awarded costs in the lower Court to certain defendants separately, and to eight sets of defendants collectively, and costs in the Sudder Court to three sets, and the only applications which were made for execution of the decree within the period of limitation were made by one of the defendants to recover his costs in the lower Court and a fractional share of the costs in the Sudder Court awarded to his set of defendants, a subsequent application by him and the other defendants for execution of the decree was held to be barred by limitation. RAM AUTAR *v.* AJUDHIA SINGH . . **I. L. R., 1 All., 231**

368. ——— *Application by one of two joint decree-holders for part execution of joint decree—Act X of 1877 (Civil Procedure Code, s. 231).*—A decree passed jointly in favour of more persons than one can only be legally executed as a whole for the benefit of all the decree-holders, and not partially to the extent of the interest of each individual decree-holder. *Held* therefore, where one of two persons, in whose favour a decree for money had been passed jointly, applied on the 27th April 1880 for execution of a moiety of such decree, and the other of such persons made a similar application on the 30th April 1880, that such applications, not being made in accordance with law, were not sufficient to keep the decree in force. Also that the illegality of such application could not be cured by a subsequent amended application for the execution of the decree as a whole, preferred after the period of limitation had expired. COLLECTOR OF SHAHJAHANPUR *v.* SURJAN SINGH . . . **I. L. R., 4 All., 72**

369. ——— *Application by two of three joint decree-holders for part execution of joint decree—Acquiescence by judgment-debtor in part execution.*—A decree for money was passed in 1871 in favour of two persons jointly. In 1883 the decree-holders applied for execution thereof. By previous application for execution made in 1875, 1877, and 1880, the decree-holders had sought to recover two-thirds of the amount of decree. *Held* that, inasmuch as the previous executions of the decree by some sharers for their shares, whether strictly allowable or not, were allowed, and no objections at the time were taken, they were good for the purpose of keeping the decree alive, and that the judgment-debtor could not now take exception to them as not being applications to enforce the decree within the meaning of the Limitation Act. *Mungul Pershad Dichit* v. *Grija Kant Lahiri, I. L. R.*, 8 *Calc.*, 51, followed. NANDA RAI *v.* RAGHUNANDAN SINGH **I. L. R., 7 All., 282**

370. ——— *Application for partial execution of joint decree.*—Although the Civil Procedure Code does not allow one of several decree-holders to apply for the partial execution of a joint decree, yet an application by one of such decree-holders for execution of the decree in respect of so much of the relief granted to all as he considers appertains to him individually may keep in force the decree as being an application according to law. PONAMPILATH PARAPRAVAN KUTHATH HAJI *v.* PONAMPILATH PARAPRAVAN BAVOTTI HAJI

[I. L. R., 3 Mad., 79

371. ——— *Application for partition under decree—Decree for partition.*—A consent decree for partition made between three parties contained a provision that, if the plaintiffs should not have the property partitioned within two months from the date thereof, any one of the other

parties to the suit might obtain partition by executing the decree. One of the parties sued out execution and obtained partition and possession of his own share. More than three years after the date of the decree, but less than three years from the date of the application just mentioned, another of the parties applied for partition under the decree. *Held* that the application was not barred by limitation under the provisions of the Limitation Act XV of 1877, sch. II, art. 179, expl. 1. MOHUN CHUNDER KURMOKAR *v.* MOHESH CHUNDER KURMOKAR
[I. L. R., 9 Calc., 568

372. ———— *Decree for partition, Application for execution of—Co-sharers.*—*A*, on the 29th June 1871, obtained a decree for partition against *B*, his co-shareholder, and on the 28th November 1876 applied to have the execution-proceedings struck off the file. The application was refused, and the partition was ordered to be completed at *B's* expense. *Held* that, as the execution-proceedings taken either by one shareholder or the other were taken on behalf of both, limitation did not apply. KHOORSHED HOSSEN *v.* NUBBEE FATIMA
[I. L. R., 3 Calc., 551: 2 C. L. R., 187

373. ———— *Application for execution of decree—Power of mooktear to make application—Civil Procedure Code, 1859, s. 207—Waiver of irregularity by Court.*—An application for execution of a decree on behalf of all the judgment-creditors was presented in Court by a mooktear. The mooktear had himself appended to such application the names of all of them but one who had signed his own name. *Held*, reversing the decision of the Court below, that although exception might fairly have been taken to the form of the application at the time it was presented, yet, having once been accepted by the Court, it was substantially an application on behalf of all the judgment-creditors sufficient to prevent the operation of the Law of Limitation. AUTOO MISREE *v.* BIDHOOMOOKHEE DABEE . . **I. L. R., 4 Calc., 605**

374. ———— **and ss. 7, 8**—*Civil Procedure Code, 1882, ss. 231, 258—Disability of—Minority—Execution of decree.*—A member of an undivided Hindu family and his two minor brothers (who sued by him as their next friend) brought a suit for partition of family property against their father, and joined as defendants certain persons who were in possession of part of the property under alienations made by the father, but alleged in the plaint to be invalid as against the family. In 1875 a decree was passed in favour of the plaintiffs in the above suit. No application for the execution of the decree was made by either the first or second plaintiff; but the third plaintiff, having attained his majority in June 1881, applied for execution in April 1884: his application was opposed by two of the defendants. The District Judge made an order granting his application in respect of the one quarter share to which he was declared to be entitled under the decree. *Held* that the order of the District Judge was wrong. The decree was not one "passed severally in favour of more persons than one distinguishing portions of the subject-matter as payable or deliverable to each"; and as neither s. 7 nor s. 8 of the Limitation Act was applicable to the case, the application was barred by limitation under art. 179 of the Limitation Act. SESHAN *v.* RAJAGOPALA. RAJAGOPALA *v.* SESHAN . **I. L. R., 13 Mad., 236**

375. ———— *Civil Procedure Code, ss. 231, 232—Assignment of decree by operation of law—Application for execution of decree.*—A Hindu obtained in 1878 a decree for partition of certain property and applied in 1888 to have it executed. It appeared that the decree-holder's son, having obtained against him in 1881 a decree for a share of whatever he should acquire under the decree of 1878, had applied for execution of the last-mentioned decree; and reliance was now placed on that application to save the bar of limitation. *Held* that, assuming the decree of 1881 had effected an assignment by operation of law of the decree of 1878, the father and son were not joint decree-holders within the meaning of Civil Procedure Code, s. 231, and the father's application for execution was barred by limitation. RAMASAMI *v.* ANDA PILLAI . **I. L. R., 13 Mad., 347**

This decision was set aside on review, and it was held on the facts as then presented to the Court that the decree was not a joint decree, and that no question therefore arose as to the effect of expl. I to art. 179 of the Limitation Act. RAMASAMI *v.* ANDA PILLAI
[I. L. R., 14 Mad., 252

(*b*) JOINT JUDGMENT-DEBTORS.

376. ———— *Decree declaring separate liability—Proceeding to keep decree alive.*—Where a decree was passed against several defendants, each of whom is declared to have a separate liability in respect of a definite amount, execution against one or more of such judgment-debtors keeps the decree in force against all simultaneously. MOHESH CHUNDER CHOWDHRY *v.* MOHUN LALL SIRCAR . . . . . **8 W. R., 80**

377. ———— *Proceeding against some only of judgment-debtors.*—A proceeding against certain of a number of joint judgment-debtors, in which, in the presence of certain of them, some are released from execution and some declared liable, is a proceeding within the meaning of s. 20, Act XIV of 1859. MOHESH CHUNDER BISWAS *v.* TARAMONEE DASSEE . . . **9 W. R., 240**

378. ———— *Proceedings against some only of judgment-debtors.*—The law makes no distinction between the different defendants liable under a decree; the decree is kept wholly in force if any effectual proceeding is taken under it within the prescribed time to keep it alive. But where a decree, though nominally in one document, really contains separate decrees against separate individuals, the law of limitation may be put into force in execution against the different defendants as if there were separate decrees. STEPHENSON *v.* UNNODA DOSSEE . . . . . 6 W. R., Mis., 18

379. ——— *Death of judgment-debtor—Execution—Execution against one of several representatives of a sole debtor—Death of such representative—Subsequent application for execution against other representatives—Practice.*—An application for execution against one of the representatives of a sole judgment-debtor saves limitation against another representative. Accordingly, where the plaintiff, on the death of his sole debtor, sued out execution on the 18th June 1881, under a darkhast, No. 718 of 1878, against *V*, one of the three sons of the debtor, and the execution-proceedings continued till the death of *V* in March 1884, whereupon the plaintiff applied on the 28th May 1884 to put *M* and *N*, the brothers of *V*, on the record as his representatives,—*Held* that the application was not too late against *M* and *N* regarded as joint representatives, with their brother *V*, of their father, the original judgment-debtor. *Ramanuj Sewak Singh* v. *Hingu Lal, I. L. R., 3 All., 157.* KRISHNAJI JANARDAN *v.* MURARRAV [I. L. R., 12 Bom., 48

380. ——— *Application for execution of decree against legal representatives of deceased judgment-debtor.*—An application for execution of a decree against one of the several legal representatives of the deceased judgment-debtor takes effect, for the purposes of limitation, against them all. RAMANUJ SEWAK SINGH *v.* HINGU LAL [I. L. R., 3 All., 157

381. ——— *Decree against two persons specifying period for which each was liable—Execution against one.*—Where a decree was given for arrears of rent against two persons, and one of them was afterwards declared on appeal to be liable for the rents for a certain period only, and execution was taken out against him only,—*Held* that the decree must be taken as a separate decree against each defendant for the portion for which each was declared to be liable, and consequently that execution proceedings against one would not prevent the law of limitation applying to bar execution against the other. WISE *v.* RAJNARAIN CHUKERBUTTY [1 B. L. R., F. B., 258 : 10 W. R., 30

KHEMA DEBEA *v.* KAMOLAKANT BUKSHI [10 B. L. R., 259 note : 10 W. R., 10

382. ——— *Surety—Separate liability—Proceedings to keep alive decree.*—In execution of decree, the debtors arranged to pay the debt by instalments, and the petitioner entered into a surety-bond by which he agreed, on failure of the debtors to pay the debt, or any one of the instalments, to be liable for the debt, or to have execution at once taken out against him. *Held* that the surety's was a separate liability; that proceedings against one or others of the joint debtors which would keep the decree alive against all of them would not affect him; and that, if he could be proceeded against in execution of the original decree, execution should have been taken against him from the date when his liability commenced, and that the decree should have been kept alive as against him by proceedings irrespective of those taken against the judgment-debtors. HURKOO SINGH *v.* RAM KISHEN [6 W. R., Mis., 44

383. ——— *Application for execution against a surety when a step in aid of execution against a principal—Mode of enforcing payment against a surety.*—*V* was awarded the sum of R4,951-13-11 by the District Judge as compensation for land taken up by the Collector under the Land Acquisition Act, 1870. The money was ordered to be paid over to him on his giving security for its refund in case the Appellate Court so ordered. *D* thereupon became his surety and executed a bond binding himself to pay into Court the said sum of R4,951-13-11, if ordered by the Court. On the 25th September 1893 the High Court varied the order of the District Court and awarded R4,204-7-11 (part of the R4,951-13-11) to another claimant *K* (the appellant). On 17th February 1894 *K* applied for execution of this order against the surety *D* and claimed also interest (R1,635-10-0) and costs (R530-15-4). *D* objected to pay interest or costs, and the High Court held that, as surety, he was liable only for the principal sum, but not to interest or costs. Subsequently, *viz.*, on the 16th February 1897, *K* applied for execution against the principal debtor *V* of the order of the 25th September 1893, in respect of the interest and costs, contending that his application of the 17th February 1894 against the surety was a step in aid of the execution of the order under art. 179 of the Limitation Act (XV of 1877) and prevented limitation. *Held* that his application was barred by limitation. The application for execution against the surety would not operate to keep alive the order as against the principal debtor unless it was made to enforce a liability which was common to both under the order. But under the order the surety was not liable for interest or costs. His liability was expressly confined by his bond to the principal sum, and it was only as to that sum that he was jointly liable with Vinayak. The previous application, therefore, for execution against the surety for money for which he was not liable under the order could not be regarded as a step in aid of execution against the principal debtor *V*. The mode of enforcing payment against a surety is by summary process in execution, and not by separate suit. KUSAJI RAMJI *v.* VINAYAK RAMCHANDA PANBHU [I. L. R., 23 Bom., 478

384. ——— *Application for execution of decree against some of the joint judgment-debtors, out of time—Realization of a portion of the decretal amount by such execution, Effect of, as against other judgment-debtor who was not a party to the execution-proceeding—Application in accordance with law.*—A judgment-debtor, who was not a party to a previous application for execution of a decree or to any order made upon it, is not precluded from showing that the said application was barred by limitation, and that therefore it was not in

7. JOINT DECREES—*concluded.*

accordance with law. A decree was obtained against four persons on the 13th August 1890. An application for execution was made against all of them on the 7th October 1893. A subsequent application was made against two of them on the 17th February 1897, and a portion of the decretal amount was realized. On a further application for execution against persons who were parties to the previous execution-proceeding and also against a person who was not a party to the said proceeding, objection was taken by the latter that the application for execution as against him was barred by limitation. *Held* that the application was barred by limitation, inasmuch as the objector was not a party to the previous execution-proceeding, which was itself barred by limitation, and therefore it had not the effect of keeping the decree alive. Harendra Lal Roy Chowdhry *v.* Sham Lal Sen
[I. L. R., 27 Calc., 210

8. MEANING OF PROPER COURT.

385. ———— **expl. II (1871, art. 167)**—*"Court," Meaning of—Application to execute decree.*—The term "Court" in Act IX of 1871, sch. II, art. 167, means the Court whose business it is, either by transfer or otherwise, to execute the decree. Prokash Chunder Lahory *v.* Poorno Chunder Roy . . . . . **21 W. R., 410**

386. ———— *"Court"—Conciliator.*—A conciliator appointed under the Dekkan Agriculturists' Relief Act (XVII of 1879) is not a Court. The presentation therefore to a conciliator of an application for execution of a decree within the period of limitation does not save the limitation, if the application to the proper Court be time-barred: Act XV of 1877, s. 14, para. 3; sch. II, art. 179. Manohar *v.* Gebiapa . **I. L. R., 6 Bom., 31.**

———— **art. 180 (1871, art. 169; 1859, s. 19).**

1. ———— *Decree of Sudder Court, Calcutta.*—The twelve years' limitation was held not to apply to a decree of the late Sudder Court, which was not a Court established by Royal Charter. Thakoor Doss Gossain *v.* Kashee Nath Mundul
[12 W. R., 73

Huro Pershad Roy Chowdhry *v.* Manick Lushkur . . . . **12 W. R., 343**

2. ———— *Judgment of Judges of Supreme Court sitting as Small Cause Court Judges.*—The judgments of the Judges of the late Supreme Court sitting under Act IX of 1850 (the Small Causes Courts Act) were held to be judgments of a Court established by Royal Charter, and were therefore not affected by Act XIV of 1859, s. 20, but were governed by s. 19. Coultroup *v.* Smith
[1 Mad., 204

3. ———— *Decrees of High Court.*—It was formerly held that the execution of decrees of the High Court was governed as to limitation by s. 19, and not s. 20 or 22, of Act XIV of 1859. Mahatab Chand *v.* Tarucknath Mookerjee
[6 W. R., Mis., 94

Ishan Chunder Chowdhry *v.* Jugodishuree
[8 W. R., 267

Bapurav Krishna *v.* Madhavrav Ramrav
[5 Bom., A. C., 214

Later rulings, however, are to the contrary—*see infra.*

4. ———— *Decree of Privy Council.*—S. 19, Act XIV of 1859, applies only to Courts in this country established by Royal Charter, and not to the Privy Council, the execution of whose decrees was subject to the limitation prescribed by s. 20 of that Act. Wise *v.* Jugobundhoo Baboo
[4 W. R., Mis., 10

5. ———— *Execution of decree of Privy Council—Court established or not established by Royal Charter—Act XXV of 1852, s. 1.—Per* Peacock, *C.J.,* Trevor and L. S. Jackson, *JJ.*—A decree of Her Majesty in Council is neither a decree of a Court established by Royal Charter within s. 19, nor a decree of a Court not established by Royal Charter within s. 20 of Act XIV of 1859. Therefore that Act does not apply to such decrees. S. 1 of Act XXV of 1852 only prescribes the procedure for executing such decrees, and does not apply any law of limitation to them. Anandamayi Dasi *v.* Purno Chandra Roy
[B. L. R., Sup. Vol., 506 : 6 W. R., Mis., 69

6. ———— *Alteration of decree on appeal—Decree of lower Court altered by High Court.*—Where a decree of the lower Court is materially altered on appeal by the High Court,—*e.g.,* where the amount of mesne profits allowed by the lower Court is cut down by the High Court,—the decree becomes a decree of the High Court, and the period within which a proceeding must have been taken to enforce the same, so that it may not be barred by the law of limitation, is twelve years under s. 19 of Act XIV of 1859. Chowdhry Wahid Ali *v.* Mullick Inayet Ali **6 B. L. R., 52 : 14 W. R., 288**

7. ———— *Execution of decree of High Court on appeal from mofussil.*—A decree of the High Court on appeal from the mofussil must be executed within three years under s. 20, Act XIV of 1859. Such decree is not a decree of a Court established by Royal Charter within the meaning of s. 19. Ramcharan Bysak *v.* Lakhikant Bannik
[7 B. L. R., F. B., 704 : 16 W. R., F. B., 1

See Arunachella Thudayan *v.* Veludayan
[5 Mad., 215

8. ———— *Execution of decree of High Court on appeal from mofussil—Portion of decree relating to costs.*—The portion of a decree of the High Court on appeal from the mofussil which relates to costs comes within s. 19, Act XIV of 1859. Tafuzzal Hossein Khan *v.* Bahadur Singh
[7 B. L. R., 706 note : 11 W. R., 205

9. ———— *Embodiment in final decree of portion affirmed.*—Where the High Court passes a decree on appeal from a mofussil Court, the Court which has to execute the decree of the High Court is governed by the rules which govern the execution of its own decrees. The ruling in *Chowdhry Wahid Ali* v. *Mullick Inayet Ali, 6 B. L. R., 52,*—that, whether the decree of the lower Court is reversed or modified or affirmed, the decree passed by the Appellate Court is the final decree in the suit, and as such the only decree which is capable of being enforced by execution,—not dissented from, except that it was suggested that in all cases it may be expedient expressly to embody in a decree of affirmance so much of the decree below as it is intended to affirm, and thus avoid the necessity of a reference to the superseded decree. *Quære*—Can the ruling in *Anandamayi Dasi* v. *Purno Chandra Roy, B. L. R., Sup. Vol., 506,* be supported? KISTOKINKER GHOSE ROY *v.* BURRODACAUNT SINGH ROY **10 B. L. R., 101 [17 W. R., 292 : 14 Moore's I. A., 465**

S. C. in lower Court, KISHEN KINKER GHOSE *v.* BURODA KANT ROY . . . **8 W. R., 470**

JOY NARAIN GIREE *v.* GOLUCK CHUNDER MYTEE **[22 W. R., 102**

10. ——————— *Execution of an order of Privy Council—Order in Council confirming a decree.*—Although an order of Her Majesty in Council may confirm a decree of the Court below, that order is the paramount decision in the suit; and any application to enforce it is, in point of law, an application to execute the order and not the decree which it confirmed. Such an application is governed by art. 180, sch. II of Act XV of 1877. LUCHMUN PERSAD SINGH *v.* KISHUN PERSAD SINGH **[I. L. R., 8 Calc., 218 : 10 C. L. R., 425**

BHOOBOONA ALUMBARI KOER *v.* JOBRAJ SINGH **[11 C. L. R., 277**

11. ——————— *Application for execution of decree—Revivor—Order for execution after notice—Writ of scire facias.*—The plaintiff obtained a decree in 1864. The first application for execution was made in September 1869 under s. 216 of the Civil Procedure Code (Act VIII of 1859); and after notice to the defendant as provided thereby, an order was made under that section for execution to issue. In September 1880 an application for execution was made under s. 230 of the Civil Procedure Code of 1877, which repealed Act VIII of 1859. *Held* that the order after notice had the effect of reviving the decree within the meaning of art. 180, sch. II, Act XV of 1877, and therefore the decree was not barred by the law of limitation. An order for execution under the Code made after notice to show cause has, on the Original Side of the Court, the same effect as an award of execution in pursuance of a writ of *scire facias* had under the procedure of the Supreme Court,—*i.e.*, it creates a revivor of the decree. ASHOOTOSH DUTT *v.* DOORGA CHURN CHATTERJEE **[I. L. R., 6 Calc., 504 : 8 C. L. R., 23**

12. ——————— *Application for execution of decree—Decree of High Court—Civil Procedure Code (Act X of 1877), s. 230.*—The plaintiffs obtained a decree of the High Court of Bombay against the defendant on 22nd February 1867. The defendant, after the passing of the decree against him, resided in Ahmedabad. In July plaintiff assigned his decree to *L*, who in 1876 assigned it to *M*. From time to time *M* obtained orders for the execution of the said decree, but was always unable to proceed to execution. The last order for execution made by the High Court was on the 4th February 1879. In April 1879 the decree was transmitted to the Court at Ahmedabad for execution, and that Court in September 1879 issued a warrant of arrest against the defendant, against the order for which the defendant appealed. The said order was confirmed by the High Court on 10th February 1880. In April 1881 the defendant was in Bombay, and *M*, the decree-holder, obtained a summons calling on defendant to show cause why the decree should not be executed against him. On 3rd May the summons was made absolute. The defendant appealed and contended that the application for execution was barred by limitation under s. 230 of the Civil Procedure Code (Act X of 1877), which was to be read with cl. 180 of sch. II of the Limitation Act, XV of 1877. *Held* that the application was not barred. Cl. 180 of the second schedule of the Limitation Act, XV of 1877, was intended to be independent of s. 230 of the Civil Procedure Code, and not to be in any way controlled by it. S. 230 does not apply to decrees made by the High Court. MAYABHAI PREMBHAI *v.* TRIBHUVANDAS JAGJIVANDAS **[I. L. R., 6 Bom., 258**

GANAPATTHI *v.* BALASUNDARA **[I. L. R., 7 Mad., 540**

13. ——————— *Execution of decree—Order of Her Majesty in Council—Revivor—Civil Procedure Code (Act XIV of 1882), ss. 230, 248—Res judicata.*—A decree was obtained against the judgment-debtor in the Zillah Court in 1860, which was reversed by the High Court, but was restored on appeal to Her Majesty in Council on the 22nd May 1872. This decree was assigned to the present decree-holders on the 10th April 1873. Between the 27th November 1872 and 10th April 1880 various applications for execution of the Order in Council were made, attachment processes issued, and proceedings struck off. In 1880 the decree-holders brought a suit to establish the right of the judgment-debtor to a bond in favour of the latter for a certain sum of money, and on the 15th March 1881 they obtained a decree which was upheld by the High Court on the 20th March 1882. After this decree, between the 10th February 1883 and the 19th April 1886, a number of applications were made for execution, which were struck off. Another application was made on the 25th July 1887 for execution. On the 28th October 1887 the judgment-debtor filed an objection on the ground that the decree was barred. On the 20th December 1887 the objection was overruled and execution issued, but the proceedings were struck off on the 28th March 1888. Then after another application had been made on the 28th September 1888, the present application was made on the 19th November 1890, when the judgment-debtor filed an objection on the ground that the decree of which execution was sought was barred by the law of limitation. *Held* that the decree which was sought to be enforced was an "Order of Her Majesty in Council" within the meaning of art. 180 of the Limitation Act. *Luchmun Persad Singh* v. *Kishun Persad Sing, I. L. R., 8 Calc., 218 : 10 C. L. R., 425,* and *Pitts* v. *La Fontaine, L. R., 6 App. Cas., 482,* approved. Art. 180 is independent of s. 230 of the Code of Civil Procedure. S. 230 has no application to decrees made by the High Court in the exercise of its original civil jurisdiction. In art. 180, Orders in Council stand in the same category as decrees of Courts established by Royal Charter in the exercise of such jurisdiction. Execution of the decree therefore was not barred by s. 230 of the Code. *Mayabhai Prembhai* v. *Tribhuvandas Jagjivandas, I. L. R., 6 Bom., 258,* and *Ganpathi* v. *Balsundara, I. L. R., 7 Mad., 546,* referred to. In art. 180 of the Limitation Act the term "revived" must be read in one and the same sense in connection with the High Court decrees and Orders in Council, and not distributively. Following the interpretation of revivor in *Aushootosh Dutt* v. *Doorga Charan Chatterjee, I. L. R., 6 Calc., 504 : 8 C. L. R., 23,* there having been in the present case an order for execution of the decree made after notice to the judgment-debtor, there was such a revivor as prevented the execution of the decree from being barred by art. 180. *Held* also that the objection of the judgment-debtor was *res judicata.* The same contention was raised in the former application and overruled by the judgment of the Subordinate Judge, dated the 20th December 1887. FUTTEH NARAIN CHOWDHRY *v.* CHUNDRABATI CHOWDHRAIN

[I. L. R., 20 Calc., 551

14. ——— *Application for execution of decree—Transfer of decree for execution—Revivor—Civil Procedure Code (1882), ss. 223, 230, and 248—Insolvent, Adverse possession of—Attachment.*—A obtained a decree against *B* on the original side of the High Court on the 19th December 1881. On the 11th December 1893 the judgment-creditor applied to the Court under s. 223 of the Code of Civil Procedure for "transmission of a certified copy of the decree to the District Judge's Court of the 24-Pergunnahs, with a certificate that no portion of the decree has been satisfied by execution within the jurisdiction" of the High Court, and alleging that the judgment-debtor had no property within its jurisdiction, but had property in the 24-Pergunnahs. The application was headed as an application for execution, and was in a tabular form. Upon this a notice was issued under s. 248 (*a*) of the Code, and the judgment-debtor not having shown any cause on the 19th December 1893, a certified copy was ordered to be issued. The certified copy of the decree having been transmitted, the judgment-creditor, on the 1st March 1894, applied for the execution of the decree to the District Judge. On the objection of the judgment-debtor that the execution was barred by limitation,—*Held* (NORRIS and GORDON, *JJ.*) that the application of the 11th December 1893 was not an application for execution, and also that the order of the 19th December 1893 was not an order for execution, and could not operate as a revivor of the decree within meaning of art. 180, sch. II of the Limitation Act. There was no necessity for the issue of a notice under s. 248 upon the application to transfer the decree under s. 223 of the Code, and on that application execution could not have been obtained upon the order of the 19th December 1893. The first application for execution was that made on the 1st March 1894 to the Court to which the certified copy of the decree was transmitted, and that was not within time. The execution of the decree was therefore barred by limitation. *Nilmony Singh Deo* v. *Biressur Banerjee, I. L. R., 16 Calc., 744,* followed. *Ashootosh Dutt* v. *Doorga Churn Chatterjee, I. L. R., 6 Calc., 504,* distinguished. SUJA HOSSEIN *alias* REHAMUT DOWLAH *v.* MONOHUR DAS

[I. L. R., 22 Calc., 921

A review having been granted of this decision, the appeal was re-heard, and on the objections of the judgment-debtor that the execution was barred by limitation, and that he having been declared an insolvent, and the properties having vested in the Official Assignee, the attachment was contrary to law,—*Held* (O'KINEALY and HILL, *JJ.*) that the execution was not barred by limitation, as the order of the 19th December 1893 was an order for execution, and operated as a revivor of the decree within the meaning of art. 180, sch. II of the Limitation Act. *Held* also that, the judgment-debtor having been in possession of the property for more than twelve years, the Official Assignee not having taken possession of it, he had a title by adverse possession which was capable of being attached. *Ashootosh Dutt* v. *Durga Churn Chatterjee, I. L. R., 6 Calc., 504; Futteh Narain Chowdhry* v. *Chandrabati Chowdhrain, I. L. R., 30 Calc., 551,* followed. SUJA HOSSEIN *alias* REHAMUT DOWLAH *v.* MONOHUR DAS . . . **I. L. R., 24 Calc., 244**

15. ——— *Judgment entered up under s. 86 of the Indian Insolvent Act (Stat. 11 & 12 Vict., c. 21), s. 86—Execution of such judgment.*—*C* was adjudicated an insolvent in October 1866, and on the 19th August 1868 judgment was entered up against him under s. 86 of the Indian Insolvent Act (Stat. 11 & 12 Vict., c. 21) for R66,40,648. In 1886 it was ascertained by the Official Assignee that certain property belonging to the insolvent's estate was available for the creditors of the estate, and on his application an order for execution against the said property was made on the 5th April 1886 by the Insolvent Court under s. 86 of the Insolvent Act. It was contended that execution was barred by limitation. *Held* that execution on the judgment was not barred. *Per* SARGENT, *C.J.*—The policy of the Indian Insolvent Act is that the future property of the insolvent should be liable for his debts. That intention would be to a great extent defeated if judgment entered up by the order of the Insolvent Court under s. 86, which is the machinery provided for effecting that object, could only be executed within a limited time. Limitation Acts should not be deemed applicable to judgments entered up under s. 86, unless their language clearly requires it. A judgment entered up under s. 86 of the Insolvent Act, although a judgment of the High Court, is not a judgment entered up in the exercise of the ordinary original civil jurisdiction, nor could the right to enforce the judgment be lawfully released by any person, and therefore art. 180 of the Limitation Act did not apply. *Per* WEST, *J.*—Formerly in England as well as in India the policy of the Insolvent Acts was to make the insolvent perpetually responsible. In England, however, by Stat. 32 & 33 Vict., c. 83, bankruptcy was substituted for insolvency, and all pending cases of insolvency were ordered to be closed within prescribed periods. In construing that statute it has been declared that after the given time the insolvent was free from all responsibility, and that after his death his estate was free also. Thus the lien on an insolvent debtor's whole future property has disappeared from English law; but this has been effected by direct legislation. In India there has been no legislation with regard to judgments of the Insolvent Court, but it has been decided that such a judgment is to be deemed a decree of the High Court, and executed as such. It must therefore be subject to the same rules as other decrees of the High Court in the absence of any special exception. Art. 180 of the Limitation Act is therefore applicable to such a judgment. The Insolvent Act did not contemplate its being entered up otherwise than as a judgment of the Supreme Court, and, as such, it ranked as a judgment of a chartered Court in the exercise of the ordinary original civil jurisdiction. The same description may be applied to it now; and hence the execution is limited, as in the case of other judgments and decrees of the High Court. The principle of perpetual liability to execution can no longer be deemed a principle. The English law has discarded it; the Indian law has made all judgments subject to limitation, and amongst them judgments of the Insolvent Court. Art. 180 therefore applies. But the right to enforce the judgment in the present case did not accrue to the Official Assignee until the order of the Insolvent Court to take out execution was made. That order was not made until April 1886, and therefore the right to execution, which arose on the date of that order, was not barred by art. 180 of the Limitation Act (XV of 1877). IN THE MATTER OF CANDAS NARRONDAS. OFFICIAL ASSIGNEE (TURNER) *v.* PURSHOTAM MUNGALDAS NATHUBHOY . . **I. L. R., 11 Bom., 138**

Held (on appeal to the Privy Council)—The Limitation Act (XV of 1877), sch. II, art. 180, applies to a judgment of a Court for the relief of insolvent debtors entered up in the High Court, in accordance with s. 86 of the Stat. 11 & 12 Vict., c. 21. Although a Court held under the latter statute determines the substance of the questions relating to the insolvent's estate, the proceedings in execution and the judgment are the High Court's. The judgment is entered up in the ordinary course of the duty cast upon the High Court by the law, not by way of special or extraordinary action, but in the exercise of its ordinary original civil jurisdiction. The latter expression in the charter of 28th December 1865, being opposed to the "extraordinary" jurisdiction which the High Court may assume, at its discretion, upon special occasions and by special orders, includes all such jurisdiction as is exercised by the High Court in the ordinary course of law without any step taken to assume it. When an order has been made under s. 86 of the Stat. 11 & 12 Vict., c. 21, that execution be taken out, a present right accrues to the Official Assignee to apply for it; and therefore art. 180 of sch. II assigning, in reference to judgments of High Courts exercising ordinary original jurisdiction, a starting-point of time depending on the accrual of the right to enforce them is the article applicable. IN THE MATTER OF CANDAS NARRONDAS. NAVIVAHU *v.* TURNER

[I. L. R., 13 Bom., 520
L. R., 16 I. A., 156

LIQUIDATED DAMAGES.

See CASES UNDER DAMAGES — MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.

See CASES UNDER INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES OR OTHERWISE.

LIQUIDATORS.

See CASES UNDER COMPANY—WINDING UP—DUTIES AND POWERS OF LIQUIDATORS.

See COMPANY—WINDING UP — GENERAL CASES . . **I. L. R., 15 Mad., 97**

——— **Official Liquidator, Assignment of lease by—**

See LANDLORD AND TENANT—LIABILITY FOR RENT . **I. L. R., 14 All., 176**

——— **Suit by—**

See COMPANY — ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.
[I. L. R., 17 Bom., 439, 472

See PLAINT — FORM AND CONTENTS OF PLAINT—PLAINTIFFS.
[I. L. R., 17 All., 292
I. L. R., 18 All., 198

LIS PENDENS.

See FOREIGN COURT, JUDGMENT OF.
[I. L. R., 19 Mad., 257

See MAHOMEDAN LAW—DEBTS.
[I. L. R., 4 Calc., 402

See PARTIES — PARTIES TO SUITS—PURCHASERS . . . **7 W. R., 225**
[11 Bom., 64

1. ——— Application of doctrine in India.—The doctrine of *lis pendens* is applicable to natives of this country, and has a wider operation here than in England. The distinction between an equitable lien created *pendente lite* and an absolute sale is that in the latter case, though not in the former, it is necessary to institute a fresh suit. KASSIM SHAW *v.* UNNODAPERSHAD CHATTERJEE [1 Hyde, 160

2. ——— The doctrine of *lis pendens* is in force in British India. LAKSHMANDAS SARUPCHAND *v.* DASRAT **I. L. R., 6 Bom., 108**

GULABCHAND MANICKCHAND *v.* DHANDI VALAD BHAU . . . . . . **11 Bom., 64**

3. ——— *Principle of doctrine—Registered and unregistered conveyances.*—The doctrine of *lis pendens* rests, as stated by Turner, *L.J.*, in *Bellamy* v. *Sabine*, not upon the principle of constructive notice, but upon the fact that it would be plainly impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail. This reason for refusing recognition to alienations *pendente lite* made by a party to a suit is as fully applicable in the case of a registered as of an unregistered conveyance. LAKSHMANDAS SARUPCHAND *v.* DASRAT **[I. L. R., 6 Bom., 168**

4. ——— *English law, Applicability of, in mofussil—Suit to set aside alienations by widow.*—The widow of a legatee of one-half of the residue and the bulk of considerable estate sued to set aside alienations made by the widow of one of three executors acting as managers; her husband, the deceased executor, being legatee of one-sixth. The alienations were made pending a suit by the same plaintiff in the Supreme Court to administer the entire estate, and to expose defalcations and frauds of the managers and executors also, after an injunction issued in that suit prohibiting alienation; and the alienations were set aside by the Court. *Quære*—Whether the English doctrine of *lis pendens* is applicable in the mofussil. EX-PARTE NILMADHUB MUNDUL . . . **2 Ind. Jur., N. S., 169**

5. ——— The doctrine of *lis pendens* applies only to alienations which are inconsistent with the rights which may be established by the decree in the suit. MUNISAMI *v.* DAKSHANAMURTHI . . . . **I. L. R., 5 Mad., 371**

6. ——— *Assignment of mortgages—Suit for possession—N* being mortgagee in possession of five-eighths of a pangu (share) of certain land—security for a debt of R400—hypothecated his rights to *M* in 1876. In 1878 *K* bought two-eighths of the said five-eighths from the mortgagor. In 1879 *K* sued *N* claiming possession of his two-eighths on payment of R400, and obtained a decree and possession thereof. Pending this suit, *N* assigned his mortgage to *M*. *M* was aware of the suit, and *K* was aware of the assignment when he paid R400 into Court for *N*. In 1883 *K* bought the remaining three-eighths from the mortgagor, and sued *N* and *M* to recover possession thereof. *M* pleaded that he had a valid mortgage over three-eighths. *Held* by MUTTUSAMI AYYAR, *J.*, that if the assignment of the mortgage by *N* to *M* was a real transaction, this plea was good. *Per* MUTTUSAMI AYYAR, *J.*—The doctrine of *lis pendens* can only be relied on as a protection of the plaintiff's right to property actually sought to be recovered in the suit. BRAHANNAYAKI *v.* KRISHNA **[I. L. R., 9 Mad., 92**

7. ——— The effect of a *lis pendens* in India considered. KRISHNAPPA VALAD MAHADAPPA *v.* BAHIRU YADAVRAV **[8 Bom., A. C., 55**

SAM *v.* APPUNDI IBRAHIM SAIB . **6 Mad., 75**

8. ——— *Possession of property obtained pending suit.*—Possession of property obtained from a defendant while a suit is pending against him in respect of that property must be taken to be the possession of the defendant himself for the purposes of the suit. RAM KISHEN *v.* DOOLEE CHAND . . . **22 W. R., 547**

9. ——— *Maxim, "Pendente lite nihil innovetur."*—The rule "*Pendente lite nihil innovetur*" is in force in British India. Where the owner of a house, during the pendency of a suit by an unregistered mortgagee for foreclosure and sale, mortgaged the same house by a registered mortgage to another person, it was held that the last-mentioned mortgagee had no title as against the purchaser under a decree for sale in the suit, although such purhaser was the plaintiff in the suit. A grantee or vendee of the defendant, becoming such during the pendency of the suit, need not be made a party to the suit; and, inasmuch as the abovementioned rule does not rest upon the equitable doctrine as to notice, it is a matter of indifference whether or not, at the time of his becoming grantee or vendee, he had actual notice of the existence of the suit. GULABCHAND MANICKCHAND *v.* DHONDI VALAD BHAU . . . . **11 Bom., 64**

10. ——— *Possession under a subsequent mortgage created during the pendency of a suit by a prior mortgagee.*—A sale or mortgage *pendente lite* is invalid as against the plaintiff, and the vendor or mortgagor is under a disability to give any valid possession, as against the plaintiff in the pending suit, to the party who becomes a purchaser or mortgagee during the pendency of the suit, whether or not the purchaser or mortgagee *pendente lite* has knowledge of the prior sale or mortgage as to which the litigation is pending, or of the litigation itself. *Kasim Shaw* v. *Unodapershad Chatterjee, 1 Hyde, 160*, and *Manual Fruval* v. *Sanagapalli Latchmidevamma, 7 Mad., 104*, followed. BALAJI GANESH *v.* KHUSALJI **[11 Bom., 24**

11. ——— *Sale pendente lite—Right of purchaser—Mortgage.*—On the 31st August 1863 *A* mortgaged his house to *B*, who brought a foreclosure suit, and on 7th July 1866 obtained a decree against *A* for the sale of the house if the mortgage-debt was not paid on or before the 24th March 1868. The debt not having been paid, the house was sold at a Court sale on the 15th July 1870 and purchased by *C*. In an action brought by the plaintiff to recover possession of the house, on the ground that he had purchased it on the 2nd August 1868, at an execution sale under a common money-decree against *A*,—*Held* that, even if there had been

LIS PENDENS—*continued.*

no decree in the mortgage suit, the fact that that suit had been instituted in 1866, and was pending in 1868, would have been sufficient to defeat the plaintiff's suit; his purchase in 1868, having been made *pendente lite*, was completely subject to any decree which might be made in the mortgage suit. RAOJI NARAYAN *v.* KRISHNAJI LAKSHMAN **11 Bom., 139**

12. ——— *Sale in execution of decree—Purchaser, Right of.*—The purchase of property in the mofussil at a sale in execution of decree is valid, notwithstanding a decree for sale of the property in a suit for foreclosure pending in the High Court at the time of sale, to which the purchaser was not a party. ANANDAMAYI DASI *v.* DHARENDRA CHANDRA MOOKERJEE
**[8 B. L. R., 122: 14 Moore's I. A., 181
16 W. R., P. C., 19**

Affirming the decision of the High Court in ANNUND MOYEE DOSSEE *v.* DHURUNDRO CHUNDER MOOKERJEE . . . . **1 W. R., 103**

13 ——— *Suit for partition—Right of purchaser.*—Three brothers, *L M B*, *P K B*, and *G D B*, being jointly entitled in equal shares to an undivided one-third share in certain property, mortgaged their shares by three deeds bearing different dates to one *R N*. Between the dates of the two last mortgages the brothers instituted a suit for partition of the property and for certain other objects; and on the 2nd February 1864 a decree was made in the suit, declaring the brothers entitled to a one-third share of the property, and ordering a partition and the taking of accounts, and reserving the question of costs. *R N* was not made a party to this suit. On 6th September 1864 the brothers covenanted to mortgage certain property to the plaintiff, including that previously mortgaged to *R N*. On 8th and 9th December the agreement was performed by conveyances, in which *R N* joined, and which recited that he had been paid off; and on 28th November 1866 and 27th March 1867 the three brothers conveyed their equities of redemption to the plaintiff. On 15th June 1868 an order was made in the partition suit for the sale of a sufficient portion of the property to pay the costs of the parties to the suit, and under this order the property which the plaintiff sought to recover in the present suit was sold on 1st May 1869, and purchased by the defendant, who at the time had full notice of the plaintiff's claim. *Held* the doctrine of *lis pendens* did not apply, and the plaintiff was entitled to recover possession. KAILAS CHANDRA GHOSE *v.* FULCHAND JAHURRI . . . . **8 B. L. R., 474**

14. ——— *Suit for account against executor—Sale by Sheriff in execution of decree—Right of purchaser at Sheriff's sale against purchaser at sale by mortgagee.*—In 1855 a decree for an account was passed, in the Supreme Court at Calcutta, against *A*, an executor. *A* died in 1856, and the suit, which was revived against his representatives, came on for consideration on further directions on the 29th of August 1866. It was then found that *A*'s estate was liable for ₹1,32,406-11-8, and his representatives were ordered to pay this money into Court. The representatives having made default in payment, a writ of *fieri facias* was issued, under which certain property was sold by the Sheriff of Calcutta and conveyed by him to *B* on the 1st of April 1867. Previously to this, the representatives of *A* had, on the 11th of January 1865, mortgaged the same property, together with other lands, "for the purpose of paying the Government revenue of certain taluqs belonging to *A*, deceased;" and the mortgagee having obtained a decree on his mortgage, the property was sold to *C* in execution of the mortgage decree on the 30th of March 1867. In a suit for possession by *C* against *B* the latter pleaded *lis pendens*. *Held* that the nature of the suit, in which the decree of 1855 and the subsequent order of 1866 were passed, was not such as to warrant the application of the doctrine of *lis pendens* to the mortgage of the 11th of January 1855. *Kailas Chandra Ghose* v. *Fulchand Jahurri, 8 B. L. R., 474*, followed. KASIMUNNISSA BIBEE *v.* NILRATNA BOSE
**[I. L. R., 8 Calc., 79: 9 C. L. R., 173
10 C. L. R., 113**

15. ——— *Purchase pendente lite—Right of purchaser against mortgagee of property.*—Plaintiff purchased at a sale by the District Munsif's Court of Guntur, held on the 22nd of December 1868, the interest of one *F G* in a cotton screw at Guntur. Previous to this, on the 31st July 1867, the husband of the 1st defendant in the present suit filed a plaint, No. 16 of 1867, in the Civil Court of Guntur against the representatives of *F G* (who was then dead), praying to be declared entitled to be treated as mortgagee of the shares of *F G* in that and another screw for ₹1,696-9-0, and that the amount might be raised by sale of those shares. Issues were settled, the 4th of which was—"Was there a tangible mortgage of real property or shares in real property?"—and the decree made on 30th September 1869 found this issue in the affirmative, and declared that the amount sued for should be paid from the aforesaid shares hypothecated to the plaintiff in that suit. At a sale in execution of this decree, the share of *F G* in the screw at Guntur was purchased by 2nd defendant (in the present suit) on the 18th of February 1870. The present plaintiff objected to the sale and was referred to a regular suit. Accordingly he brought the present suit to set aside the decree in No. 16 of 1867 as regards the share of *F G* in the screw at Guntur, to cancel the attachment and sale to second defendant, and for possession of the share. First defendant pleaded that plaintiff at the date of his purchase had notice of the pending of the suit No. 16 of 1867 and of the mortgage claim. The plaintiff denied the fact of the mortage and its regularity, and issues were framed, the 1st of which was—"whether plaintiff knew that the suit No. 16 of 1867 was under hearing when he bought the one-third share, and that there might be declared a hypothecation to the late husband of the first defendant in this suit." The Civil Court, treating the claim of the plaintiff in No. 16 of 1867 as a mortgage, held that, as it was prior in point of time to the sale under the Munsif's decree, it should prevail against plaintiff's claim, even though plaintiff

had not notice. The Court also found that plaintiff had notice. Upon appeal,—*Held* that, as the purchase made by the plaintiff was made while the suit No. 16 of 1867 was pending, in which a mortgage was alleged and payment was prayed out of the property, the plaintiff was bound by the decree made therein, whether he had or had not notice, nor could he in any way question that decree. MANUAL FRUVAL *v.* SANAGAPALLI LATCHMIDEVAMMA **[7 Mad., 104**

16. ———— *Notice—Right of purchaser pendente lite as against person whose lien has been declared in suit to which the purchaser was no party—Notice.*—Suit to recover possession of a mutah from which plaintiff had been ejected by an order of Court, passed in execution of the decree in a suit to which he was no party. Plaintiff claimed under a deed of sale from *A* (a purchaser from *C* and *D*), dated 11th November 1860, and alleged that he purchased for valuable consideration and without notice of any other claim. Defendant asserted that plaintiff purchased fraudulently with notice of her late husband's right of purchase. It appeared that defendant's husband had sued *C D* and others to enforce a lien upon the mutah, and obtained a judgment of the Privy Council upholding his lien and declaring its priority over the purchase of *C* and *D*. This suit was pending before the Privy Council at date of plaintiff's purchase. In 1862 defendant's husband sued *C* and *D* for specific performance of an alleged agreement for sale, dated October 1851, without adducing any evidence as to the existence of the agreement, and got a decree in his favour, because the Principal Sudder Ameen had said in the original case that *C* and *D* had agreed to sell the mutah. The present plaintiff was turned out of possession under this decree, to the proceedings in which he had in vain sought to get made a party, on the ground that he was affected by notice of the former proceedings. He sought relief under s. 230, Act VIII of 1859, but his application was dismissed, and he then commenced this suit. The Civil Judge decided in favour of plaintiff. *Held*, confirming the decree of the lower Court, that this was a case of a vendee of property, perhaps subject to a lien, turned out upon a decree against other people declaring the holder of the lien the owner of the property, and that the ejectment was wrongful and procured by a gross misuse of the Court's process. The effect of notice of *lis pendens* considered. SAM *v.* APPUNDI IBRAHIM SAIB . . **6 Mad., 75**

17. ———— *Purchase pendente lite—Right of suit.*—*T*, having obtained a decree against the heirs of *H*, attached certain property in execution. *P*, one of the heirs, objected that the decree was made against the defendants in their representative capacity, and that the property attached had descended to her, not from *H*, but from her husband. The objection was overruled and the property sold. *P* appealed to the High Court, which passed a judgment in her favour. *Held* that the sale of the property was one *pendente lite*, and, as such, subject to the final result of the suit between the parties; and that *P* had a right to come into

Court as against the purchaser and establish her title to the property. INDERJEET KOOER *v.* POOTEE BEGUM . . . . . **19 W. R., 197**

18. ———— *Purchaser under execution sale.*—In a suit for rent by the auction-purchaser of property which had been sold in execution of a money-decree, the defendant admitted being in possession, but denied the alleged relationship of landlord and tenant, contending that the property had been purchased by himself at a sale in execution of a decree which he had obtained upon a mortgage-bond, *i.e.*, a money-bond with a clause creating a charge upon the property. The suit on this mortgage was commenced after the attachment upon which the property was sold to the plaintiff, but was pending when the plaintiff purchased. *Held* that the mortgagors were bound by the proceedings in the suit including the attachment and sale, and the defendant had a good title against the plaintiff in the same manner as against the mortgagors whose interest the plaintiff purchased, even if the certificate of sale was not registered. A purchaser under an execution is bound by *lis pendens*, for it would be impossible that any action or suit could be brought to a successful termination if alienating *pendente lite* were permitted to prevail. RAJ KISHEN MOOKERJEE *v.* RADHA MADHUB HOLDAR **[21 W. R., 349**

19. ———— *Patni lease granted pendente lite.*—A patni lease of lands granted by a Hindu widow in possession upheld, though made pending an equity suit brought by her against her husband's executors. BISSONATH CHUNDER *v.* RADHA KRISTO MUNDUL . **11 W. R., 554**

20. ———— *Purchase of property on which there is a decree in suit on a mortgage-bond—Suit for possession against purchaser from mortgagor.*—The plaintiff in 1877 obtained a decree on a mortgage-bond, in execution of which property belonging to his debtor was put up for sale and purchased by the plaintiff on 5th May 1878. The defendants had, in execution of a subsequent money-decree against the same debtor, purchased the same property on the 1st April 1878. In a suit by the plaintiff for possession and mesne profits,—*Held*, following the case of *Raj Kishen Mookerjee* v. *Radha Madhub Holdar, 21 W. R., 349*, that the defendants were purchasers *pendente lite*, and were consequently bound by the proceedings in the plaintiff's suit on the mortgage-bond. JHAROO *v.* RAJ CHUNDER DASS . . **I. L. R., 12 Calc., 299**

21. ———— *Sale in execution of decree—Auction-purchaser—Res judicata.*—*A*, the auction-purchaser of certain immoveable property at a sale in execution of a decree, purchased with notice that a suit by *H* and *M* against the judgment-debtor and the decree-holder for a share in such property was pending, but did not intervene in such suit. Before the sale to *A* was made absolute, *H* and *M* obtained a decree in the suit for a moiety of the share claimed by them. *A* took no steps to get such decree set aside, but sued them to establish his

LIS PENDENS—*continued.*

right to such moiety in virtue of his auction-purchase. It appeared that the Court which passed the decree in favour of *H* and *M* did so without jurisdiction. *Held* that, inasmuch as the suit in which such decree was made was tried and determined by a Court having no jurisdiction, it could not be held that *A* was bound by such decree, and that it could not be said that *A* was bound to take steps to get such decree set aside by means of appeal, or that, because he had omitted to do so, it had become binding on him and his suit was precluded. *Quære*—Whether the doctrine of *lis pendens* applies in the case of a purchase in execution of decree. ALI SHAH *v.* HUSAIN BAKHSH . . **I. L. R., 1 All., 588**

It was held it does not. NUFFUR MERDHA *v.* RAM LALL ADHICARY . . . **15 W. R., 308**

22. ——— *Sale in execution of decree—Purchaser, Rights of—Decree by mortgagee—Incumbrance.*—Where a creditor obtains a decree against his debtor, and in execution puts up for sale, and himself becomes the purchaser of, certain property of his debtor, which is already under mortgage to another, and such other has, previous to the decree and sale, commenced a suit on his mortgage-bond (although such suit has not proceeded to a decree), such judgment-creditor purchasing *pendente lite* only obtains the right and interest of the mortgagor in such property—*viz.*, the equity of redemption—and does not acquire the property free from the incumbrance created by the debtor. LALA KALI PROSAD *v.* BULI SINGH

[I. L. R., 4 Calc., 789 : 3 C. L. R., 396

23. ——— *Applicability of the doctrine to a Court sale in execution of a decree—Code of Civil Procedure (1859), ss. 240, 270, 271—Effect of a decree obtained by an attaching creditor in a suit against successful intervenors or claimants.*—In 1872 the plaintiff obtained a money-decree against two brothers, *P* and *K*. In execution of that decree, he attached their one-half share in certain fields in 1874. The attachment was removed at the instance of two claimants, *S* and *P*. In 1875 the plaintiff sued the claimants, and obtained a decree in his favour in 1878. Meanwhile in December 1874, after the plaintiff's attachment had been removed, one *V* obtained a decree against one of the brothers, *P*. In 1876, while the plaintiff's suit against *S* and *B* was pending, *P*'s right, title, and interest in the one-half share of the fields belonging to himself and *K* was sold in execution of *V*'s decree, and purchased by the defendant. In 1881 the plaintiff again attached the one-half share belonging to the two brothers under his decree of 1872. Thereupon the defendant, relying on his purchase of 1876, applied for the removal of the attachment. It was removed from *P*'s one-fourth share, and maintained on *K*'s share, which was in due course sold. The plaintiff now sued to establish his right to sell *P*'s one-fourth share under his decree of 1872. *Held* that the doctrine of *lis pendens* did not apply to this case; that the defendant, though he purchased *P*'s share during the pendency of the plaintiff's suit of 1875, was not bound by the decree made in that suit—first because, as an auction-purchaser at a Court sale in execution of a decree, he derived title, not from *P*, but by operation of law; secondly because *P* was not the person against whom the decree was made in the suit of 1875; and, thirdly, because *P* was not represented in that suit by the plaintiff simply because the plaintiff sought to establish his right to attach and sell the property as *P*'s property. *Ali Shah* v. *Husain Bakhsh, I. L. R., 1 All., 588,* followed. LALU MULJI THAKAR *v.* KASHIBAI . . **I. L. R., 10 Bom., 400**

24. ——— *Presentation in Court of award—Assignment pending such proceedings.*—*P* and his partners mortgaged certain immoveable property to plaintiff on the 11th October 1869. They had then no title to the property, but they subsequently acquired one by purchase on the 29th June 1871. On plaintiff demanding that *P* and his partners should make good the contract of mortgage and of the interest they had acquired, the matter was referred to arbitrators, who, on the 26th December 1873, made an award empowering plaintiff to sell the mortgaged property in satisfaction of his debt. The award was presented in Court by plaintiff on the 23rd January 1874, and was filed by the Court on the 23rd February 1874. Meanwhile, on the 14th February 1874, the property was attached in execution of a money-decree obtained by a creditor of *P* and his partners against them. On the 15th April 1874 it was sold by auction and purchased by defendant. In a suit brought by plaintiff to recover possession of the property, both the lower Courts rejected his claim, on the ground that *P* and his partners had no right to the property when they mortgaged it to plaintiff. *Held* that the presentation in Court of the award obtained by plaintiff was equivalent to the presentation of a plaint for the specific performance of the contract of mortgage, and the proceedings consequent thereon constituted a *lis pendens*, during which a mere money-decree-holder could not, by any proceedings which he might take, defeat the object of plaintiff's application to the Court to file his award. PRANJIVAN GOVARDHANDAS *v.* BAJU . . **I. L. R., 4 Bom., 34**

25. ——— *Mortgage by executors—Suit on mortgage—Administration suit—Writ of fi-fa—Sheriff's sale—Sale in execution of decree.*—In a suit by the representatives of *P D* against his brother *A D*, and after *A D*'s death against his executors, it was found that there was over R1,32,400 due to the plaintiff from the estate of the deceased; and on the 29th of August 1866 the executors were ordered to pay this sum into Court. The executors disobeyed, and on the 24th of December 1866 a writ of *fi-fa* was issued from the High Court, in execution of which certain property belonging to the estate of *A D* was sold to the defendants on the 18th of July 1867. Previously, however, on the 12th of October 1866, the executors had mortgaged the same property to the plaintiff, who brought a suit on his mortgage on the 10th of June 1867. On the 28th of August 1867 the present defendants were made parties to that suit, and in their written statement they alleged that they had been improperly made parties, and claimed a title superior to that

of the plaintiff. That suit was dismissed with costs as against the present defendants, on the ground that they were improperly added; but a decree for sale was given against the executors, in execution of which the mortgaged property was sold to the plaintiff. In a subsequent suit brought by the plaintiff for possession,—*Held* that the defendants were entitled to redeem, and were not affected by the suit of 1867 as a *lis pendens*. CHUNDER NATH MULLICK v. NILAKANT BANERJEE . . **I. L. R., 8 Calc., 690**

26. ——— *Sale in execution of decree—Prior attachment.*—On the 29th June 1876 the plaintiff obtained a money-decree by consent against *R*, the father-in-law of the defendant. On the 24th of July 1876 the plaintiff attached a house apparently belonging to *R*. On the 12th October 1876 the defendant sued *R* for maintenance, and alleged that the house in question was the property of her deceased husband and *R*, and she claimed the right to continue to live in it. On the 10th of November 1876, and during the pendency of the defendant's suit against *R*, the house was sold under the plaintiff's decree against *R*, and the plaintiff himself became the purchaser. On the 20th of June 1877 the defendant obtained a decree aginst *R* in terms of the prayer of her plaint. On the 27th of August 1879 the plaintiff brought the present suit to eject the defendant from the house. *Held* that what the plaintiff bought from *R* was his right, title, and interest in the house, which being subject to the decree in the defendant's pending suit, the plaintiff's purchase was likewise subject to the same, and the circumstance that the plaintiff had placed a prior attachment on the house made no difference. The plaintiff therefore could not eject the defendant during her lifetime. PARVATI v. KISANSING . **I. L. R., 6 Bom., 567**

27. ——— *Sale pending appeal—Decree reversed—Right of judgment-debtor.*—*S*, having obtained a decree against *M* and another, brought to sale and purchased *M*'s property pending appeal. The decree having been reversed,—*Held* that *M* was entitled to the restoration of his property, and not merely to the proceeds of the sale thereof. SADASIVA v. MUTTU SABAPATHI CHETTI

[I. L. R., 5 Mad., 106

See LATI KOER v. SOBADRA KOER

[I. L. R., 3 Calc., 724

28. ——— *Perpetual lease—Cultivation of waste land.*—A decree-holder, who has obtained possession of land in suit pending an appeal, cannot grant a perpetual lease thereof which will be binding on his opponent in the event of the decree being reversed. GAJAPATI RADHIKA PATTA MAHADEVI GURU v. GAJAPATI RADHAMAM MAHADEVI GURU . . . **I. L. R., 7 Mad., 96**

29. ——— *Former decree for partition—No return to commission—Mortgage of share—Purchase by a stranger of portion of the lands included in the decree—Suit by him for partition—Res judicata.*—*A* and *B* were the joint owners in equal shares of certain property. In 1869 *B* mortgaged his share to *A* under a mortgage-deed drawn up in the English form. Later on, in 1869, *A* brought a suit against *B* for partition, and in 1870 obtained a decree appointing a commissioner of partition and directing the partition. No return was made to this commission, and no actual partition come to. In 1873 *A* obtained a decree for an account and for payment, or in default for sale of the property. In 1878 *B*'s share was put up for sale and purchased by *C*, and *C* was put into possession. In 1881 *C* brought a suit against *A* for partition. *Held* that the decree obtained by *A* in 1873 put an end to *B*'s right to redeem unless he paid the amount found due against him, and therefore, at the time of the sale to *C*, *B*'s right to redeem had ceased to exist, and the property was no longer subject to partition under the decree of 1870, and therefore the partition asked for under the suit of 1881 could not be granted. KIRTY CHUNDER MITTER v. ANATH NATH DEY

[I. L. R., 10 Calc., 97 : 13 C. L. R., 249

30. ——— *Mortgage executed during pendency of maintenance suit in which decree is made charging property mortgaged—Transfer of Property Act (IV of 1882), s. 52.*—Where a member of a Hindu family, during the pendency of a suit for maintenance which resulted in a decree charging the house in suit, together with other property with the maintenance claimed, mortgaged the house in suit to the plaintiff,—*Held* that he was entitled so to do, and that the validity of the mortgage was not affected by the doctrine of *lis pendens*. MANIKA GRAMANI v. ELLAPPA CHETTI

[I. L. R., 19 Mad., 271

31. ——— *Purchaser at sale in execution of decree—Attachment of property sold ante litem.*—Where the defendant in an ejectment action had bought the village in question at a sale in execution of a decree obtained by the mortgagee against the mortgagors thereof, it appeared that prior to his purchase the plaintiff's vendor had sued to establish against the parties to that decree his title to the village, and had subsequently obtained a decree in his favour. *Held* that the defendant bought *pendente lite*, and was bound by the decree so obtained. That result could not be avoided by showing that the mortgagee decree-holder had attached the village prior to the suit by the plaintiff's vendor. MOTI LAL v. KARAB-UL-DIN

[L. R., 24 I. A., 170 : I. L. R., 25 Calc., 179 : 1 C. W. N., 639

32. ——— *Decree on mortgage—Sale of mortgaged land pending proceedings in execution of decree.*—On the 22nd August 1882, *Y* and *K* mortgaged certain land to the plaintiff by an unregistered mortgage. On the 17th May 1884, *Y* alone mortgaged the same land to the defendant. This mortgage was duly registered. Subsequently to the date of the defendant's mortgage, the plaintiff sued *Y* and *K* on his mortgage, and on 26th August 1884 he got a decree for the sale of the mortgaged property. On 1st November 1884 he applied for execution of his decree, and in August 1885 the execution sale took place and the property was sold to one *D*, who was the plaintiff's nominee. Meanwhile,

LIS PENDENS—*continued.*

however, and pending the plaintiff's execution proceedings, *Y* and *K*, on the 14th March 1885, sold the property to the defendant by a registered deed of sale. The plaintiff now sued the defendant for possession. *Held* (1) that the sale to the defendant on the 14th March 1885, pending the plaintiff's execution-proceedings, was a sale *pendente lite* and void as against the plaintiff. (2) That the plaintiff, as purchaser at the Court's sale in August 1885, took the property subject to the defendant's mortgage of *Y*'s share to the defendant in 1884, but free from the effect of the subsequent sale by *Y* and *K* to the defendant. (3) As this was a suit for possession, and as *Y*'s share had been mortgaged to the defendant with possession, the plaintiff was only entitled to joint possession of the property with the defendant. He could file a separate suit to redeem defendant. Shivjiram Sahebram Marwadi *v.* Waman Narayan Joshi . **I. L. R., 22 Bom., 939**

33. ———— *Purchase by puisne mortgagee at sale in execution of decree of property with several mortgages on it—Purchases before and during mortgagee's suit and after decree therein how affected by it.*—The plaintiff in this suit had succeeded to four, out of five, mortgages, subsequent to his own, which had been executed before a decree obtained by a mortgagee. This decree had been purchased by the first defendant, who also bought the property at the execution-sale. The plaintiff had also succeeded to several mortgages executed pending the suit in which the decree was made. *Held* that a distinction must be made in respect of whether the mortgages so transferred to the plaintiff had been executed before or after the bringing of the above suit. As regards the mortgages executed before it, the plaintiff, not having been a party to that suit, was entitled to redeem the first defendant, who was purchaser of the decree. As regards the mortgages executed after that suit was brought, the plaintiff was bound by the decree, and his interest in the mortgages, transferred *pendente lite,* passed to the purchaser. On the other hand, persons who have taken transfers of property subject to a mortgage cannot be bound by proceedings in a subsequent suit between the prior mortgagee and the mortgagor, to which they have not been made parties. Umes Chunder Sircar *v.* Zabur Fatima

[I. L. R., 18 Calc., 164
L. R., 17 I. A., 201

34. ———— *Suit resulting in proceedings unexpected from its nature and the relief sought—Possibility of appeal—Compromise of suit—Bonâ fide purchaser without notice—Estoppel.*—The plaintiffs, in execution of decree against the estate of the deceased husband of *A*, attached among others certain properties as to which *A* put in a petition of objections on 11th July 1872, claiming them as her own by right of purchase from her husband in lieu of her dower, and her claim was allowed and the properties released from attachment on 20th December 1872. Subsequently in May 1873, *A* mortgaged the properties to *R*. An appeal was referred (but whether before or after the mortgage

LIS PENDENS—*continued.*

to *R* was not clear) against the order of 28th December 1872, and the appeal was, on 30th May 1874, settled by a compromise between the plaintiffs and *A*, by which among other conditions time was granted to *A* to pay off the decree, and a twelve-anna share of the properties claimed was released from attachment, the attachment being continued against the other 4-annas share: the order of the Court was simply that "the case be struck off." The decree not being satisfied, the plaintiffs took out execution, and the properties were put up for sale and purchased by the plaintiffs on 27th November 1882. Subsequently in execution of the decree *R* held against *A*, the properties were again put up for sale and purchased by *R* on 14th November 1884. In a suit against *R* and *A* for declaration of the plaintiff's title and for possession of the properties,—*Held* that the order of the Court and the compromise in the claim suit were not such proceedings as from nature of the suit and the relief prayed *R* could have expected would result, and that he was therefore not bound by them as a purchaser *pendente lite. Kailash Chandra Ghose* v. *Ful Chand Johari, 8 B. L. R., 474,* and *Kasseemunnissa Bibee* v. *Nilratna Bose, I. L. R., 8 Calc., 79,* referred to. *Semble*—Neither the possibility of an appeal nor the consent decree were proceedings by which *R* as a purchaser *pendente lite* would be bound. *Held* also that under the circumstances *R* had a good title as *bonâ fide* mortgagee and auction-purchaser without notice, and that the plaintiffs were estopped from questioning that title. *Poresh Nath Mukherji* v. *Anath Nath Deb, I. L. R., 9 Calc., 265,* followed. Kishory Mohun Roy *v.* Mahomed Mujaffar Hossein . . . **I. L. R., 18 Calc., 188**

35. ———— *Auction-purchaser bound by lis pendens.*—*K* brought a suit against *P* to recover possession of certain land. Whilst that suit was pending in the Court of first instance, the right, title, and interest of *P* in the land were sold in execution of a decree against him at the instance of a judgment-creditor and purchased by *G*. Subsequent to *G*'s purchase, *K*'s suit was dismissed by the Court of first instance; but *K* appealed, and the Appellate Court reversed the decree of the Court below and gave judgment in *K*'s favour. *G*, who was not made a party to the appeal, thereupon instituted a suit against *K* to eject him and obtain possession of the land. *Held* that the doctrine of *lis pendens* applied, and that *G* was not entitled to maintain the suit. *Held* further that it made no difference to the application of the doctrine that the decree of the Court of first instance was in favour of *G*'s predecessor in title, for that decree was open to appeal, and the decree in the suit was that passed by the Appellate Court, the proceedings in the Appeal Court being merely a continuation of those in the suit; and as *G*'s purchase was made whilst that suit was pending, *G* was still bound by the decree of the Appellate Court. *Anundo Moyee Dossee* v. *Dhonendro Chunder Mookerjee, 14 Moore's I. A., 101: 8 B. L. R., 122: 16 W. R., P. C., 19,* distinguished. Gobind Chunder Roy *v.* Guru Churn Kurmokar

[I. L. R., 15 Calc., 94

LIS PENDENS—*continued.*

36. ———————————— *"Contentious suit"—Transfer of Property Act (IV of 1882), s. 52.*—*A*, on the 9th September 1883, sold certain immoveable property to *S* for R98-12 by means of a conveyance which was not registered. On the 29th September 1883 *S* instituted a suit against *A* on that conveyance to obtain possession of the property. On the 5th October 1883, when that suit was pending, but before the summons was served on *A*, *A* by a duly registered conveyance sold the same property to *R* for R198-8. In the suit filed by *S*, *A* filed a written statement, but did not further contest it, and *S* obtained a decree and got possession of the property. In a suit subsequently brought by *R* to obtain possession of the property from *S* upon the ground that his registered conveyance was entitled to priority over the unregistered document of *S*, it was contended that, *R*'s purchase having been made whilst *S*'s suit was pending, his title could not prevail against that of *S*. *Held* that the doctrine of *lis pendens* did not apply to the facts of the case, as at the time of *R*'s purchase there was no contentious suit or proceeding in existence, the summons in *S*'s suit not having been then served. RADHASAM MOHAPATTRA *alias* MADUN MOHUN MOHAPATTRA *v.* SIBU PANDA . . **I. L. R., 15 Calc., 647**

37. ———————————— *Transfer of Property Act (IV of 1882), s. 52—"Active prosecution" of suit, meaning of.*—Where the plaintiffs purchased a certain property after the decision but before the drawing up of the decree of the lower Court which declared the seller's title to the property and the decree was subsequently appealed against and reversed by the Appellate Court,—*Held* that the doctrine of *lis pendens* applied, as the plaintiffs purchased during the active prosecution of a suit within the meaning of s. 52 of the Transfer of Property Act, although no appeal was actually pending at the time when the purchase was made. *Kaseemunnissa Bibee* v. *Nilratna Bose, I. L. R., 8 Calc., 79,* referred to. *Gobind Chandra Roy* v. *Guru Churn Kurmokar, I. L. R., 15 Calc., 94,* followed. *Indurjeet Koer* v. *Pootee Begum, 19 W. R., 197; Chundee Koomar Lahooree* v. *Gopee Kristo Gossamee, 20 W. R., 204; Kishory Mohun Roy* v. *Mahomed Mujaffar Hossein, I. L. R., 18 Calc., 188;* and *Moti Lal* v. *Karrabuldin, I. L. R., 25 Calc., 179,* relied on. *Held* further that the law of *lis pendens* in England is different from that prevailing in this country, which is founded on the fact that it would be impossible to bring any suit to a successful termination if alienations *pendente lite* were permitted to prevail. DENO NATH GHOSE *v.* SHAMA BIBEE **[4 C. W. N., 740**

38. ———————————— *Transfer of Property Act (1882), s. 52—Transfer pendente lite—Time at which a suit becomes "contentious."*—*Held* that a suit becomes a "contentious suit" within the meaning of s. 52 of the Transfer of Property Act, 1882, at the time when the summons is served on the defendant. *Radhasyam Mahapattra* v. *Sibu Panda, I. L. R., 15 Calc., 647,* and *Abboy* v. *Annamalai, I. L. R., 12 Mad., 180,* followed. PARSOTAM SARAN *v.* SANEHI LAL **[I. L. R., 21 All., 408**

39. ———————————— *Transfer made pending partition suit in which there was a dispute as to shares—Transfer of Property Act (IV of 1882), s. 52.*—After the institution of a partition by a member of a joint Hindu family consisting of six brothers and a mother, but before the summonses were served, one of the sons transferred his share of the property to a third party, who was added as a defendant to the suit. At the time of the transfer both the transferor and transferee had notice of the partition suit on a question having been raised as to what share of the property the transferee was entitled to. *Held* that, inasmuch as both the transferor and transferee had notice of the partition suit at the time of the transfer, and as there was a dispute about the shares, s. 52 of the Transfer of Property Act applied to the case. JOGENDRA CHUNDER GHOSE *v.* FULKUMARI DASSI **[I. L. R., 27 Calc., 77**

JOGENDRO CHUNDER GHOSE *v.* GANENDRA NATH SIRCAR . . . . . **4 C. W. N., 254**

40. ———————————— *Mortgage—Purchase, without notice, of land declared liable for mortgage-debt by a decree.*—In 1864 *A* mortgaged four shops to the plaintiff's father. Subsequently, however, *A*'s father brought a suit, and obtained a decree declaring that two of these shops were not included in the mortgage. In 1869 the plaintiff's father (the mortgagee) sued *A* upon the mortgage, and prayed in the same suit that certain other land not included in the mortgage-deed might be held liable for his debts in lieu of the two shops. He obtained a decree on the 29th November 1869, which ordered R1,291 to be paid "on the liability of the land in the plaint mentioned." No steps were taken by the plaintiff to execute this decree for seven years. On the 18th August 1876 *A* sold to the defendant, by a registered deed of sale, a portion of the land so declared liable, and the defendant entered into possession without notice of the plaintiff's decree. The plaintiff now sued to obtain a declaration that the land was liable to be sold in execution of his decree of 1869. Both the lower Courts dismissed his suit. On appeal to the High Court,—*Held* that the defendant was a purchaser for value without notice of the plaintiff's decrees, and took the land unaffected by the plaintiff's equitable lien created by the decree. There was no *lis pendens*. The *litis contestatio* had ceased. The decree, which was a final one, had terminated the litigation between the parties, and now only remained to be executed. There was, moreover, in this case the further circumstance that nothing had been done in the suit after the decree and during the seven years which elapsed between it and the defendant's purchase in 1876. VENKATESH GOVIND *v.* MARUTI **[I. L. R., 12 Bom., 217**

41. ———————————— *Transfer of Property Act (IV of 1882), s. 52—When a suit becomes contentious—Priority of registered mortgage.*—As soon as the filing of the plaint is brought

LIS PENDENS—*continued.*

to the notice of the defendant, the proceeding becomes contentious, and any alienation subsequent to that is subject to the doctrine of *lis pendens.* A mortgage was executed on 25th June and was registered. On the same day, a prior mortgagee filed a suit against the mortgagors on an unregistered mortgage of the same land: he obtained a decree and attached the mortgage property. *Held* that the registered mortgagee was entitled to priority, and his mortgage was not affected by the rule of *lis pendens* ABBOY *v.* ANNAMALAI . **I. L. R., 12 Mad., 180**

42. ———— *Transfer of Property Act (IV of 1882), s. 52—Partition, suit for—Decree by consent.*—Pending a suit for partition of land, etc., two of the parties to the suit sold part of the land in question to a stranger who was not brought on to the record. After the execution of the sale-deed, the parties to the suit entered into a compromise, and a decree was passed by consent accordingly. In a suit by the purchaser for possession of the land sold to him,—*Held* the purchaser was not bound by the decree passed by consent. VYTHINADAYYAN *v.* SUBRAMANYA . . **I. L. R., 12 Mad., 439**

43. ———— *Transfer of Property Act, s. 52—Lease granted during partition suit.*—S. 52 of the Transfer of Property Act does not apply to a case where the shares of the parties and their right to those shares are not disputed. The mode in which the lands should be allotted amongst the ascertained sharers does not affect the right to any specific property. KHAN ALI *v.* PESTONJI EDULJEE GAJDAR . . . **1 C. W. N., 62**

44. ———— *Transfer of Property Act, s. 52—Mortgage.*—Of the three owners of certain properties, two executed a mortgage of their interest in December 1872. In 1879 a creditor of the three obtained a money-decree against them, and in execution attached, *inter alia*, the properties subject to the mortgage. In July 1880 the mortgagee intervened in execution, and an order having been made directing that the property be sold subject to his mortgage lien, filed a suit upon his mortgage. The property was brought to sale in execution of the money-decree in November 1880, and the defendant became the purchaser. The mortgagee obtained a decree in the following February, and the mortgaged property was sold in execution in March 1884 and was purchased by one who assigned his interest to the plaintiff. *Held* that the defendant's purchase was subject to the doctrine of *lis pendens.* KUNHI UMAH *v.* AMED . **I. L. R., 14 Mad., 491**

45. ———— *Transfer of Property Act, ss. 52, 53—Contribution, Suit for.*—Two properties A and B, belonging to different owners, were mortgaged under a joint bond for the same debt. The mortgagee put his bond in suit, and, having obtained a decree, caused property A to be sold, the proceeds of which proved more than sufficient to satisfy the whole mortgage-debt. Before such sale, however, *X* had, in execution of a simple money-decree, acquired a share in property A. *X* accordingly sued for contribution from property B, in that, so far as his share in property A went, he had satisfied the mortgage-debt, and ultimately obtained a decree in his favour; but during the pendency of that litigation, property B had been transferred to *Y*. *Held* that *Y* must take the property subject to *X*'s right to contribution from it in respect of the loss of his share in property A. BALDEO SAHAI *v.* BAIJ NATH . . . **I. L. R., 13 All., 371**

LIS PENDENS—*concluded.*

46. ———— *Transfer of Property Act (IV of 1882), s. 52—Lease of property in respect of which a decree for sale has been made under s. 88.*—*Held* that a lease of property made by a judgment-debtor against whom a decree for sale had been made under s. 88 of the Transfer of Property Act for sale of that property came within the purview of s. 52 of the Transfer of Property Act. THAKUR PRASAD *v.* GAYA SAHU

[I. L. R., 20 All., 349

47. ———— *Involuntary alienation—Execution-proceedings under mortgage-decree—Revenue Sale Law (Act XI of 1859), ss. 13, 54—Sale for arrears of Government revenue.*—A decree was obtained for the sale of a mortgaged property, being a share of an estate, on the 31st August 1889. In execution of that decree, the property was purchased by the plaintiffs on the 11th December 1891, and the sale was confirmed on the 5th March 1892. Meanwhile, pending the execution-proceedings, a larger share of the estate, including the share mortgaged, was purchased by the defendants at a revenue sale on the 30th September 1891, which sale was confirmed on the 11th March 1892. In a suit instituted by the plaintiffs for the possession of the property purchased by them, the defendants having questioned the validity of the mortgage decree and contended that they were not bound by it, not being parties thereto, and having in the alternative claimed the right to redeem the mortgaged property,—*Held* that the defendants were bound by the mortgage-decree, the principle of *lis pendens* applying to the case. HAR SHANKAR PRASAD SINGH *v.* SHEW GOBIND SHAW . . **I. L. R., 26 Calc., 966**

[4 C. W. N., 317

LIST OF CANDIDATES AT MUNICIPAL ELECTION.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 31.

[I. L. R., 19 Calc., 192, 195 note, 198

LIST OF VOTERS AT ELECTION.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 31 . **I. L. R., 22 Calc., 717**

LOAN.

See CONTRACT—CONDITIONS PRECEDENT.

[I. L. R., 14 Bom., 498

See LIMITATION ACT, 1877, ART. 59.

[I. L. R., 13 Bom., 338

———— **on Security of land—**

See BANK OF BENGAL . **7 B. L. R., 653**

LOCAL BOARD.

———— Notice by President of—

See PENAL CODE, s. 188.
[I. L. R., 20 Mad., 1

LOCAL GOVERNMENT.

———— Order of, effect of—

See BENCH OF MAGISTRATES.
[I. L. R., 16 Mad., 410
I. L. R., 20 Calc., 870

See JURY—JURY IN SESSIONS CASES.
[I. L. R., 23 Mad., 632

See MAGISTRATE, JURISDICTION OF—POWER OF MAGISTRATES.
[16 W. R., Cr., 79

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MUNICIPAL TAX.
[I. L. R., 13 Mad., 78

———— Power of—

See BOMBAY SURVEY AND SETTLEMENT ACT (I OF 1865), ss. 35, 48.
[I. L. R., 1 Bom., 352

See GOVERNOR OF BOMBAY IN COUNCIL.
[8 Bom., A. C., 195
I. L. R., 8 Bom., 264

See GOVERNOR OF MADRAS IN COUNCIL.
[2 Mad., 439

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL 5 Mad., 277

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.
[16 W. R., Cr., 79
I. L. R., 9 Mad., 431

———— Rules made by—

See RULES MADE UNDER ACTS.

See PORTS ACTS, s. 6.
[I. L. R., 17 Mad., 118, 397

———— Suit against—

See NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT, s. 28.
[I. L. R., 1 All., 269

1. ———— *Small Cause Court, Mofussil—Civil Procedure Code, ss. 5, 360, ch. XX—Insolvency jurisdiction.*—Under s. 360 of the Code of Civil Procedure, the Local Government cannot invest a Mofussil Small Cause Court with the insolvency jurisdiction conferred on District Courts by ch. XX of the said Code, inasmuch as, by reason of s. 5, ch. XX does not extend to such Courts of Small Causes. SETHU *v.* VENKATARAMA
[I. L. R., 9 Mad., 112

2. ———— *Notification of Government of Bombay extending Act, Effect of—Scheduled Districts Act, XIV of 1874, ss. 5, 6.*—Under s. 5 of the Scheduled Districts Act, XIV of 1874, the Local Government cannot, by extending an Act which is of necessarily restricted application, make its provisions applicable to an entirely new subject-matter,—*viz.*, the litigation of a new local area. Accordingly, where the Government of Bombay issued the following notification, No. 823 of 1886,—"In exercise of the powers conferred by s. 5 of the Scheduled Districts Act, XIV of 1874, the Governor of Bombay in Council is pleased, with the previous sanction of the President in Council, to extend to the Island of Perim the whole of Act II of 1864 of the Governor General in Council, with the exception of ss. 2, 17, and 23. The Governor in Council is further pleased, in exercise of the powers conferred by s. 6 of the Scheduled Districts Act, XIV of 1874, and by any other enactment, to direct that the Resident at Aden shall be Sessions Judge and Court of Session for the Island of Perim, and shall exercise the same jurisdiction and powers in respect of the administration of civil and criminal justice in the said island, and in respect of the trial of persons committed for trial by the Court of Session for offences committed in the said island as are vested in him in Aden by the said Act,"—*Held* that the provisions of the Aden Act II of 1864, which (as appears from the preamble) deals with the litigation of Aden alone, could not be extended to Perim, without enlarging the subject-matter of the Act. *Held* also that the appointment of the Political Resident at Aden as a Sessions Judge and Court of Session for the Island of Perim made under cl. (*a*) of s. 6 of the Scheduled Districts Act, XIV of 1874, was valid and effectual with reference only to the provisions of the Criminal Procedure Code, and that that portion of the notification which regulates the exercise by the Resident of his powers with reference to Act II of 1864 should be treated as surplusage. QUEEN-EMPRESS *v.* MANGAL TEKCHAND . . . . I. L. R., 10 Bom., 274

LOCAL INQUIRY.

See DECREE—CONSTRUCTION OF DECREE:—MESNE PROFITS.
[I. L. R., 8 Calc., 178
L. R., 8 I. A., 197

———— Criminal—

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—LOCAL INQUIRY.

LOCAL INVESTIGATION.

See CASES UNDER AMEEN.

See APPEAL—ORDERS . 7 W. R., 425
[W. R., 1864, 363

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES . . . 6 B. L. R., 677
[15 W. R., 423
18 W. R., 452

See CHUR LANDS . 6 B. L. R., 677
[13 Moore's I. A., 607

LOCAL INVESTIGATION—*continued.*

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.
[I. L. R., 19 All., 302
3 C. W. N., 607

See CASES UNDER SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—LOCAL INVESTIGATIONS.

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER.
[I. L. R., 21 Calc., 920
I. L. R., 19 All., 302

1. ———— **Object of local investigations**—*Evidence not obtainable in Court.*—Local investigations are had recourse to not so much for the purpose of collecting evidence which can be taken in Court, as to obtain evidence which from its peculiar nature can only be obtained on the spot. BHOWANEE DUTT SINGH *v.* BEER SINGH . . **2 N. W., 196**

2. ———— **Application for inspection or local investigation**—*Civil Procedure Code, 1859, s. 180.*—An application under s. 180, Act VIII of 1859, should be made at the hearing of the suit, and not previously. MACKINNON, MACKENZIE & CO. *v.* BHUGRAM DOSS . . **Bourke, O. C., 243**

3. ———— **Discretion of Court**—*Local inquiry.*—It is within the discretion of a Judge to order or refuse a local inquiry. RASH BEHAREE SINGH *v.* SAHEB ROY . . . **12 W. R., 76**

GRAHAM *v.* LOPEZ . . . . **1 W. R., 141**

4. ———— **Reference to a Commissioner**—*Civil Procedure Code, s. 392.*—The local investigation referred to in Civil Procedure Code, s. 392, presupposes the existence on the record of independent evidence which requires to be elucidated, and that section does not authorize a Court to delegate to a Commissioner the trial of any material issue which it is bound to try. SANGILI *v.* MOOKAN
[I. L. R., 16 Mad., 350

5. ———— **Power of Court to direct, when parties do not ask for it**—*Remand order for local investigation.*—In a suit for land, where the question was as to whether the land lay within the boundaries of the plaintiffs' or the defendants' land, the Court of first instance suggested to the parties that the proper mode of determining the case was in the first instance to hold a local investigation, and that such local investigation should be applied for by one or other of the parties. Both parties resolutely refused to make such application, and the Court thereupon dealt with the case upon the materials before it and passed a decree. Upon appeal, the lower Appellate Court remanded the case for the purpose of a local investigation being held at the cost of the plaintiff in the first instance. *Held* that, inasmuch as neither of the parties desired to have a local investigation, the Court was wrong in remanding the case, and that it was bound to decide it upon the evidence before it. JATINGA VALLEY TEA COMPANY *v.* CHERA TEA COMPANY **I. L. R., 12 Calc., 45**

6. ———— **Notice of local investigation**—*Civil Procedure Code, 1859, s. 180.*—Though there was no express direction to that effect in s. 180, Act VIII of 1859, yet it was necessary to give notice to parties of the time when a local investigation ordered by the Court was to be held. KISTOMONEE DEBIA *v.* EGLINTON . . . . . **12 W. R., 139**

7. ———— **Officer to hold local inquiry**—*Civil Procedure Code, 1859, s. 180.*—S. 180, Act VIII of 1859, made it imperative on a Court to employ in the first instance the regular officer of the Court to hold a local inquiry. RAM DOSS KOONDOO *v.* NIL KANTO DHUR . . . **8 W. R., 6**

BYJNATH SINGH *v.* INDURJEET KOER
[8 W. R., 331

BAHADOOR ALLY *v.* DOOMNUN SINGH
[7 W. R., 27

Instances of improper appointments are given in DOORGA DOSS CHATTERJEE *v.* GOOROO CHURN MISTREE . . . . **6 W. R., Act X, 81**
and TEELUCKDHAREE ROY *v.* MOORALEEDUR ROY
[13 W. R., 285

8. ———— **Duty of Judge to conduct local investigation**—*Civil Procedure Code, 1882, s. 392.*—S. 392, Civil Procedure Code, clearly shows that where a Judge can conveniently conduct a local investigation in person, he should do so. DWARKANATH SARDAR *v.* PROSUNNO KUMAR HAJRA
[1 C. W. N., 682

9. ———— **Question of disputed boundary**—*Possession before date of suit.*—*Held* that a local inquiry ought not to have been ordered in this case, where the question to be decided was one of disputed boundary, which turned chiefly on possession before the date of suit, and that the Subordinate Judge would have been justified in disregarding the Ameen's report, and trying the appeal on the recorded evidence. KALEE DOSS ACHARJEE *v.* KHETTRO PAL SINGH ROY . **17 W. R., 472**

See ISWAR CHANDRA DAS *v.* JUGAL KISHORE CHUCKERBUTTY . . . **4 B. L. R., Ap., 33:**
[17 W. R., 473 note

10. ———— **Ascertainment of fact of marriage.**—In a case where the issue is whether two persons bear the relation of man and wife, a Judge is not justified in going himself to the village where the parties live, in order to make inquiries among their neighbours; much less in holding such local investigation on a Sunday, and without due notice to one of the parties. JUBHOO SAHOO *v.* JUSSODA KOOER . . . **17 W. R., 230**

11. ———— **Power of Judge to order local investigtion by Subordinate Judge.**—A Judge has no power to order a Subordinate Judge, whose judgment is before him on appeal, to go and inspect the locality and make a report. Such a report cannot be treated as evidence one way or the other. If the Judge was of opinion that it was necessary to take further evidence, he ought to have proceeded as directed by ss. 354 and 355, Act VIII of 1859, and it was competent to him, if necessary, to order an Ameen or any suitable person to make a local investigation under s. 180.

LOCAL INVESTIGATION—*continued.*

But a Judge from whose decision an appeal is pending is the most unsuitable person to make such investigation. ROY SOOLTAN BAHADOOR *v.* LALOO KOOER . . . 7 W. R., 300

12. ———— **Incomplete inquiry owing to laches of plaintiff.**—In a suit for wasilat, where the Ameen's inquiry was not completed on account of the laches of the plaintiff,—*Held* (GLOVER, *J.*, dissenting) that there had been no local investigation at all, and that the defendant had no opportunity of producing his evidence. KALEE DOSS MITTER *v.* DEBNARAIN DEB . . . 13 W. R., 412

13. ———— **Duty of Ameen to return report to Court ordering investigation**—An appeal having been made from an order relating to the execution of a decree, the High Court directed that an Ameen should deliver over possession and make a map of the property so delivered over, and a map showing the boundaries laid down in the decree. The Ameen went to the spot and made a map. That map was not transmitted to the Court; but in consequence of certain proceedings in the Subordinate Judge's Court, a second Ameen was sent and a second map made. These proceedings were wholly disregarded by the High Court, which proceeded upon the first Ameen's map and report, against which no exception was filed in the High Court. LALLJEE SAHOO *v.* RAJENDER PERTAB SAHEE [14 W. R., 418

14. ———— **Investigation by ameen**—*Power of District Judge to interfere with order for—Circular Orders 41 of 1866 and 25 of 1870.*—In a suit for the possession of land, the boundaries of which were disputed, the Subordinate Judge ordered an ameen to make a local investigation, and reported his order to the District Judge, who refused to allow the investigation to proceed. *Held* that this was a case coming within the provisions of Circular Order No. 41, dated the 2nd October 1866, which authorizes local investigations by ameens when it is necessary to ascertain by measurement disputed areas of land; and that the District Judge had no authority to stay the investigation. *Per* PRINSEP, *J.*—All that the District Judge was entitled to do under Circular Order No. 25, dated 25th August 1870, was to express his opinion as to the propriety or otherwise of the Subordinate Judge's order. NIROD KRISHNO ROY *v.* WOOMANATH MOOKERJEE [I. L. R., 4 Calc., 718: 3 C. L. R., 234

15. ———— **Non-attendance at local investigation**—*Procedure order setting aside a judgment by default.*—Ss. 114 and 180 are to be read together. The words "and persons not attending upon the requisition of the commissioner" in s. 180 are general and apply to parties making default, whether required to give evidence or not. The words "like disadvantages" referred to in s. 180 mean that in the case of the non-attendance of a defendant the local investigation is to be proceeded with *ex parte;* and in the case of the non-attendance of a plaintiff, the suit is to be dismissed with costs. In case of judgment by default for non-appearance before a commissioner appointed under s. 180, the proper course is to apply to the Judge for an order to set aside the judgment, and if that application be refused, to appeal against the order of refusal. The Judge's order should contain a distinct direction to the commissioner to proceed *ex-parte* in the event of the non-attendance of the plaintiff. ESSAN CHUNDER CHUCKERBUTTY *v.* SOORJO LALL GOSSAIN [1 Ind., Jur., O. S., 3 W. R., F. B., 1: Marsh., 139

LOCAL INVESTIGATION—*concluded.*

16. ———— *Failure of party to appear on local inquiry.*—In a case in which plaintiff sued to recover some land, and in which defendant denied the power of plaintiff's vendor to sell the land claimed or a part of it, a local inquiry was ordered to ascertain the boundaries of the land in dispute. Judgment of the High Court—upholding the decision of the lower Court, which dismissed the suit because plaintiff failed to appear or take proper steps before the ameen at the local investigation, and because he omitted to give formal proof of his deed of purchase—confirmed. MAHOMED TUQUE CHOWDHRY *v.* JUDONATH JHA [16 W. R., P. C., 28

17. ———— **Powers of Magistrates in holding local investigation**—*Collection of evidence by Magistrate on local inquiry—Evidence.*—Power of Magistrates to hold local investigations and the nature of such investigations discussed. Whenever it is desirable for a Magistrate to view the place at which an occurrence, the subject-matter of a judicial investigation before him, has taken place, he should be careful to confine himself to such a view of the place as to enable him to understand the evidence placed before him, and should take care that no information reaches him with reference to the occurrence which he has to investigate beyond what he acquires by that view, and if the place of the occurrence be in dispute, he would be wise in postponing his visit till all the evidence has been recorded, if under such circumstance he feels disposed to visit it at all. But where a local enquiry by a Magistrate takes the form of an investigation into the occurrence on the site of the occurrence instead of in his own Court, and he takes evidence on the spot, such evidence should not be recorded unless it is protected by all the safeguards by which evidence on which a Judge may act is protected by law. HARI KISHORE MITRA *v.* ABDUL BAKI MIAH [I. L. R., 21 Calc., 920

18. ———— **Court proceeding to hear an appeal without waiting for return to a commission for local investigation issued at the request of a party**—*Civil Procedure Code, s. 584—Substantial error in procedure.*—The intention of the Code of Civil Procedure is that, when a Court deems it necessary, on the application of a party or otherwise, that a commission for local investigation should be issued, the return to that commission should be before the Court before it proceeds to hear and determine the case. MADHO SINGH *v.* KASHI SINGH . . . I. L. R., 16 All., 342

LODGING-HOUSE-KEEPER.

See HOTEL-KEEPER AND GUEST.
[3 Bom., O. C., 137

See N.-W. P. AND OUDE LODGING HOUSE ACT . . **I. L. R., 20 All., 534**

LODGINGS LET TO PROSTITUTE.

See LANDLORD AND TENANT—TENANCY FOR IMMORAL PURPOSE.
[9 B. L. R., Ap., 37

LORD'S DAY ACT.

1. ———— **Application of**—*British Burma —Abkari rules.*—The Lord's Day Act (29 Car. II, c. 7) does not extend to criminal cases in British Burma. *A* was convicted and fined for the breach of an abkari rule. *Held* that the conviction could not be supported, on the ground that the abkari rule had not the force of law. ABRAHAM *v.* QUEEN
[1 B. L. R., A. Cr., 17: 10 W. R., 350

2. ———— *Moulmein.*—The Lord's Day Act does not apply to Moulmein. GEASEMANN *v.* GARDNER . **3 W. R., Rec. Ref., 2**

Nor to Madras.

See ANONYMOUS CASE . **4 Mad. Ap., 62**

3. ———— **Application of Act to Madras Presidency**—*Arrest of Mahomedan debtor on Sunday.*—A Mahomedan debtor was arrested within the original jurisdiction of the High Court on a Sunday. Upon application made, INNES, *J.*, directed his discharge, on the ground that the arrest, having been made upon a Sunday, was illegal. Upon appeal,—*Held* by HOLLOWAY, *J.*, that the provisions of the Lord's Day Act (29 Car. II, c. 7) do not apply in this country. That even if the substantive provisions of the statute were applicable, it did not follow that s. 6 would be. That if the statute dealt with substantive law, it would be applicable to all the Queen's subjects or none, and that there were ample reasons for saying it was impossible to apply it to all. By KERNAN, *J.*, that, as between natives of India, the Lord's Day Act does not apply. PARAM SHOOK DOSS *v.* RASHEED-OOD-DOWLAH . **7 Mad., 285**

4. ———— *Criminal proceedings taken on Sunday, Legality of.*—Criminal proceedings taken by a Magistrate are not necessarily illegal by reason of having been taken on a Sunday. IN THE MATTER OF THE PETITION OF SINCLAIR
[6 N. W., 177

And *see* Cases under HOLIDAY.

LOST GRANT, PRESUMPTION OF—

See PRESCRIPTION—EASEMENTS—GENERALLY—CLAIM TO PRESCRIPTION.
[15 W. R., 212
1 W. R., 230

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR . **3 B. L. R., O. C., 18**
[6 B. L. R., 85: 12 B. L. R., 406

LOTTERY.

See COMPANY—FORMATION AND REGISTRATION . **I. L. R., 20 Mad., 68**

———— **Foreign Lottery**—*Advertisement—Newspapers—Publisher—Penal Code (XLV of 1860), s. 294A.*—The expression " in any such lottery " in para. 2 of s. 294A of the Penal Code (XLV of 1860) means " any lottery not authorized by Government," and includes a foreign lottery. The word " publisher " in the above paragraph includes both the person who sends a proposal as well as the proprietor of a newspaper who prints the proposal as an advertisement. The proprietor of a Bombay newspaper who published an advertisement in his paper relating to a Melbourne lottery was accordingly held to be punishable under s. 294A of the Penal Code. QUEEN-EMPRESS *v.* MANCHERJI KAVASJI SHAPURJI . . . **I. L. R., 10 Bom., 97**

LOTTERY ACT (V OF 1844).

See PROMISSORY NOTE **9 B. L. R., 441**

LOTTERY OFFICE.

———— **Charge of keeping**—

See ACT XXVII OF 1870.
[6 B. L. R., Ap., 98

LOTTERY TICKETS.

See GAMBLING . **12 W. R., Cr., 34**

LUNACY.

See EVIDENCE—CIVIL CASES—HEARSAY EVIDENCE . . **6 B. L. R., 509**
[13 Moore's I. A., 519

See CASES UNDER HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—INSANITY.

See CASES UNDER INSANITY.

See MAHOMEDAN LAW—INHERITANCE.
[2 B. L. R., A. C., 306

LUNATIC.

See ARREST—CIVIL ARREST.
[I. L. R., 22 Bom., 961

See LETTERS PATENT, HIGH COURT, NORTH-WESTERN PROVINCES, CL. 12.
[I. L. R., 4 All., 159

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . **I. L. R., 15 Bom., 177**

See REGISTRATION ACT, S. 35.
[I. L. R., 1 All., 465
L. R., 4 I. A., 166

LUNATIC—*continued.*

——— **Committee of, under Act XXXV of 1858.**

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—INSANITY . **I. L. R., 22 Calc., 864**

——— **Estate of—**

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . **13 B. L. R., Ap., 14**

——— **Suit against—**

See OUDE LAND REVENUE ACT, SS. 175 AND 176 . **I. L. R., 22 Calc., 729**
[L. R., 22 I. A., 90

1. ——— **Jurisdiction**—*Act XXXV of 1858, s 2.*—A lunatic had been for a number of years in involuntary confinement in Bhowanipore Lunatic Asylum, within the jurisdiction of the Court of the Judge of the 24-Pergunnahs, and was possessed of property out of that jurisdiction. On an application to the Judge to appoint a manager of his property,—*Held* that, as the lunatic was residing within the jurisdiction of the Court of the 24-Pergunnahs, the Judge could, under Act XXXV of 1858, s. 2, inquire into the fact of his insanity and order a manager to be appointed to the estate. DURANT *v.* CHANDRANATH CHATTERJEE . . **2 B. L. R., A. C., 246**

S. C. KALLONAS *v.* COLLECTOR OF BACKERGUNGE **[11 W. R., 109**

2. ——— **Married daughter of lunatic**—*Act XXXV of 1858, s. 13—Maintenance—"Family," Meaning of.*—The word "family" in s. 13 of Act XXXV of 1858 (which provides for the maintenance of the lunatic and his family) does not include a married daughter of the lunatic living with her husband apart from her father, but includes only persons living with the lunatic as members of his family, and dependent on him for their maintenance. CHUNDRABATI KOERI *v.* MONJI LAL **[I. L. R., 23 Calc., 512**

3. ——— **Lunatic resident in mofussil**—*Act XXXV of 1858, ss. 10, 18, and 22—Residence—Guardian of lunatic's person—Position of guardian towards local Court appointing him—Temporary suspension of guardian—Jurisdiction of District Judge—Irregularity—Superintendence of High Court—Civil Procedure Code (1882), s. 622.*—Although Act XXXV of 1858 contains no express provisions as to the place of residence of a lunatic governed by the Act, it contemplates that he shall reside within the jurisdiction of the Court that has found him to be a lunatic. The guardian of such a lunatic's person is, in matters connected with the guardianship, subordinate to the District Court which appointed him. A guardian, having obtained leave from the District Judge to take the lunatic out of the jurisdiction for a specified time, was, at the expiration of that time, ordered to return with the lunatic to his residence within the local jurisdiction. He failed to comply with the order. Without further notice, the District Judge, by certain orders which he gave, by letter and telegram, through the manager of the lunatic's estate, suspended the guardian from his office, and directed him to make over the custody of the lunatic to the manager. The guardian made over the custody accordingly and then applied to the High Court, under s. 622 of the Code of Civil Procedure, to set aside those orders and restore the custody of the lunatic to him at Calcutta (outside the jurisdiction of the Court to which the lunatic was subject). The High Court declined to interfere, even though the orders were made irregularly; because no case for its intervention had been made out, and because the lunatic ought not to be removed out of the local jurisdiction. IN THE MATTER OF BASHARAT ALI CHOWDHRY **[I. L. R., 24 Calc., 133**

4. ——— **Application under Act**—*Act XXXV of 1858, ss. 2 and 3.*—Applications made under sections of the Lunacy Act, XXXV of 1858, must be verified. BUSRUT ALLY CHOWDHRY *v.* ESHAN CHUNDER ROY . . **7 W. R., 267**

5. ——— *Act XXXV of 1858, Procedure on inquiry under.*—The application for an inquiry under the Lunacy Act, XXXV of 1858, should be verified, and proper notice should be given to the alleged lunatic or his friends in case of necessity. In examining him, the greatest care and delicacy should be observed, and everything likely to cause unnecessary pain or excitement to him avoided. If also he be a person of rank, exempted from personal appearance in Court in ordinary civil proceedings, his personal appearance in Court in an inquiry into the state of his mind should be dispensed with. JUGUNNATH SAHEE DEO *v.* BURRA LALL OPENDRONATH SAHEE DEO **[5 W. R., Mis., 54**

6. ——— **Procedure**—*Act XXXV of 1858, s. 5—Examination of lunatic.*—S. 5, Act XXXV of 1858 never intended that an alleged lunatic should be summoned into a public Court as a witness, and subjected to examination as a witness by the vakeel of the person on whose petition the inquiry was instituted. IN THE MATTER OF THE PETITION OF JUGGERNATH . . . . **7 W. R., 246**

7. ——— *Appearance of lunatic—Act XXXV of 1858.*—A person alleged to be a luntic, though not found so under Act XXXV of 1858, may appear either by vakeel or in person. UMA SUNDARI DASI *v.* RAMJI HALDER **[I. L. R., 7 Calc., 242 : 9 C. L. R., 13**

See BINDABUN CHUNDER KUR CHOWDHRY *v.* KALI DASS SIRCAR . . **W. R., 1864, 268**

8. ——— *Non-appearance of lunatic after service of summons—Act XXXV of 1858.*—A Judge, instead of striking off a case because an alleged insane person does not appear after service of notice, ought in such event to prosecute the inquiry contemplated by Act XXXV of 1858. MOORUT KOONWAR *v.* DHURM NARAIN SINGH **[2 W. R., Mis., 7**

LUNATIC—*continued.*

9. ———— *Act XXXV of 1858—Procedure necessary before appointing guardian.*—A Court cannot, under Act XXXV of 1858, make over charge of the property and person of an alleged lunatic to a guardian until it has adjudged him to be of unsound mind and incapable of managing his affairs. BHOLANATH MOOKERJEE *v.* GRISH MOHINEE DEBIA . . . . . **15 W. R., 259**

10. ———— **Unsoundness of mind**—*Act XXXIV of 1858, s. 1—Unsound mind.*—The term "unsound mind" in s. 1 of Act XXXIV of 1858 comprehends imbecility, whether congenital or arising from old age, as well as lunacy or mental aberration resulting from disease. IN RE COWASJI BERAMJI LILAOOVALA . . **I. L. R., 7 Bom., 15**

11. ———— **Unsoundness of mind, Proof of**—*Act XXXV of 1858—Incapacity to manage affairs—Ascertainment of state of mind by medical examination*—Unsoundness of mind taken by itself is not sufficient to bring a person within the meaning of the term "lunatic" as used in Act XXXV of 1858, unless it would incapacitate him from managing his affairs; nor, on the other hand, will a person who is incapable of managing his affairs be a lunatic, unless that incapacity is produced by unsoundness of mind. For the purposes of this Act, the observation of the patient by medical witnesses, between the date of petition and the date of actual hearing, would be sufficient for ascertaining his state of mind at the time of inquiry. SHERMAN *v.* SCHORN **[24 W. R., 124**

12. ———— *Witnesses, Evidence of.*—The bare assertion of witnesses unsupported by any details of the causes, the course and the treatment of the malady, ought not to be accepted as satisfactory proof of insanity. KALA CHAND GHOSE *v.* SHOOLOCHUNA DOSSIA . **22 W. R., 38**

13. ———— **Inquiry as to fact of lunacy**—*Power of judicial officer—Evidence.*—On an inquiry as to the fact of lunacy under Act XXXV of 1858, any finding as to the actual time when the lunacy began is beyond the jurisdiction of the judicial officer making the inquiry. Where the fact of lunacy was admitted, and the question was the date at which it commenced, the evidence of a planter in the neighbourhood, as to common report for years in the village as to the lunacy, having been admitted by the lower Court, the Judicial Committee refused to reject it. BODHNARAYAN SINGH *v.* UMRAO SINGH. AJODHYA PERSAD SINGH *v.* UMRAO SINGH **[6 B. L. R., 509: 15 W. R., P. C., 1 13 Moore's I. A., 519**

14. ———— *Act XXXV of 1858, s. 8.*—The inquiry as to alleged lunacy under Act XXXV of 1858 must be made by the Judge, and not by a subordinate Court, to which the Judge can only issue a commission under s. 8 of the enactment, in cases where the alleged lunatic resides at a distance more than fifty miles from the place where the Court is held. Ordinarily to such inquiries the members of the family are proper and sufficient parties, but other persons interested may, under special circumstances, be permitted to take part. RAM PURGUSS SINGH *v.* AMIR ALI . . . . **3 Agra, Mis., 3**

15. ———— *Act XXXV of 1858.*—An inquiry into the state of mind of an alleged lunatic should not be instituted under Act XXXV of 1858 without its being clearly shown to the Court that there is ground for supposing that the person is of unsound mind. GUNGA PERSHAD SAHOO *v.* WOOMA KOOWER . . . **18 W. R., 326**

16. ———— *Act XXXV of 1858—Procedure—Power of High Court under Act—Onus probandi.*—Before a Judge can, on the application of a Collector under Act XXXV of 1858, order the property of an alleged lunatic to be placed in charge of somebody else, he must observe the procedure laid down in that Act and pronounce the alledged lunatic to be of unsound mind after instituting a proper inquiry into the point. The High Court can set aside an order of the Judge made under the Act without evidence being taken, without remanding the case to the Judge, there being no analogy in this respect between an ordinary civil suit and proceedings under this Act. The burthen of proving an allegation as to the lunacy of any person rests on the Collector or the person who makes the allegation. BUSHARUTOOLLA *v.* COLLECTOR OF TIPPERAH **[3 W. R., 475**

17. ———— *Act XXXV of 1858—Inquiry as to state of lunatic's mind.*—Where a District Judge in a matter of lunacy under Act XXXV of 1858 stopped the case at a preliminary stage of the proceedings, on a report of the medical officer that the alleged lunatic was labouring under a considerable aberration of mind as a consequence of the habit of ganja-smoking, which the Judge considered to be a form of intoxication not amounting to lunacy,—*Held* that the Judge ought to have gone on to hold the inquiry and satisfied himself whether the alleged lunatic was capable of managing his affairs irrespective of the cause of such incapacity. HURSAHOY LALL *v.* BHUTTUN SINGH **[20 W. R., 55**

18. ———— *Act XXXIV of 1858—Degree of unsoundness of mind—Manager of lunatic, duty of.*—A Hindu, who had acquired considerable assets without any ancestral property, lived with one of his wives and his eldest son, who managed the property. A younger son, who lived apart with his mother, made an application to the High Court alleging that his father was a lunatic, and praying that he be declared to be so, and that a committee be appointed under Act XXXIV of 1858, and that the eldest son be directed to deliver the property to the committee. It was found on the inquiry held under the above Act that the alleged lunatic had for many years now and then been for short periods in such a state of mind as to render it right to detain him at home, and that he now had about him that which, when aroused by the recollection of past losses or by the recurrence of family quarrels, might produce mental derangement, but that he was of sound mind at the dates of the above

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application and of the inquiry. *Held* that the application should be dismissed. *Per Curiam.*—The eldest son should give to those who would be co-heirs with him to his father a fair opportunity of satisfying themselves that his management is open to no question, and that nothing is done to their detriment. Distinction between lunacy with lucid intervals, and a state of sound mind, subject to occasional unsoundness arising from accidental and temporary causes, considered. IN RE NAGAPPA CHETTI

[I. L. R., 18 Mad., 472

19. ——— *Suit by wife as next friend, alleging husband to be a lunatic—Husband not an adjudged lunatic—Civil Procedure Code (Act XIV of 1882), s. 462—Act XXXV of 1858.*— Where a wife, alleging her husband to be of unsound mind, brought a suit as next friend, the Court ordered an inquiry (1) as to whether the husband was of unsound mind and (2) as to whether the suit was for his benefit. PRANSUKHRAM DINANATH *v.* BAI LADKOR . . **I. L. R., 23 Bom., 653**

20. ——— **Appointment of manager**—*Necessity of preliminary inquiry and adjudication.*—It is only when a man has been adjudged a lunatic as the result of proceedings, and on inquiry held in due course of law, that the Court obtains the authority to appoint a manager of his estate. GIREEJABUTTY KOOERREE *v.* MONJEE LAL . **20 W. R., 477**

21. ——— *Act XXXIV of 1858, s. 25—Application by curator bonis appointed in Scotland.* — A petition was presented through his constituted attorney by a *curator bonis* duly appointed in Scotland to *W*, a doctor in the Bombay Army, absent from India on leave, praying for an order authorizing the petitioner's attorney to recover and give valid receipts for certain moneys belonging to the said *W* and to realize certain shares and bonds also belonging to the said *W*, and to remit the proceeds according to the directions of the petitioner as such *curator bonis*. The petitioner stated that the said *W* had been duly adjudged to be of unsound mind by the Court of Session in Scotland, and annexed a "Court of Session Extract" of the "act and decree" whereby the said *curator bonis* was appointed; but there was no evidence that *W* had been found of unsound mind and incapable of managing his affairs, or that the curator had given security, or that funds were required for the maintenance of *W*. The Court refused the order. IN RE WELSH

[I. L. R., 8 Bom., 280

22. ——— *Act XXXV of 1858—Guardian for property of lunatic—Lunatic trustee of a mutt.*—A guardian may be appointed under Act XXXV of 1858 to the property vested in a lunatic as the head of a mutt. SITARAMA CHARYA *v.* KESAVA CHARYA . **I. L. R., 21 Mad., 402**

23. ——— *Civil Procedure Code, 1882, s. 463—Lunatic defendant—Guardian ad litem—Act XXXV of 1858.*—A guardian *ad litem* cannot be appointed under ch. XXXI of the Code of Civil Procedure for a lunatic defendant to whom Act XXXV of 1858 applies, until the defendant has been adjudged a lunatic under the provisions of the said Act. SUBBAYA *v.* BUTHAYA

[I. L. R., 6 Mad., 380

24. ——— *Defendant a lunatic, but not adjudicated a lunatic—Code of Civil Procedure (Act XIV of 1882), ss. 443, 463—Act XXXV of 1858—Practice—Appointment of a guardian ad litem by the Court.*—Although s. 443 of the Code of Civil Procedure (Act XIV of 1882), read with s. 463 does not oblige a Court to appoint a guardian *ad litem* for a defendant of unsound mind, except where he has been adjudged to be of unsound mind under Act XXXV of 1858; still upon general principles and in conformity with the practice of the Court of Chancery, the Court should assign a guardian *ad litem* for the defendant if it finds, on inquiry, that he is of unsound mind so as to be unfit to defend the suit. VENKATRAMANA RAMBHAT *v.* TIMAPPA DEVAPPA . . . **I. L. R., 16 Bom., 132**

25. ——— *Suit—Act XXXV of 1858 — Lunatic, not adjudged to be so, suing through a next friend or defending through a guardian ad litem.*—The provisions of ch. XXXI of the Code of Civil Procedure are not exhaustive, and where a person is admitted or has been found to be of unsound mind, although he has not been adjudged to be so under Act XXXV of 1858, or by any other law for the time being in force, he should, if a plaintiff, be allowed to sue through his next friend, and the Court should appoint a guardian *ad litem* where he is a defendant. *Porter* v. *Porter, L. R., 37 Ch. D., 420; Venkatramana Rambhat* v. *Timappa Devappa, I. L. R., 16 Bom., 132; Tukaram Anant Joshi* v. *Vithal Joshi, I. L. R., 13 Bom., 656; Uma Sundari Dasi* v. *Ramji Haldar, I. L. R., 7 Calc., 242;* and *Jonagadla Subbaya* v. *Thatiparthi Senadala Buthaya, I. L. R., 6 Mad., 380,* referred to. NABBU KHAN *v.* SITA . . **I. L. R., 20 All., 2**

26. ——— *Act XXXV of 1858, s. 22—Application for permission to alienate property of lunatic—Objection by a third party that the property does not belong to the lunatic, determination of, whether necessary.*—In an application for permission to alienate the property of a lunatic under Act XXXV of 1858, it is not necessary to determine whether such property belongs to the lunatic or to a third party. DINESH CHUNDER BANERJEE *v.* SOUDAMINI DEBI . **4 C. W. N., 526**

27. ——— *Act XXXV of 1858, s. 14—Manager appointed under the Lunacy Act — Manager of joint family — Alienation by manager.*—Where a person is appointed manager of a lunatic's estate under Act XXXV of 1858, he can only make a valid alienation in accordance with the provisions of that Act, although he may also be *de facto* manager of the family property. A Hindu married woman having a lunatic husband and minor sons was appointed guardian of the lunatic's estate under Act XXXV of 1858. She was also *de facto* manager of the family. She mortgaged the family property, without the sanction of the Court as required by s. 14 of the Act. *Held* that the mortgages were

LUNATIC—*continued.*

invalid as regards the lunatic's interest in the property; but, as regards the interest of the minors, which was vested in them at the time of the mortgages, the property being ancestral, the mortgages were binding if made for family purposes. ANPURNABAI *v.* DURGAPA MAHALAPA NAIK

[I. L. R., 20 Bom., 150

28. ———————— *Act XXXV of 1858, ss. 15, 16, 17, 18, and 20—Hindu lunatic member of joint family—Joint member of the lunatic's family appointed guardian or manager of the lunatic's estate — Liability to account — Manager charged with mismanagement.*—The manager of a Hindu lunatic's estate appointed under Act XXXV of 1858, who is in possession with others of joint family property, is not, in his capacity of manager of the lunatic's estate, bound by the provisions of s. 15 of the Act to exhibit an inventory and account of the family property. The lunatic is possessed of no property for which the manager is liable to account. It does not make any difference if the manager is himself a joint owner or not. The Act provides no machinery, nor does it confer any power upon the Court, to deal with the joint family property or interfere in the affairs of a joint family. If a manager is charged with mismanagement, he is entitled to some particulars of the charges made against him. In all cases of lunacy in which a guardian or a manager of the lunatic's estate is appointed by the Court under the Act, it is desirable to issue a formal order or certificate of appointment. TRIMBAKLAL GOVANDAS *v.* HIRALAL ITCHHALAL

[I. L. R., 20 Bom., 659

29. ———————— *Act XXXV of 1858—Uncertificated guardian, Powers of—Manager of joint Hindu family, Powers of—Guardian—Sale by de facto guardian of lunatic's share.*—Act XXXV of 1858 does not affect the general provisions of Hindu law as to guardians who do not avail themselves of the Act, and the managing member of a joint Hindu family, one of the members of which is a lunatic, may, in case of necessity, sell joint family property including the lunatic's share, although he does not hold a certificate under the said Act. *Ram Chunder Chuckerbutty* v. *Brojonath Mozoomdar, I. L. R., 4 Calc., 929,* followed in principle. *Court of Wards* v. *Kupulmun Singh, 10 B. L. R., 364: 19 W. R., 163,* disapproved. KANTI CHUNDER GOSWAMI *v.* BISHESWAR GOSWAMI

[I. L. R., 25 Calc., 585
2 C. W. N., 241

30. ———————— *Beng. Act IV of 1870—Sanction to proceedings—Court of Wards.*—The sanction of the Commissioner of the Division is necessary under Bengal Act IV of 1870 before proceedings can be taken under Act XXXV of 1858 to place the estate of a lunatic under the management of the Court of Wards. The proceedings set aside as null and void. IN RE KOWLBAS KOER

[8 B. L. R., Ap., 50

S. C. CHUCKUR SURUN NARAIN SINGH *v.* COLLECTOR OF SARUN . . . **17 W. R., 180**

LUNATIC—*continued.*

31. ———————— *Act XXXV of 1858, s. 9—Act XIX of 1873, s. 195—Court of Wards, Power of.*—S. 9 of Act XXXV of 1858 and s. 195 of Act XIX of 1873 do not render it imperative on the Court of Wards to take charge of the estate of a person adjudged by a Civil Court, under Act XXXV of 1858, to be of unsound mind, but merely confer on that Court a power so to do. Until the Court of Wards exercise that power, the appointment by the Civil Court of a manager of the lunatic's property, under s. 9 of Act XXXV of 1858, is valid. MANOHAR LAL *v.* GAURI SHANKAR

[I. L. R., 1 All., 476

32. ———————— *Act XXXV of 1858, ss. 2, 7, 9, 10, 23—Guardian of lunatic—"The legal heir"—Wife of lunatic—Mahomedan law—Shia sect.*—One *M S*, a Shia Mahomedan, was formally adjudged a lunatic under the provisions of Act XXXV of 1858. At the time of this adjudication *M S* had a wife, *Z*, who had had one child by him, but that child had died previously to *M S* being adjudged a lunatic; it did not, however, appear that there was any reason precluding the possibility of further issue of the marriage. *Held* by MAHMOOD, *J.*, that under the law applicable to the Shia sect of Mahomedans *Z* was one of the "legal heirs" of *M S* within the meaning of s. 10 of Act XXXV of 1858, and as such was excluded by the terms of the proviso to that section from being appointed guardian of the person of her lunatic husband. In cases under the Lunacy Act (XXXV of 1858), the High Court as a Court of Appeal will not take upon itself the duty of deciding who may be the fittest person to appoint as guardian of the person or property of a person adjudged a lunatic thereunder. That duty should rest with the Courts to which it is entrusted by the Act. *Held* by KNOX, *J.*, that upon the general circumstances of the case the wife was not a fit person to be appointed as guardian of the lunatic: *sed quære* whether she was, within the meaning of s. 10 of Act XXXV of 1858, "the legal heir" of the lunatic, and therefore statutorily disqualified. FAZL RAB *v.* KHATUN BIBI

[I. L. R., 15 All., 29

33. ———————— *Act XXXV of 1858.*—On an application for the appointment of a guardian to the estate of a lunatic under Act XXXV of 1858, the Judge should only appoint a person to take charge of the estate of the lunatic, without specifying of what that estate consists. NITAMBINI CHOWDHRAIN *v.* SHASHI MUKHI CHOWDHRAIN

[4 B. L. R., Ap., 24: 12 W. R., 518

34. ———————— *Guardian—Mortgage by de facto guardian.*—A Hindu, who is lunatic, may be possessed of property, although he cannot take it by inheritance. All dealings with such property to be binding must be effected by a guardian or manager duly appointed by the supreme civil authority; and since the passing of Act XXXV of 1858, a guardian or manager can only be appointed in the special manner prescribed by that Act. A *de facto* manager can have no greater powers than one

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duly appointed. Where, therefore, the mother of a lunatic, who had not been so appointed, mortgaged his estate without the previous sanction of the Court, the mortgagee's suit for foreclosure was dismissed. COURT OF WARDS *v.* KUPULMUN SING

[10 B. L. R., 364: 19 W. R., 164

35. ———— **Power of manager**—*Person appointed manager of lunatic's affairs while he was of sound mind.*—A person who was appointed manager of a lunatic's affairs, by consent obtained while she was of sound mind, and who is capable of making a defence on her behalf, is competent to represent her in a suit, although not appointed under the law as representative of the lunatic. KALA CHAND GHOSH *v.* SHOOLOCHUNA DOSSIA . **22 W. R., 33**

36. ———— *Civil Procedure Code, 1882, s. 463—Right to sue—Suit by next friend of a lunatic—Adjudication of lunacy under Act XXXV of 1858.*—A suit for partition was brought by *A* as next friend of *B*, a lunatic. Subsequent to the institution of the suit, *B* was adjudged to be of unsound mind under Act XXXV of 1858, and *A* was appointed a manager of the lunatic's estate. *Held* that *A* had no right to sue, as next friend of the lunatic, under ch. XXXI of the Code of Civil Procedure (Act XIV of 1882). The provisions of that chapter apply only in cases where there has been an adjudication of lunacy under Act XXXV of 1858 previously to the institution of the suit. *Held* also that, independently of the provisions of ch. XXXI of the Code of Civil Procedure, on principles of equity, *A* had no right to sue in respect of the immoveable property of a lunatic. *Held* further that the adjudication of lunacy under Act XXXV of 1858 and *A*'s appointment as manager of the lunatic's estate subsequent to the institution of the suit did not cure the original invalidity of his proceedings in the suit. TUKARAM ANANT JOSHI *v.* VITHAL JOSHI . . **I. L. R., 13 Bom., 656**

37. ———— *Suit by an unadjudged lunatic by the Agent of the Court of Wards as guardian—Authority of the Court of Wards—Mad. Reg. V of 1804—Estates of lunatics subject to Mofussil Courts—Act XXXV of 1858—Code of Civil Procedure, s. 464.*—A Jain, who was subject to the Aliyasantana law, made a will, whereby he disposed of the property of his family in favour of certain persons, and died. The plaintiff, a female, was the sole surviving member of the testator's family, but it was admitted that she was, and for more than fifty years had been, a lunatic, though she had not been declared to be so under Act XXXV of 1858: it appeared that her lunacy was not congenital. She sued, by the Collector of South Canara, the Agent for the Court of Wards. *Held* (1) that the plaintiff was not excluded from inheritance by reason of lunacy under Aliyasantana law, and the will in favour of the defendants was invalid; (2) that the Court of Wards had power to take cognizance of the plaintiff's case under Madras Regulation V of 1804; (3) that although the Court of Wards should ordinarily obtain a declaration under Act XXXV of 1858 in cases where the lunacy of a ward is open to question, their failure to do so in the present case was not fatal to the suit; (4) that Civil Procedure Code, s. 464, was accordingly applicable to the case; (5) that the appointment of the Collector as guardian to the plaintiff was legal and valid. In deciding what was the extent of the property which the plaintiff was entitled to inherit under the above rulings, certain documents adduced as evidencing partition of the family property were held to evidence merely arrangements for separate enjoyment. SANKU *v.* PUTTAMMA . . **I. L. R., 14 Mad., 289**

38. ———— *Guardian of the person of a lunatic—Suit in respect of the lunatic's estate—Right of suit—Civil Procedure Code (Act XIV of 1882), s. 440.*—A guardian of the person only of a lunatic has no right to bring a suit in respect of the lunatic's estate. The manager of the lunatic's estate is the only person who can institute such a suit. The word "guardian" in s. 440 of the Civil Procedure Code (Act XIV of 1882) as amended by Act VIII of 1890, when applied to a lunatic, means the manager of his estate. Under this section, a person other than the guardian of the estate can also sue with the leave of the Court. BAI DIVALI *v.* HIRALAL . . . **I. L. R., 23 Bom., 403**

39. ———— *Striking out lunatic plaintiff's name—Authority of pleader as agent for filing suit—Limitation Act (XV of 1877), s. 7—Restoration of name—Suit by person not adjudged to be of unsound mind under Act XXXV of 1858—Right of suit—Guardian—Next friend.*—A plaint as originally framed contained the name of *K*, stated to be of unsound mind, as first plaintiff, and of his wife *N* as his guardian and second plaintiff. When the plaint was actually filed, *K*'s name was struck out by the pleader and *N*. Subsequently his name was restored on his own application, but the period of limitation prescribed for the suit had then elapsed. The first Court held that under s. 7 of the Limitation Act the plaintiff's claim was not barred. On appeal the Judge dismissed the suit, holding that the order of the first Court restoring *K*'s name was bad, and that the suit was time-barred at the date of that order. On second appeal,—*Held*, reversing the decree, that the pleader and *N* acted beyond their authority in striking out *K*'s name, and that therefore the restoration of his name must relate back to the filing of the suit, which was therefore not barred. *Quære*—Whether a person of unsound mind, but not adjudged to be so under Act XXXV of 1858, can in this country sue by his next friend. KIRPARAM JHUMEKRAM MODIA *v.* MODIA DAYALJI JHUMEKRAM

[I. L. R., 19 Bom., 135

40. ———— *Act XXXV of 1858, s. 11—Suit on behalf of minor—Collector.*—A Collector appointed under s. 11, Act XXXV of 1858, to take charge of the estate of a lunatic, cannot himself sue on behalf of the lunatic, but must appoint manager for the purpose. GOUREENATH *v.* COLLECTOR OF MONGHYR. COURT OF WARDS *v.*

LUNATIC—*continued.*

RUGHOOBUR DYAL. SHEOPERSHAD NARAIN *v.* COLLECTOR OF MONGHYR . . . **7 W. R., 5**

41. ——— **Appeal, Right of**—*Act XXXV of 1858, ss. 3, 4, 22—Right of suit to recover property.*—On an application made by the wife and son of *T H*, an alleged lunatic, under the provisions of Act XXXV of 1858, s. 3, the daughters of the alleged lunatic, who were served with a notice under s. 4 of the same Act, appeared at the hearing of the application, and cross-examined the witnesses examined in support of the application. The Judge found that *T H* was of unsound mind, and appointed his wife, *L*, to be the guardian of his person. The daughters appealed to the High Court. *Held* (on an objection being taken that the appellants had no *locus standi*) that the daughters were entitled to appeal under the provisions of s. 22, Act XXXV of 1858. *Sherman* v. *Schorn, 24 W. R., 124,* referred to. *Quære*—Whether a right to sue to recover a property would be sufficient to confer jurisdiction under Act XXXV of 1858. IN THE MATTER OF THE PETITION OF MAHOMED BUSHEERUL HOSSEIN. MUNGHUR *v.* MAHOMED BUSHEERUL HOSSEIN

[I. L. R., 8 Calc., 263; 10 C. L. R., 1

42. ——— **Appointment of guardian of lunatic where lunatic is member of joint family**—*Act XXXV of 1858.*—An application made by the wife of a lunatic that she should be appointed manager under Act XXXV of 1858 was opposed by the lunatic's nephew, who was a member with him of a joint family governed by Mitakshara law, and who claimed to be entitled himself to the appointment of manager. The nephew was held to be disqualified on the ground of misconduct, and the wife was appointed. On appeal by the nephew, it was objected that, under Act XXXV of 1858, no manager could be appointed, as the lunatic was a member of a joint family and had no separate property. *Held* that the nephew, by claiming to be appointed manager, could not object that the lunatic had no separate property. *Quære*—Whether a manager can under any circumstances be appointed under Act XXXV of 1858 if the lunatic is a member of a joint family under the Mitakshara law and possessed of no separate property. SOOBANSE SINGH *v.* JUGGESSHUR KOER . **13 C. L. R., 86**

43. ——— *Act XXXV of 1858—Member of joint Mitakshara family—Guardian.*—The husband of a lunatic's daughter applied to the Court to declare his father-in-law, who was a member of a joint Mitakshara family, to be a lunatic, and appoint a manager of his property and guardian of his person under Act XXXV of 1858. The lunatic had an interest both in joint ancestral property and in property inherited collaterally, which might, but was not shown to, belong to him separately. The lower Court found that the application was made with a view to taking consequent proceedings for partition. *Held* that, it appearing that he had remained for sixteen years in the same house under the same guardian, and there being no allegation of ill-treatment, no sufficient grounds were shown for the Court's interference, or the appointment of another guardian of his person. Before any action can be taken under the Act in this respect, there ought to be a strong case made out that the change of custody would be for the lunatic's benefit. *Held* also that, as his daughter could not inherit his ancestral property and as it was doubtful if the collaterally-inherited property was the separate property of the lunatic, the Court would not, under such circumstances, appoint a manager of the property; but that the guardians of the lunatic, who were managers of the joint family, should, on her request, furnish accounts to the daughter of the management of the collaterally-inherited property. *Semble*—Act XXXV of 1858 applies to the members of a Mitakshara family. *Quære*—Assuming the application to be made with a view to a partition of the property, and that the lunatic was declared a lunatic under the Act, whether a partition could be had. IN THE MATTER OF THE PETITION OF BHOOPENDRA NARAIN ROY. BHOOPENDRA NARAIN ROY *v.* GREESH NARAIN ROY

[I. L. R., 6 Calc., 539; 8 C. L. R., 30

44. ——— **Incapacity of joint owners of property**—*Effect of, in favour of managing owners.*—The incapacity of joint owners confers powers of alienation, in certain cases of necessity, upon the managing owner. SHEO PERSHAD NARAIN *v.* COLLECTOR OF MONGHYR. GOUREENATH *v.* COLLECTOR OF MONGHYR. COURT OF WARDS *v.* RUGHOOBUR DYAL . . . . . . **7 W. R., 5**

45. ——— **Insanity pending award**—*Person becoming lunatic before award published.*—If a person was in fit condition to manage his affairs down to the time when the proceedings before an arbitrator in which he was interested were substantially concluded, the award will not be invalidated by reason of the person having become insane before the final publication of the award. GOUREENATH *v.* COLLECTOR OF MONGHYR. COURT OF WARDS *v.* RUGHOOBUR DYAL. SHEO PERSHAD NARAIN *v.* COLLECTOR OF MONGHYR . . . **7 W. R., 5**

46. ——— **Power to lease lands of proprietor disqualified from lunacy**—*Act XXXV of 1858, s. 9—Court of Wards in Oudh.*—The order of a Civil Court declaring, under Act XXXV of 1858, an Oudh talukhdar to be of unsound mind and incapable of managing his affairs, renders him a disqualified proprietor within the meaning of s. 9 of that Act, with the result that the Court of Wards is authorized to take charge of his estate without a further order of the Civil Court appointing the Court of Wards to be manager. A Civil Court having made an order declaring a talukhdar to be of unsound mind and incapable of managing his affairs, and having at the same time appointed to be manager of his estate the Deputy Commissioner of the district, who also acted as manager of the Court of Wards,—*Held* that a lease for more than five years made by the latter officer, as representing the Court of Wards, was not invalidated under s. 14 of the above Act, providing that no manager appointed by the Civil Court under it shall have power to grant a lease for any period exceeding five years. SARABJIT SINGH *v.* CHAPMAN

[I. L. R., 13 Calc., 81
L. R., 13 I. A., 44

M

MADRAS ABKARI ACT (MADRAS ACT III OF 1864).

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE.
[6 Mad., Ap., 40

1. ——— s. 2 — *Liquor — Toddy — Fermented palm juice.*—Sweet palm juice, which by exposure to the operation of natural causes ferments and becomes toddy, is as much manufactured by the person who exposes it as if the same result were produced by the process of distillation. ANONYMOUS
[5 Mad., Ap., 26

2. ——— *Toddy—Fermented palm juice—Conviction without evidence of fermentation.*—*Primâ facie,* toddy is fermented palm juice. A conviction under s. 21 of Madras Act III of 1864, for selling toddy without a license, upheld, although no evidence was given as to whether fermentation had taken place. ANONYMOUS . **5 Mad., Ap., 36**

This case was not intended to define toddy as a matter of law. ANONYMOUS . **6 Mad., Ap., 11**

3. ——— *Sale—Barter — Payment of wages in liquor.*—Payment of wages in liquor does not amount to a sale of liquor within the meaning of s. 2 of the Abkari Act (Madras Act III of 1864). QUEEN-EMPRESS *v.* APPAVA
[I. L. R., 9 Mad., 141

4. ——— **and s. 9** — *Unexecuted contract to sub-rent—Suit for specific performance.*—In a suit brought by plaintiff for the specific performance of an agreement entered into between the plaintiff and defendant, whereby the defendant, an abkari contractor, undertook to sub-let to plaintiff the abkari of a talukh, and also to recover damages for the breach of contract,—*Held* that s. 9 of the Abkari Amendment Act (Madras Act III of 1864) did not affect the rights and liabilities of the parties *inter se,* under the terms of an unexecuted contract to subrent, although the Act would prevent the subrentor deriving any benefit under an executed contract of sub-renting from the excise or the manufacture or sale of liquor, as defined in s. 2, until he had complied with the condition prescribed in s. 9 of the Act. VENKATA KRISTNAIYA *v.* VENKATACHALAIYAR . . . . **5 Mad., 1**

——— **s. 6.**

See DAMAGES — SUITS FOR DAMAGES — BREACH OF CONTRACT.
[I. L. R., 14 Mad., 82

——— **s. 8** — *Licensed vendor, Sale by agent of.*—A license to sell liquor granted to *N* under the provisions of the Abkari Act (Madras Act III of 1864) having been cancelled, *N* put forward *M* as a proper person to be licensed for the shop in which *N* himself had been selling. *M* was duly licensed by the Collector. Under cover of this license, *N* continued his former business, paying *M* a certain sum monthly. *N* was convicted of selling liquor without a license. *Held* that the conviction was illegal. QUEEN-EMPRESS *v.* NANJAPPA
[I. L. R., 7 Mad., 432

——— **s. 10** - *Revenue Recovery Act (Madras Act III of 1864), ss. 1, 3, 4, 5, 37, 42, 52—Sale for arrears of abkari revenue—Prior encumbrance not affected.*—Where land is sold under the provisions of s. 10 of the Madras Abkari Act, 1864, for arrears due by an abkari renter, the purchaser at the sale does not take the land free of all encumbrances as in the case of a sale for arrears of land revenue under the provisions of the Revenue Recovery Act (Madras Act II of 1864). RAMACHANDRA *v.* PITCHAIKANNI . . **I. L. R., 7 Mad., 434**

1. ——— **s. 21**—*Licensed vendor—Possession of arrack.*—The Magistrate convicted the accused under s. 21 of Madras Act III of 1864, and directed the confiscation of certain arrack found in his possession. *Held* that, the accused being a licensed vendor, the arrack was not liable to confiscation. ANONYMOUS . . . **5 Mad., Ap., 41**

2. ——— **and s. 22**—*Licensed vendors where license has expired.*—The provision in s. 21 of the Madras Abkari Act limiting the liability of licensed vendors whose license has expired to the case in which they are found in possession of liquor kept for the purpose of sale must be read as an exception to the general provision of s. 22. QUEEN *v.* RAMAYYA . . . **I. L. R., 5 Mad., 131**

1. ——— **s. 22**—*Conveyance of liquor without valid permits—Permits made out in names of third parties.*—Upon a conviction under s. 22 of (Madras) Act III of 1864, for conveying liquor without valid permits, it appearing that the defendants produced permits by the talukh abkari renter, covering the amount of liquor which was being conveyed, but made out in the names of third parties who were not present when the liquor was seized, but on whose behalf the liquor was at the time of seizure being conveyed,—*Held* that the permits were valid, and the conviction was bad. ANONYMOUS
[5 Mad., Ap., 29

2. ——— *Possession of toddy by servants.*—The servants of an abkari renter of certain villages were convicted under s. 22 of Act III of 1864 (Madras) for conveying three measures of toddy without a permit from one of the said villages to the shop of the renter. *Held* that the conviction was illegal. QUEEN *v.* PATTACHI
[I. L. R., 7 Mad., 161

3. ——— **and V of 1879, s. 23**—*Confiscation of boat used for carrying liquor without permit.*—Neither under the provisions of the Madras Abkari Act nor under the provisions of the Abkari Amendment Act, 1879, is an order by a Magistrate confiscating a boat used for carrying liquor without a valid permit legal. The Collector alone can confiscate. QUEEN *v.* PERIANNAN. QUEEN *v.* NARAINA . . . **I. L. R., 4 Mad., 241**

MADRAS ABKARI ACT (MADRAS ACT III OF 1864)—*concluded.*

——— **ss. 23, 26, and s. 17**—*Confiscation of animals.*—Although a Magistrate may not confiscate animals under s. 23 (*a*) of the Madras Abkari Act, yet the proceeds of whatever has been confiscated by the Collector under s. 17, including animals, would be available for distribution in the manner prescribed in s. 26 (*b*). QUEEN *v.* SAKIYA [I. L. R., 5 Mad., 137

——— **s. 25, and V of 1879, s. 26 (b)**—*Not producing license.*—The offence, under Madras Act III of 1864, s. 25, of not producing, when called upon by the police, a liquor license, is not one for which a Magistrate may proceed under s. 26 (*b*) of Madras Act V of 1879. QUEEN *v.* VASANTAPPA [I. L. R., 4 Mad., 231

——— **s. 26**—*Police-officer—Village policeman—Mohatad.*—The term "police-officer" used in s. 26 of the Abkari Act (Madras Act III of 1864) includes a mohatad or village policeman. QUEEN-EMPRESS *v.* SESHAYA . I. L. R., 9 Mad., 97

——— **s. 32**—*Non-payment of penalty.*—Where it appears that after distress and sale a penalty imposed under s. 21 of the Madras Abkari Act, 1864, cannot be recovered, and the penalty is not paid, the Court may commit the offender to the civil jail under s. 32 of the Act. QUEEN *v.* CHAKRASAHU [I. L. R., 7 Mad., 185

MADRAS ABKARI ACT (MADRAS ACT I OF 1886).

——— **ss. 9, 11, 55.**—Under the Madras Abkari Act, 1886, a permit is not necessary where toddy is carried from the licensee's trees to his shop within the limits of his farm, or where, the licensee having a general permit, the persons carrying the toddy are in his employment. QUEEN-EMPRESS *v.* SAMBOJI . . . I. L. R., 11 Mad., 472

——— **s. 28.**

See ATTACHMENT—ALIENATION DURING ATTACHMENT I. L. R., 16 Mad., 479

——— **ss. 29, 55 (e)**—*Rule forbidding delegation by licensee of authority to draw toddy.*—Under s. 29 of the Madras Abkari Act, the Governor in Council made and published a rule on 8th February 1887, whereby it was declared that no license-holder could delegate his authority to draw toddy unless under exceptional circumstances to any person. *B*, the son of a licensee, drew toddy with his father's permission. He was convicted under s. 55 (*e*) of the Act. *Held* that the rule was *ultra vires* and the conviction bad. QUEEN-EMPRESS *v.* BELLARA . . . . I. L. R., 11 Mad., 250

——— **ss. 31 and 36.**

See PRIVATE DEFENCE, RIGHT OF. [I. L. R., 19 Mad., 349

——— **s. 43.**

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ABKARI ACT. [I. L. R., 18 Mad., 48

MADRAS ABKARI ACT (MADRAS ACT I OF 1886)—*concluded.*

——— **ss. 55 (a), 59**—*Rules notified by Government under Abkari Act—Rules for "immediate" removal of toddy.*—Toddy-drawers failing to remove their toddy to a shop or distillery "within a reasonable time" after it is drawn are punishable under s. 55 (*a*) of the Abkari Act, though their licenses do not refer to the Government notification made under the Act, prescribing its immediate removal. QUEEN-EMPRESS *v.* JAMMU [I. L. R., 12 Mad., 450

1. ——— **s. 56**—*License to keep toddy-shop—Failure to keep shop open—Omission not constituting an act.*—By s. 56 (*b*) of the Madras Abkari Act, 1886, whoever, being the holder of a license or permit granted under the Act, "does any act in breach of any of the conditions of his license or permit not otherwise provided for in this Act," may be punished with fine or imprisonment or with both. The holder of a license to keep a shop for the sale of toddy having been convicted for failing to keep his shop open, in breach of one of the conditions of the license,—*Held* that, even if the licensee was under an obligation to keep open his shop (which did not appear to be the case), an omission to do so did not amount to an act in breach of the conditions of the license; and that the conviction must in consequence be set aside. QUEEN-EMPRESS *v.* VENKATASAMI NAIDU . . . . I. L. R., 23 Mad., 220

QUEEN-EMPRESS *v.* KARUPPAN [I. L. R., 23 Mad., 220 note

2. ——— **and s. 64**—*Holder of a license and his servants.*—The words "being holder of a license" in Abkari Act, s. 56, must be taken to include any person in the employ, or for the time being acting on behalf of the holder of a license. QUEEN-EMPRESS *v.* MAHALINGAM SERVAI [I. L. R., 21 Mad., 63

MADRAS ACT—1862—IV.

See GRANT—RESUMPTION OR REVOCATION OF GRANT . I. L. R., 14 Mad., 431

——— **1863—I.**

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . 4 Mad., Ap., 51, 52

——— **IV.**

See MUNSIF, JURISDICTION OF.
[2 Mad., 32
3 Mad., 339
4 Mad., 149

——— **1864—II.**

See LANDLORD AND TENANT—MIRASIDARS. [I. L. R., 1 Mad., 205

See MADRAS ABKARI ACT, 1864, s. 10. [I. L. R., 7 Mad., 434

See MADRAS REVENUE RECOVERY ACT, 1864.

——— **III.**

See MADRAS ABKARI ACT, 1864.

MADRAS ACT—*continued.*

———— **1865—III.**

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865.

———— **V.**

See FINE . . . **3 Mad., Ap., 9**

———— **VII.**

See MADRAS IRRIGATION CESS ACT.

———— **VIII.**

See MADRAS RENT RECOVERY ACT, 1865.

See REGISTRATION ACT, 1877, s. 17.
[7 Mad., 234

———— **X.**

See RIGHT OF SUIT—SUITS AGAINST MUNICIPAL OFFICERS . . **3 Mad., 370**

———— **s. 108** — *Slaughter-house, Using place as.*—Slaughtering a sheep in one's own premises for one's own private use is not an offence under s. 108 of Madras Act X of 1865. ANONYMOUS
[6 Mad., Ap., 18

———— **s. 114** — *Continuing of offensive trade in premises already used.*—The continuing of offensive trades in premises already used is not an offence under s. 114 of Madras Act X of 1865. The section only applies to the fresh dedication of premises to certain offensive trades. ANONYMOUS
[5 Mad., Ap., 16

———— **1866—I.**

See CANTONMENTS ACT (MADRAS ACT I OF 1866) . . **7 Mad., Ap., 15**
[I. L. R., 8 Mad., 428

See CANTONMENT MAGISTRATE.
[I. L. R., 8 Mad., 350

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL . . **3 Mad., 277**

———— **IV.**

See RIGHT OF SUIT—OFFICE OR EMOLUMENT . . **I. L. R., 8 Mad., 249**

———— **1867—VI.**

See MADRAS TOWNS LAND REVENUE ACT.
[I. L. R., 22 Mad., 100

———— **IX.**

See MADRAS MUNICIPAL ACT, 1867.

———— **1869—III.**

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . . **5 Mad., Ap., 28**
[6 Mad., Ap., 44
7 Mad., Ap., 10, 11
I. L. R., 5 Mad., 377
I. L. R., 7 Mad., 197
I. L. R., 12 Mad., 297

See SUMMONS, SERVICE OF.
[I. L. R., 11 Mad., 137

MADRAS ACT—*continued.*

———— **1871—III.**

See MADRAS TOWNS IMPROVEMENT ACT, 1871.

———— **IV.**

See MADRAS LOCAL FUNDS ACT, 1871.

———— **1873—III.**

See MADRAS CIVIL COURTS ACT, 1873.

———— **1876—I.**

See MADRAS LAND REVENUE ASSESSMENT ACT.

———— **1878—V.**

See MADRAS MUNICIPAL ACT, 1878.

———— **1879—V.**

See MADRAS ABKARI ACT, 1864.
[I. L. R., 4 Mad., 231, 241

———— **1882—I.**

See SALT, ACTS AND REGULATIONS RELATING TO—MADRAS.

———— **V.**

See MADRAS FOREST ACT.

———— **s. 10.**

See VALUATION OF SUIT—APPEALS.
[I. L. R., 8 Mad., 22

———— **1884—I.**

See MADRAS MUNICIPAL ACT, 1878, ss. 103, 105 . **I. L. R., 8 Mad., 428**

See MADRAS MUNICIPAL ACT, 1884.

———— **II.**

See MADRAS BOUNDARY MARKS AMENDMENT ACT.

———— **III.**

See MADRAS REVENUE RECOVERY AMENDMENT ACT.

———— **IV.**

See MADRAS DISTRICT MUNICIPALITIES ACT, 1884.

———— **V.**

See MADRAS LOCAL BOARDS ACT.

———— **1885—I.**

See MADRAS POLICE ACT, 1859, s. 48.
[I. L. R., 9 Mad., 167

———— **1886—I.**

See MADRAS ABKARI ACT, 1886.

———— **II.**

See MADRAS HARBOUR TRUST ACT.

MADRAS ACT—*concluded.*

——————1887—I.

See CASES UNDER LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS.

See MALABAR COMPENSATION FOR TENANTS IMPROVEMENT ACT.

——————1888—III.

See MADRAS POLICE ACT, 1888.

——————1889—I.

See MADRAS VILLAGE COURTS ACT, 1889.

—————— III.

See MADRAS TOWNS NUISANCES ACT.

——————1891—I.

See MADRAS GENERAL CLAUSES ACT.

——————1895—III.

See MADRAS HEREDITARY VILLAGE OFFICES ACT.

——————1897—III (MADRAS DISTRICT MUNICIPALITIES AMENDMENT ACT, 1884).

See MADRAS DISTRICT MUNICIPALITIES ACT.

MADRAS BOAT RULES.

1. —————— **Act IV of 1842—Act IX of 1846**—*Jurisdiction of Magistrates—Liability of owner under rule 7—Burden of proof.*—Under Act IX of 1846, the Madras Government is authorized to make in respect of ports in the presidency such regulations for the management of boats and such other matters as are provided for by Act IV of 1842 in respect of the Madras roads, being similar in principle to the provisions of the said Act, but varying in detail as local circumstances may require. Act IV of 1842, s. 24, empowers a Justice of the Peace of the town of Madras to hear and determine all pecuniary forfeiture and penalties had or incurred under or against that Act. *Held* that it was competent to the Government of Madras to provide that cases cognizable under the rules passed in accordance with Act IX of 1846 should be heard and determined by Magistrates not being Justices of the Peace. Under rule 7 of the amended rules for the better management of boats, etc., plying for hire at the out-ports of the Madras Presidency, dated 1st October 1867, the owner of a boat is liable to fine on proof of his allowing his boat to ply without the requisite complement of men. *Held* that, where it was proved that a boat was plying without its proper crew, the absence of proof by the prosecutor that the owner was aware of the fact was no bar to his conviction. IN RE ROUTHAKONNI . **I. L. R., 9 Mad., 431**

2. —————— **Boat Rules in Madras Ports**—*Refusal to carry cargo without reasonable excuse.*—By the Boat Rules of a certain port it was provided (1) that all licensed boats must carry such number of passengers and quantity of goods as should be expressed in the license; and (2) that the owner of a licensed boat who should refuse to let his boat on hire without assigning reasonable and satisfactory grounds for such refusal should be liable to a penalty. *Held* that a refusal by a person in charge of a licensed boat to receive goods on board unless a tallyman was sent with them on the ground that he could not count, was not a reasonable and satisfactory cause. QUEEN-EMPRESS *v.* KAMANDU

[I. L. R., 10 Mad., 121

MADRAS BOUNDARY MARKS ACT (MADRAS ACT XXVIII OF 1860).

See COURT FEES ACT, SCH. II, ART. 17.

[I. L. R., 4 Mad., 204

See LIMITATION ACT, 1877, s. 14.

[I. L. R., 11 Mad., 309

—————— **ss. 21, 25, 28**—*Appeal, Nature of—Arbitrator's award—Duty of Collector—Irregularity in procedure.*—The appeal allowed by s. 28 of the Madras Boundary Act, XXVIII of 1860, is one from a decision recorded in the presence of the parties and duly intimated to them as required by s. 25 of the said Act. The omission by the Collector to pass a decision in accordance with an arbitrator's award and to furnish a copy to the parties as required by s. 21 of the Boundary Act is fatal to the award. The power given by s. 21 being a judicial power, a Collector must exercise his independent judgment, and should not refer the award for acceptance to the Board of Revenue and Government, nor should he adjudicate when, as agent to the Court of Wards, he represents one of the rival claimants. SESHAMA *v.* SANKARA . . . . **I. L. R., 12 Mad., 1**

—————— **s. 25.**

See LIMITATION—QUESTION OF LIMITATION . . **I. L. R., 19 Mad., 416**

See MINOR—REPRESENTATION OF MINOR IN SUITS . **I. L. R., 11 Mad., 309**

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.

[I. L. R., 11 Mad., 309

1. —————— *Appeal—Limitation—Special extension of time for appeal.*—Under s. 25 of the Boundary Act (Madras Act XXVIII of 1860), the decision against which an appeal is allowed in the form of a regular suit is the original decision of the settlement officer, and not that of his superior passed on revision; and unless time is extended by the Governor in Council, the appeal must be brought within two calendar months from the date of the original decision. The provisions of the exception to s. 5 of the Limitation Act, 1871, do not apply. THIR SING *v.* VENKATARAMIER . **I. L. R., 3 Mad., 92**

2. —————— *Limitation—Procedure.*—Under s. 25 of Act XXVIII of 1860 (Madras Boundary Act), which limits the time within which a suit may be brought to set aside the decision of a settlement officer to two months from the date of the award, time will not begin to run until the date on

MADRAS BOUNDARY MARKS ACT (MADRAS ACT XXVIII OF 1860) —*concluded.*

which the decision is communicated to the parties. As the settlement officer is required to take evidence before coming to a decision under s. 25, a decision based upon the report of a subordinate vitiates the whole proceedings and is not binding on the parties. Annamalai Chetti *v.* Cloete

[I. L. R., 6 Mad., 189

3. ———— **Power of Government to extend time for appeal.**—The proviso contained in s. 25 of Act XXVIII of 1860 gives a discretionary power to the Government of extending the time for appeal by suit at all times even after the expiry of the period limited. Krishnareddi Govindareddi *v.* Stuart **I. L. R., 1 Mad., 192**

4. ———— A suit by way of appeal against a decision of a Revenue Survey officer in 1876, under s. 25 of the Madras Boundary Act, 1860, was dismissed on second appeal in 1881 by the High Court, on the ground that it was barred by limitation, inasmuch as the suit was instituted one day after the time prescribed by the said Act. The plaintiffs thereupon applied to the Governor in Council, under s. 25 of the said Act, to extend the period so as to allow the plaintiffs to bring a second suit. This application was granted, and the plaintiffs brought a second suit against the decision of the Revenue Survey officer. *Held* that the order of the Governor in Council was not *ultra vires*, and that the second suit was not barred. Venkatramana *v.* Thir Singh . . . **I. L. R., 7 Mad., 280**

MADRAS BOUNDARY MARKS ACT AMENDMENT ACT (MADRAS ACT II OF 1884).

———— **s. 9.**

See Limitation—Question of Limitation . **I. L. R., 19 Mad., 416**

MADRAS CIVIL COURTS ACT (MADRAS ACT III OF 1873).

See Munsif, Jurisdiction of.

[I. L. R., 9 Mad., 208
I. L. R., 11 Mad., 197

See Cases under Valuation of Suit.

———— **s. 12.**

See Execution of Decree—Transfer of Decree for Execution, etc.

[I. L. R., 7 Mad., 397
I. L. R., 17 Mad., 309

See Munsif, Jurisdiction of.

[I. L. R., 11 Mad., 140
I. L. R., 19 Mad., 56

———— **s. 14.**

See Appeal to Privy Council—Cases in which Appeal lies or not—Valuation of Appeal.

[I. L. R., 15 Mad., 237

MADRAS CIVIL COURTS ACT (MADRAS ACT III OF 1873)—*concluded.*

———— **s. 16**—*Suit by reversioner to recover land granted to Hindu widow—Presumption as to death of widow from absence, not a question of succession or inheritance.*—Plaintiff sued as reversioner to recover certain land granted in lieu of maintenance to a Hindu widow. The widow had left her village sixteen years before suit, and had not been heard of since. *Held* that the question whether a presumption arose that the widow was dead was not a question regarding succession or inheritance to be decided according to Hindu law within the meaning of s. 16 of the Madras Civil Courts Act, 1873. Balayya *v.* Kistnappa . **I. L. R., 11 Mad., 448**

———— **s. 28.**

See Munsif, Jurisdiction of.

[I. L. R., 19 Mad., 445

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884).

———— **s. 11**—*Interference with a public drain.*—The owner of a house in a street at Tanjore renewed, without the sanction of the Municipal Council, the masonry covering of a drain in front of his house. *Held* that the act of the plaintiff did not constitute an interference with the drain within the meaning of District Municipalities Act, s. 211. Municipal Council, Tanjore *v.* Visvanatha Rau

[I. L. R., 21 Mad., 4

———— **s. 41.**

See Public Servant.

[I. L. R., 13 Mad., 131

———— **s. 47 and s. 63**—*Land tax—Land unappropriated to buildings.*—A municipal council under the Madras District Municipalities Act has no power to levy a tax on any land exceeding seven-and a-half per cent. on the annual value of such land. The meaning of the term "lands unappropriated to any buildings" in the Madras District Municipalities Act, s. 63, cl. 2, considered. Clarke *v.* Chairman, Ootacamund Municipal Council

[I. L. R., 18 Mad., 310

———— **ss. 49, 50.**

See Small Cause Court, Mofussil—Jurisdiction—Municipal Tax.

[I. L. R., 13 Mad., 78

1. ———— **s. 53 and ss. 55 and 60**—*Wrongful assessment of profession tax.*—The Municipality at Tuticorin demanded R50 as profession tax from the South Indian Railway Company, which had already paid profession tax to the Municipality at Negapatam. The Company complied with the demand under protest and sued the Municipality for a refund of the amount paid, and obtained a decree. *Held* the Municipality at Tuticorin had no right to levy the tax on the Railway Company, as the Company had already paid it once, and the decree directing the amount levied to be refunded was correct. Municipal Council of Tuticorin *v.* South Indian Railway Co. . . **I. L. R., 13 Mad., 78**

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884) —*continued.*

2.———————— **and ss. 55 and 60**—*Profession tax.*—The Bank of Madras carried on business at (among other places) Negapatam and Tellicherry, in both of which places the Madras District Municipalities Act was in force. The Bank paid profession tax under that Act to the Municipality of Negapatam two days before it was due. The Municipality of Tellicherry subsequently, and with knowledge of the above facts, assessed the Bank to the same tax for the same period and levied the amount which was paid under protest. *Held* that the Bank was entitled to recover the amount so paid from the Municipality of Tellicherry. *Semble*—The aggregate income derived by the Bank from the exercise of its business in the separate Municipalities should regulate the class under which it would be liable to taxation. MUNICIPAL COUNCIL OF TELLICHERRY *v.* BANK OF MADRAS . . . **I. L. R., 15 Mad., 153**

3.———————— **and ss. 59 and 60**—*Profession tax—Trader.*—One who makes it his business to sell the produce of his own land for profit is a trader within the meaning of Madras Act IV of 1884, provided the sales are conducted in a shop or place of business. *Held* by PARKER, *J.*, that one who has paid profession tax as a sheristadar in one municipality is not on that account exempted from paying a further tax in respect of a trade carried on by him in another municipality under Madras Act IV of 1884. VENKATA REDDI *v.* TAYLOR

[I. L. R., 17 Mad., 100

4.———————— **and sch. (A)**—*Profession tax—District Court pleader—Court situated outside municipal limits.*—The plaintiff, who was a pleader, lived and had his office and occasionally practised in Courts within the limits of the Municipality of Salem, but he claimed to be entitled to the refund of a sum levied on him for profession tax under the District Municipalities Act for the reasons that he practised as a District Court pleader, and that the District Court was situated outside the municipal limits. *Held* that the plaintiff was liable to pay profession tax to the Municipality of Salem. RAMASAMI AYYAR *v.* MUNICIPAL COUNCIL OF SALEM . . . **I. L. R., 18 Mad., 183**

5.———————— *Profession tax—English Insurance Company carrying on business by agents in India.*—The plaintiff was an English Insurance Company which carried on business at Cocanada by its agents, merchants of that place, at the business premises of the agents. The Municipal Council of Cocanada having levied profession tax on the plaintiff, this suit was brought in 1896 to recover the amount. *Held* that the tax had been illegally levied, and that the plaintiffs were entitled to a decree for its refund. *Corporation of Calcutta* v. *Standard Marine Insurance Co., I. L. R., 22 Calc., 581,* followed. MUNICIPAL COUNCIL, COCANADA *v.* ROYAL INSURANCE CO. . . . **I. L. R., 21 Mad., 5**

———————— **s. 55**—*Profession tax—Officer with head-quarters in municipality.*—An officer, whose head-quarters are within a municipality, does not *ipso facto* exercise his profession or hold such office or appointment within the municipality so as to render himself liable for the payment of profession tax under Madras Act IV of 1884. Accordingly, an officer who is not personally present at his head-quarters in the course of duty for a period of sixty days in the half-year is not liable for the tax under s. 55 of the Act. CHAIRMAN, ONGOLE MUNICIPALITY *v.* MOUNSEY . . **I. L. R., 17 Mad., 453**

See HAMMICK *v.* PRESIDENT, MADRAS MUNICIPAL COMMISSION . . **I. L. R., 22 Mad., 145**

———————— **ss. 63, 262**—*House-tax assessed on school building—Suit to recover tax payable under protest.*—House-tax and water-tax was levied under the Madras District Municipalities Act, 1884, s. 63, on the school buildings of the Native College, Madura (which were exclusively used for charitable purposes), and was paid by the managers of the college, who sued in the Small Cause Court to recover the amount. *Held* that the tax was illegal and the plaintiffs were entitled to recover. FISCHER *v.* TWIGG . . . **I. L. R., 21 Mad., 367**

———————— **ss. 71 (2), 262 (2)**—*Notice of intended insertion of name or property on assessment books—Substantial compliance with Act—Action to recover money paid in respect of tax.*—By s. 71 of the Madras District Municipalities Act, 1884, the Chairman may at any time amend the assessment book in manner therein provided, but no person's name or property shall be inserted, nor any increase of assessment made unless notice thereof has been served on such person not less than thirty days previous to a day to be specified in such notice as the day upon which such notice will be revised. By s. 262, no assessment made under the authority of the Act shall be impeached, and no action shall be maintained in any Court to recover money paid in respect of any tax levied under the Act, provided that the directions and provisions of the Act shall have been substantially complied with. A notice which was served upon plaintiff by a municipal council purported to be issued under s. 71 (2) of the Madras District Municipalities Act, 1884, and was as follows: "I have the honour to forward herewith a list showing the amount of land and water-taxes due for 1895-96 on devastanam lands within the limits of this municipality, and to request that you will be good enough to cause the amount to be remitted to this office at your earliest convenience." *Held* that the notice was bad, that the terms of s. 71 (2) had not been substantially complied with, and that consequently s. 262 (2) had no application. *Municipal Council, Nellore* v. *Rangayya, I. L. R., 19 Mad., 10,* explained. MUNICIPAL COUNCIL, TANJORE *v.* UMAMBA BOI SAHEB . . **I. L. R., 23 Mad., 523**

1.———————— **s. 103**—*Procedure to compel payment of tax—Distress.*—Under s. 103 of Act IV of 1884 (Madras), a prosecution for default of payment of tax cannot be instituted unless the tax cannot be recovered by distress and sale of moveable property of the defaulter as provided in that section. QUEEN-EMPRESS *v.* O'SHAUGHNESSY . **I. L. R., 9 Mad., 429**

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884) —*continued.*

2. ——— *Attachment of moveable property—Doors of house.*—The doors of a house are not attachable as moveable property under the Madras District Municipalities Act, s. 103. QUEEN-EMPRESS *v.* IBRAHIM . **I. L. R., 13 Mad., 518**

3. ——— **and s. 110**—*Doors of house—Distraint notice.*—A Municipal Council under the District Municipalities Act has, under s. 110, a power to distrain after due notice, besides that given by s. 103, but the property distrained must be that of the defaulter, and the doors of a house cannot be removed in execution of a warrant of distress. PURUSHOTTAMA *v.* MUNICIPAL COUNCIL OF BELLARY . . **I. L. R., 14 Mad., 467**

——— **s. 169**—*Suit for declaration of title against a Municipality.*—The plaintiff sued a Municipal Council, under the Madras District Municipalities Act, for a declaration of title to a certain structure situated in the limits of the Municipality and of his right to put a roof over it. The structure was found to belong to the plaintiff. *Held* that the Municipal Council had no discretion under s. 169 of the above Act to prevent the plaintiff from dealing with the structure, provided he did not interfere with the convenience of the public or with any sanitary regulations. KRISHNAYYA *v.* BELLARY MUNICIPAL COUNCIL . . . . **I. L. R., 15 Mad., 292**

——— **s. 173**—*Obstruction of public street.*—S. 173 of the District Municipalities Act, 1884 (Madras), provides that no person shall deposit anything so as to cause obstruction to the public in any street without the written permission of the Municipal Council. *Held* that the depositing by any person of an article in the street without the permission of the Municipal Council amounted to an obstruction. QUEEN-EMPRESS *v.* BOLAPPA **I. L. R., 11 Mad., 343**

——— **s. 179**—*Repair of buildings.*—By s. 179, Madras District Municipalities Act IV of 1884, it is provided that "the external roofs, verandahs, pandals, and walls of buildings erected or renewed after the coming into operation of this Act shall not be made of grass, leaves, mats, or other such inflammable materials except with the written permission of the Municipal Council." *Held* that the word "renewed" includes repairing. QUEEN-EMPRESS *v.* SUBBANNA . **I. L. R., 19 Mad., 241**

——— **s. 180 and s. 264**—*Municipal building license—Building in excess of license—Requisition to demolish building—Magistrate, Jurisdiction of.*—A landowner in a Municipality subject to Madras Act IV of 1884 applied for a building license under s. 180 of the Act. The Municipality, having resolved that a portion of the land was required for widening a public lane, ordered the applicant to abstain from building on it, and granted a license for a building to be erected on the remaining portion. The landowner, however, erected a building upon the whole of the land. The Municipal Council then called upon her to demolish the building erected on the portion of the land which had not been licensed. This notice was not complied with. The landowner was then prosecuted and convicted under ss. 180, 263, and 264 of the Act. *Held* that neither of the above-mentioned orders of the Municipal Council were legal, and consequently that no offence had been committed by the landowner. *Semble*—Madras Act IV of 1884, s. 264, does not empower a Magistrate to impose a fine prospectively in respect of the period during which a person convicted of the offence of omitting to comply with a notice to execute any work may continue to leave such work unexecuted. QUEEN-EMPRESS *v.* VEERAMMAL **I. L. R., 16 Mad., 230**

——— **ss. 188, 189**—*Keeping a private cart-stand without a license.*—In a prosecution for using a place as a cart-stand without a license under the Madras District Municipalities Act, 1884, it was proved that carts resorted daily to the premises of the accused, laden with produce for sale to the general public and not only to the accused, who acted as a broker and permitted the carts to stand on his premises until the sale and removal of the goods was completed. *Held* that the place was used as a cart-stand within the meaning of s. 188, and that the accused had committed an offence punishable under s. 189 of the Act. QUEEN-EMPRESS *v.* AYYAKANNU MUDALI . . . **I. L. R., 22 Mad., 455**

——— *Keeping a private cart-stand without a license.*—It is not necessary, in order to establish the offence of using a place as a cart-stand without a license under the Madras District Municipalities Act (Madras Act IV of 1884), s. 189, to prove that the cart-stand is offensive or dangerous or that fees are levied there. QUEEN-EMPRESS *v.* AYYAKANNU MUDALI . . . **I. L. R., 21 Mad., 293**

——— **s. 198 and ss. 191, 192, 193**—*Butchers' licenses—Private market, Meaning of.*—A Municipal Council, under the Madras District Municipalities Act, refused to give licenses to certain persons keeping butchers' shops not used as slaughter-houses, except on the condition that they should remove to a fixed market. *Held* that butchers' shops are not "private markets" within the meaning of the Act, and that the action of the Municipal Council was *ultra vires.* QUEEN-EMPRESS *v.* BAODUR BHAI . **I. L. R., 10 Mad., 216**

——— **s. 222**—*Nuisance—Sewage water.*—An occupier of a building who allows sewage water to run into a street within the limits of a Municipality, governed by the Madras District Municipalities Act, commits an offence under s. 222 of that Act, although the Municipality may have supplied no side drains in the street in question. QUEEN-EMPRESS *v.* SEVUDAPPAYYAR **I. L. R., 15 Mad., 91**

——— **s. 261**—*Limitation—Contract Act (IX of 1872), s. 74—Penalty.*—The Council of a Municipality, under Madras Act IV of 1884, entered into a contract for the lighting of the town, whereby it was provided that the deposit made by the contractor

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884) —*continued.*

should be forfeited on any default made by him in carrying out the terms of the contract. One holding a decree against the contractor attached the amount of the deposit in the hands of the Municipal Council, but the Council subsequently passed a resolution in July 1888 declaring that the amount of the deposit had been forfeited. The decree-holder, having purchased from the contractor his right to the money in question, sued in 1890 to recover it from the Municipality. *Held* (1) that the suit was not barred by the rule of limitation in the Madras District Municipalities Act, s. 261; (2) that the provision for forfeiture in the contract was penal and unenforceable, and consequently that the resolution of July 1888 was *ultra vires.* SRINIVASA *v.* RATHNASABAPATHI . **I. L. R., 16 Mad., 474**

———— **s. 262**—*Suit to recover tax alleged to be illegally levied—Right of suit.*—The plaintiff built a house at Nellore, the construction of which was completed on the 15th of August 1893. The Municipal authorities of that place, being governed by the Madras District Municipalities Act, gave notice of assessment on the 11th of September, levied the tax as assessed, and credited it as the tax due for the half-year ending on the 30th of September 1893. The plaintiff now sued to recover the amount paid by him as having been illegally levied. *Held* that under the provisions of the District Municipalities Act, s. 262, the suit was not maintainable. MUNICIPAL COUNCIL OF NELLORE *v.* RANGAYYA **[I. L. R., 19 Mad., 10**

———— **ss. 263, 264**—*Criminal Procedure Code (Act X of 1882), ss. 16, 350—Bench of Magistrates.*—A trial on the charge of making an encroachment upon public land under District Municipalities Act (Madras), 1884, ss. 167, 263, and 264, was begun before a Bench of seven Magistrates, and ended in a conviction by five of the Magistrates in the absence of the other two. It appeared that the Municipal Council had passed no resolution under District Municipalities Act, s. 264. *Held* that on the facts of the case the conviction under s. 263 was right, and that it was not invalidated by the absence at the end of the trial of two of the Magistrates before whom it had begun. *Quære*—Whether a charge under s. 264 would lie in the absence of a resolution passed by the Municipal Council. KARUPPANA NADAN *v.* CHAIRMAN, MADURA MUNICIPALITY . . **I. L. R., 21 Mad., 246**

———— **Bye-law No. 48**—*District Municipalities Act Amendment Act (Madras Act III of 1897)—Covering a drain without Municipal permission.*—A bye-law of a Municipality had been framed under the powers conferred by an Act of 1884 as amended by an Act of 1897, and was to the following effect: "No public drain shall be covered without the permission of the Municipal Council." It had come into force in 1890. Prior to its coming into operation, an earlier bye-law had subsisted, in substantially the same terms. An occupier of premises, who had covered a drain during the subsistence of the earlier bye-law, was charged with having committed an offence under the later bye-law, and contended by way of defence that he could not be convicted, inasmuch as the act complained of had been committed before the passing of the Act under which the complaint was laid. He was convicted by a Bench of Magistrates. *Held* that the conviction was right. *Per* ARNOLD WHITE, *C.J.*—The bye-law applies to all drains which existed in a covered state at the time when it came into operation. The word "shall" is used throughout the bye-laws in the imperative, and not with reference to time, and this is the sense in which it is used in the bye-law in question. *Per* BENSON, *J.*—A bye-law similar in terms to that under which the accused had been convicted having been in existence under the then Municipal Act at the time when the accused first covered the drain in question, the liability then incurred by him continued, under the General Clauses Act (Madras), unaffected by the passing of the present Municipal Act. The contention that the accused could not be convicted because the act complained of was committed before the present Municipal Act was passed, therefore failed. PARIMANAM PILLAI *v.* CHAIRMAN, MUNICIPAL COUNCIL, OOTACAMUND . **I. L. R., 23 Mad., 213**

MADRAS FOREST ACT (MADRAS ACT V OF 1882).

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE. **[I. L. R., 19 Mad., 165**

———— **s. 2 and ss. 3, 4, 6, 8, 9, 50**—*Destroying cairn erected by Forest Department.*—The accused, who were servants of the shrotriemdar of an agraharam, destroyed a cairn erected by the Forest Department on the shrotriem land along the boundary line of a proposed forest reserve. No notice under Forest Act, s. 6, was proved to have been served on the shrotriemdar, and it did not appear whether the land in question was comprised in the boundaries specified in the notification published under s. 4. The accused were convicted under s. 50 (*d*). *Held* (1) that the provisions of the Act did not apply to the shrotriem land; (2) that the right of a forest officer to enter upon and demarcate land under s. 9 is limited to the purpose of the inquiry directed by s. 8; (3) that the conviction was wrong. QUEEN-EMPRESS *v.* JANGAM REDDI **[I. L. R., 14 Mad., 247**

———— **ss. 2, 43**—*Rules 10; 13, 23—Logs permanently fastened to a building cease to be timber.*—The accused were convicted of removing "timber" vested in the Forest Department, and the convicting Magistrate ordered it to be confiscated. *Held* that, having been already permanently fastened to a building, it had ceased to be timber within the meaning of s. 2 of the Forest Act, and the order foe confiscation was illegal. QUEEN-EMPRESS *v.* KETHIGADU . . . . **I. L. R., 9 Mad., 373**

MADRAS FOREST ACT (MADRAS ACT V OF 1882)—*continued.*

——— **s. 4 and ss. 2, 10, and 14**—*Claim to percentage of forest income—Pensions Act (XXIII of 1871), s. 4—"Civil Court"—Jurisdiction of Forest Settlement Officer—Jurisdiction of Appellate Court—Consent of parties to jurisdiction.*—A claim to a percentage of forest income is not a claim to forest produce under Madras Act V of 1882, nor is it a claim to a right specified in s. 4 of that Act. A Forest Settlement Officer has no jurisdiction to entertain a suit in which such a claim is made, and such a suit brought by discharged forest karnams is barred by s. 4 of the Pensions Act. A Forest Settlement Officer is a "Civil Court" for the purposes of the Pensions Act. If a Court of limited jurisdiction exceeds its powers and adjudicates on a claim over which it has no jurisdiction, the Court (if any) which exercises appellate jurisdiction over it is bound to entertain an appeal preferred against the lower Court's decision, and to correct the error. A Court of competent appellate jurisdiction in such a case is not bound by an order made without jurisdiction by a Collector on an appeal to him in the same suit. Submission by the parties to his jurisdiction cannot give a Forest Settlement Officer jurisdiction in a case where he has no inherent jurisdiction. SECRETARY OF STATE FOR INDIA *v.* VYDIA PILLAI

[I. L. R., 17 Mad., 193

——— **s. 6.**

See TITLE—EVIDENCE AND PROOF OF TITLE—LONG POSSESSION.

[I. L. R., 15 Mad., 315

——— *Tree pottah—Occupier of land.*—The holder of a tree pottah is a known occupier of land within the meaning of s. 6 of the Madras Forest Act. REFERENCE UNDER THE MADRAS FOREST ACT

[I. L. R., 12 Mad., 203

——— **s. 10.**

See APPEAL—MADRAS ACTS.

[I. L. R., 11 Mad., 309

See JURISDICTION OF CIVIL COURT—STATUTORY POWERS, PERSONS WITH.

[I. L. R., 12 Mad., 105

See VALUATION OF SUIT—APPEALS.

[I. L. R., 8 Mad., 22

——— **ss. 10 and 11**—*Claim by riparian owner to uninterrupted flow of natural stream—Jurisdiction of Forest Settlement Officer.*—A Forest Settlement Officer appointed under s. 4 of the Madras Forest Act, 1882, has, under ss. 10 and 11 of that Act, jurisdiction to decide a claim by a riparian owner to the uninterrupted flow of the water of a natural stream. SANGILI VEERA PANDIA CHINNA TAMBIAR *v.* SUNDARAM AYYAR

[I. L. R., 20 Mad., 279

——— **s. 14 and s. 39**—*Limitation Act (XV of 1877), ss. 5, 6—Period of Limitation—Power to excuse delay.*—Delay in preferring an appeal under the Madras Forest Act beyond the period prescribed by s. 14 of that Act may be excused under s. 5 of the Indian Limitation Act, 1877. REFERENCE UNDER MADRAS FOREST ACT

[I. L. R, 10 Mad., 210

MADRAS FOREST ACT (MADRAS ACT V OF 1882)—*concluded.*

1. ——— **s. 21**—*Tree pottah—Trespass.*—The holder of pottah of certain trees on land which had been declared a reserved forest was convicted of trespass under the Madras Forest Act on proof that he continued to gather the produce of the trees. *Held* that the conviction was bad for want of proof that the petitioner's claim had been duly disposed of or that he had not preferred his claim within the period required by law. QUEEN-EMPRESS *v.* RAMI REDDI . . . . **I. L. R., 12 Mad., 226**

2. ——— **and ss. 4, 7, 16**—*Making fresh clearing, Offence of—Omission of order prohibiting felling of trees pending rehearing of a case.*—A claim put forward to part of certain land notified for reservation under the Madras Forest Act originally rejected was held to be valid by the District Court on appeal. The High Court set aside the decision of the District Court, and directed that the appeal be re-heard. Pending the re-hearing, a lessee of the claimant felled trees on the land, and was charged under s. 21 (*a*) with the offence of making a fresh clearing prohibited by s. 7 of the Act. The Magistrate acquitted him on the ground that there was no order in writing served on him by the Forest Department prohibiting him from felling trees pending the rehearing. *Held* that the acquittal was wrong. QUEEN-EMPRESS *v.* NARASIMMAYYA

[I. L. R., 12 Mad., 338

3. ——— *Grazing cattle in a forest reserve.*—The owner of cattle found grazing in a forest reserve cannot be convicted under Madras Forest Act, s. 21 (*d*), in the absence of evidence that he either pastured the cattle or permitted them to trespass in the reserve. QUEEN-EMPRESS *v.* KRISHNAYYAN . . . . **I. L. R., 15 Mad., 156**

——— **Rule 12 of rules under Forest Act**—*Removal of leaves from classified trees.*—The mere removal of leaves from classified trees on unreserved land does not constitute a breach of rule 12 of the Madras Forest Act, 1882. QUEEN-EMPRESS *v.* SIVANNA . **I. L. R., 11 Mad., 139**

——— **s. 26**—*Cutting trees without permit—Canara Forest Rules, Nos. 7, 12, 23.*—The accused, not having a permit, cut certain classified tress on the kumaki adjoining his land and used the wood in his still as fuel; and upon these facts he was convicted of an offence against rules 7, 12, and 23. *Held* that the conviction was illegal. QUEEN-EMPRESS *v.* SHEREGAR . . . **I. L. R., 13 Mad., 21**

——— **s. 33**—*"Jointly interested"—Possession of forest under a mortgage.*—The Government having possession of a forest under a mortgage is jointly interested therein with the mortgagor within the meaning of the Madras Forest Act, s. 33. ASHTAMURTHI *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 13 Mad., 322

MADRAS GENERAL CLAUSES ACT (MADRAS ACT I OF 1891).

See MADRAS RENT RECOVERY ACT, s. 51.
[I. L. R., 22 Mad., 179

MADRAS HARBOUR TRUST ACT (MADRAS ACT II OF 1886).

See BILL OF LADING.
[I. L. R., 19 Mad., 169

——— **ss. 70, 87**—*Immunity from action—Breach of contract—Contract Act (IX of 1872), ss. 151, 152—Liability of bailees for hire for loss of goods—Negligence—Onus of proof—Byelaws, Validity of.*—When goods which have been entrusted to bailees for hire are lost, it lies on the bailees to show that they have taken as much care of the goods as a man of ordinary prudence would, under similar circumstances, have taken of his own goods of a similar kind, and that the loss occurred notwithstanding such care. If they fail to satisfy the Court on that point, they are liable for the loss. *Per* SHEPHARD, *J.*—The provision in s. 87 of the Madras Harbour Trust Act, 1886, to the effect that the Board, its officers and servants shall not be liable in damages for any act *bonâ fide* done or ordered to be done by them in pursuance of the Act, does not apply to all causes of action, and, *inter alia*, to a suit in respect of a breach of contract against the Board. The immunity there given applies only to those cases in which there is an act done or purporting to be done in pursuance of the Act. The fact that the Board has worked under the provisions of a statute does not prevent it from entering into a contract; and the section does not apply in a case where the party aggrieved complains of the breach of such a contract on the part of the Board. By s. 70 of the Madras Harbour Trust Act, 1886, the Board is empowered to make bye-laws for the reception, removal, and porterage of goods. A bye-law framed under this section provided that importers desiring to store cargo must apply to the Secretary of the Board for such space as they might require, and that such applications would be granted on such terms as the Board might approve, and concluded with the reservation that the Board, while taking all reasonable precautions, would accept no responsibility in respect of property stored upon its premises, which would remain at the risk of the consignees or owners. *Held* (*per* COLLINS, *C.J.*, and BODDAM, *J.*) that this provision was not a bye-law for the reception or removal of goods within the meaning of s. 70 of the Act, and was *ultra vires*. TRUSTEES OF THE HARBOUR, MADRAS *v.* BEST & CO.
[I. L. R., 22 Mad., 524

——— **s. 87 and s. 61**—*Maintenance of harbour causing encroachments on seashore—Liability of a public body for maintaining works authorized by statute—Common law liability where not expressly excluded by statute—Limitation.*—A harbour, which was in the first instance constructed by Government, was, by the Madras Harbour Trust Act, 1886, vested in trustees, together with the foreshore within the limits of the port. Prior to the date of the Act, an erosion, by the action of the sea, of a

MADRAS HARBOUR TRUST ACT (MADRAS ACT II OF 1886)—*continued.*

portion of the foreshore had commenced, in consequence of the existence of the harbour; and a revetment or barrier of stones had been built to counteract it. The trustees subsequently, but prior to 1891, extended the arms of the harbour, and in 1895 the result of the continuous encroachment of the sea was that a part of the said revetment or barrier of stones and some land was washed away. Plaintiff was the owner of land adjoining that which was so washed away, and the sea also encroached upon and injured plaintiff's land and the buildings upon it. The Madras Harbour Trust Act contains no provision for the payment of compensation by the trustees. By s. 61, the trustees are empowered to perform all works necessary to carry out the objects of the Act. Plaintiff sued the trustees to recover damages for the injury caused to his land by their maintaining and extending the arms of the harbour, as erected when the Board of Trustees was created, without taking steps to erect such buildings as would prevent the sea from encroaching upon and injuring the plaintiff's land. *Held* (affirming SHEPHARD, *J.*) that the plaint containing the above averments of fact disclosed no cause of action. The dates upon which damage to the plaintiff's buildings was alleged to have occurred were 25th December 1897 and 9th and 10th April 1898 respectively. By s. 87 of the Madras Harbour Trust Act, no suit shall be commenced against any person under the Act after six months from the accrual of the cause of such suit. The plaint was originally presented on 9th July 1898, and it was amended on 13th September 1898. On the day upon which the six months from 25th December 1897 expired, and until the day before the plaint was presented, the Court was closed. By the same section it is provided that no suit or other proceeding shall be commenced against any person for anything done or purporting to have been done in pursuance of the Act without giving to such person one month's previous notice in writing of the intended suit or proceeding, and of the cause thereof. Two letters had been written on behalf of the plaintiff. The first of these, dated 14th April 1898, represented the damage caused to plaintiff's property as above set out, and notified under s. 87, if that section should apply, that if the amount of damage suffered and assessed by plaintiff in the said letter should not be paid on or before the expiry of one month from the date thereof, legal proceedings would be instituted to recover the damage without further notice. The second letter, dated 11th May 1898, referred to further damage suffered, and called upon defendants to pay an increased sum, failing which action would be brought to recover such sum together with a further sum representing any further damage that might be done to the property by the sea before the suit should be filed or heard. The letter stated the ground of complaint to be that the encroachment of the sea was the result of the harbour groynes by which the action of the sea had been affected, that defendants had acted illegally and negligently in maintaining and extending those groynes and so causing the encroachment, and that by so doing they had caused the foreshore vested in them to be washed

MADRAS HARBOUR TRUST ACT (MADRAS ACT II OF 1886)—*concluded.*

away and the sea to be let in to the plaintiff's premises, thus causing the damage complained of, which defendants had taken no steps to prevent. *Held per* SHEPHARD, *J.*, that the plaintiff must be deemed to have commenced the suit in due time, since it was owing to the act of the Court itself that he was prevented from presenting his plaint till the day upon which it was filed. Also that the notice was sufficient, and that on the facts of the case s. 87 had no application. *Semble*—That, though a special rule of limitation was prescribed by the Act, s. 5 of the Limitation Act applied. *Per* O'FARRELL, *J.*—That the last clause of s. 87, which provides that neither the Board nor any of its officers or servants shall be liable in damages for any act *bonâ fide* done or ordered to be done in pursuance of the Act, had no reference to the present case. That section applied only to cases of acts done without legal authority or in excess of legal authority, but under the *bonâ fide* belief that they were covered by such authority. *Per* BODDAM, *J.*—That the cases in which it has been held that no action lies for non-feasance apply only to highways and have no application to the present case. *Per* DAVIES, *J.*—The liability of the trustees, in the absence of any statutory duty cast upon them to insure plaintiff from loss, was confined to the maintenance of the particular work they took over, and, if there was any general obligation to protect the plaintiff's property, it lay on the Government, who constructed the harbour, the Legislature not having imposed it on the trustees. ISMAIL SAIT *v.* TRUSTEES OF THE HARBOUR, MADRAS

[I. L. R., 23 Mad., 389

MADRAS HEREDITARY VILLAGE OFFICES ACT (MADRAS ACT III OF 1895).

———— s. 5—*Attachment of growing crop.*—By s. 5 of the Madras Hereditary Village Offices Act, the emoluments of village offices are not to be liable to attachment. *Held* that an attachment by a decree-holder of a crop growing on certain lands in a zamindari, which were the inam service lands held by the judgment-debtor as a village servant, had been rightly set aside. KANNAM NAIDU *v.* LATCHANNA DHORA . . **I. L. R., 23 Mad., 492**

———— **s. 21.**

See MADRAS REVENUE RECOVERY ACT, s. 52 . . **I. L. R., 23 Mad., 571**

MADRAS IRRIGATION CESS ACT (MADRAS ACT VII OF 1865).

See MADRAS RENT RECOVERY ACT, s. 4.

[I. L. R., 7 Mad., 182

1. ———— s. 1—*Water-cess—Overflow from Government works—Water supplied or used for purposes of irrigation.*—Surplus water from Government irrigation works flowed on to land of the plaintiff which they were in the habit of cultivating with dry crops and stagnated there rendering such cultivation impossible. The plaintiffs did not want the water to flow on to their land, but, being unable to exclude it, planted paddy as the best crop to cultivate under the above circumstances. Water-cess was levied on the plaintiffs under colour of Act VII of 1865. *Held* the water was not supplied or used for purposes of irrigation within the meaning of Act VII of 1865, s. 1, and the plaintiffs were not liable to pay the water-cess. VENKATAPPAYYA *v.* COLLECTOR OF KISTNA . . . **I. L. R., 12 Mad., 407**

2. ———— *Lands irrigated under Kistna anicut—Water-cess—Optional or compulsory use of water.*—A raiyat occupying land in the Kistna delta made no application for the supply of water, but water from the irrigation channels flowed from time to time on to his land from irrigated lands of a higher level, and he had no option as to whether to accept or refuse the supply. No increased benefit was derived from the water by the raiyat. A sum having been levied from him on account of water-cess, he now sued to recover the amount. *Held* that the plaintiff was entitled to recover. *Venkatappayya* v. *Collector of Kistna, I. L. R., 12 Mad., 407,* followed. KRISHNAYYA *v.* SECRETARY OF STATE FOR INDIA . **I. L. R., 19 Mad., 24**

———— **s. 4.**

See MADRAS RENT RECOVERY ACT, s. 11.

[I. L. R., 15 Mad., 47

MADRAS LAND REVENUE ASSESSMENT ACT (MADRAS ACT I OF 1876).

1. ———— s. 2—*Separated registration and assessment of revenue—Suit for declaratory decree—Consequential relief—Specific Relief Act, s. 42—Misjoinder of parties—Madras Regulation XXV of 1802, s. 8—Want of concurrence of parties in applying.*—A suit was brought by *F* against the Secretary of State for India in Council for a declaration that the order of the Madras Government directing the Collector to cancel the separate registration and assessment of a village in the Sivaganga zamindari in his name was *ultra vires* and illegal. The plaintiff's claim to be separately registered as the holder of the said village depended upon the proper construction to be put on grant of the village contained in two documents, the one dated the 13th December 1872 and the other being a document dated the 14th May 1877, executed by the Rani and her children. Subsequently to the grant referred to, an application was preferred by the Rani and addressed to the Collector requesting him to separately assess the village and register it in the name of *F*. This application was never presented owing to the death of the Rani, who was succeeded by the father of the present zamindar, who executed, on the 22nd February 1883, a deed of release in favour of *F* ratifying the grant abovementioned in the following terms: "Whereas the village of Kondagai . . . . of my zamindari . . . has been granted to you in perpetuity by the late Rani Kattama Nachiyar and others and has been in your possession according to the terms of the documents executed by them to you

therefor on the 13th December 1872 and on the 14th May 1877, and whereas I have received from you R2,000 as the consideration for my ratifying your rights in accordance with the terms of the said documents and for relinquishing whatever rights I possess therein, I hereby ratify your rights of every description in the said village and relinquish all my rights therein in your favour. Wherefore as per the terms of the said documents, dated the 13th December 1872 and the 14th May 1877, you and your heirs and assigns shall hold and enjoy the said Kondagai village . . . . in perpetuity . . . . with full powers of alienation by sale, gift, or otherwise. You shall pay to my zamindari the sum of R3,500, the poruppu fixed on the said village, as well as road-cess, mangamai, etc., according to custom," and he applied to the Collector for separate assessment and registration of the village in the name of *F* on the 25th March 1883. On the 29th March 1883 *F* also made a similar application, but, pending disposal, the present zamindar's father died, and was succeeded by his son, the present zamindar, who raised objections, and the application was not granted. On the 23rd May 1887 the present zamindar granted a lease of the zamindari to *O*, *S*, and *K*, who executed a release guaranteeing *F* undisturbed possession and enjoyment of the village, and accepted his position such as it may have been at or prior to the date of the execution of the lease. On the 23rd January 1890 the zamindar executed in favour of *F* a deed of release, which, after reciting the grant from the Rani, the deed executed by the zamindar's deceased father dated the 22nd February 1883, and a further payment of R3,500 by *F*, contained the following covenant: "Therefore I forfeit and relinquish the right I profess to have in me to question the said permanent lease or the terms of the said lease deeds, and I hereby ratify your right. You and your heirs shall hold and enjoy the said villages absolutely according to the terms of the aforesaid permanent lease deeds." *F* then applied by petition, dated the 13th March 1890, to the Collector for separate registration and assessment of the said village, but on notices being sent to the zamindar and the lessees, they filed objections which, after due enquiry, were overruled by the Collector, who ordered separate registration and fixed the assessment. On appeal, the Board of Revenue supported the action of the Collector. Whereupon the lessees appealed to the Government of Madras on the 21st September 1891, and the Government of Madras on the 14th November 1891 cancelled both the separate registration and the separate assessment. Under the circumstances, *F*, claiming to be the duly registered holder of the said village, sued the Secretary of State for a declaration that the order of the Madras Government, dated the 14th November 1891, directing the Collector to cancel the separate registration and assessment of the said village was *ultra vires* and illegal,—and the lessees sued *F* for the balance of poruppu, mangamai, and road-cess, with interest alleged to be due on the said village for Fasli 1300. *Held* that *F* was bound to pay the lessees R3,500 poruppu with mangamai and road-cess, whether his village was separately registered and assessed or not. *Held* that the suit by *F* for a declaration that the order of the Madras Government directing the Collector to cancel the separate registration and assessment of the village previously made by him was illegal and *ultra vires*, could not be maintained with reference to s. 42, Specific Relief Act, inasmuch as the order had been already carried out. *Held* also that, if the general words of the prayer "for such other relief as the circumstances of the case may require" were to be taken as including a prayer for consequential relief, then the suit was bad for misjoinder, inasmuch as the zamindar and the lessees who were interested parties were not joined. *Held* also that not only the person applying under Act I of 1876, s. 2, for separate assessment and registration must be entitled thereto, but also that the parties to the alienation must concur in the application. FISCHER *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL. ORR *v.* FISCHER

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Held by the Privy Council, reversing the above decision: By the effect of ss. 5 and 6 of the Madras Act I of 1876 the decision of the Collector, in a case within his jurisdiction, whether for or against separate registration of a portion alienated from a zamindari, when once duly sanctioned as provided by that Act, can only be questioned in a Civil Court. Under ss. 7 and 8, the apportionment of the assessment may be appealed from the Collector to the Board of Revenue, and power is reserved to the Governor in Council to order re-adjustment of the separate assessment if fraud or material error should appear. Separate registration, on the other hand, is a matter of private right. The grantee of the perpetual lease of a village, alienated thereby from a zamindari, sued for a declaration of the invalidity of an order of the Government, inasmuch as it directed the cancellation of the Collector's order, after sanction by the Board for the separate registration of the village. *Held* that this declaration should be decreed. The objection that the suit was contrary to the law enacted in s. 42 of the Specific Relief Act, 1877, was not sustainable. No further relief could have been required by the plaintiff. The effect of the declaration itself for which he had sued would be sufficient to maintain the Collector's original order, which was valid in law, while the order of the Government directing its cancellation was not legal and was void. Nor was the suit defective for want of parties. Another suit heard on appeal with the above, having been brought by the lessees of the entire zamindari, against the same grantee, raised the question,—what was the obligation entered into by him in respect of payment of the revenue upon separate registration and separate assessment of the village. This involved the construction of terms in the documents entitling the grantee to the village, and these, according to the plaintiffs, obliged him to pay a fixed sum to the zamindari. *Held* that he was only liable, after the registration and assessment, for burdens lawfully incident to the separate holding, and that they were to be

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discharged by direct payment by him to the Collector. FISCHER *v.* SECRETARY OF STATE FOR INDIA. ORR *v.* FISCHER . . **I. L. R., 22 Mad., 270**
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3 C. W. N., 161

2. ———— **ss. 2 and 6**—*Suit for declaration of right to separate registration and assessment—Madras Regulation XXV of 1802, s. 8—Want of concurrence of parties in suit.*—An alienee of a portion of a zamindari is entitled to separate registration and assessment under Madras Act I of 1876. A Court has power to order separate registration and assessment under s. 6, although all the parties concerned do not concur in applying within the meaning of s. 2. KAMALAMMAL *v.* RAJU NAICKER
[I. L. R., 19 Mad., 308

———— **s. 6**—*Madras Regulation XXV of 1802, s. 9—Madras Regulation XXVI of 1802, s. 2.*—An application to a Collector to grant separate registration of a portion of a permanently-settled estate which has been alienated by a Court sale is one under the provisions of Regulations XXV and XXVI of 1802, and not under Act I of 1876. BOMMARAZU *v.* SESHAMMA . . **I. L. R., 22 Mad., 438**

MADRAS LOCAL BOARDS ACT (MADRAS ACT V OF 1884).

1. ———— **s. 27 and ss. 128, 156**—*Suit against Talukh Board—Suit framed erroneously—Plaint, Frame of—Compensation for wrongful acts committed under the Act—Special period of limitation.*—In a suit brought against, among others, the President of a Talukh Board constituted under Local Boards Act, 1884 (Madras), to recover land on which the panchayat of a Union within the talukh had erected a public latrine, it was pleaded that the suit, as against the abovementioned defendant, was wrongly framed, and also that it was barred by the special rule of limitation contained in s. 156 of that Act. The plaintiff asked for no amendment, but proceeded to trial. *Held* that the suit was not maintainable under the Madras Local Boards Act, 1884, s. 27, on the ground that it was not brought against the Talukh Board. *Quære*—Whether s. 156 is applicable to suits other than suits for compensation for wrongful acts committed under colour of the Act. AMEER SAHIB *v.* VENKATARAMA **I. L. R., 16 Mad., 296**

2. ———— **and s. 156**—*Notice of action—Form of suit—Plaint, Frame of—Injunction against Talukh Board.*—The plaintiff built a wall on his land situate within the limits of the Sivaganga Talukh Board. The Local Board called upon him to remove the wall as constituting an obstruction, and gave him notice that in default of his doing so it would be demolished by the authorities. The plaintiff now brought a suit against the President of the Talukh Board and the Chairman of the Union, within the limits of which the land was situated, for an injunction restraining the defendants from interfering with the wall. No notice of action was given under the Local Boards Act, s. 156. In the Courts of first instance and first appeal no objection was taken to the frame of the suit with reference to the provisions of s. 27. *Held* (1) that the defendants should not be permitted on second appeal to raise such objection to the frame of the suit; (2) that previous notice of action under s. 156 was not necessary. PRESIDENT, TALUKH BOARD, SIVAGANGA *v.* NARAYANAN
[I. L. R., 16 Mad., 317

———— **s. 43**—*Public servant—Sanitary Inspector.*—A Sanitary Inspector appointed by the Local Board is a public servant within the meaning of Local Boards Act, Madras, 1884, s. 43. QUEEN-EMPRESS *v.* TIRUVENGADA MUDALI
[I. L. R., 21 Mad., 428

———— **ss. 64, 73**—*Tax payable on land—Favourable tenure—Claim by landholder of more than one-half of the tax from tenant—Invalidity of custom for tenant to pay whole tax.*—A tenant paid an annual rent of R64 to the landholder, the tenure being of a nature dealt with by sub-s. (*iii*) of s. 64 of the Local Boards Act (Madras), 1884. The landholder distrained on the tenant's property in respect of the whole amount of local cess payable in respect of the land, contending that it should be calculated on the rent value, which was admittedly R710. It was found that under a custom subsisting in the district the whole amount of the local cess was payable by the tenant. *Held* that, having regard to s. 73 of the said Act, such a custom must be unreasonable and invalid. The words "favourable rent" in s. 64, sub-s. (*iii*), of the Act mean rent which, at the time of the assessment being fixed, is favourable as compared with the ordinary rent of similar lands in the vicinity, and has nothing to do with the question whether the rent, as fixed at the time when the lease was granted, was favourable or unfavourable. BHUPATIRAZU *v.* RAMASAMI . **I. L. R., 23 Mad., 268**

———— **ss. 77, 78, 81, 94, 163**—*Penal Code (Act XLV of 1860), ss. 99, 186, 353—Service of notice of demand of house-tax—Omission to fill up the house-register completely—Illegal distraint—Resistance to distraining officer.*—A notice of demand of a house-tax under the Madras Local Boards Act (Madras Act V of 1884) was affixed to the house. The owner, who was a potter and cultivator by occupation, was in the village at the time. He did not pay the tax. A warrant of distress was issued, the house-register not having been completely filled up, and a bucket and spade belonging to the defaulter were attached. The defaulter successfully resisted the distraint. *Held* that the provisions of the Act had been sufficiently complied with as regards the preliminary steps for making the demand and the service of notice, and the fact that the spade and the bucket were protected from attachment under s. 94 did not justify the resistance, and accordingly that the defaulter was guilty of offences under Penal Code, ss. 186 and 353. QUEEN-EMPRESS *v.* POOMALAI UDAYAN . **I. L. R., 21 Mad., 296**

———— **s. 87, cl. 3**—*Government stores and equipages—Non-liability to tolls.*—Stores and carts belonging to the Government jails come within the

MADRAS LOCAL BOARDS ACT (MADRAS ACT V OF 1884)—*concluded.*

words "Government stores and equipages" in cl. 3, s. 87, Act V of 1884, and are free from tolls under that Act. QUEEN-EMPRESS *v.* KUTTI ALI

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———— **ss. 98 and 100.**

See PENAL CODE, s. 188.

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———— **s. 128 and s. 156**—*Suit for malicious prosecution against officers of Panchayat Union—Limitation.*—A suit was brought against the Chairman and accountant of a Punchayat Union for damages for malicious prosecution more than six months after the close of the criminal proceedings, and it was contended for the defendants that the suit should have (under s. 128 of the Local Boards Act) been brought against the Talukh Board, and that the suit was not instituted within six months of the accrual of the cause of action as required by s. 156 of the same Act. *Held* (1) that the defendants were liable for torts committed by them, and that, notwithstanding the Local Boards Act, s. 128, the plaintiff was not confined to his remedy against the Talukh Board; (2) that the Local Boards Act, s. 156, was not applicable unless it were proved that the Act complained of was done by servants of the Talukh Board within the scope of their authority as such, acting or purporting to act under the Act. ANNAJI *v.* SUBRAMANYA . . I. L. R., 13 Mad., 442

MADRAS LOCAL FUNDS ACT (MADRAS ACT IV OF 1871).

———— **Tolls where leviable.**—Under the Local Funds Act (Madras Act IV of 1871), tolls are only leviable at toll-bars, and tolls are not leviable on carts which enter a circle by a public road on which there is no toll-bar. *Quære*—Whether toll would not be leviable on a cart approaching a toll-bar, and, to evade payment, making a detour otherwise than by a road available to the public. GOVINDARAJULU *v.* LAKSHUMAN . . . I. L. R., 6 Mad., 37

MADRAS MUNICIPAL ACT (MADRAS ACT IX OF 1867).

———— **s. 142**—*President of Municipality, Discretion of, to grant licenses.*—The President of the Municipality has a discretion to grant or withhold a license under Act IX of 1867, s. 142. His exercise of that discretion does not render him liable to an action. MOONEE UMMAH *v.* MUNICIPAL COMMISSIONERS FOR TOWN OF MADRAS . 8 Mad., 151

MADRAS MUNICIPAL ACT (MADRAS ACT V OF 1878).

———— **ss. 103, 105, sch. A, class I**—*Madras Act I of 1884, sch. A, class I—Professional tax—Half-yearly payments.*—Although the tax levied on professions under s. 103 of the City of Madras Municipal Act, 1878, is described as a yearly tax, a half-yearly liability is incurred in respect thereof by the tax-payer. *W*, having been assessed under class I, sch. A of Act V of 1878, Madras, to profession tax at the yearly rate of R150, paid a moiety thereof for the first half of the year 1884 as provided in s. 105 of the said Act. When the tax for the second half-year became due, Madras Act I of 1884 had come into force, and *W* was assessed for the second half of the year under class I of sch. A of that Act at R125, being a moiety of the yearly tax on the same class. *Held* that the assessment was legal. WILSON *v.* PRESIDENT, MUNICIPAL COMMISSION, MADRAS . . I. L. R., 8 Mad., 429

1. ———— **s. 119**—*Place of public worship—Feeding Brahmins.*—A building used in whole or in part for purposes other than those of public worship is not exempt from taxation under s. 119 of the City of Madras Municipal Act, 1878. The feeding of Brahmins is not an act of public worship within the meaning of that section. THAMBU CHETTI SUBRAYA CHETTI *v.* ARUNDEL

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2. ———— **and ss. 120, 123**—*Waste land—Tax.*—S. 123 of the City of Madras Municipal Act, 1878, which defines the annual value of a house, building, or land, for the purpose of taxation under the Act, has no reference to the alternative given to the President by s. 120 to levy a fixed annual tax (not exceeding R4 per ground) on lands unappropriated to any building, or occupied by native huts with their appurtenances. AHMED UNNISSA BEGAM SAHIBA *v.* ARUNDEL . . I. L. R., 7 Mad., 63

———— **s. 123**—*Tax on buildings—Hospital built by Government—Standard of hypothetical rent.*—Under s. 123 of the City of Madras Municipal Act, the gross annual rent at which a building might reasonably be expected to let from month to month, or from year to year, is, for the purpose of assessment to house-tax under the Act, to be deemed to be the annual value of such building. The Lying-in Hospital in Madras, built and supported by Government, having been assessed by the President of the Municipality as on a rental of R1,000 a month, the Magistrates, on appeal, reduced the assessment, finding that R7,920 would be a reasonable rent, having regard to the letting value of the building in the neighbourhood; but, at the request of the Municipality, they referred the following question to the High Court: Whether (as contended by Government) the property in question should be valued and assessed on the rent, which, on the property being offered in the open market without reserve, a person desirous of securing it would have to pay; or whether (as contended by the Municipality) it should be valued and assessed on the highest reserve rent which an owner of the property offering it in the open market would reasonably demand and below which sum he would not be willing to let. *Held* that the standard value was what the hypothetical tenant requiring the building for use as a hospital would be willing to pay, rather than rent a less suitable building and adapt it to his requirements at his own expense, and that in this sense the contention of the Municipality was correct. SECRETARY OF STATE *v.* MADRAS MUNICIPALITY . . I. L. R., 10 Mad., 38

MADRAS MUNICIPAL ACT (MADRAS ACT V OF 1878)—*continued.*

———— **s. 192, Case referred under**—*Right of Municipal Commissioners to levy water-tax—Condition precedent—Independent power—Construction of statutes.*—The Madras Municipal Act is not a " private " Act. When a public body is entrusted by the Legislature with the duty of making public improvements, and powers are entrusted to it for such purpose, those powers will not be subject to a restrictive construction, though they interfere with private rights. A statute is not to be construed like a contract. The power to impose a tax is not contractual and needs no correlative right. An equitable construction is not permissible in a taxing statute where it is possible to adhere to the words of the statute. *B* resided within the City of Madras and occupied premises within a division or district of the city in which no water had been introduced by the Municipal Commissioners. The Commissioners levied a water-tax on *B* in respect of his premises. *B* appealed under s. 189 to the President and two Commissioners, who decided that he was liable to pay the tax. On a case stated to the High Court it was held by INNES, *J.*, and MUTTUSAMI AYYAR, *J.* (KERNAN, *J.*, dissenting), that upon the true construction of the Act (V of 1878) the right of the Commissioners to levy the water-tax was independent of the duty imposed upon the Commissioners to supply water. BRANSON *v.* MUNICIPAL COMMISSIONERS, MADRAS

[I. L. R., 2 Mad., 362

———— **ss. 317, 318**—*President of Municipal Commissioners—Discretion as to necessity of cleansing tank likely to prove injurious to health.*—By s. 317 of the City of Madras Municipal Act, 1878, the President of the Municipal Commissioners was invested with a discretion as to the necessity of cleansing and filling up tanks and wells and draining off stagnant water likely to prove injurious to the health of the neighbourhood, and by s. 318 was empowered, on neglect of the owner to comply with a requisition to do the necessary work, to get the work done and to recover the costs in the manner provided for the collection of taxes. No appeal was allowed by the Act against the President's decision. *Held,* in a suit by the Municipal Commissioners to recover from the defendants the cost of draining and cleansing a tank, that it was not open to the defendants to prove that the tank was not likely to prove injurious to the health of the neighbourhood. MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS *v.* PARTHASARADI . . **I. L. R., 11 Mad., 341**

———— **s. 433**—*Water rate—Liability of Commissioners to a suit for compensation for not supplying water and collecting rate.*—By the provisions of the City of Madras Municipal Act, 1878, if a water rate is levied by the Commissioners, they are bound to supply water for house service to every rate-payer who desires and provides the necessary works to connect his premises with the main, which ought to be within 150 yards of his premises, and the rate-payers are bound to pay water-rate whether or not they avail themselves of the privilege of house service. If the Commissioners do not perform this duty, the rate-payer has a remedy by action and may recover compensation, either under the provisions of s. 433 (which provides that a person aggrieved by the failure of the Commissioners to do their duty may bring his action, and the Court may either direct the duty to be performed "or make such order as to the Court may seem fit") or under those of the Statute of Westminster. *Semble*—If the Court does not order the execution of the works under s. 433, the only other order it could make would be an order for reasonable compensation. The Legislature intended the water rate to be a payment for a benefit conferred, and the tax should not be levied till water can be supplied. If in part of the city the Commissioners are able to supply water and desire to obtain at once a return for their works, they should apply to the Government to exempt the rest of the city from the operation of the Act. MUNICIPAL COMMISSIONERS, MADRAS *v.* BRANSON . . . **I. L. R., 3 Mad., 201**

MADRAS MUNICIPAL ACT (MADRAS ACT I OF 1884).

1. ———— **s. 103 and s. 110**—*Profession tax—Liability of member of a firm to pay separate tax in respect of a Government appointment, his qualification for such appointment (Government Solicitor) being the profession which he also carries on jointly with the firm—Meaning of "person" under the Act.*—A member of a firm of Attorneys-at-Law and Notaries Public, which paid the profession tax leviable under s. 103 of the City of Madras Municipal Act, 1884, also held the appointment of Government Solicitor. He practised no other profession or business than that exercised by his firm; and the duties of Government Solicitor could not be performed by any person other than a practising attorney. The Municipality of Madras having demanded profession tax in respect of the appointment of Government Solicitor in addition to the tax paid by the firm of which the holder of the appointment was a member,—*Held* that the tax was rightly levied. BARCLAY *v.* PRESIDENT, MUNICIPAL COMMISSION, MADRAS

[I. L. R., 23 Mad., 529

2. ———— **and s. 190**—*Profession tax—Inspector-General of Police.*—The Inspector-General of Police, whose official place of business with the main body of clerks is in Madras, went on tour, and during his absence the Assistant Inspector-General in Madras signed letters for him. *Held* that the Inspector-General was not assessable to profession tax under the City of Madras Municipal Act in respect of the period when he was absent on tour. HAMMICK *v.* PRESIDENT, MADRAS MUNICIPAL COMMISSION

[I. L. R., 22 Mad., 145

See CHAIRMAN, ONGOLE MUNICIPALITY

[I. L. R., 17 Mad., 453

3. ———— **and ss. 190, 192**—*Profession tax—Liability of members of a firm—Extent of appeal allowed against decision of President of Municipality—Magistrate, Jurisdiction of.*—A member of a firm in Madras, another member of which was absent, was assessed under the Madras Municipality Act to pay a certain sum for the tax on arts,

MADRAS MUNICIPAL ACT (MADRAS ACT I OF 1884)—*continued.*

professions, trades, and callings as agents in charge of the business of the absent member of the firm. He complained to the President against the assessment under ss. 104, 190 of the Act on the ground that he was not liable to pay any tax as agent, etc., but the assessment was confirmed. He thereupon preferred an appeal to the Magistrates. *Held* (1) that the Magistrates had jurisdiction under Madras Municipal Act, s. 192, to decide the question of the liability of the appellant to be taxed under s. 103; (2) that although the absent partner might be called upon through the appellant as his agent to pay the tax due by the firm with reference to its whole income, he was not otherwise chargeable with any tax in respect of the business carried on by him. DAVIES *v.* PRESIDENT OF THE MADRAS MUNICIPAL COMMISSION . . . . **I. L. R., 14 Mad., 140**

4. ——————— **and sch. A, class 1 (A), (B)**—*Exercise of calling—Investment of funds of society—Benefit Society.*—The business of investing the funds of a society for interest is a calling within the meaning of s. 103 of the Madras Municipal Act, 1884. A society established to provide by the subscriptions of its members for pensions for their widows and children is a benefit society within the meaning of sch. A, class 1 (A), of the said Act. Where the context discloses a manifest inaccuracy, the sound rule of construction is to eliminate the inaccuracy and to execute the true intention of the Legislature. JENNINGS *v.* PRESIDENT, MUNICIPAL COMMISSION, MADRAS . **I. L. R., 11 Mad., 253**

——————— **s. 307**—*Prohibition against depositing stable refuse in a street—Deposit of stable refuse in a dust-bin—Liability of person so depositing.*—By the first clause of s. 307 of the City of Madras Municipal Act, 1884, the President of the Municipality "shall provide in the streets of the city suitable and sufficient dust-bins for the temporary deposit of dust, dirt, ashes, kitchen refuse and other inoffensive matter excepting building, stable and garden refuse, which shall be removed by the owner thereof." By the second clause of the same section, "whoever, after such provision has been made, deposits any of the said matters or any building, stable or garden refuse in any street, pavement or verandah of any building" . . . . is rendered liable to fine. Petitioner, having deposited stable refuse in one of the dust-bins provided in accordance with the Act, was charged before a Magistrate and fined under the latter clause of the said section. *Held* that the dust-bin was not a part of the street, and that the throwing of stable refuse into the dust-bin was not a deposit of such refuse in the street so as to constitute an offence under the said section. PERUMAL *v.* MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS . . . **I. L. R., 23 Mad., 164**

1. ——————— **s. 433**—*Statement of cause of action—Address of intending plaintiff—Sufficiency of notice of action.*—In a suit against the Municipal Commissioners of the City of Madras for damages sustained by the plaintiff by reason of an accident occasioned to his horses through the ill-repair of a road within the limits of the Municipality, it appeared that at the close of a correspondence between the plaintiff and the President of the Municipality, the plaintiff, in a letter headed "Madras," stated that he had directed auctioneers to sell the horses, and that he would "proceed against you by law to recover such loss or damage as I may have sustained," and added "kindly consider this as notice of claim under s. 433 of Municipal Act (I of 1884)," and that the plaintiff's attorneys, in a subsequent letter, demanded payment of R1,000, "being the damages sustained by our client by reason of the neglect to keep in proper repair that portion of the road, etc.," and stated that, if the sum claimed were not paid, the plaintiff would be "compelled to have recourse to law to recover the same without further notice." *Held* (1) that the two letters should be read together; (2) that the cause of action was stated sufficiently in the second of the above letters; (3) that the plaintiff's address was sufficiently given in the first of the above letters. There was therefore a sufficient notice of action under s. 433 of the Madras Municipal Act, 1884. EALES *v.* MUNICIPAL COMMISSIONERS OF MADRAS **[I. L. R., 14 Mad., 386**

2. ——————— *Notice of action.*—In a suit against the President of the Municipal Commission, Madras, to recover damage for the demolition of a house which had been built by the plaintiff without previous notice given by him under the Madras Municipal Act, 1884, s. 265, the plaintiff proved, by way of notice of action, the delivery of a letter signed by him and dated from his place of residence, which did not state where the house in question had stood, nor the date of its demolition, nor state positively that an action would be brought. *Held* that the letter was not a sufficient notice of action. DEVALJI RAU *v.* PRESIDENT, MUNICIPAL COMMISSION, MADRAS **[I. L. R., 18 Mad., 503**

——————— **sch. A**—*Liability of Mutual Assurance Company to taxation.*—The investment for interest of the funds of a Mutual Insurance Company by its Directors constitutes "carrying on business for gain," and the premia paid by insurers and the profits from investments thereof constitute the "capital" of the Company within the meaning of sch. A of the City of Madras Municipal Act, 1884. MADRAS EQUITABLE ASSURANCE COMPANY *v.* PRESIDENT, MUNICIPAL COMMISSION, MADRAS **[I. L. R., 11 Mad., 238**

——————— **sch. B**—*Vehicle tax—Bicycle—Vehicle with springs.*—A bicycle with pneumatic tires, having two metal springs under the saddle, is liable to taxation as a vehicle with springs under the City of Madras Municipal Act, 1884. WILSON *v.* MADRAS MUNICIPALITY . **I. L. R., 19 Mad., 83**

MADRAS POLICE ACT (MADRAS ACT XXIV OF 1859).

——————— **ss. 10 and 44**—*Departmental punishment and prosecution under the Act.*—In the absence of any rules framed by Government under s. 10 of the Madras Police Act, a departmental

MADRAS POLICE ACT (MADRAS ACT XXIV OF 1859)—*continued.*

punishment inflicted under that section is no bar to a prosecution under s. 44 of that Act. QUEEN-EMPRESS *v.* FAKRUDEEN . . **I. L. R., 17 Mad., 278**

———— **ss. 21 and 49**—*Procession likely to cause breach of the peace—Powers of police—Removal of banners from persons in the procession—Trespass.*—A procession of Hindus carried certain banners, and the Superintendent of Police was of opinion that a breach of the peace would be occasioned if these banners continued to be displayed, and in good faith, for the purpose of preventing such breach of the peace, he took away the banners from certain persons in the procession. *Held* that the action of the Superintendent of Police was not justified by the Madras Police Act, 1859, ss. 21 and 49, and that he was accordingly liable for the trespass. RANGANAYAKULU *v.* PRENDERGAST **[I. L. R., 17 Mad., 37**

———— **s. 44.**

See REVISION—CRIMINAL CASES—EVIDENCE AND WITNESSES. **[6 Mad., Ap., 45**

1. ———— **and s. 10**—*Sentry going to sleep on duty—Ceasing to perform duties.*—Accused, a police constable, was convicted under s. 44 of Act XXIV of 1859 of ceasing to perform the duties of his office. The evidence showed that he had gone to sleep while posted as a sentry over the jail. *Held* that the accused was not guilty of the particular species of offence of which he was convicted; he was, however, guilty *primâ facie* under the section. Going to sleep while on guard is an offence punishable under s. 10. ANONYMOUS **[6 Mad., Ap., 31**

2. ———— *Sentry going to sleep on duty.*—Accused, a police constable, was on duty at the outer gate of a central jail. Quitting his post beside the gateway and leaving the gate open, he went to sleep outside. For this violation of duty he was convicted and sentenced under s. 44 of Act XXXIV of 1859. *Held* that the conviction was legal. ANONYMOUS . . . **7 Mad., Ap., 7**

3. ———— **and ss. 8, 10, 11**—*Village kavalgars.*—S. 44 of Act XXIV of 1859 applies only to police officers enrolled and appointed in the manner prescribed in ss. 8, 10, and 11 of the Act. Village kavalgars, not being so appointed, are not punishable under s. 44. ANONYMOUS **[7 Mad., Ap., 4**

———— **s. 48.**

See BENCH OF MAGISTRATES. **[I. L. R., 13 Mad., 142**

See FINE . . . **3 Mad., Ap., 9**

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS. **[5 Mad., Ap., 25**

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING TRIAL **I. L. R., 15 Mad., 132**

MADRAS POLICE ACT (MADRAS ACT XXIV OF 1859)—*concluded.*

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY **5 Mad., Ap., 35**

See SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE **7 Mad., Ap., 22 [3 Mad., Ap., 9**

1. ———— *Spreading fishing-nets by the side of public thoroughfare.*—To spread fishing-nets by the side of a thoroughfare in a town is not an offence punishable under cl. 3, s. 48 of Act XXIV of 1859. QUEEN *v.* KHADER MOIDIN **[I. L. R., 4 Mad., 235**

2. ———— *Power of Local Government to define "town."*—There is no Act of Legislature which empowers either the District Magistrate or the Local Government to define a "town" for the purpose of s. 48, Act XXIV of 1859. ANONYMOUS **[6 Mad., Ap., 34**

3. ———— *Reckless riding in streets—Riding untrained bullock.*—Accused was convicted under cl. 1, s. 48 of the Police Act, XXIV of 1859. The facts found were that he rode an untrained bullock, which he could not control, in the public street. *Held* that the evidence warranted the conviction. ANONYMOUS . . . **7 Mad., Ap., 10**

4. ———— *Madras Act I of 1885—Dung-heap kept in a town.*—By cl. 5 of s. 48 of Act XXIV of 1859 (Madras), as amended by Act I of 1885 (Madras), any person who, within the limits of a town, "throws or lays down any dirt, filth, rubbish or any stones or building materials; or who constructs a cow-shed or stable without the bounds of any thoroughfare, or who causes any offensive matter to run from any dung-heap into the street" is punishable. *A* was convicted and fined for having kept a manure-heap in a town, but not in a street. *Held* that the conviction was bad. QUEEN-EMPRESS *v.* APPATHORAY . . **I. L. R., 9 Mad., 167**

———— **s. 50.**

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865. **[4 Mad., Ap., 54**

———— **s. 53.**

See ESTOPPEL—ESTOPPEL BY CONDUCT. **[5 Mad., 466**

See RIGHT OF SUIT—MONEY HAD AND RECEIVED , . . **5 Mad., 466**

MADRAS POLICE ACT (MADRAS ACT III OF 1888).

———— **ss. 42, 45, and 47**—*Seizure of articles used for purpose of gaming.*—In the Madras City Police Act III of 1888, s. 47, the words "all or any of the other articles seized" include money or securities for money seized by the police under s. 42. The Magistrate is not bound to hold any inquiry as to whether the money and other things seized were used or intended to be used for the purpose of gaming. QUEEN-EMPRESS *v.* BHASHYAM CHETTI **[I. L. R., 19 Mad., 209**

MADRAS POLICE ACT (MADRAS ACT III OF 1888)—*concluded.*

——— **s. 71, cls. 11 and 15**—*Crowd collected by music—Obstruction of street—Music performed in private place.*—Members of the Salvation Army were found by the Magistrate to have played tambourines and sung "at the angle" of a street in Madras, and thereby collected a crowd which thronged the street, and they were convicted of offences under the City of Madras Police Act, s. 71, cls. 11 and 15. *Held* on revision that, since the intention of the accused was to collect a crowd in the street, the conviction under cl. 11 was right, whether or not the place where the accused played and sang was a private place; but that, if it was a private place, the conviction under cl. 15 was wrong. Queen-Empress *v.* Suka Singh **I. L. R., 14 Mad., 223**

MADRAS REGULATION—1802—II.

See Cases under Limitation—Statutes of Limitation—Madras Regulation II of 1802.

See Limitation Act, 1877, art. 149.
[I. L. R., 9 Mad., 175

——— **s. 17.**

See English Law—Equitable Mortgage . . **9 Moore's I. A., 303**

——— **s. 18.**

See Limitation Act, 1877, art. 144—Adverse Possession.
[I. L. R., 13 Mad., 467

——— **III, s. 6.**

See Oath . . . **4 Mad., Ap., 3**

See Oaths Act, 1873, s. 11.
[I. L. R., 2 Mad., 356

——— **XVII, s. 3.**

See Registration—Madras Regulation XVII of 1802 . . **2 Mad., 108**

——— **XXV.**

See Collector . . . **3 Mad., 35**

See Grant—Construction of Grants.
[I. L. R., 9 Mad., 307
L. R., 13 I. A., 32
I. L. R., 2 Mad., 234

See Hindu Law—Inheritance—Impartible Property.
[I. L. R., 13 Mad., 406
L. R., 17 I. A., 134

See Jurisdiction of Civil Court—Registration of Tenures . **3 Mad., 35**

See Madras Rent Recovery Act, 1865, s. 1 . . . **I. L. R., 8 Mad., 351**

See Tax . . **I. L. R., 9 Mad., 14**

1. ——— *Mad. Reg. XXXI of 1802, Rights of zamindars under—Proprietary possession—Construction of statute—Preamble.*—The affirmative words of Madras Regulation XXV of 1802, s. 2, the preamble thereto forming no part of the enactment, did not either give to, or take away, from the former owners of lands, not permanently assessed, any rights which they then had. It merely vested in all zamindars an hereditary right at a fixed revenue upon the conclusion of the permanent assessment with them. The words "proprietors of lands," as used both in the Bengal Code of 1793 and in the Madras Code of 1802, have a technical signification. They refer to "zamindars, independent talukhdars, and others, who pay the revenue assessed upon their estates immediately to Government." So also the words "proprietary possession," in the recital of Regulation XXV of 1802, mean the possession of a person who is a proprietor according to the technical meaning of the term. According to the true construction of Madras Regulations XXV and XXXI of 1802, the Legislature recognizes the right of private property, and does not assert a right on the part of Government to deprive or dispossess zamindars in their lifetime, or their heirs after their deaths, independently of any considerations connected with the realization of the public revenue. It provides for the protection of the revenue from invalid lakhiraj grants, and for the mode of trying the validity of the titles of persons claiming to hold their lands exempt from the payment of revenue. Oolagappa Chetty *v.* Arbuthnot. Collector of Trichinopoly *v.* Lekhamani. Pedda Amani *v.* Zamindar of Marungapore . **14 B. L. R., 115 : 21 W. R., 353**
[L. R., 1 I. A., 268, 282

MADRAS REGULATION—1802—XXV —*continued.*

2. ——— *Alienation by zamindar—Limitation.*—In a suit brought by a zamindar to recover either assessment at the rate of R5,000 per annum, or a pergunnah, part of the plaintiff's zamindari, the defendant pleaded that he had held the pergunnah as his own before and ever since the Permanent Settlement, and that the claim was barred by both Regulation XXV of 1802 and Act XIV of 1859. The lower Court overruled both pleas: the first, because it held that, under Regulation XXV of 1802, the zamindar's title could not be questioned; the second, because it considered that the decision in a former suit (that the *laches* of the zamindar could not prejudice his successor) prevented the application of the statute, on the ground of subsequent hostile possession, and that the plaintiff had had twelve years from the time he came into possession in which to bring the suit. *Held,* first, there was nothing in the Regulations relating to the Permanent Settlement showing an intention to affect rights of property in existence at the period of their being passed; secondly, that the decision in the previous suit could not be followed in the present case, in which the claimant was the grandson of him against whom, as to property of a normal character, the statute would have begun to run. Krishna Devu Garu *v.* Ramachandra Devu Maharajulu Garu
[3 Mad., 153

3. ——— *Settlement—Mistake in settlement papers—Grant by zamindar before Permanent Settlement.*—Tenants are not concluded

MADRAS REGULATION—1802—XXV —*continued.*

by a mistake in settlement papers, nor does Regulation XXV of 1802 provide for forfeiture of rights by parties who by carelessness or accident allow their land to be misdescribed in settlement proceedings. It was doubted whether grants made by a zamindar before the Permanent Settlement were, or were not, binding on his successors,—their Lordships' minds inclining strongly to the affirmative side of the alternative, but as the question was not raised in the Courts below, it was not considered to be open to the appellants in the appeal to the Privy Council. VYRICHERLA RAZ BAHADOOR *v.* NADMINTI BAGAVAT SASTRI **[25 W. R., P. C., 3**

4. ——————— *Alienation of proprietary rights.*—Regulation XXV of 1802 strictly restrains the alienations of proprietary rights except in manner therein provided, and invalidates a disposal or transfer of such rights as against the Government and the heirs and successors of the proprietor making the disposal or transfer. *Semble*—Such alienation would be valid against the proprietor himself. A permanent lease is as much within the operation of Regulations XXV and XXX of 1802 as an absolute transfer by gift or sale. SUBBARAYULU NAYAK *v.* RAMA REDDI . . . . **1 Mad., 141**

——————— ss. 4, 12—*Zamindar's sanad, Assets mentioned in—Quit-rent on an agraharam village—Inam title-deed, Rate mentioned in—Joint liability of agraharamdars—Rent, Rate of.*—The plaintiff was a zamindar holding his estate under a sanad dated 1802. This sanad followed almost verbatim the language of Regulation XXV of 1802, s. 4, and where it referred to "lands paying a small quit-rent," added "which quit-rent unchangeable by you is included in the assets of your zamindari." The suit was brought to recover arrears of jodi or quit-rent accrued due on an agraharam village in the zamindari. The defendants, who were the agraharamdars, had divided the village and held it in separate shares. They pleaded that they were not liable to pay jodi in excess of the rate fixed by the Inam Commissioner and specified in the inam title-deed granted by him for the village in 1869. *Held* (1) that the decision of the Inam Commissioner did not affect the zamindar's claim, and that the question to be determined was what was the jodi payable in respect of the village at the time of the permanent settlement on which the peishcush of the zamindari was fixed; (2) that the defendants were jointly and severally liable for the amount that should be found due to the zamindar. On its appearing that R6 per patti was the recognized rate from 1832 to 1879, and that there was no evidence to show the agraharamdars had ever paid any other rate, or had paid R6 under coercion, the Court presumed that that was the rate at the time of the Permanent Settlement. SOBHANADRI APPA RAU *v.* GOPALKRISTNAMMA **[I. L. R., 16 Mad., 34**

——————— s. 8.

See KARNAM . **I. L. R., 20 Mad., 145**

MADRAS REGULATION—1802—XXV —*continued.*

See MADRAS LAND REVENUE ASSESSMENT ACT . **I. L. R., 19 Mad., 292, 308**
[I. L. R., 22 Mad., 270
L. R., 26 I. A., 16

1. ——————— *Perpetual lease—Transfer.*—A perpetual lease of a distinct portion of a zamindari is not a transfer within the meaning of s. 8, Regulation XXV of 1802, Madras Code. VENCATASWARA NAICKER *v.* ALAGOOMOOTTOO SERVAGAREN . **4 W. R., P. C., 73 : 8 Moore's I. A., 327**

2. ——————— *Alienation by zamindar—Limitation.*—Where a zamindar alienated a part of the zamindari, and the terms of the Regulation XXV of 1802, s. 8, were complied with,—*Held* (HOLLOWAY, J., *dissentiente*) that the alienation was invalid against the plaintiff, the grandson of the zamindar. *Held* also by the whole Court that the defendant and his father having held the land for a lengthened period on a claim of right, the plaintiff's suit was barred by the Statute of Limitations. ALI SAIB *v.* SANYASIRAZ PEDDABALIYARA SIMHULU . . . . . **3 Mad., 5**

See SETA RAMA KRISTNA RAYUDAPPA RANGA RAO *v.* JAGUNTI SITAYAMMA GARU . **3 Mad., 67**

3. ——————— *Right of grantee of proprietor against purchaser from his successor.*—A zamindar granted part of his zamindari absolutely and died. His grantee was then dispossessed by a purchaser from his successor. *Held* that, as the conditions specified in Regulation XXV of 1802, s. 8, had not been observed by the former zamindar, the grant was voidable on the determination of his interest, and that consequently the disposition was legal. PITCHAKUTTICHETTI *v.* PONNAMMA NATCHIYAR . . . . . **1 Mad., 148**

4. ——————— *Alienation not registered—Permanent lease.*—A permanent lease of a village in a muttah by the muttahdar (plaintiff's father) was held to be not invalidated by s. 8 of Regulation XXV of 1802, although the lease had not been registered as required by that section. *Subbarayalu Nayak* v. *Rama Reddi, 1 Mad., 141,* overruled. KONDAPPA NAIK *v.* ANNAMALAY CHETTY . . . . . **4 Mad., 396**

5. ——————— *Permanent lease by zamindar.*—A perpetual or permanent lease at a low fixed rent, made by a zamindar who obtained the zamindari, by self-acquisition, was binding upon the zamindar's successors, although the instrument was not registered under Regulation XXV of 1802, s. 8. MUTTU VIRAN CHETTY *v.* KATTUMA NATCHIYAR **[4 Mad., 463**

——————— s. 9—*Mad. Reg. XXVI of 1802, s. 2—Madras Land Revenue Assessment Act (Mad. Act I of 1876)—Application to Collector to grant separate registration of portion of tenure sold.*—An application to a Collector to grant separate registration of a portion of a permanently-settled estate which has been alienated by a Court-sale, is

MADRAS REGULATION—1802—XXV —*concluded.*

one under the provisions of Regulations XXV and XXVI of 1802, and not under Act I of 1876. BOMMARAZU *v.* SESHAMMA **I. L. R., 22 Mad., 438**

———— **s. 11.**

See KARNAM . **I. L. R., 20 Mad., 145**

See MUNSIF, JURISDICTION OF. **[I. L. R., 12 Mad., 188**

———— *Srotriyamdar—Suit to dismiss karnam.*—Under Regulation XXV of 1802, a srotriyamdar cannot sue for the dismissal of the karnam of his village. THURGA RAMACHANDRA RAU *v.* APPAYYA . . **I. L. R., 7 Mad., 128**

———— **s. 12.**

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF . . **I. L. R., 13 Mad., 479**

———— **XXVI.**

See POSSESSION—ADVERSE POSSESSION. **[I. L. R., 20 Mad., 6**

———— **XXVII.**

See RESUMPTION—EFFECT OF RESUMPTION . . . . **3 Mad., 59**

———— **XXVIII.**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RENT . **2 Mad., 22**

———— **XXIX**—*Karnam—Incapacity of next heir—Minority—Appointment by landholder of successor without proof before Zillah Court of incapacity of heir.*—A karnam in a zamindari village having died leaving a minor son, the landholder appointed the brother of the late karnam to the office. In a suit brought by the son, after attaining majority, to establish his right to the office and to recover its emoluments,—*Held* that, under the provisions of Regulation XXIX of 1802, he was not entitled to recover. S. 7 of the Regulation provides that in filling the office of karnam the heirs of the preceding karnam shall be chosen by the landholders, except in cases of incapacity, on proof of which before the Judge of the zillah the landholders shall be free to exercise their discretion in the nomination of persons to fill vacancies. *Held* that, where the incapacity arose from minority about which there was no dispute, an appointment by a landholder, made without proof before the Court of the incapacity of the heir, was valid. VENKATANARAYANA *v.* SUBBARAYUDU . . . **I. L. R., 9 Mad., 214**

———— **s. 5.**

See KARNAM . **I. L. R., 20 Mad., 145**

———— **ss. 5, 7, 10, 16, 18.**

See MUNSIF, JURISDICTION OF. **[I. L. R., 12 Mad., 188**

———— **s. 7.**

See MUNSIF, JURISDICTION OF. **[I. L. R., 22 Mad., 340**

MADRAS REGULATION—1802—XXIX —*continued.*

1. ———— *"Heirs," Meaning of.*—The word "heirs" in s. 7 of Madras Regulation XXIX of 1802 means "persons who, in the event of death, would inherit from the preceding incumbent." ARUMUGAM PILLAI *v.* VIJAYAMMAL **[I. L. R., 4 Mad., 338**

2. ———— *"Heirs of preceding karnam."*—The words "the heirs of the preceding karnam" in s. 7 of Regulation XXIX of 1802 mean his next of kin according to the order of succession of several grades of legal heirs, and not heirs, in the order of succession to undivided divisible ancestral property. KRISHNAMMA *v.* PAPA **[4 Mad., 234**

3. ———— The office of karnam in a zamindari village having been held by three brothers jointly in hereditary rights, the zamindar, on the death of one brother, did not fill up the vacancy, considering that the work could be well conducted by the two survivors. On the death of the survivors, their sons succeeded to the office. The zamindar, subsequently desiring to reappoint a third karnam, nominated an outsider to the joint tenancy of the office. *Held* that, as there were heirs of the last holders in existence the appointment was invalid. VENKAYYA *v.* SUBBARAYUDU **[I. L. R., 9 Mad., 283**

4. ———— *Office of karnam in a zamindari village, Succession to—Female claimant—Incapacity of next heir.*—The karnam of a zamindari village having died, leaving a widow his heir, the zamindar appointed her to the office of karnam. The nearest male sapinda of the deceased karnam (from whom he was divided) sued to establish his right to the office of karnam. *Held* (1) that a woman cannot hold the office of karnam. *Held* further (2) that, when the immediate heir is incapacitated, the nearest male sapinda of the deceased karnam is entitled to succeed to the office. CHANDRAMMA *v.* VENKATRAJU . **I. L. R., 10 Mad., 226**

5. ———— *Karnam in zamindari village—Title to office.*—The holder of a karnam's office in a zamindari village, being incapacitated, resigned the office in 1863, leaving a minor son, the plaintiff. The brother of the late holder was then appointed to the office, and held it till 1877, when he died. Plaintiff was then nominated by the zamindar, but did not enter on the office. In 1897, the zamindar being dead, defendant No. 2 was appointed by the zamindar's widow and entered on the office. *Held* that under Regulation XXIX of 1802, s. 7, defendant No. 2, being the heir of the last holder, was the lawful holder of the office. SUBBARAYUDU *v.* GANGARAJU . . **I. L. R., 11 Mad., 196**

6. ———— *Zamindari karnam—Order of succession to hereditary office—Hindu law—Inheritance.*—A woman who had been appointed to succeed her husband, the holder of the hereditary office of karnam in a zamindari, died leaving the defendant, her daughter's son, and the plaintiff, the son of her late husband's paternal uncle. *Held* that the defendant was entitled to succeed in preference to the plaintiff. The "heirs of the preceding karnam" in s. 7 of Madras Regulation XXIX of 1802 mean his next of kin according to the order of succession of the several grades of legal heirs, and not heirs, in the order of succession to undivided divisible ancestral property. *Krishnamma* v. *Papa, 4 Mad., 234,* followed. SEETARAMAYYA *v.* VENKATARAZU . . **I. L. R., 18 Mad., 420**

—— **s. 12.**

See PUBLIC SERVANT.
[I. L. R., 15 Mad., 127

—— **XXX.**

See LANDLORD AND TENANT—LIABILITY FOR RENT . . . . **1 Mad., 3**

See LEASE—CONSTRUCTION.
[6 Mad., 164, 175

See MADRAS REGULATION XXV OF 1802.
[1 Mad., 141

—— **XXXI.**

See MADRAS REGULATION XXV OF 1802.
[14 B. L. R., 115
L. R., 1 I. A., 268, 282

—— **XXXII.**

See PANCHAYAT . **I. L. R., 15 Mad., 1**

—— **XXXIV.**

See HINDU LAW—USURY . **6 Mad., 400**
[1 Mad., 5

1. —— *Iladarwara mortgage in South Canara—Lease.*—Madras Regulation XXXIV of 1802, which applies to usufructuary mortgages executed before the passing of Act XXVIII of 1855, does not apply in the case of an iladarwara mortgage in South Canara, which, securing to the mortgagee the use and occupation of the land for a long term, amounts to a lease of the property for the term agreed upon. PERLATHAIL SUBBA RAU *v.* MANKUDE NARAYANA . . . **I. L. R., 4 Mad., 113**

2. —— *Mortgages where redemption is allowed at the end of any year.*—An instrument of mortgage whereby land is made over to the mortgagee for cultivation, and a grain rent estimated at a certain quantity is to be retained yearly in lieu of interest, with a condition that on the expiry of any year the mortgage might be redeemed and possession recovered on payment of the principal, falls within the purview of Regulation XXXIV of 1802. *Perlathail Subba Rau* v. *Mankude Narayana, I. L. R., 4 Mad., 113,* distinguished. TIPPAYYA HOLLA *v.* VENKATA . **I. L. R., 6 Mad., 74**

3. —— *Mortgage by way of conditional sale—Mahomedan mortgagor.*—In 1832 a Mahomedan mortgaged certain land with possession, on condition that, if the money lent was not repaid within eight years, the land should be enjoyed by the mortgagee after that period as if conveyed by sale. In 1883 a suit was brought to redeem. *Held* that the title of the mortgagee became absolute by virtue of the terms of the contract on default of payment within the time specified. The obligation cast by Regulation XXXIV of 1802 upon a mortgagee to account for profits does not prevent a mortgage by way of conditional sale from becoming, after the period for redemption has elapsed, an absolute sale where no account has been rendered by the mortgagee. The rule laid down in *Pattabhiramier's case, 13 Moore's I. A., 560,* applies to a mortgage executed by a Mahomedan. MALLIKARJUNUDU *v.* MALLIKARJUNUDU . . . . **I. L. R., 8 Mad., 185**

—— **1803—II, s. 44.**

See LAND ACQUISITION ACT, s. 11.
[I. L. R., 13 Mad., 485

—— **IX, s. 55.**

See JURISDICTION OF CIVIL COURT—REVENUE . . **I. L. R., 1 Mad., 89**

—— **1804—V.**

See GUARDIAN—APPOINTMENT.
[I. L. R., 6 Mad., 187

See LIMITATION ACT, 1877, s. 10.
[I. L. R., 5 Mad., 91

—— **s. 8.**

See LUNATIC . **I. L. R., 14 Mad., 289**

See MINOR—REPRESENTATION OF MINOR IN SUITS . **I. L. R., 11 Mad., 309**
[I. L. R., 13 Mad., 197

See MISJOINDER . **I. L. R., 13 Mad., 197**

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.
[I. L. R., 11 Mad., 309

See SALE IN EXECUTION OF DECREE—DECREES AGAINST REPRESENTATIVES.
[I. L. R., 5 Bom., 14

—— **ss. 14 and 20.**

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS.
[I. L. R., 10 Mad., 44

—— **s. 17.**

See COLLECTOR . **I. L. R., 19 Mad., 255**

—— **s. 20.**

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R., 12 Mad., 445

—— **1805—I.**

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.
[I. L. R., 4 Mad., 335, 335 note

—— **s. 18.**

See SALT, ACTS AND REGULATIONS RELATING TO, MADRAS . **I. L. R., 3 Mad., 17**
[I. L. R., 1 Mad., 278.

—— **1808—VII.**

See LIMITATION ACT, 1877, s. 10.
[I. L. R., 5 Mad., 91

MADRAS REGULATION—*continued.*

——— 1816—IV.

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . **I. L. R., 6 Mad., 249**

See EXECUTION OF DECREE—MODE OF EXECUTION—GENERALLY, ETC. **[I. L. R., 9 Mad., 378**

See LIMITATION ACT, 1877, s. 6. **[I. L. R., 9 Mad., 118**

See MUNSIF, JURISDICTION OF.
[I. L. R., 7 Mad., 220
I. L. R., 8 Mad., 500
I. L. R., 11 Mad., 375

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES. **[5 Mad., 45**

See SUBORDINATE JUDGE. **[I. L. R., 5 Mad., 222**

See TRANSFER OF CIVIL CASE—GENERAL CASES . . **I. L. R., 8 Mad., 500**

See VALUATION OF SUIT—SUITS. **[6 Mad., 151**

——— **s. 17**—*Vakil's fees before village panchayats.*—S. 17 of Regulation V of 1816 has not been repealed by subsequent enactments. GOPALU *v.* VENKATADOSS **[I. L. R., 7 Mad., 552**

——— VI, s. 8.

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT. **[7 Mad., 182**

——— s. 27.

See OATH . . . **4 Mad., Ap., 3**

——— VII.

See PANCHAYAT . **I. L. R., 8 Mad., 569**

——— XI.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS REGULATION IV OF 1821 . **I. L. R., 5 Mad., 268**

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE. **[I. L. R., 23 Mad., 540**

——— s. 5.

See ESCAPE FROM CUSTODY. **[I. L. R., 17 Mad., 103**

——— s. 10.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS REGULATION XI OF 1816 . . **5 Mad., Ap., 32**

——— *Mussulman, Status of—Punishment in stocks.*—A Mussulman is not of the lower castes of the people punishable, under s. 10 of Madras Regulation XI of 1816, by confinement in the village stocks. QUEEN *v.* NABI SAHEB **[I. L. R., 6 Mad., 247**

MADRAS REGULATION—*continued.*

——— XII.

See COLLECTOR . . **4 Mad., Ap., 1**
[I. L. R., 8 Mad., 569

See MADRAS REGULATION V OF 1822. **[1 Mad., 230**

See PANCHAYAT . **I. L. R., 8 Mad., 569**
[I. L. R., 15 Mad., 1

——— XIII.

See STAMP—MADRAS REGULATION XIII OF 1816 . . **I. L. R., 7 Mad., 440**

——— XIV.

See PLEADER—APPOINTMENT AND APPEARANCE . . **4 Mad., Ap., 43**

See PLEADER—REMUNERATION. **[1 Mad., 369**

——— **XV**—*Procedure—Pleading—Allegation of division.*—According to Regulation XV of 1816 of the Madras Code, in a suit for possession of joint family property in which the title of the plaintiff depended on the fact of a division having taken place in the family, a distinct averment of division must be made in the cause, and a direction given by the Court for the production of evidence in proof of such an averment. VIJYA RAGANADHA BODHA GOOROO SWAMY PERRIA WOODAI TAVER *v.* ANGA MOOTOO NATCHIAR
[6 W. R., P. C., 50
3 Moore's I. A., 278

——— 1817—VII.

See ACT XX OF 1863 . **5 Mad., 334**
[7 Mad., 77
I. L. R., 17 Mad., 95, 212
I. L. R., 22 Mad., 223

See ENDOWMENT . . **7 Mad., 306**

See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT. **[I. L. R., 7 Mad., 499**

See JURISDICTION OF CIVIL COURT—ENDOWMENT . . . **7 Mad., 117**

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION. **[I. L. R., 1 Mad., 55**

——— s. 12.

See RIGHT OF SUIT—ENDOWMENTS, SUITS RELATING TO. **[I. L. R., 13 Mad., 277**

——— 1818—VIII.

See APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL. **[6 Moore's I. A., 309**

——— 1821—IV.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MAD. REG. IV OF 1821. **[I. L. R., 5 Mad., 268**

MADRAS REGULATION—*continued.*

—— **1822—V.**

See LANDLORD AND TENANT—LIABILITY FOR RENT . . . **1 Mad., 3**

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS . **2 Mad., 22, 475**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RENT. **[2 Mad., 22, 475**

—— *Mirasidar.*—Regulation V of 1822 is inapplicable to land held under a mirasidar or any ordinary proprietor. YANAMANDRAM VENKAYA *v.* SHILLAKURU VENKATA NARAINA REDDY **[1 Ind. Jur., O. S., 131**

S. C. ENAMANDARAM VENKAYYA *v.* VENKATA NARAYANA REDDI . . . . **1 Mad., 75**

—— s. 8—*Proprietor of permanently-settled estates.*—Regulation V of 1822, s. 8, only applies to zamindars and other proprietors of estates permanently settled under the Regulations of 1802. NALLATAMBI PATTAR *v.* CHINNA DEYVANAGAYAM PILLAI . . . **1 Mad., 109**

—— s. 18—*Disputes regarding irrigation—Mad. Reg. XII of 1816.*—Regulation V of 1822 does not apply to disputes respecting irrigation. The disputes mentioned in s. 18 of Regulation V of 1822 are subjected to the procedure provided by Regulation XII of 1816. RAGAVENDRA RAU *v.* MAHOMED KANITARAGANAR **1 Mad., 230**

—— **IX.**

See COLLECTOR . . . **2 Mad., 322**

—— s. 5—*Sale of land to recover fine imposed by Collector—Title of purchaser.*—A sale of land under the provisions of s. 5 of Regulation IX of 1822 does not convey to the purchaser a title free from prior incumbrances. RAMAN *v.* HASSAN . . . **I. L. R., 9 Mad., 247**

—— ss. 29, 35—*Remedy confined to parties to suit.*—The remedies provided by s. 35 of Regulation IV of 1816 against Village Munsifs are confined to persons who are parties to suits before such Village Munsifs. RAMAN *v.* PAKRICHI **[I. L. R., 9 Mad., 385**

—— **1825—II.**

See STAMP—MADRAS REGULATION II OF 1825 . . **I. L. R., 16 Mad., 419**

—— **1828—VII.**

See COLLECTOR . . . **2 Mad., 322**
[I. L. R., 7 Mad., 420

—— **1831—IV.**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION. **[4 Mad., 277**

See GRANT—CONSTRUCTION OF GRANTS. **[12 W. R., P. C., 33**
13 Moore's I. A., 104

MADRAS REGULATION—1831—IV—*concluded.*

See GRANT—RESUMPTION OR REVOCATION OF GRANT. **[I. L. R., 14 Mad., 431**

See INAM COMMISSIONER . **2 Mad., 341**

—— **VI.**

See HEREDITARY OFFICES REGULATION MAD. REG. VI OF 1831.

—— **X.**

See DISTRICT JUDGE, JURISDICTION OF. **[I. L. R., 6 Mad., 187**

—— **ss. 1, 2, 3.**

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS. **[I. L. R., 10 Mad., 44**

—— **XI.**

See TREASURE TROVE . **7 Mad., 150**

—— **1833—III.**

See VALUATION OF SUIT—SUITS. **[6 Mad., 151**

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865).

See CASES UNDER APPEAL—MADRAS ACTS, MADRAS RENT RECOVERY ACT. **[4 Mad., 227, 251**
I. L. R., 4 Mad., 167

See JURISDICTION OF CIVIL COURT—POTTAHS . **I. L. R., 12 Mad., 481**
[I. L. R., 13 Mad., 361
I. L. R., 14 Mad., 441
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See CASES UNDER JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS.

See LEASE—CONSTRUCTION. **[6 Mad., 164, 175**

See POSSESSION—ADVERSE POSSESSION. **[I. L. R., 20 Mad., 6**

See REGISTRATION ACT, 1877, s. 17. **[7 Mad., 234**

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS. **[I. L. R., 17 Mad., 106**

See REVIEW—ORDERS SUBJECT TO REVIEW . . . . . **4 Mad., 251**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MOVEABLE PROPERTY. **[I. L. R., 11 Mad., 264**

See STATUTES, CONSTRUCTION OF. **[6 Mad., 122**

1. —— s. 1—*Inamdar—Mad. Reg. XXV of 1802.*—S. 1 of Madras Act VIII of 1865 does not confine the term "inamdar" to such inamdars as are registered. *Held* therefore that the purchaser of

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an inam village, who had not got his name registered as inamdar, was not thereby debarred from enforcing the provisions of the Act against a tenant for arrears of rent. *Valamarama* v. *Virappa, I. L. R., 5 Mad., 145,* observed upon. SUBBU *v.* VASANTHAPPAN . . . . **I. L. R., 8 Mad., 351**

2. ———— *Landholder—Poligar of unsettled polliem.*—The definition of the word "landholders" in Madras Act VIII of 1865, s. 1, includes the poligar of an unsettled polliem. Such a landholder is therefore entitled to sue under the Act to compel the acceptance of pottahs by his tenants. CHAUKI GOUNDEN *v.* VENKATARAMANIER . **5 Mad., 208**

3. ———— **and s. 2**—*Inamdar—Quit-rent.*—An inamdar entitled to receive a jodi or quit-rent from other inamdars may have recourse to the summary remedies provided by Act VIII of 1865 (Madras) for the recovery of the quit-rent. APPASAMI *v.* RAMA SUBBA . **I. L. R., 7 Mad., 262**

4. ———— *Landholder—Distraint.*—*V* leased certain fields to *S* at a single rent. Of these fields some were held by *V* under a raiyatwari pottah, but the pottah for the rest stood in the names of *V*'s vendors. *V* distrained for arrears of rent under the provisions of the Rent Recovery Act. *Held* that *V* was not a landholder within the definition in the said Act in respect of the latter fields, and therefore that the distraint was illegal. SUBBA *v.* VENKATA . . . . **I. L. R., 8 Mad., 9**

5. ———— **and s. 3**—*Zamindar delegating powers to mortgagee.*—Where a zamindar executed a usufructuary mortgage-deed of part of his zamindari and by the deed delegated all his powers under the Rent Act (Madras Act VIII of 1865) to the mortgagee,—*Held* that the mortgagee was entitled to enforce the acceptance of pottahs under the provisions of the Rent Act. GUNDA REDDI NARAYANA REDDI *v.* KRISTNA DOSS BALA MUKUNDA DOSS . . . . **I. L. R., 5 Mad., 87**

6. ———— **and s. 79**—*Landholder—"Farmer"—Assignee of landholder—Mortgagee of landholder, Position of.*—A mortgagee of a "landholder," as defined in Madras Act VIII of 1865, s. 1, may exercise the powers of landholder under the Act—(1) as a "farmer" if it is a condition of the mortgage that the mortgagee shall take possession of the estate in whole or in part and give credit or account for a sum certain to the proprietor on account of the collection; or (2) as an assignee of a landholder under s. 79 if the powers conferred by the Act on landholders have been specially delegated to him by his mortgagor. A delegation of such powers should not be inferred from an instrument in the form of an ordinary mortgage. VELLAYAN CHETTI *v.* TIRUVAKONE . . . . **I. L. R., 5 Mad., 76**

7. ———— *Landholder—Assignee of pottah.*—A zamindar hypothecated certain villages comprised in his zamindari as security for a debt, at the same time leasing the said villages to the mortgagee at an annual rent, the amount of which was to be, as it fell due, credited in liquidation of the debt. *Held* that the plaintiff, who was the assignee of the hypothecation deed and the lease, was not a "landholder" within the meaning of Madras Act VIII of 1865. ZINULABDIN ROWTEN *v.* VIJIEN VIRAPATREN **[I. L. R., 1 Mad., 49**

8. ———— *Landholder—Assignee—Delegation of powers.*—The interest of *B* in the farm of a jaghir, which he had obtained on lease from the jaghirdar, was sold in execution of a decree and purchased by *J*, who assigned his interest to the plaintiff. In a suit under Act VIII of 1865 (Madras) by plaintiff to compel defendant to accept a pottah, defendant objected that plaintiff had no right to enforce acceptance of a pottah under the Act. *Held* by the Full Bench [TURNER, *C.J.*, MUTTUSAMI AYYAR, HUTCHINS, and BRANDT, *JJ.* (KERNAN, *J.*, dissenting)], that plaintiff was a landholder within the meaning of the Act and entitled to enforce acceptance of a pottah. *Zinulabdin Rowten* v. *Vijien Virapatren, I. L. R., 1 Mad., 49,* dissented from. GOUSE *v.* SUNDARA . . . . **I. L. R., 8 Mad., 394**

9. ———— *Landholder—Manager of estate and until debt is paid—Increase of rent for garden cultivation and second crops.*—An instrument authorizing a creditor to manage an estate, recover rent and pay certain disbursements, and retain possession until a certain debt amongst other debts to him was paid, does not create to the creditor a landholder within the meaning of Act VIII of 1865. VAYTHENATHA SASTRIAL *v.* SAMI PANDITHER **[I. L. R., 3 Mad., 116**

10. ———— **and s. 13**—*Inamdar—Tenant—Right of distraint—Inam Commissioner.*—A zamindar, holding his estate under a sanad, which included, among the assets of the zamindari, the jodi payable by an inamdar, proceeded under the Rent Recovery Act to recover arrears of jodi by distraint. In a suit by the inamdar to release the distraint, it appeared that the plaintiff had sublet the land, and that the rate at which the jodi was claimed exceeded that entered in the Inam Commissioner's pottah. *Held* (1) that the inamdar was a tenant of the zamindar within the meaning of the Rent Recovery Act; (2) that the fact that the inamdar had sublet the land did not confer on him a higher status than that of a tenant; (3) that the zamindar accordingly had a right to proceed under the Rent Recovery Act, and that his claim was not limited to the amount of jodi entered in the Inam Commissioner's pottah. SURYANARAYANA *v.* APPA RAU **[I. L. R., 16 Mad., 40**

1. ———— **s. 2**—*Tenant—Lessee of zamindar—Limitation.*—In 1869 a village in the zamindari of *R* was granted by the zamindar to *S* at a favourable rent, in consideration of *S* renouncing a claim to the zamindari. The village was not separately assessed, and divided off from the zamindari. The rent having fallen into arrears, the village was sold in 1875 under the provisions of the Rent Recovery Act, and purchased at the sale by the agent of the Court of Wards on behalf of the defendants, minor sons of the deceased zamindar. In a suit brought by *S* in 1883 to recover the village,—*Held* that the sale was binding on *S*, and that the suit was barred by limitation. BASKARASAMI *v.* SIVASAMI . **I. L. R., 8 Mad., 196**

2. ———————— *Limitation.*—In a suit by a tenant against a zamindar to release an attachment made under the Madras Rent Recovery Act, s. 40, it appeared that, according to the kistbandi obtaining in the zamindari, rent was payable in monthly instalments, commencing with November in each Fasli. *Held* that the unit for the rule of limitation prescribed by Rent Recovery Act, s. 2, for proceedings by the landlord was the aggregate rent in arrear at the end of the Fasli. APPAYASAMI *v.* SUBBA **[I. L. R., 13 Mad., 463**

1. ———— **s. 3**—*Purchaser of zamindari village without separate assessment—Landholder.*—A zamindar having mortgaged one of his zamindari villages to *V*, a proportionate amount of the peshkush due by the zamindar was paid to the treasury by *V* by agreement. Having sued the zamindar, and brought to sale and purchased the village at the Court sale, *V* continued to pay the peshkush as before to the treasury, although the village was never separately assessed under s. 8 of Regulation XXV of 1802. *Held* that *V* was not entitled to enforce the acceptance of a pottah under the provisions of the Rent Recovery Act. VALAMARAMAYYAN *v.* VIRAPPA KANDIAN . . . . . **I. L. R., 5 Mad., 145**

2. ———————— *Purchaser of four shares in shrotriyam village—Landholder.*—Where the holders of shares in a shrotriyam village have not received or agreed to receive the rent separately from the tenants according to their shares, the several shareholders constitute one landholder under the Rent Act, and one sharer is not entitled to enforce acceptance of a pottah by the tenants in respect of the proportionate rent payable to him. KRISHNAMACHARI *v.* GANGARAU REDDI . **I. L. R., 5 Mad., 229**

3. ———————— *Landholders — Mulgar.*—*Quære*—Whether a mulgar is within the class of landholders defined in the Madras Rent Recovery Act, s. 3. KRISHNA *v.* LAKSHMINARANAPPA **[I. L. R., 15 Mad., 67**

4. ———————— *Registered zamindar—Zamindari held in co-parcenary—Co-sharers, Right of one of several to sue.*—A registered holder of a zamindari sued under the Madras Rent Recovery Act to enforce the acceptance of a pottah and execution of a muchalka by the defendant, a tenant on the estate. It was pleaded in defence that the zamindari was the undivided property of the plaintiff and his co-parceners, in whose name a pottah and muchalka had already been exchanged. *Held* that the plaintiff, as being the registered zamindar, was entitled to maintain the suit alone. AYYAPPA *v.* VENKATAKRISHNAMARAZU . . **I. L. R., 15 Mad., 484**

5. ———————— **and ss. 4 and 7**—*Contents of pottah—Date of tender of pottah.*—A landlord within three days of the end of the Fasli tendered to a tenant by way of pottah a document containing a statement of account of rent payable in respect of the current Fasli. *Held* that the document tendered was a good pottah, and that under local custom a valid tender of a pottah may be made at the end of the Fasli. NARAYANA *v.* MUNI **[I. L. R., 10 Mad., 363**

6. ———————— **and ss. 4, 9**—*Landlord and tenant—Right to enforce acceptance of pottah.*—The renter of a zamindari, to whom the right to collect the kuttubadi or quit-rent on inam lands and the road-cess payable to Government was delegated, sued to compel the inamdars to accept pottahs and execute muchalkas for the amounts due. *Held* that the inamdars, not being cultivating tenants, were not bound, under Act VIII of 1865 (Madras), to accept a pottah. *Ramasami* v. *Collector of Madura, I. L. R., 2 Mad.,* 67, referred to. RAMA *v.* VENKATACHALAM . . . **I. L. R., 8 Mad., 576**

7. ———————— **and ss. 8, 9, and 11**—*Agreements between landlords and tenants.*—The pottahs and muchalkas mentioned in s. 3, Madras Act VIII of 1865, must be understood to embrace those written agreements only which are mutually interchanged by a lordlord and those of his tenants who are actually engaged in the cultivation of the lands to which they relate, since the remedies which the Act provides in ss. 8 and 9 can only be made available where the relation of landlord and tenant, or a holding of some sort, already exists upon such a basis that the landlord or the tenant, as the case may be, can come into Court and claim to have a writing granted to him. *Semble*—If a lease granted by a zamindar to an intermediate holder could be considered a pottah within the meaning of s. 3 of Madras Act VIII of 1865, it would, under the proviso to s. 11 of that Act, be liable to be set aside by the successor of the grantor if granted at a lower rate than that generally payable on such lands, and not for the purposes mentioned in the said proviso. RAMASAMI *v.* BHASKARASAMI. RAMASAMI *v.* COLLECTOR OF MADURA . . . . **I. L. R., 2 Mad., 67**

8. ———————— **and s. 9**—*Mokhassa-inamdars paying kattubadi to the zamindar—Obligation to accept pottah.*—Mokhassa-inamdars who hold lands in a zamindari and pay kuttubadi annually to the zamindar, and who are not cultivating tenants, are not bound to accept a pottah from the zamindar. LAKSHMINARAYANA PANTULU *v.* VENKATARAYANAM **[I. L. R., 21 Mad., 116**

9. ———————— *Mad. Reg. XXV of 1802, s. 8—Non-registration of landholder—Subsequent registration of undivided brother of landholder—Maintainability of suit.*—Suits for exchange of pottah and muchalka for Fasli 1306 ending June 30th, 1897, were dismissed in the Sub-Collector's Court in August 1897 on the ground that the plaintiffs were not the registered landholders. Pottah had been tendered in June 1897. Plaintiffs appealed. Subsequent to the filing of such appeals, namely, in December 1897, the Collector registered the undivided brother of the plaintiffs (who had died in April 1897), and it was contended at the hearing of the appeals that such registration covered all the undivided

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members of the family. *Held* that, in the absence of registration under s. 8 of Regulation XXV of 1892, the landholder was not entitled to enforce acceptance of pottah under the provisions of the Rent Recovery Act, and that there was no cause of action under that Act. The original defect of title was not cured by the subsequent registration of the landholder in the name of the plaintiffs' undivided brother. *Valamarayyan* v. *Virappa Kandian, I. L. R., 5 Mad., 145,* and *Ayyappa* v. *Venkatakrishnamarazu, I. L. R., 15 Mad., 484,* followed. RAGHAVA REDDI *v.* KANNI GRAMANI . . . **I. L. R., 23 Mad., 221**

———— **s. 4.**

See LEASE—CONSTRUCTION.
[I. L. R., 11 Mad., 200

1. ———— *Suit for rent—Summary suit to enforce acceptance of pottah.*—A suit for rent is maintainable where a pottah in the form required by s. 4, Madras Act VIII of 1865, and such as the defendant was bound to accept, has been tendered to the defendant, although no attempt has been made by a summary suit before the Collector to enforce its acceptance. HARAJAI KUMARA VENKATA PERUMALRAJ *v.* KANNIAPPAH. ZEMINDAR OF KARVATINUGGAR *v.* KANNIAPPAH . . . . **4 Mad., 149**

2. ———— *Pottah for palmyra palm trees.*—Under Madras Act VIII of 1865, a landlord may compel a tenant to accept a pottah for palmyra trees. MUTTUSAMY MUDALY *v.* SADAGOPA GRAMANY
[4 Mad., 398

3. ———— *Landlord and tenant—Exchange of pottahs.*—The pottahs and muchakas required by Madras Act VIII of 1865 should be made and exchanged during the existence, but not necessarily at the commencement, of the tenancy, the terms of which they are meant to express. The 4th section of the Act requires no more than that the pottahs should mention the rate and proportion of the produce to be given, and not the specific quantity or number of measures. SESHADRI AYYANGAR *v.* SANDANAM
[I. L. R., 1 Mad., 146

4. ———— *Water-tax collected for Government by landholder—Water Cess Act, Madras, VII of 1865—Suit to enforce pottah.*—A landlord, being authorized to collect on account of Government the water-tax imposed under Act VII of 1865 (Madras), sued his tenant to compel him to accept a pottah for such water-tax under Act VIII of 1865 (Madras). *Held* that the tenant was not bound to accept the pottah. BACHU RAMESAM *v.* NUKALA BHANAPPA
[I. L. R., 7 Mad., 182

5. ———— **and ss. 7 and 87**—*Form of pottah necessary for tender by landholder.*—A pottah which professes to make the tenant liable to the person tendering it for lands not held, as well as for lands held, of such person, is an improper one, and not one which the tenant is bound to accept. ALAGIRISAMI NAIKER *v.* INNASI UDAYAN
[I. L. R., 3 Mad., 127

6. ———— **and s. 11**—*Acceptance of pottah not in accordance with the Act.*—A tenant having accepted a pottah (which did not give the particulars described in s. 4 of the Madras Rent Recovery Act, and having executed to the landlord a muchalka which was registered, is not entitled to obtain in a summary suit an order setting aside a distraint by the landlord for arrears of rent. APPA RAU *v.* VIRANNA . . **I. L. R., 13 Mad., 271**

7. ———— *Validity of pottah—Omission to sign by landholder.*—A suit was brought to set aside a sale of lands on the ground, among others, that a pottah which had been tendered was illegal. One of the clauses objected to in the pottah contained an erroneous reference to punja lands which had inadvertently not been erased; another provided only in an indirect manner for the rent payable in respect of any other land that might be cultivated. The pottah was not signed or sealed. *Held* that the clauses referred to were unobjectionable: and the fact that the pottah tendered had not been signed by the landlord did not necessarily render it invalid. ESWARA DOSS *v.* RAJAN . . . **I. L. R., 22 Mad., 353**

———— **s. 6**—*Signing and registration of pottahs and muchalkas.*—Madras Act VIII of 1865, s. 6, imposes upon village karnams the duty of signing and registering pottahs and muchalkas exchanged under the Act. Where such pottahs and muchalkas were not signed or registered by the karnam,—*Held* that a suit for rent might be maintained, founded upon the muchalka, the signature and registration by the karnam not being intended to be a condition of the right to sue. VENKATA SUBBA ROW *v.* SESHA REDDY
[4 Mad., 243

———— **s. 7.**

See LIMITATION ACT, 1877, ART. 12.
[I. L. R., 20 Mad., 33

See LIMITATION ACT, 1877, ART. 131.
[I. L. R., 15 Mad., 161

1. ———— *Tenant having no saleable interest in the land.*—S. 7 of Madras Act VIII of 1865 applies to cases where the landlord is the exclusive proprietor of both the melwarum and the mirasiwarum, and the tenant has no saleable interest in the land. RAMASAMI AIEN *v.* MANJEYA PILLAI
[6 Mad., 61

2. ———— *Suit for arrears of rent—Tender of pottah.*—Plaintiff sued for certain arrears of rent. The suit was dismissed as to Faslis 1271, 1272, and 1275, on the ground that no pottahs had been tendered for those Faslis. On special appeal it was contended that no tender was necessary, because a suit which had been brought before Fasli 1271 for the determination of the proper rate of rent was pending during those Faslis. *Held* that the pending of that suit did not render the tender of pottahs unnecessary, and that the present suit was rightly dismissed. PERIYANAYAGAM PILLAI *v.* VIRAPPA NAIKAN . . . . . . **7 Mad., 51**

3. ———— *Tender of pottah through the post.*—Tender of a pottah through the post to a tenant is invalid under the provisions of Madras Act

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VIII of 1865. Venkatachellam Chetti *v.* Kadumthusi . . . **I. L. R., 4 Mad., 145**

4. ——— *Suit for rent dismissed—Suit for use and occupation barred.*—A landlord who has failed in a suit for rent under the Rent Recovery Act cannot bring a fresh suit for use and occupation. Ali Khan *v.* Appadu [**I. L. R., 7 Mad., 304**

5. ——— **and ss. 9 and 10**—*Pottah tendered within Fasli—Suit after Fasli, when pottah amended—Maintainability of suit.*—A landholder tendered a pottah within the Falsi. After the close of the Fasli, he brought a suit to enforce its acceptance when the pottah was amended. After judgment in that suit, the landholder attached the land; whereupon the tenant sued to have the attachment set aside, on the ground that, as no proper pottah had been tendered within the Fasli, and the suit which resulted in the rectification of the pottah had been filed after the close of the Fasli, the landholder was precluded from enforcing his claim,—*Held* that, inasmuch as judgment had been obtained, fixing the terms of the pottah, the tenant could not plead, in answer to an action for rent, the incorrectness of the pottah originally tendered. A landholder has a choice of two alternatives. If he satisfies himself that the pottah tendered by him is the right one, he may bring his suit for rent or take other measures to recover it. He takes his chance of some flaw being discovered in the pottah. If he is not so satisfied, he institutes a suit under s. 10 of the Rent Recovery Act, and obtains a judgment which fixes the terms of the pottah for that Fasli beyond all dispute. Munisami Naidu *v.* Perumal Reddi **I. L. R., 23 Mad., 616**

6. ——— *Tender of pottah—Unreasonable condition.*—A tenant is not bound to accept a pottah which requires him to relinquish, at the close of the Fasli, land which he has been unable to cultivate. Vedanta Chariar *v.* Ayyasami Mudali . . . **I. L. R., 4 Mad., 322**

7. ——— *Tender of pottah.*—When a Collector in a suit brought under the provisions of the Rent Recovery Act has decided that a tenant is to accept a pottah on certain terms, the landholder is not bound to tender such pottah for acceptance before suing to enforce the terms thereof. Court of Wards *v.* Darmalinga . **I. L. R., 8 Mad., 2**

8. ——— *Pottah—Rate of rent—Indefinite stipulations.*—In a pottah tendered by a landlord to his tenant under s. 7 of Act VIII of 1865 (Madras), the rate of rent should be ascertained and declared even where the rate may vary with the means of cultivation or the frequency of cultivation or where the quantum of rent may vary with an increase or reduction in the area of the holding. A landlord tendered a pottah to his tenant which contained the following stipulations: "If you cultivate by the aid of Sirkar services of irrigation, wet crops on dry land, you must pay water rate settled according to the highest nanjai assessment of neighbouring land. If you occupy land in excess of that entered in this pottah, you must pay the appropriate assessment, or if the assessment has not been fixed, then such assessment as our Sirkar may settle." *Held* that the pottah was not one which the tenant was bound to accept. Vankata Ramanjulu Nayudu *v.* Ramachandra Nayudu . . **I. L. R., 7 Mad., 150**

9. ——— *Landlord and tenant—Acceptance of muchalka without delivery of pottah—Presumption.*—When a muchalka has been taken from a tenant under the Rent Recovery Act (Madras Act VIII of 1865), but no pottah granted, this is some evidence that the tenant dispensed with the delivery of a pottah, and legal proceedings ought not to be set aside merely because no pottah and muchalka have been exchanged without enquiry as to whether the parties have agreed to dispense with pottahs and muchalkas. Varathachari *v.* Balu Naicken [**I. L. R., 3 Mad., 255**

10. ——— *Landlord and tenant—Exchange of pottah and muchalka.*—Under s. 7 of Madras Act VIII of 1865, the agreement to dispense with the exchange of pottah and muchalka need not be express, but it must appear that this provision of the law was present to the minds of the contracting parties, and that they deliberately elected not to act upon it. The mere existence of a verbal lease is insufficient to raise the presumption that the exchange of pottah and muchalka has been dispensed with. Komireddi Varaha Narasimham *v.* Chevala Ramasami Nayudu . . **I. L. R., 5 Mad., 136**

11. ——— **and ss. 3 and 13**—*Suit for recovery of rent—Exchange of pottahs and muchalkas—Tender of pottah.*—Suits for the recovery of rent cannot be maintained in the Civil Courts by the landholders described in s. 3 of Madras Act VIII of 1865, unless pottahs and muchalkas have been exchanged between the landholder and the tenant as required by s. 7 of the Act, or some one of the other conditions of the section has been complied with. So held by Morgan, *C.J.*, Innes, *J.*, and Kindersley, *J.* (Holloway, *J.*, *dissentiente*). But such suit may be maintained by the landholders described in s. 13 of the Act without complying with the requirements contained in s. 7. So held by Morgan, *C.J.* (Kindersley, *J.*, *dissentiente*). *Held* also that in cases where pottahs must be tendered, tender must be made before the expiration of the Fasli for which rent is sought to be recovered. Gopalasawmy Mudelly *v.* Mukkee Gopalier [**7 Mad., 312**

Venkatasami Naik *v.* Situpati Ambalam [**7 Mad., 359**

——— **s. 8.**

See Theft . **I. L. R., 16 Mad., 364**

——— *Suit to enforce tender of pottahs—Suit brought after expiration of Fasli.*—A tenant is not entitled to bring a suit under Rent Recovery Act, 1865, s. 8, to enforce the tender of a pottah by his landlord after the expiration of the Fasli to which the pottah relates. Ramasami Mudaliar *v* Rathna Mudaliar . . **I. L. R., 21 Mad., 148**

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

——— **s. 9.**

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS.
[I. L. R., 17 Mad., 140

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.
[I. L. R., 13 Mad., 287

1. ——— *Tender of pottah during Fasli—Suit commenced after Fasli.*—A suit to enforce acceptance of pottah under s. 9 of the Rent Recovery Act, 1865, may be instituted after the expiration of the Fasli to which the pottah relates, provided that the pottah has been tendered during the continuation of the Fasli. *Ramasami Mudaliar* v. *Rathna Mudaliar, I. L. R., 21 Mad., 148,* explained. PAPAMMA *v.* SUBBANNA . **I. L. R., 22 Mad., 318**

2. ——— **and s. 51**—*Refusal by tenant to accept pottah—"Cause of action"—Period within which summary suit must be brought.* On 17th June 1897 a land-holder tendered a pottah to a tenant who, on the same day, refused to accept it. On 5th August 1897 the landholder brought a suit to enforce its acceptance. *Held* that the suit was brought in time. MUNISAMI NAIDU *v.* KRISHNA REDDI . . . **I. L. R., 23 Mad., 474**

3. ——— *Rate of rent where rate is disputed.*—Before a dispute regarding the rate of rent can be decided in a suit brought under s. 9 of Madras Act VIII of 1865, merely on the ground of what appears to be just, the Court must consider the reasonableness of the rate according to the local usage, and when such usage is not ascertainable, according to the rates for neighbouring lands of similar description and quality. KRISTNA RAU *v.* MAHADEVA MUDALI. KRISTNA RAU *v.* NYNIAPPA MUDALI. KRISTNA RAU *v.* SOLAYAPPA MUDALI. KRISTNA RAU *v.* CHINNA SUBBU MUDALI. KRISTNA RAU *v.* KRISHNA MUDALI . . . **6 Mad., 204**

4. ——— *Landholder—Tender of pottah—Notice—Zamindar and raiyat.*—Where the parties are bound to exchange written engagements in the shape of pottahs and muchalkas, the landlord must, in order to maintain a suit under s. 9 of Madras Act VIII of 1865 to enforce acceptance of a pottah, show that he has tendered a pottah in writing. A mere indefinite demand or notice, whether written or unwritten, is not sufficient to sustain such a suit. CHANDA MIAH SAHIB *v.* LAKSHMANA AIYANGAR
[I. L. R., 1 Mad., 45

5. ——— *Joint shrotriyamdars—Distinct contract by tenant in respect of a share.*—The plaintiff was one of two joint shrotriyamdars. In Fasli 1289 the defendant accepted a pottah from, and executed a muchalka to, him in respect of the half share of the plaintiff. The plaintiff sued to enforce acceptance of a pottah and execution of a muchalka for Fasli 1290 and for arrears of rent. *Held* that the suit lay without joinder of the other joint shrotriyamdar. PURUSHOTTAMA *v.* RAJU
[I. L. R., 11 Mad., 11

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

6. ——— *Copy of pottah—Tender of pottah.*—A landholder tendered to his tenant a notice stating that his pottah, of which the particulars were given, had been prepared, and calling on him to come within a month to the zemin cutchery to fetch the pottah and execute the muchalka. *Held* that there was sufficient tender of a pottah to support a suit under s. 9 of the Madras Rent Recovery Act. MARUTHAPPA *v.* KRISHNA **I. L. R., 12 Mad., 253**

7. ——— *Tender of pottah by post—Landlord and tenant.*—A landlord sent a pottah by post to his tenant, who declined to receive it. *Held* the tender of the pottah by post was not sufficient to support a suit under s. 9 of the Madras Rent Recovery Act. SAMINATHA *v.* VIRANNA
[I. L. R., 13 Mad., 42

8. ——— *Omission to tender pottah—Rent claimed by landlord not having tendered legal pottah.*—A landlord, not having tendered a legal pottah to his tenant, made a demand on him as for rent, and, on his refusal to pay, attached his holding. The tenant, to release the attachment, paid the sum demanded under protest on 23rd September 1885. On 22nd March 1886 the tenant filed a suit on the small cause side of the District Munsif's Court to recover the amount so paid: that suit was dismissed for want of jurisdiction on 2nd September 1886. On the last-mentioned date the tenant filed the present suit on the same cause of action. *Held* that the landlord, not having tendered a legal pottah, was not in a condition to establish any right to recover rent directly or by way of set-off. KULLAYAPPA *v.* LAKSHMIPATHI . . **I. L. R., 12 Mad., 467**

9. ——— **and s. 7**—*Demand of pottah.*—The Rent Recovery Act does not require that a tenant demanding a pottah shall apply in writing to the landholder specifying the lands and the Fasli for which the pottah is required. SRINIVASA *v.* NARAYANASAMI . **I. L. R., 8 Mad., 1**

10. ——— **and s. 10 and s. 7**—*Suit to enforce terms of tenancy—Suit to determine terms of tenancy—Pottah—Jurisdiction of Revenue Court.*—A suit under s. 9 of Madras Act VIII of 1865 to enforce the acceptance of a pottah is not a suit to enforce the terms of a tenancy within the meaning of s. 7 of the same Act, but a suit to determine those terms. ZAMINDAR OF DEVARACOTA *v.* VEMURI VENKAYYA . **I. L. R., 1 Mad., 389**

11. ——— **and ss. 10, 11.**—A summary suit by landlord to enforce the acceptance of a pottah under the Madras Rent Recovery Act should not be dismissed on a finding by the Appellate Court that the pottah tendered was not a proper pottah. The Appellate Court ought to pass the decree which the Court of first instance should have passed. NAGARAJA *v.* KASIMSA
[I. L. R., 11 Mad., 23

12. ——— **and ss. 10, 11**—*Improper stipulations in pottah—Claim of tenants to hold over land after expiry of lease—Civil Procedure Code, s. 544.*—In summary suits brought by a andlord to enforce acceptance by his tenants of pottahs tendered by him for the current Fasli, it was pleaded that the pottahs were improper in that they did not comprise certain land of which the tenants were in possession and in which they claimed permanent occupancy rights, and also in that they contained various terms which the plaintiff was not entitled to impose on the defendants, providing (*inter alid*) (1) that interest should be payable on the several instalments of rent as they became due; (2) that the defendant should not fell certain trees except for agricultural purposes; (3) that the defendants should not reap their crops without previously obtaining the plaintiff's permission; (4) that on a change made without the plaintiff's permission from dry to wet cultivation, the tenancy should be forfeited in case of default made by the defendants in paying the amount of Government assessment, and also an undetermined sum then to become payable by the defendants to the plaintiff in addition to the rent. The defendants failed to prove the permanent occupancy rights claimed over the land not comprised in the pottahs, and it appeared that they had held leases from the plaintiff for the land in question for a period of three years and had held over after the expiry of the leases without the permission and contrary to the wishes of the landlord; and it further appeared that the provision as to trees did not extend to shrubs, etc., and had been an accepted term in the pottahs issued for ten years. The Revenue Court modified the terms of the pottahs and passed decrees that the pottahs as modified be accepted, against which some only of the defendants appealed, and the District Judge on appeal introduced further modifications into the pottahs. *Held* (1) that the District Judge had no jurisdiction under Civil Procedure Code, s. 544, to introduce further modifications into the pottahs in favour of the defendants who had not appealed according to the opinion formed by him in appeals preferred by the defendants in other suits; (2) that the defendants were not entitled to have the pottahs modified by enlarging the extent of the land comprised in them, or by the cancellation of the provisions as to interest and as to felling trees; (3) that the defendants were entitled to have the pottahs modified by the cancellation of the provision as to reaping crops and of the provision for forfeiture. RANGAYYA APPA RAU *v.* KADIYALA RATNAM

[I. L. R., 13 Mad., 249

13. ——————— **and ss. 79, 80**—*Yeomiah lands—Unregistered holder rendering service and granting pottahs—Estoppel by acquiescence of persons entitled to the yeomiah holding.*—A yeomiahdar died, leaving a brother, who was then out of India. Shortly before his death, he made an invalid assignment of his holding to a third person who performed the service, and granted pottahs of the land. The holding was resumable on failure of the service. The brother of the late yeomiahdar returned after three years and obtained registration of his title. He now filed this suit to enforce acceptance of pottahs tendered by him to the raiyats, who had already accepted pottahs from, and executed muchalkas to, the assignee. *Held* that the suit was not maintainable, as under the circumstances the plaintiff's conduct justified the tenant's belief that the assignee was entitled to collect rent from them until the assignment was questioned by the plaintiff, and notice of his title given to them. KHADAR *v.* SUBRAMANYA . . . . **I. L. R., 11 Mad., 12**

——————— **s. 10.**

See JURISDICTION OF CIVIL COURT—POTTAHS . **I. L. R., 17 Mad., 1**

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS . **I. L. R., 9 Mad., 39**
[I. L. R., 21 Mad., 482

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS.
[I. L. R., 17 Mad., 140

See LIMITATION ACT, 1877, ART. 110.
[I. L. R., 17 Mad., 225
I. L. R., 19 Mad., 21
I. L. R., 22 Mad., 248, 249 notes, 250 note

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 16 Mad., 451

1. ——————— *Power of Collector to enforce ejectment for default—"Default," Meaning of.—Quære*—Whether a Collector can enforce ejectment for the default specified in s. 10 of the Rent Act, where the ultimate judgment in the case has been that of an Appellate Court, and not of his own Court. *Semble*—"Default" in s. 10 of the Rent Act means wilful default. YAKUB SAHIB *v.* JAFFER ALI SAHIB . . . **I. L. R., 4 Mad., 167**

2. ——————— **and s. 69.**—A landlord having sued his tenant under the Rent Recovery Act to compel him to accept a pottah, the Revenue Court directed the tenant to accept the pottah as amended by the Court. On appeal by the tenant, the District Court directed a further amendment of the pottah. Three months after the decree of the District Court, the landlord applied to the Revenue Court to eject the tenant under s. 10 of the Rent Recovery Act for not accepting the pottah and executing a muchalka, and six months after the date of that decree the Revenue Court ordered the tenant to be ejected. *Held* that s. 10 of the Rent Recovery Act (which provides that, if within ten days from the date of the Collector's judgment the defendant shall not have accepted the pottah as approved or amended by the Collector, and shall not have executed a muchalka in the terms of the said pottah, the Collector, on proof of such default, shall pass an order for ejecting the defendant) did not warrant the order. YAKUB *v.* NARASINGA . . **I. L. R., 7 Mad., 572**

1. ——————— **s. 11**—*Water-cess—Tenants—Cultivation improved by water taken from landlord's tank.*—A landlord has a right to charge water-cess when his tenant cultivates a wet crop on dry land or a second wet crop on wet land by means of water taken from the landlord's tank. THAYAMMAL *v.* MUTTIA . . . **I. L. R., 10 Mad., 282**

2. ———— **cls. 1, 2, 3, 4**—*Improvements effected by tenant—Enhancement of rent—Sanction of Collector.*—The sanction of the Collector required by the proviso to cl. 4, s. 11 of the Rent Recovery Act, as a condition precedent to the enhancement of rent when the landlord has improved the land or has had to pay additional assessment to Government, is not requisite when, improvements having been made by the tenant, the landlord seeks to enhance the rent. *Per* MUTTUSAMI AYYAR, *J.*—The proviso to cl. 4 of s. 11 of the Rent Recovery Act implies that, when the tenant has improved the land at his own expense, the landlord is not entitled on that ground to enhance the rent. *Semble*—Cl. 1 of s. 11, which provides that all contracts for rent, express or implied, shall be enforced, cannot be so applied as to deprive a tenant of the benefit of improvements made at his own expense. *Per* HUTCHINS, *J.*—When improvements have been made by the tenant, the proper rate of rent has to be determined with reference to the several provisions of s. 11, quite irrespective of the improvements. VENKATAGIRI RAJA *v.* PITCHANA

[I. L. R., 9 Mad., 27

3. ———— **rule 3**—*Rate of rent, Determination of—Neighbouring lands of similar kind.*—The provision in Madras Act VIII of 1865, s. 11, rule 3—"And when such usage is not clearly ascertainable, then according to the rates established or paid for neighbouring lands of similar description and quality,"—does not admit of rates of rent being determined on an average of varying rates paid for neighbouring lands; but it does not require, for determination of the proper rate of rent for particular lands, the existence of a fixed general rate of rent for neighbouring lands of similar description and quality. The words "according to the rates established or paid" import clearly the power to determine the rate of rent in accordance with either the general rate at which neighbouring lands of a similar kind are let, or, where the rents of such lands vary, the rate at which rents had for any time been actually paid by some of the tenants of such lands. MAHA SINGAVASTHA AYYAR *v.* GOPALA AYYAN

[6 Mad., 239

4. ———— *Implied contract.*—Where a landlord, having for many years accepted rent at "dry" rates from a tenant for certian land, sued the tenant to enforce acceptance of a pottah at "garden" rates, on the ground that the tenant had raised a crop with water taken from a well constructed by the tenant,—*Held* that there was an implied contract within the meaning of s. 11 of the Rent Recovery Act to accept rent at "dry" rates, and that plaintiff was therefore not entitled to enhance the rate of rent, the improvement having been effected at the expense of the tenant. KRISHNA *v.* VENKATASAMI . . **I. L. R., 8 Mad., 164**

5. ———— *Provision in pottah for increasing rate of assessment for garden cultivation.*—A provision in a pottah for increasing the rate of assessment if garden cultivation is carried on, or if a second crop is raised, is not illegal, but comes within the provisions of s. 11 of Act VIII of 1865. VAYTHENATHA SASTRIAL *v.* SAMI PANDITHER

[I. L. R., 3 Mad., 116

6. ———— *Enhancement of rent—Custom.*—The imposition by a zamindar of garden assessment on land brought under garden cultivation by a tenant who improved the land by sinking a well after 1865 is illegal, although there might be a custom in the zamindari of charging a varying assessment according to the kind of crop raised. FISCHER *v.* KAMAKSHI PILLAI

[I. L. R., 21 Mad., 136

7. ———— **rule 4**—*Hindu law—Alienation—Power to make leases.*—The second proviso contained in rule 4, s. 11, Madras Act VIII of 1865, does not apply to a lease which is *bonâ fide* and valid under the general Hindu law, and, as such, falls under rule 1. This proviso does not amount to a repeal of the Hindu law regarding ordinary leases, but applies only to such leases when, in the circumstances in which they are made, they amount to a fraud upon the power of the grantor's successor as manager or to alienations made for the personal benefit of the grantee and to the prejudice of the successor. RAMANADAN *v.* SRINIVASA MURTI

[I. L. R., 2 Mad., 80

8. ———— *Change of cultivation—Sanction of Collector.*—Where a landlord claimed to revert to nanjai rates (assessed on irrigated land) of rent on the ground that he had repaired a tank, which for years had been unrepaired,—*Held* that the sanction of the Collector was not required by s. 11 of the Rent Recovery Act. LAKSHMANAN CHETTI *v.* KOLANDAIVELU KUDUMBAN

[I. L. R., 6 Mad., 311

9. ———— *Sanction of Collector—Suit for increased assessment on ground of improvements.*—In a suit before the Collector under Madras Act VIII of 1865, brought by a zamindar to compel his tenants, the defendants, to accept a pottah at enhanced rates of assessment, on the ground that he had at his own expense repaired a tank and rendered the land formerly cultivated as dry land capable of being cultivated as wet land,—*Held* that the plaintiff could not maintain the suit, inasmuch as he had not obtained the sanction of the Collector to raise the rent, and such a condition was a condition precedent to such a suit. *Semble*—That the right of the plaintiff to recover was dependent on the further condition that an additional revenue was levied on him consequent upon the improvement made. KATTASAWMY *v.* SANDAMA NAIK . **5 Mad., 294**

10. ———— *Implied contract as to rates of rent—Customary fees—Restraint on building—Landlord and tenant.*—In order to support the inference of a contract under the Madras Rent Recovery Act, s. 11, from payment of the same rent for a given number of years, the intention that the same rent is payable in future years must be clear and unequivocal: it is unsafe to imply such a contract from a single lease for five years. A pottah is not unenforceable by reason of its providing for the payment of fees to village artizans in a case where such fees are customary, or by reason of its prohibiting the tenant from erecting buildings on his holding, if such prohibition is limited to erections not compatible with the agricultural character of the holding. LAKSHMANA *v.* APPA RAU

[I. L. R., 17 Mad., 73

11. ——— *Assignee of revenue—Suit to enforce acceptance of pottah by raiyat—Terms of pottah.*—An inamdar, who was assignee of the revenue of land, sued to compel a raiyat to accept a pottah for the land at varam rates under the provisions of s. 11 of the Rent Recovery Act. *Held* that the only pottah which the defendant was bound to accept was a pottah prescribing payment of the revenue charged on the land. PALANIAPPA *v.* RAYA

[I. L. R., 7 Mad., 325

12. ——— *Reduction of assessment in pottah of 1840—Pottah prescribing rent to be paid permanently by tenant.*—In 1840 a mittadar granted to a tenant a pottah for certain land in which the tenant had already a heritable estate, fixing the rent at the reduced rate R40. The document provided "this sum of R40 you are to pay perpetually every year per kistbandi in the mitta catcheri." It appeared that the rent fixed was less than what was payable upon the lands previous to the date of the pottah and also less than that payable upon neighbouring lands of similar quality and description. *Held* that the reduction in the rate of rent was not invalidated by Rent Recovery Act, 1865, s. 11. FOULKES *v.* MUTHUSAMI GOUNDAN

[I. L. R., 21 Mad., 503

13. ——— *Reduction of rent—Improvements by tenant—Whether grant of reduction binding on successors.*—Where a landholder has granted a reduction of rent otherwise properly payable in respect of land, the mere fact that the tenant has made some improvements subsequent to the grant does not bring the case within the exception to the proviso of s. 11 of the Madras Rent Recovery Act, 1865, so as to be binding on the landholder's successor. OBAI GOUNDAN *v.* RAMALINGA AYYAR

[I. L. R., 22 Mad., 217

14. ——— and s. 9—*Condition of pottah—Established rates of rent—Rent in kind.*—The zamindar of Vallur sued certain raiyats in his pergunnah of Gudur to enforce the acceptance of pottahs providing, among other conditions, that the raiyats should relinquish their holdings at the end of the term unless fresh pottahs were tendered to them, that they should pay half the cost of repairs by a cess proportioned to the wet rate; that if they irrigated dry land they should pay a wet rate to the zamindar, as well as the water rate due to Government, that they should not cut crops without permission, and should supply grass and vegetables to the zamindar's servants. It appeared that in 1853 the pergunnah in question was surrendered to Government, who restored it subject to the payment of a newly-assessed peishcush in 1862, a date when the present defendants were already in occupation of their respective holdings. In the interval, Government collected village rents in money. The pergunnah was not surveyed, and a money assessment fixed prior to 1859. The District Judge expunged the conditions in the pottah above referred to, and held that the zamindar was entitled to collect, by way of rent from the raiyats respectively, the quota of the village rents which each raiyat paid in 1861. He found, however, that there was no contract, express or implied, as to the rent to be paid; and that prior to 1851 the raiyats held their lands under the zamindar on the sharing system, and that for the first year after the restoration of the pergunnah the arrangement enforced by Government had remained in force, but that from 1863 to 1870 the sharing system was in force, and varam was paid by the raiyats, after which for five years individual money rents were collected, and then there were two leases with money rents each for a period of five years. *Held* (1) that the conditions in the pottah above referred to were unenforceable and had been rightly expunged; (2) that the plaintiff's rights were not limited by the rates of rent paid to Government in 1861, but that the rent should be discharged in kind according to the established rate of varam in the village; (3) that the plaintiff was entitled to recover from the raiyats half the water-tax payable on the poramboke lands irrigated from the Kistna anicut. VENKATA NARASIMHA NAIDU *v.* RAMASAMI

[I. L. R., 18 Mad., 216

15. ——— *Suit to assess proper rate of rent—Determination of rate of rent.*—In a suit by the plaintiffs as inamdars to compel the defendants, occupiers of plaintiffs' land, to accept pottahs under Madras Act VIII of 1865, the defendants objected to the rates of rent claimed by the plaintiffs. There was no contract between the parties as to the rent to be paid, nor was there any assessment made under a survey made previous to the 1st January 1859. *Held* that the proper rent to be paid by the defendants was to be determined according to the rates established or fixed for neighbouring lands of a similar kind. MAHASINGAVASTHA AIYA *v.* GOPALIYAN. GOPALIYAN *v.* MAHASINGAVASTHA AIYA

[5 Mad., 425

16. ——— *Contract to pay a certain rent implied from payment in past years.*—S. 11 of the Rent Recovery Act provides that in the decision of suits involving disputes regarding rates of rent which may be brought before Collectors under ss. 8, 9, and 10, all contracts for rent, express or implied, shall be enforced. *Held* that payment of rent in a particular form at a certain rate for a number of years is not only presumptive evidence of the existence of a contract to pay rent in that form or at that rate for those years, but is also presumptive evidence that the parties have agreed that it is obligatory on the one party to pay and the other to receive rent in that form and at that rate, so long as the relation of landlord and tenant may continue. VENKATAGOPAL *v.* RANGAPPA

[I. L. R., 7 Mad., 365

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865)—*continued.*

17. ——— *Enhanced rent on irrigated land—Sanction by Collector of enhanced rent—Customary contribution to a temple—Implied contract—Landlord and tenant.*—A zamindar tendered to raiyats on his estate pottahs providing (*inter alia*) for the payment of (1) certain fees to a Hindu temple, (2) rent in which the land assessment was consolidated with a water-cess in respect of certain land irrigated under the Kistna anicut. There was nothing to show that the former of these items constituted a charge on the land and the latter had not been sanctioned by the Collector under the Madras Rent Recovery Act, s. 11, but it was found that both had been paid by the raiyats for many years. The Court of first appeal held on this finding that there were implied contracts on the part of the raiyats to pay both items. *Held* (1) that the temple fee was *primâ facie* voluntary, and should not be treated as a payment which the zamindar could compel a raiyat to make, and consequently that the pottah tendered to him was an improper pottah; (2) that the finding as to the existence of an implied contract to pay the second of the above items was a correct finding, in accordance with the ruling in *Venkatagopal* v. *Rangappa. I. L. R., 7 Mad., 365.* The first proviso to the Madras Rent Recovery Act, s. 11, is not restricted in its application to rates of original rent as contradistinguished from its enhancement on account of improvements. SIRIPARAPU RAMANNA *v.* MALLIKARJUNA PRASADA NAYUDU

[I. L. R., 17 Mad., 43

18. ——— *Enhanced rent on irrigated land—Sanction by Collector of enhanced rates of rent—Implied contract to pay rent at a certain rate—Landlord and tenant.*—In a suit brought by the Collector of a district, as receiver of a zamindari, against a tenant on the estate to enforce the exchange of pottah and muchalka, it appeared that the rent demanded was assessed at an enhanced rate, and comprised a consolidated wet rate imposed on account of irrigation. To the enhancement of the rent by the addition of the water rate the sanction of the Collector required by the Madras Rent Recovery Act, s. 11, first proviso, had not been obtained. *Held* that such sanction could not be implied from the fact that the Collector, as such receiver, had caused the provision in question to be inserted in the pottah, and now sought to enforce it by suit. Upon the question whether, from the fact that the tenant had paid the water rate in question for some years previously, an implied contract to pay it for the future could be inferred,—*Held* upon the facts of the present case that no such contract could be inferred. With reference to the Full Bench decision in *Venkatagopal* v. *Rangappa, I. L. R., 7 Mad., 365*, the Court stated what was the principle to be kept in view in considering whether an implied contract to pay enhanced rent could be inferred. MALLIKARJUNA PRASADA NAYUDU *v.* LAKSHMINARAYANA . **I. L. R., 17 Mad., 50**

19. ——— *Enhanced rent on irrigated land—Sanction granted by Head Assistant Collector—Customary rent—Implied contract—Restraint on building—Landlord and tenant.*—A Head Assistant Collector is competent to grant a sanction for the enhancement of rent under the Madras Rent Recovery Act, s. 11. The granting of such sanction is a judicial and not a merely administrative act, and such sanction should not be granted without first giving notice to both the landlord and the tenant, and hearing and considering the contentions of both parties. In a suit by the landlord to enforce the exchange of a pottah and muchalka, the tenant objected to the rate of rent imposed on part of the land, which was dry land converted into wet. *Held* that the finding of the lower Appellate Court that there was an implied contract to pay rent at such rate was not open to any legal objection. It appeared that the pottah tendered contained a stipulation for the payment of rent at a special rate for garden (jarib) lands watered by wells which had been constructed by the raiyat at his own cost, and also comprised a stipulation that the raiyat should not build on his holding. The Court of first appeal held that the special rate of rent above referred to was customary, and had been followed for many years. *Held* that there was no ground for interference on second appeal with the lower Appellate Court's decision regarding the former of the stipulations above referred to, but that the latter should be so modified as to prevent the raiyat only from raising any building incompatible with an agricultural holding. BHUPATHI *v.* RANGAYYA APPA RAU . . . **I. L. R., 17 Mad., 54**

20. ——— *Implied contract as to rent—Land irrigated under Kistna anicut—Collector's sanction to increase of rent.*—Land in a zamindari in the Kistna delta was newly irrigated from anicut channels. The zamindar tendered pottahs at wet rates. *Held* (1) that the zamindar was not entitled to levy increased rates without the Collector's sanction under s. 11 of Madras Act VIII of 1865, although he had expended money on the channels; (2) that payment for five years of such wet rates under a five years' lease did not imply a contract to continue such payments; (3) that a stipulation in the previous lease binding the tenants to pay such increased rates in case of future irrigation did not bind the tenants after the term of that lease expired. NARASIMHA NAIDU *v.* RAMASAMI

[I. L. R., 14 Mad., 44

21. ——— *Lands irrigated from Kistna anicut—Madras Act VII of 1865, s. 4—Restriction as to felling trees—Implied contract as to rent.*—A zamindar holding lands irrigated by the Kistna anicut, from whom no extra peishcush is on that account levied by Government, is not entitled to impose on his tenants a "wet" rate of rent without the permission of the Collector under s. 11 of Madras Act VIII of 1865. The fact that the tenants have paid rent at such a rate for six years is not sufficient to establish an implied covenant to continue to do so. It is allowable for a landlord to insert in his pottahs a term to the effect that the tenant shall not fell

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trees without his consent. APPARAU *v.* NARASANNA . . . **I. L. R., 15 Mad., 47**

22. ———— *Form of pottah—Form of rent determined by implied contract—Variation in amount of rent.*—In a landlord's suit to enforce acceptance of a pottah and execution of a muchalka by the defendants, it appeared that the predecessor in title of the defendants had accepted from the predecessor in title of the plaintiff in 1849 a cowle for eleven years, which provided for payments in kind, but since the expiry of that period the rent had always been paid in money, though the amount varied. The tenant was described in the cowle as a sukavasi raiyat, and the defendants also claimed to be sukavasi tenants. *Held* that it was unnecessary to determine the cause of the variations in the amount of rent, and that an agreement that the rent should continue to be paid in money should be implied, and the landlord accordingly was not entitled to impose a pottah providing for payment of rent in kind. POLU *v.* RAGAVAMMAL . . **I. L. R., 14 Mad., 52**

———— **s. 12.**

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS. **[7 Mad., 53**

See LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE . **I. L. R., 13 Mad., 124**
[I. L. R., 15 Mad., 67

See ONUS OF PROOF—LANDLORD AND TENANT . **I. L. R., 16 Mad., 271**

1. ———— *"Tenants"—Term not restricted to agricultural tenant*—S. 12 of the Rent Recovery Act provides that tenants ejected without due authority by landholders may bring a summary suit before the Collector to obtain reinstatement with damages. *Held* that the word "tenants" is not restricted to agricultural tenants only, but includes the permanent lessee of a mitta. SUBBARAYA *v.* SRINIVASA . . . **I. L. R., 7 Mad., 580**

See BASKARASAMI *v.* SIVASAMI **[I. L. R., 8 Mad., 196**

2. ———— *Issue of pottah, Effect of—Receipt of rent—Suit for possession—Ejectment.*—On the true construction of s. 12 of the Madras Rent Recovery Act (Madras Act VIII of 1865) the issue of a pottah is not intended to do more than prevent the arbitrary ejectment of tenants, and does not give them a right of permanent occupancy; and it did not therefore prevent a plaintiff, though he had issued pottahs to the defendant, from recovering the lands from him, and he was not bound merely to receive rent. SATHIANAMA BHARATI *v.* SARAVANABAGI AMMAL **I. L. R., 18 Mad., 266**

———— **s. 13**—*Persons entitled to proceed under Act—Attachment, Validity of.*—*A* granted two villages in perpetuity to *B* under a deed, reserving a certain rent to himself which was to be recovered "according to the Act" if it fell into arrear. The rent remained unpaid for two years, and *A* obtained an attachment for the whole arrear under the Madras Rent Recovery Act. *Held* (1) that *A* was entitled to proceed as landlord under the Madras Rent Recovery Act; (2) that the attachment held good for such amount of rent as was recoverable under that Act. *Ramasami* v. *Collector of Madura, I. L. R., 2 Mad., 67,* discussed. RAMACHANDRA *v.* NARAYANASAMI **[I. L. R., 10 Mad., 229**

———— **s. 14.**—*Suit for rent—Limitation.*—When a tenant has executed a muchalka specifying the dates on which the various instalments of rent are payable, the period of limitation for a suit by the landlord for the rent is to be computed from such dates. VENKATAGIRI RAJAH *v.* RAMASAMI **[I. L. R., 21 Mad., 413**

———— **s. 15.**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—WRONGFUL DISTRAINT. **[I. L. R., 22 Mad., 457**

———— **ss. 15, 17.**—Where a landlord has distrained for rent, and the distraint has been set aside under the provisions of the Rent Recovery Act, the landlord is debarred by s. 17 from taking further proceedings under the Act in respect of the arrears for which the distraint was made. RAMA *v.* CHENGALVARAYA . . **I. L. R., 7 Mad., 429**

1. ———— **s. 17**—*Attachment and sale of the tenant's interest in the land for arrears of rent—Declaration of invalidity of attachment.*—When default has been made in the payment of rent, and the saleable interest of the defaulting tenant in the land is attached, the attachment cannot be declared invalid in a summary suit under s. 17 of the Rent Recovery Act. THAYAMMA *v.* KULANDAVELU . . . **I. L. R., 12 Mad., 465**

2. ———— **and ss. 18 and 49**—*Suit to recover produce illegally distrained for rent—Wrongful distraint.*—The defendants, the landlords, distrained certain produce, the property of plaintiff, their lessee, in view to selling it for alleged claims for rent. The Sub-Collector, finding that the formalities required by the Act had not been observed, removed the attachment and directed the rsetoration of the property. The defendants having refused to restore the property, the plaintiff brought this suit under Madras Act VIII of 1865 to recover the value of the produce. *Held* that such wrongful withholding of the property, being an act in direct disregard and defiance of the Act, did not constitute a cause of action triable by a summary suit under that Act. SRINIVASA *v.* EMPERUMANAR PILLAI **[I. L. R., 2 Mad., 42**

3. ———— **and s. 20**—*Summary suit for wrongful distraint—Limitation—Cause of action.*—A refusal to restore property improperly distrained under the Rent Recovery Act (Madras Act VIII of 1865) after the attachment has been set aside and the property ordered to be restored under s. 17 of the Act, is not a cause of action upon which a

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summary suit can be brought under s. 20. The cause of action in such a case is the illegal distraint, and the continued detention of, and refusal to restore, the property are only aggravations of that wrong. *Semble*—A summary suit under s. 17 would lie under such circumstances for loss or damage sustained when the distress has been declared illegal, and the right to bring a summary suit is not limited to the loss sustained prior to the order declaring the distress illegal as suggested in *Srinivasa* v. *Emperumanar Pillai, I. L. R., 2 Mad., 42.* The period of limitation for a suit under s. 17 must be computed, if not from the date of the distress, at any rate from the date the distress was declared illegal. BHAGIRATHI PANDA *v.* PADALA GOPALUDU

[I. L. R., 3 Mad., 121

—— **s. 18.**

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R., 20 Mad., 498

—— *Attachment and sale of the tenant's interest in the land for arrears of rent.*—Under s. 38 of the Madras Rent Recovery Act, a landlord cannot attach the saleable interest of a defaulting tenant in the land, until the expiry of the current revenue year. THAYAMMA *v.* KULANDAVELU

[I. L. R., 12 Mad., 465

—— **s. 27.**

See APPEAL—DECREES.

[I. L. R., 13 Mad., 248

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—WRONGFUL DISTRAINT.

[4 Mad., 401

—— **s. 33.**

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—OTHER GROUNDS.

[I. L. R., 8 Mad., 6

—— **s. 35.**

See STAMP ACT, 1869, s. 3 . **8 Mad., 112**

—— **and s. 76**—*Sale of tenant's interest—Refusal of Collector to give certificate.*—A sale of the tenant's interest in certain land having taken place under ss. 39 and 40 of the Rent Recovery Act, the Deputy Collector refused to issue sale certificate to the purchaser, on the ground that the sale had been irregularly conducted. *Held* that, under s. 35 of the Rent Recovery Act, the purchaser was entitled to a sale certificate. VELLI PERIYA MIRA *v.* MOIDIN PADSHA . **I. L. R., 9 Mad., 332**

—— **s. 38.**

See ATTACHMENT—ALIENATION DURING ATTACHMENT . **I. L. R., 8 Mad., 573**

See SALE FOR ARREARS OF RENT—INCUMBRANCES . . **I. L. R., 7 Mad., 31**

[I. L. R., 2 Mad., 234

[I. L. R., 10 Mad., 266

Se SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

[I. L. R., 6 Mad., 428

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—— **ss. 38 and 39.**

See LIMITATION ACT, 1877, ART. 12.

[I. L. R., 20 Mad., 3

1. —— **s. 39**—*Sale of immoveable property under—Irregularity in sale, Effect of.*—A suit lies to set aside a sale of immoveable property irregularly conducted under the provisions of Act VIII of 1865. If notice of sale is not served in the way prescribed by s. 39, the sale must be set aside. NATTU ACHALAI AYYANGAR *v.* PARTHASARADI PILLAI

[I. L. R., 3 Mad., 114

2. —— *Service by affixing notice of intention to sell on some conspicuous part of the tenant's land—Residence of tenant in foreign territory.*—The provision of s. 39 of the Rent Recovery Act that the notice of an intention to sell the land should be served "at his usual place of abode," denotes some place in the neighbourhood of the land in respect of which the pottah was tendered, and does not apply when the tenant resides in foreign territory. OLIVER *v.* ANNTHARAMAYYAN

[I. L. R., 18 Mad., 30

—— **ss. 39 and 40.**

See RIGHT OF SUIT—LANDLORD AND TENANT, SUITS CONCERNING.

[I. L. R., 10 Mad., 368

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R., 20 Mad., 498

—— **s. 40.**

See LIMITATION ACT, 1877, ART. 12.

[I. L. R., 20 Mad., 33

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R., 20 Mad., 498

See STAMP ACT, 1869, s. 3.

[8 Mad., 112

—— **ss. 41, 43.**

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, MADRAS.

[5 Mad., 289

—— **s. 44**—*Delivery of possession—Appeal—Limitation.*—*A* obtained a warrant ejecting *B* for arrears of rent under s. 41 of the Rent Recovery Act. *B* appealed within fifteen days, but *A* was put into possession on 13th May 1882. *B*'s appeal came on for hearing, and was dismissed on 13th June 1883. *B* instituted this suit to recover possession of the land on 28th July 1883. *Held* that *B*'s suit was not time-barred under s. 44 of the Rent Recovery Act. PADSHA *v.* TIRUVEMBALA

[I. L. R., 9 Mad., 479

—— **s. 49.**

See DEPUTY COLLECTOR, JURISDICTION OF . . **I. L. R., 16 Mad., 323**

1. —— **s. 50**—*Petition sent by post—Presentation of plaint.*—A petition sent by post is not a substitute for the presentation of a plaint as

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required by s. 50 of Madras Act VIII of 1865. MOPARTI PITCHI NAIDU *v.* VUPPALA KONDAMMA [6 Mad., 136

2. ——————— **and s. 69**—*Plaint—Amendment—Irregular procedure—Joint petition—Order to file separate plaints—Limitation.*—A landlord, having tendered pottahs to his raiyats which were not accepted by them, distrained, for rent due under the pottahs tendered, on the 10th of March 1882. On the 13th of March thirteen raiyats presented a joint petition to the Head Assistant Collector complaining of the landlord's acts. This petition was referred to the Tehsildar for report, and not treated as a plaint under Act VIII of 1865 (Madras); but subsequently, having been brought before the Deputy Collector for orders, it was treated as a joint plaint under the said Act, and the petitioners were directed by that officer each to file a separate plaint. Thirteen plaints were accordingly filed on the 27th of May. *Held* that under s. 50 of the Act, which allows irregular plaints to be amended at the discretion of the Collector, the petition of the 13th March, which contained all the necessary allegations, could be treated as a plaint capable of amendment; and that the order of the Deputy Collector directing the petitioners to file separate suits was an amendment within the meaning of that section. *Held* also that by the provisions of s. 69, which provides that substantial justice shall not be defeated by want of form or irregularity in procedure, the said order, even if irregular, having done substantial justice, ought not to be set aside. ATTIPAKULA MUNAPPA *v.* DASINANI CHENCHU NAYUDU . **I. L. R., 7 Mad., 138**

1. ——————— **s. 51 and s. 18**—*Summary suit to set aside distraint—"Within thirty days"—Sunday—General Clauses Act (X of 1897), s. 10(1)—General Clauses Act (Madras) (Act I of 1891), s. 11.*—Suits to set aside a distraint under s. 15 of the Rent Recovery Act (Madras), 1865, were filed on the thirty-first day after the distraint complained of, the thirtieth day being a Sunday, and the Court closed. On objection being taken that the suits were barred under ss. 18 and 51 of the Act,—*Held* (1) that the suits were filed in time; (2) that the provisions of the Limitation Act do not extend the period of thirty days limited by ss. 18 and 51 of the Rent Recovery Act (Madras), 1865, for bringing a summary suit to set aside a distraint; neither does s. 10 of the General Clauses Act nor s. 11 of the General Clauses Act (Madras), inasmuch as the latter Acts are not retrospective; and (3) that there is a generally recognized principle of law under which parties who are prevented from doing a thing in Court on a particular day, not by any act of their own, but by the Court itself, are entitled to do it at the first subsequent opportunity. SAMBASIVA CHARI *v.* RAMASAMI REDDI . . **I. L. R., 22 Mad., 179**

2. ——————— *Presentation of plaint—Acceptance by Court of plaint sent by post.*—*K* sent a plaint by post to a revenue officer, who was on tour, and, in obedience to an order issued by such officer to pay batta within a certain date, presented himself and paid the amount demanded within thirty days from the date of the cause of action. *Held* that the suit was instituted within the time prescribed by s. 51 of the Rent Recovery Act. *Moparti Pitchi Naidu* v. *Vuppala Kondamma, 6 Mad., 136,* approved and distinguished. SANKARANARAYANA *v.* KUNJAPPA . . . **I. L. R., 8 Mad., 411**

3. ——————— *Suit to enforce acceptance of improper pottah—Limitation.*—A landlord sued his tenants in the Court of a District Munsif to enforce acceptance of pottahs and the execution of muchalkas by them, and to recover arrears of rent. These suits were filed more than thirty days after tender of the pottahs, which were found to contain certain improper stipulations. *Held* the suit was not barred by the rule of limitation in Madras Rent Recovery Act, s. 51. EASWARA DOSS *v.* PUNGAVANCHARI [**I. L. R., 13 Mad., 361**

——————— **ss. 57, 66**—*Ex-parte decision.—Semble*—The terms of s. 57 of Act VIII of 1865 are wide enough to justify a Collector in treating as *ex-parte* a defendant not appearing on the day to which the hearing of the suit may have been adjourned under s. 66 of the Act. SUBBRAMANIYA PILLAY *v.* PERUMAL CHETTY . **4 Mad., 251**

1. ——————— **s. 69**—*Appeal, Computation of time for—Time required to file copy of decision.*—An appeal under Madras Act VIII of 1865 must be presented within thirty days from the date of the decision appealed against. The appellant is not required to file a copy of such decision with his appeal. IN THE MATTER OF THE PETITION OF MOHIDIN HUSSEN SAHEB . . . . . **8 Mad., 44**

2. ——————— **and s. 18**—*Deduction of time occupied in obtaining copy of judgment appealed against—Limitation Act (1877), s. 12.*—A tenant whose property had been distrained for arrears of rent sued under Rent Recovery Act, s. 18, by way of appeal against the distraint. The Revenue Court decided in his favour. The landlord preferred an appeal under s. 69 more than thirty days after the date when the decision was pronounced. He claimed that the time occupied in procuring a copy of the judgment appealed against should be deducted in the computation of the thirty days' period of limitation. *Held* that the appellant was not entitled to have the deduction made, the provisions of s. 12 not being applicable to an appeal filed under s. 69 of the Madras Rent Recovery Act, and that the appeal was barred by limitation. AKKAPPA NAYANIM *v.* SITHALA NAIDU [**I. L. R., 20 Mad., 476**

——————— **s. 72**—*Refusal to execute muchalka—Suits for rent.*—By s. 72 of the Rent Recovery Act, when a judgment is given for the delivery of a muchalka, if the person required by the decree to execute such muchalka shall refuse to do so, the judgment shall be evidence of the amount of rent claimable from such person, or a copy of the judgment under the hand and seal of the Collector shall be of the same force and effect as a muchalka executed by the said person. A landholder, having tendered a pottah and obtained

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confirmation of it by summary suit, sued for rent. The tenant in his written statement denied that the pottah was a proper one, and contended that he was not bound to accept it. *Held* that this amounted to a refusal to execute the muchalka, for the delivery of which judgment had been given, within the meaning of s. 72, and that the requirements of that section had been complied with. VENKATARAMAYYA *v.* SUBBANNA . **I. L. R., 23 Mad., 565**

——— **s. 76.**

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 16 Mad., 451
I. L. R., 17 Mad., 298

s. 78.

See LIMITATION ACT, 1877, s. 14.
[I. L. R., 12 Mad., 467

See RIGHT OF SUIT—LANDLORD AND TENANT, SUITS CONCERNING.
[I. L. R., 10 Mad., 368

——— *Limitation—Suit to recover property wrongfully distrained.*—The plaintiff sued to recover certain property wrongfully distrained by the defendant, who was his landlord, or in the alternative for its value. The defendant had tendered no pottah to the plaintiff, but the distraint had taken place professedly under the Rent Recovery Act. The suit was not brought within six months from the date of the wrongful distraint. *Held* that the suit was not barred under Rent Recovery Act, s. 78. GOUDAN *v.* RANGAYA GOUNDAN . **I. L. R., 20 Mad., 449**

MADRAS REVENUE RECOVERY ACT (MADRAS ACT II OF 1864).

See MADRAS ABKARI ACT, 1864, s. 10.
[I. L. R., 7 Mad., 434

See CASES UNDER SALE FOR ARREARS OF REVENUE.

——— **ss. 1, 2, 3, 38, 39**—*Landholder—Defaulter—Pottah allowed to stand in name of another—Estoppel—Notice—Sale.*—Where a landholder allows the registry of land to stand in the name of another and the revenue falls into arrears, a sale of the land under the provisions of the Revenue Recovery Act (Madras Act II of 1864), effected after the service of notice upon the person in whose name the pottah stands, will pass the landholder's interest to the purchaser at the revenue sale. ZAMORIN OF CALICUT *v.* SITARAMA . **I. L. R., 7 Mad., 405**

1. ——— **s. 2**—*Remedies of assignee from Government of land revenue—Land security for revenue.*—The land revenue payable on certain land having been assigned to a temple by Government, although they continued to issue a pottah for the land, the panchayat of the temple are entitled to sue for the arrears of revenue due, and under s. 2 of Madras Act II of 1864 the land itself is security for the revenue due on it, and they can therefore bring the land to sale to discharge arrears accrued due. KRISHNASAMI *v.* VENKATARAMA
[I. L. R., 13 Mad., 319

2. ——— **and ss. 25, 37**—*Sale for arrears of revenue—Liability of all fields included in pottah.*—By accepting a raiyatwari pottah, the landholder pledges each and every field included therein as security for the whole assessment. Several fields separately assessed to revenue were held under one pottah by *K*. Default having been made by *K* in payment of revenue, one of such fields, of which *N* was the owner, was attached under the Revenue Recovery Act. *N* claimed to have it released from attachment on payment of the assessment due upon it. The claim was rejected and the field sold. *Held*, in a suit by *N* to set aside the sale, that the sale was valid. SECRETARY OF STATE FOR INDIA *v.* NARAYANAN. SITARAMA *v.* NARAYANAN . **I. L. R., 8 Mad., 130**

——— **s. 11**—*Attachment of gathered crops belonging to a tenant—Right of Government to distrain for arrears of revenue.*—Government can attach for arrears of revenue under s. 11 of Madras Act II of 1864 the gathered products belonging to a tenant, provided that the products are of the land on account of which the arrears of revenue have accrued. KRISHNA CHADAGA *v.* GOVINDA ADIGA
[I. L. R., 17 Mad., 404

——— **s. 36**—*Extension of time by Government for payment of balance of purchase-money.*—S. 36 of Madras Act II of 1864 does not make it compulsory for Government to forfeit the money deposited by a bidder at a sale of land for arrears of revenue when the balance of the purchase-money is not paid within thirty days and to re-sell the land. SONAYA PILLAI *v.* KALAMEGAM
[I. L. R., 5 Mad., 130

——— **s. 38.**

See BENAMI TRANSACTION—GENERAL CASES . **I. L. R., 18 Mad., 469**

1. ——— *Sale for arrears of revenue—Confirmation of sale after cancellation.*—When a Collector has passed an order under s. 38 of Madras Act II of 1864, setting aside a sale for arrears of revenue, he cannot subsequently confirm the sale. KALIAPPA GOUNDEN *v.* VENKATACHALLA THEVAN
[I. L. R., 20 Mad., 253

2. ——— *Sale for arrears of revenue—Suit by purchaser for possession—Plea that it was a benami purchase.*—The purchaser at a sale held for arrears of revenue sued for possession of the land. It was pleaded that his purchase was made benami for the persons from whom the defendant derived title. *Held* that the Madras Revenue Recovery Act, s. 38, did not debar the defendant from raising this plea, and that, the averments on which it was based having been proved, the suit should be dismissed. SUBBARAYAR *v.* ASIRVATHA UPADESAYYAR . . **I. L. R., 20 Mad., 494**

3. ——— **and s. 39** -*Suit to set aside alleged fraudulent sale—Limitation.*—Non-compliance by the Collector with the directions of ss. 38

and 39 of the Revenue Recovery Act (Madras Act II of 1864) does not invalidate the title of the purchaser of land sold for arrears of revenue. KARUPPA *v.* VASUDEVA SASTRI . **I. L. R., 6 Mad., 148**

4. ——— — **and s. 59**—*Sale for arrears of revenue—Purchase by Government—Subsequent sale by Government—Suit by owner of a share in the mittah for cancellation of second sale—Limitation.*—The plaintiff was the owner of a share in a mittah which was sold on the 15th February 1886 for arrears of revenue and bought by Government, who, on the 16th June 1886, sold it to the first defendant, notifying the re-sale in the form prescribed under Madras Act II of 1864. The first defendant subsequently resold portions of the mittah to defendants 3 and 5 to 8. The plaintiff sued for cancellation of the second sale so far as his share was concerned, instituting a suit for this purpose on the 31st March 1890. *Held* (1) that the sale of the 16th June 1886 was not a sale under s. 38 of Act II of 1864, although the notification of the sale was in the form prescribed by that Act, but a sale by Government of property that had become its own by reason of the purchase at the prior sale of 15th February; (2) that, even assuming the sale of the 16th June 1886 to have been a sale under s. 38 of Act II of 1864, the suit was time-barred under s. 59 of that Act, since it should have been brought within six months from the date of the plaintiff's majority, *viz.*, the 29th November 1888. *Held* that the limitation prescribed by s. 59 of Madras Act II of 1864 is applicable to sales which are illegal by reason of contravening some express law, as well as to sales which are irregular. *Gobind Lal Roy* v. *Ramjanam Misser, I. L. R., 21 Calc., 70,* referred to. GOUNDAN *v.* GOUNDAN **[I. L. R., 17 Mad., 134**

——— **ss. 41 and 42**—*Sale for arrears of revenue—Land subject to kanam—Purchaser's title not subject to kanam-holder's rights.*—Where land subject to a kanam was sold for arrears of revenue due by the pottadar and owner, and the kanam-holder claimed to retain possession as against the purchaser on the ground that his rights were not affected by the sale,—*Held* that, reading ss. 41 and 42 of Madras Act II of 1864 together, the purchaser's title was not subject to the kanam. The contracts referred to in s. 41 of the Act are those which do not create a charge on the proprietary right in the land sold. KELAN *v.* MANIKAM **I. L. R., 11 Mad., 330**

1. ——— **s. 52**—*Karnam in a permanently-settled zamindari—Revenue servant.*—The karnam in a permanently-settled zamindari is a village servant employed in revenue duties within the meaning of the Madras Revenue Recovery Act, s. 52. COLLECTOR OF NORTH ARCOT *v.* NAGI REDDI **[I. L. R., 15 Mad., 35**

2. ——— **and s. 59**—*Madras Hereditary Village Offices Act (Madras Act III of 1895), s. 21—Emoluments due to village officers—Demand for payment under s. 52 of Revenue Recovery Act—Payment under protest—Suit to recover amount paid—Legality of demand—Limitation.*—By the custom of a zamindari its tenants brought their produce to the threshing-floor, where it was divided, *inter alia*, among the village servants. The lessees of the zamindari altered this system, directing the tenants to bring their produce direct to the granaries of the lessees, who promised to pay the village servants their fees from the said granaries. These fees having been only partly paid, the village servants complained to the Government revenue officials, who applied to the lessees for payment of the arrears, a demand for the same being ultimately issued under s. 52 of the Revenue Recovery Act (Madras), 1864. The lessees thereupon paid the amount of the arrears under protest, and a year later filed a suit against the Secretary of State to recover the money so paid. *Held* that the lessees had made themselves liable for the fees, and the Collector was entitled to proceed under s. 52 of the Revenue Recovery Act (Madras), 1864, to recover them. *Held* also that, inasmuch as the suit had not been brought within six months of the time when the alleged cause of action had arisen, it was barred under s. 59 of the Revenue Recovery Act (Madras), 1864. ORR *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL **[I. L. R., 23 Mad., 571**

1. ——— **s. 59**—*Limitation—Sale of land subject to mortgage—Suit by mortgagor.*—Land which was subject to a mortgage having been sold for arrears of revenue under Act II of 1864 (Madras), the mortgagee's assignee sued to enforce the terms of the bond by sale of the land more than six months after the date of the sale of the land. *Held* that the suit was barred by s. 59 of the said Act. YELLAYA *v.* VIRAYA . . . **I. L. R., 10 Mad., 62**

2. ——— *Suit to set aside a sale for arrears of revenue—Fraud—Limitation Act, 1877, art. 95.*—Suit, in July 1885, to set aside a sale of land of the plaintiff, sold in July 1884 as if for arrears of revenue under Act II of 1864 (Madras), on the ground that the sale had been brought about by fraud and collusion between the purchaser and the village officers; the plaintiff had knowledge of the alleged fraud more than six months before suit. *Held* that the Law of Limitation applicable to the case was s. 59 of Act II of 1864, and not s. 95 of the Limitation Act, and that the suit was therefore barred. *Venkatapathi* v. *Subramaya, I. L. R., 9 Mad., 457,* explained. *Baij Nath Sahu* v. *Lala Sital Prasad, 2 B. L. R., F. B., 1,* and *Lala Mobaruk Lal* v. *Secretary of State for India, I. L. R., 11 Calc., 200,* considered. VENKATA *v.* CHENGADU . . **I. L. R., 12 Mad., 168**

3. ——— *Abkari notification referring to that Act—Sale to recover sum due from an abkari renter—Limitation for suits to recover land so sold.*—The right of selling toddy at certain places was put up to auction by the Collector under a notification which required that payment should be made at fixed periods, and that the purchaser should take out licenses as therein provided, failing which the shops concerned might be re-sold, and any loss accruing to Government recovered under the Madras Revenue Recovery Act. The plaintiff bid at the auction, and

MADRAS REVENUE RECOVERY ACT (MADRAS ACT II OF 1864)—*concluded.*

his bid was accepted. He sought to withdraw from the contract, but the sale to him was confirmed, and on his failure to make the payments above referred to, the rights purchased by him were re-sold at a lower price, and his house was attached and sold as under the Madras Revenue Recovery Act to realize the loss occasioned to Government by the re-sale. In a suit, in 1888, to recover the house from the defendant who had purchased it and been placed in possession in June 1886,—*Held* that the suit was not barred by s. 59 of the Act as having been brought more than six months after the date of the sale, but that it was governed by the general law of limitation under which the plaintiff had twelve years to sue; and that the sale was *ultra vires.* RAMAN *v.* CHANDAN

[I. L. R., 15 Mad., 219

4. ———— *Sale for arrears of revenue —Irregularity in sale—Want of due notification—Alleged fraud affecting sale—Limitation Act (XV of 1877), s. 8—Minor.*—When there are arrears of revenue so as to give jurisdiction to the Collector to sell under Madras Act II of 1864, the sale, however irregular, is a proceeding under that Act for purposes of limitation, and is valid not only as between the Collector and the defaulter, but as between the Collector and the purchaser at the sale. *Venkata* v. *Chengadu, I. L. R., 12 Mad., 168,* and *Nilakandan* v. *Thandamma, I. L. R., 9 Mad., 460,* followed. The mere fact that one of the plaintiffs, in a suit brought to set aside a sale under Madras Act II of 1864, was a minor, was held not sufficient to save the limitation bar under s. 59 of Madras Act II of 1864, when an alleged fraud affecting the sale came to the knowledge of the other plaintiffs who were majors and were jointly interested with the minor more than six months prior to the institution of the suit, s. 8 of the Limitation Act being inapplicable to such cases. NARAYANAN NAMBUDRI *v.* DAMODARAN NAMBUDRI . **I. L. R., 17 Mad., 189**

MADRAS REVENUE RECOVERY AMENDMENT ACT (MADRAS ACT III OF 1884).

———— **s. 1, cl. 5.**

See BENAMI TRANSACTION—GENERAL CASES . **I. L. R., 18 Mad., 469**

MADRAS SALT ACT (MADRAS ACT IV OF 1889).

———— **ss. 46 and 47.**

See ESCAPE FROM CUSTODY.

[I. L. R., 19 Mad., 310

MADRAS TOWN LAND REVENUE ACT (XII OF 1851) AND MADRAS ACT VI OF 1867.

———— **XII of 1851, ss. 1, 17**—*Mad. Act VI of 1867, ss. 4, 31—Penal assessment of revenue—Jurisdiction of Civil Court—Limitation.*—The plaintiff was in occupation of certain land in Madras, and in May 1895 he received a notice from the Collector stating that the land belonged to the Government, and that a penal assessment of R100 a month was imposed upon him for the current month, and calling upon him to pay that sum within three days, failing which his property would be distrained, and stating that, if he did not vacate the land at once, a further penal assessment would be imposed and levied every month. In June 1896 a like notice was served upon the plaintiff calling upon him to pay R1,300, the amount chargeable up to date. The plaintiff, having appealed to the Board of Revenue without success, paid under protest the penal assessment in various sums amounting together to R3,004-1-0. He now sued to recover that amount and prayed for a declaration of his title. *Held* by BODDAM, *J.*, that the High Court had jurisdiction to entertain the suit in respect of the claim for money, but that the suit was barred as to so much of it as had been paid more than six months before the institution of the suit. *Held* by SHEPHARD, *Offg. C.J.*, and MOORE, *J.* (affirming the judgment of BODDAM, *J.*), that the land belonged to Government and the plaintiff was in occupation without title, and that it was accordingly competent to Government to impose the assessment. In order to enable one having paid money under protest to recover money so paid, it is necessary for him to show that the payment was made under illegal coercion. MUTHAYYA CHETTI *v.* SECRETARY OF STATE FOR INDIA . . . . **I. L. R., 22 Mad., 100**

MADRAS TOWNS IMPROVEMENT ACT (MADRAS ACT III OF 1871).

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R., 2 Mad., 104

See LIMITATION ACT, 1877, ART. 120 (1871, ART. 118) . **I. L. R., 3 Mad., 124**

———— **s. 1**—*Washerman—Artizan.*—A washerman is not an artizan within the meaning of Madras Act III of 1871. EX-PARTE POONEN

[I. L. R., 1 Mad., 174

———— **s. 9**—*Power of Governor in Council to dismiss elected Municipal Commissioner.*—S. 9 of the Towns Improvement Act (Madras Act III of 1871) provides that the Governor in Council may remove an elected Municipal Commissioner for misconduct. In a suit for damages brought against the Secretary of State by a Municipal Commissioner for wrongful removal from office,—*Held* that, the defendant not having proved misconduct, the plaintiff was entitled to damages. VIJAYA RAGAVA *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 7 Mad., 466

———— **s. 38**—*Tax due before approval of Government to Act—Illegal levy of tax—Omission to give notice.*—Plaintiff sued the Municipal Commissioners for the town of Bellary for a certain sum, alleged to have been illegally levied by them from him as his trade and profession tax. The sanction of the Governor in Council, under s. 38 of Madras Act III of 1871, was obtained on the 4th

MADRAS TOWNS IMPROVEMENT ACT (MADRAS ACT III OF 1871) —*continued.*

July 1871, with authority to levy the tax from 1st May 1871. Plaintiff alleged that no notice under s. 61 of the Act had been served upon him, that the levying the tax was illegal, as the approval of Government was obtained three months after the commencement of the official year, and that the Act could not have retrospective effect. *Held* on a reference that the levy from the plaintiff was illegal. BATES *v.* MUNICIPAL COMMISSIONERS FOR THE TOWN OF BELLARY . . . **7 Mad., 249**

———— **s. 51**—*Notice by owner of claim to remission of house-tax.*—The notice which an owner of property must give in order to entitle himself to a remission of the house-tax is an annual notice. PURUSHOTTAMA *v.* MUNICIPAL COUNCIL OF BELLARY . . **I. L. R., 14 Mad., 467**

1. ———— **s. 58**—*Liability for carriage and horse-tax—Temporary residence—Payment of tax where person resides permanently.*—The defendant, a Judge of the Small Cause Court at Madura, visited Dindigal once a year and remained there for more than thirty days each year. The defendant took with him to Dindigal his horses and carriages which he used there, and in respect of which he paid the taxes imposed by law to the Municipality of Madura, where he resided. In a suit by the Municipality of Dindigal to recover the tax payable in respect of the same horses and carriages,—*Held* that the defendant was not liable. SNAITH *v.* MCQUHAE **7 Mad., 332**

2. ———— **and ss. 59-62**—*Liability to professional tax—Fiscal statutes—Construction of statutes.*—In construing enactments creating fiscal obligations, provisions declaring the liability to the tax are to be distinguished from those providing for its imposition. Machinery for the imposition of the tax may be independent of the obligation of the tax-payer. The duty of paying profession tax under s. 58, Madras Act III of 1871, is independent of the obligations of registration and taking out a certificate which precede it in the same section. *Per* HUTCHINS, *J.*—S. 61 is not to be construed so as to prevent the Commissioners from adding to the list new names or persons not in the town at the beginning of the year. VICE-PRESIDENT OF THE MUNICIPAL COMMISSION, CUDDALORE *v.* NELSON . **I. L. R., 3 Mad., 129**

———— **ss. 61, 62**—*Maxim "Quod fieri non debet factum valet."*—The Vice-President of a Municipal Commission, purporting to act under the provisions of s. 61 of the Towns Improvement Act, 1871, which empowers the Commissioners to prepare and revise the list of tax-payers, and to issue notices of assessment to persons liable to the profession tax, issued a notice of assessment to *D*, although no case of emergency existed, within the meaning of s. 27 of the Act, enabling the President, or, in his absence, the Vice-President, to exercise the powers vested by the Act in the Commissioners. *Held* that the insufficiency of the notice of assessment was no answer to a charge under s. 62 of the Act against *D* for exercising his profession without paying tax. MUNICIPAL COMMISSIONERS OF MANGALORE *v.* DAVIES

[I. L. R., 7 Mad., 65

MADRAS TOWNS IMPROVEMENT ACT (MADRAS ACT III OF 1871) —*continued.*

1. ———— **s. 62**—*"Person"—Joint trade—Tax.*—In s. 62 of the Madras Towns Improvement Act, 1871, the word "person" must be construed to include any company or association or body of persons, whether incorporated or not, where such construction is not repugnant to the context. Where, therefore, two undivided Hindu brothers carried on a joint trade in one shop and tax had been paid by one brother,—*Held* that no tax was payable by the other brother. MUNICIPAL COMMISSIONERS OF NEGAPATAM *v.* SADAYA . . **I. L. R., 7 Mad., 74**

2. ———— **and s. 169**—*Profession tax, Non-payment of—Offence, Nature of—Prosecution—Limitation.*—A complaint having been laid (on the 26th March 1885), under s. 62 of Act III of 1871 (Madras), against *O* for having exercised his profession for more than two months in the official year 1884-85 in a Municipality without paying the tax in respect thereof, the Magistrate dismissed the complaint, on the ground that the prosecution was barred by s. 169 of the Act, inasmuch as five months had elapsed since the last payment in respect of the tax became due. *Held* that the complaint, if laid within three months from the close of the official year, or, if *O* ceased to exercise his profession before the close of the official year, within three months from such date, was not barred by s. 169 of the Act. OOTACAMUND MUNICIPALITY *v.* O'SHAUGHNESSY

[I. L. R., 9 Mad., 38

———— **ss. 64, 72**—*Tax on animals—License, Extent and limit of.*—*N* having taken out a license under the provisions of the Towns Improvement Act, 1871, for a bullock, the bullock died and *N* bought another bullock, but did not take out a second license. *N* was convicted for keeping this bullock without a license. *Held*, (by TURNER, *C.J.*, and HUTCHINS, *J.*, BRANDT, *J.*, dissenting) that the conviction was right. MUNICIPAL COMMISSIONERS OF MANNARGADI *v.* NALLAPA . . . **I. L. R., 8 Mad., 327**

———— **s. 85**—*Suit to recover money illegally levied as tax on profession.*—S. 85 of Madras Act III of 1871 is not a bar to a suit to recover money wrongfully levied as a tax because such so-called tax had no legal existence. There is no provision in that Act for levying any tax described in s. 57 of the Act at all otherwise than by the prescribing of the machinery for its levy in ss. 58-61. If that machinery is not applied, no liability to pay such tax can arise. Where the Municipal Commissioners of a town had not determined on the imposition of a tax of that description till 22nd April of the official year for which such tax was imposed, and the list of persons to be taxed for that year was not completed till 14th July of the same year, and notice to *A* of his assessment under such tax was not given him till 8th October in that year,—*Held* that the tax had no legal existence, and that *A* was entitled to recover from the Commissioners money which they had collected from him as and for such so-called tax. *Bates* v. *Municipal Commissioners for the Town of Bellary, 7 Mad., 249,* followed. LEMAN *v.* DAMODARAYA . **I. L. R., 1 Mad., 158**

MADRAS TOWNS IMPROVEMENT ACT (MADRAS ACT III OF 1871)—*continued.*

———— **ss. 138, 139**—*Street—Encroachment—Possession—Private property—Onus probandi.*—*H* owned a house in the town of A, to which the Towns Improvement Act, 1871, was extended in 1879. In 1882 the Municipal Commissioners, professing to act under s. 139 of the said Act, removed a pial which projected beyond the main walls of *H's* house and abutted on a lane which was used by the public. *H* proved that the pial had existed for fifty years. *Held* that the action of the Municipal Commissioners was illegal. HANUMAYYA *v.* ROUPELL

[I. L. R., 8 Mad., 64

———— **s. 154**—*Omission to take out licenses—Criminal Procedure Code, 1869, ss. 43, 66.*—S. 154 of Madras Act III of 1871 was not intended to apply to omissions to take out licenses. It applies to breaches of the Act which, in a policeman's view, are offences, and regarding which, if committed within his view, one of two courses is open to him,—*viz.,* to arrest without warrant, or to lay an information before a Magistrate, and apply for a summons or warrant. If he adopts the latter course, then ss. 43 and 66 of the Criminal Procedure Code require that the information should be reduced to writing, and given on oath or solemn affirmation, before any process is issued thereon. S. 68 of the Code is limited to cases in which no complaint has been made, and the Magistrate, *proprio motu,* institutes a prosecution. ANONYMOUS . 6 Mad., Ap., 50

———— **s. 165**—*Penal clause sanctioned by Government with respect to other bye-laws, not with respect to that to which it is attached.*—The mere publication of a bye-law with a penal clause at the end which had not been passed by the Municipal Commissioners or approved by the Government as applicable to the bye-law in question, though it was so passed and approved in reference to other bye-laws, cannot avail to legalize the infliction of the penalty. Bye-laws requiring licenses in cases in which Madras Act III of 1871, by specifying the cases in which they shall be required, has impliedly declared they shall not be required, are in violation of the Act. ANONYMOUS . . . . 8 Mad., Ap., 3

———— **s. 168**—*Suit on a contract against Municipal Commissioners—Notice.*—A suit was brought to recover from the Municipal Commissioners of Madura the balance of a sum of money due for timber supplied under a contract duly made with them. *Held* that the plaintiff was entitled to sue on the breach of contract without giving notice, such a suit not falling under the provisions of s. 168 of the Towns Improvement Act (III of 1871, Madras). MAYANDI *v.* MCQUHAE . I. L. R., 2 Mad., 124

———— **sch. B, cl. 4**—*"Pleader and Practising Vakil"—Magistrate's Court Vakil.*—The words "Pleader and Practising Vakil" used in cl. 4, sch. B of the Madras Towns Improvement Act, 1871, are not restricted to persons who have obtained sanads from the District or High Court, but include all practitioners in Courts of criminal jurisdiction within the municipal limits. PALAMCOTTAH MUNICIPALITY *v.* ANNSAMI . I. L. R., 6 Mad., 100

MADRAS TOWNS IMPROVEMENT ACT (MADRAS ACT III OF 1871)—*concluded.*

———— **sch. C**—*Horse—Pony under thirteen hands.*—In the Madras Towns Improvement Act, 1871, the word "horse" includes a pony except when, by reference to the number of hands, the articles of sch. C show a contrary intention. Sch. C is part of the Act. No tax is leviable under the Act on a four-wheeled carriage on springs drawn by one pony under thirteen hands. VIZAGAPATAM MUNICIPALITY *v.* WALKER . I. L. R., 5 Mad., 269

MADRAS TOWNS NUISANCES ACT (MADRAS ACT III OF 1889).

See BENCH OF MAGISTRATES.

[I. L. R., 18 Mad., 394

———— **ss. 3, 6, and 7**—*Common gaming-house—Vacant unenclosed site.*—The accused were found gaming on a vacant site, the property of the seventh accused. The seventh accused was convicted under the Madras Towns Nuisances Act, ss. 6 and 7, and the other accused under s. 7. *Held* that the site in question was not a common gaming-house, and that the convictions were accordingly wrong. QUEEN-EMPRESS *v.* JAGANNAYAKULU

[I. L. R., 18 Mad., 46

———— **ss. 3 and 11.**

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.

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MADRAS VILLAGE COURTS ACT (MADRAS ACT I OF 1889).

———— **s. 13.**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES.

[I. L. R., 13 Mad., 145

———— **proviso 3**—*"Land" includes "house."*—In Madras Act I of 1889, s. 13, proviso 3, the word "land" includes land covered by a house, and consequently a suit for house-rent, unless due under a written contract signed by the defendant, is not cognizable in a Village Munsif's Court. NARAYANAMMA *v.* KAMAKSHAMMA

[I. L. R., 20 Mad., 21

———— **s. 73.**

See MUNSIF, JURISDICTION OF.

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See Cases under Warrant of Arrest,—Criminal Cases.

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——— Duty of—

1. ——— **Duty in judicial capacity.**—The necessity of a Magistrate acting in a dispassionate and impartial manner, and not in the spirit of a prosecutor, observed upon. In the matter of Mahesh Chandra Banerjee. Queen *v.* Purna Chandra Banerjee. Queen *v.* Kali Sirkar
[4 B. L. R., Ap., 1 : 13 W. R., Cr., 1

2. ——— *Acting on private knowledge of accused.*—A Magistrate acting judicially should not import into the case before him his previous knowledge of the character of the accused, but should determine his guilt or innocence upon the evidence given in the case. Reg. *v.* Vyankatrav Shrinivas . . . . 7 Bom., Cr., 50

See Meheroonissa *v.* Bhashaye Madha
[2 W. R., Act X, 29

Lopotee Domnee *v.* Tikha Moodai
[8 W. R., Cr., 67

3. ——— *Deciding on evidence when collected by police.*—Magistrates should clearly understand that, whilst the police perform their proper duty in collecting evidence, it is the function of the Magistrate alone to decide upon the sufficiency or credibility of such evidence when collected. Government *v.* Karimdad
[I. L. R., 6 Calc., 496 : 7 C. L. R., 467

4. ——— *Commitment of accused for trial.*—The duty of a committing Magistrate is to ascertain whether by the evidence for the prosecution a *primâ facie* case is made out against an accused. Queen *v.* Maha Singh . 3 N. W., 27

Queen *v.* Kishto Doba . 14 W. R. Cr., 16

5. ——— *Re-trial—Record of former trial.*—A Magistrate trying a case is as much bound by strict rules of evidence as any Sessions Judge or Civil Court. Where proceedings, which had already been taken against the accused before another Magistrate, had been quashed, and a new trial directed, the Magistrate holding the second trial is not justified in referring to the former record as a whole, but only to such portions of it as have been specially put in evidence before him. In the matter of Devi Dutt . . 7 C. L. R., 193

6. ——— *Trial by Magistrate who as Collector instituted proceedings.*—The District Magistrate should not himself try a case in which he instituted the prosecution as Collector. Queen *v.* Nadi Chand Poddar . 24 W. R., Cr., 1

7. ——— *Conviction by Magistrate for practising in Collector's Court without certificate—Officer both Magistrate and Collector.*—Where an officer is acting in two capacities,—*viz*, as Assistant Collector and Assistant Magistrate,—he should not, in his capacity of Magistrate, convict a person of an offence committed before him as Collector: therefore he has no authority as Magistrate to fine a person under s. 34, Act XX of 1865, for practising in his Court as Collector without a certificate. In the matter of Ramdyal Singh
[5 B. L. R., Ap., 89

See Queen *v.* Hiralal Das
[8 B. L. R., F. B., 422

S. C. Government of Bengal *v.* Hiralal Das
[17 W. R., Cr., 39

8. ——— *Conviction of public servant—Sentence.*—Where the person in the employment of the Court is convicted of a criminal offence punishable by fine or imprisonment, it is quite competent to the Magistrate in his administrative capacity to dismiss him from his office. Queen *v.* Chunder Coomar Sen
[1 Ind. Jur., N. S., 97 : 5 W. R., Cr., 4

9. ——— *Judge—Bias—Magistrate's jurisdiction where complainant is his private servant—Legality of conviction and sentence passed by such Magistrate in such a case.*—The mere circumstance that a trying Magistrate is the master of the complainant does not deprive the Magistrate of his jurisdiction, though it is expedient that such a complaint should be referred to another Magistrate. In re the petition of Basapa
[I. L. R., 9 Bom., 172

10. ——— *Translations of findings, Record of.*—Magistrates are bound to record translations of their findings in criminal cases. Reg. *v.* Katunji Bhukan . . 1 Bom., 17

11. ——— *Comments on proceedings of Sessions Judge.*—Comments by a Magistrate, in the form of a supplementary statement, on the proceedings of the Sessions Judge, disapproved of. Reg. *v.* Govinda bin Babaji
[5 Bom., Cr., 15

12. ——— *Witness—Threatening witness.*—In cross-examination before the Court of Session a witness stated that, when she was before the committing Magistrate, that officer, addressing her, said: "Recollect, or I will send you into custody." *Held* that, if the Magistrate did so address the witness, he exceeded his duty. Queen-Empress *v.* Ishri Singh . I. L. R., 8 All., 672

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13. ———— *High Court calling for explanation—Letter of explanation, form of.*—When the High Court calls for an explanation from a Magistrate, the letter of explanation should be signed by the Magistrate himself, and not by some one purporting to sign on his behalf. Roop Lall Doss *v.* Manook . . . **2 C. W. N., 572**

———— **Examination of, as witness.**

See Transfer of Criminal Case—Ground for Transfer **I. L. R., 21 Calc., 920**

———— **Liability of.**

See Cases under Judicial Officers, Liability of.

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See Confession—Confessions to Magistrate . **I. L. R., 22 Bom., 235**

———— **Power of.**

See Cases under Possession, Order of Criminal Court as to—Costs.

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See Cases under Cantonment Magistrate.

See Cases under Complaint.

See Criminal Procedure Codes, ss. 436, 438 (1872, ss. 296, 297).
[I. L. R., 4 Calc., 16, 647
I. L. R., 9 Bom., 100
2 B. L. R., S. N., 2: 10 W. R., Cr., 35

See Cases under Jurisdiction of Criminal Court.

See Cases under Nuisance.

See Cases under Possession, Order of Criminal Court as to.

See Prostitute . **3 B. L. R., A. Cr., 70**
[I. L. R., 6 Calc., 163

See Cases under Recognizance to keep Peace.

See Cases under Reformatory Schools Act.

1. APPEARANCE OF JURISDICTION ON PROCEEDINGS.

———— **Magistrate with power to do particular act or make particular order—** *Order for maintenance under s. 536, Criminal Procedure Code.*—Where the law empowers Magistrates

MAGISTRATE—*continued.*

1. APPEARANCE OF JURISDICTION ON PROCEEDINGS—*concluded.*

of a particular grade to do a particular act, or make a certain order, it should always appear upon the proceedings that the Magistrate making the order or doing the act is a Magistrate who had jurisdiction to do it. An order under s. 536, Criminal Procedure Code, 1872, cannot be made by a Magistrate of the second class. SOMREE *v.* JITUN SONAR

[**22 W. R., Cr., 30**

2. GENERAL JURISDICTION.

1. ———— **"Magistrate," Meaning of**—*Jurisdiction of—Criminal Procedure Code, 1861, s. 149—Meaning of "Magistrate."*—The words "a Magistrate" in s. 149 of the Code of Criminal Procedure mean "any Magistrate," and not merely "the Magistrate having jurisdiction." REG. *v.* VAHALA JETHA . . . . . **7 Bom., Cr., 56**

2. ———— **"Magistrate"**—*Criminal Procedure Code, 1861, s. 15—Head of the village.*—The head of a village is within the definition of a Magistrate as defined in s. 15 of the Criminal Procedure Code. ANONYMOUS . **4 Mad., Ap., 2**

3. ———— **"Magistrate of District," Meaning of**—*Criminal Procedure Code, 1861, s. 61.*—Meaning of the words "Magistrate of the District" in s. 61 of the Criminal Procedure Code. ANONYMOUS . . . . **3 Mad., Ap., 29**

4. ———— **District Magistrate**—*Criminal Procedure Code, 1882, s. 488.*—The expression "The District Magistrate, a Presidency Magistrate, a Sub-Divisional Magistrate and a Magistrate of the first class" in s. 488, Criminal Procedure Code, 1882, means the Magistrate of the particular district in which the person resides, against whom such a complaint is made. IN RE THE PETITION OF FAKRUDIN

[**I. L. R., 9 Bom., 40**

5. ———— *Criminal Procedure Code (Act X of 1882), s. 488—Complaint by a wife against her husband for maintenance.*—A complaint under s. 488 of the Criminal Procedure Code (Act X of 1882) falls within the cognizance of the Magistrate competent to entertain such complaint, and within the local limits of whose jurisdiction the husband or the father is actually residing at the date of such complaint. IN RE THE PETITION OF FAKRUDIN . . . **I. L. R., 9 Bom., 40**

6. ———— **Head Assistant Magistrate**—*Power of Magistrate to order trial of cases of offences committed in town outside his division.*—An objection was taken before the Sessions Judge in the hearing of an appeal that the Head Assistant Magistrate had no jurisdiction to try the case, he having a distinct local jurisdiction which did not include the town where the offence was committed. It appeared that the Head Assistant Magistrate had received general instructions from the Magistrate of the district, as a temporary arrangement, to take up criminal cases arising within the limits of the said town, which was not within his division. *Held,* upon these facts, that the Head Assistant Magistrate had no jurisdiction. ANONYMOUS . **6 Mad., Ap., 43**

MAGISTRATE—*continued.*

2. GENERAL JURISDICTION—*continued.*

7. ———— **Village Magistrate** — *Power to issue summons.*—A Village Magistrate has authority to issue a summons to persons within, but not without, the local area of his jurisdiction, whose attendance may be required in cases which he is empowered to try. QUEEN *v.* KRISHNAMA

[**I. L. R., 5 Mad., 230**

8. ———— **Magistrate also Justice of Peace**—*53 Geo. III, c. 155, s. 105—Act VII of 1853.*—A Magistrate being also a Justice of the Peace had no jurisdiction to try a British-born subject under the Penal Code. His jurisdiction in the trial of such subjects was governed and limited by 53 George III, c. 155, s. 105, and Act VII of 1853, neither of which gave him power to award imprisonment in default of payment of a fine. REG. *v.* DIXON

[**6 Bom., Cr., 14**

9. ———— **Trial by District Magistrate for breach of orders of a Reserve Inspector of Police**—*Criminal Procedure Code (Act V of 1898), s. 556; (Act X of 1882), s. 555—Police Act (V of 1861), s. 29—Magistrate not "personally interested."*—*Held* that the Magistrate of a district was not, on account of his being the head of the police of the district, debarred by reason of s. 556 of the Code of Criminal Procedure from trying a person accused under s. 29 of the Police Act, 1861, of a breach of the orders of a Reserve Inspector of Police. QUEEN-EMPRESS *v.* NARAIN SINGH

[**I. L. R., 22 All., 340**

10. ———— **Meaning of the term "personally interested"**—*Criminal Procedure Code, s. 555—Opium Act (I of 1878), s. 9—Jurisdiction of officer in charge of excise and opium administration of a district to try cases under the Opium Act.*—A Magistrate in charge of the excise and opium administration of a district is not "personally interested" in the observance of the provisions of Act I of 1878. He is therefore not precluded from exercising jurisdiction in respect of offences against the above-mentioned Act. IN THE MATTER OF THE PETITION OF GANESHI . **I. L. R., 15 All., 192**

11. ———— **Disqualification of Magistrate or Judge**—*Summary procedure—Bias of Magistrate—Chairman of Municipality trying cases as Magistrate—Criminal Procedure Code, ss. 260, 262, 263, 555—Obstruction in public road.*—A Deputy Magistrate, being also the Chairman of a Municipality, without issuing process, or making a record of the proceedings, or dismounting from a pony on which he was riding, convicted and fined an inhabitant of the town, who admitted that he had raised the level of a road within the limits of the Municipality which was considered by the Magistrate to amount to the offence of causing an obstruction in a public way. *Held* the Magistrate's procedure was illegal, and the conviction should be set aside. QUEEN-EMPRESS *v.* ERUGADU

[**I. L. R., 15 Mad., 83**

MAGISTRATE—*continued.*

2. GENERAL JURISDICTION—*continued.*

12. ———— **Disqualification of Magistrate to try a case in which he is personally interested**—*Criminal Procedure Code (Act X of 1882), s. 555—Statements made out of Court.*—The accused was convicted of reckless and furious driving on a public thoroughfare under cl. 3 of s. 31 of Bombay Act VII of 1867. The complainant was a servant of the Magistrate who tried the case, and it appeared that the Magistrate's wife was driving in a dog-cart on the thoroughfare when the tonga driven by the accused passed by. *Held* that the Magistrate was incompetent to try the case, as he was "personally interested" in it, within the meaning of s. 555 of the Code of Criminal Procedure (Act X of 1882). It is extremely improper for a Magistrate, in disposing of a case, to rely in any way on statements made to him out of Court. QUEEN-EMPRESS *v.* SAHADEV VALAD TUKARAM . . . **I. L. R., 14 Bom., 572**

13. ———— **Disqualifying interest of Magistrate**—*Criminal proceedings—Irregularity—"Personally interested"—Criminal Procedure Code, 1882, s. 555.*—Where a District Magistrate, as prosecutor, initiated and directed the proceedings against certain accused persons who were charged by him with having committed offences punishable under ss. 143 and 150 of the Penal Code, and where it appeared that the District Magistrate had himself taken an active part in causing the dispersion of the unlawful assembly, and had pursued and directed the pursuit of the members thereof, and that he subsequently took pains to collect the evidence showing the connection of the accused with the unlawful assembly and the keeping of armed men, on which evidence the accused were afterwards convicted by himself; and where it also appeared from the judgment of the District Magistrate that he had embodied therein matters which, if irrelevant, showed that he should have been examined as a witness, and that such matters should not have been stated without the accused having had an opportunity of testing them by cross-examination,—*Held* that the District Magistrate was disqualified from trying the case himself, and that the conviction must be set aside, and a fresh trial held before some other Magistrate. The words "personally interested," as used in s. 555 of the Code of Criminal Procedure, do not merely mean "privately interested" or "interested as a private individual," but include such an interest as the District Magistrate must have had under the above circumstances in the conviction of the accused. GRISH CHUNDER GHOSE *v.* QUEEN-EMPRESS

[I. L. R., 20 Calc., 857

14. ———— **Disqualification of Magistrate or Judge**—*Personal interest—Criminal Procedure Code (1882), s. 555—Bombay District Municipal Act (VI of 1873), s. 84—Municipal offence.*—The mere fact that a Magistrate is the Vice-President of a District Municipality and Chairman of the Managing Committee does not disqualify him from trying a charge of an offence brought by the Municipality under Bombay Act VI of 1873; but if he has taken any part in promoting the prosecution, as, for instance, by concurring in sanctioning

it at a meeting of the managing committee or otherwise, he will be disqualified by reason of the existence of a personal interest, over and above what may be supposed to be felt by every Municipal Commissioner in the affairs of the Municipality. QUEEN-EMPRESS *v.* PHEROZSHA PESTONJI **I. L. R., 18 Bom., 442**

15. ———— **Disqualification of Magistrate**—*Criminal Procedure Code (1882), s. 555—Personal interest.*—The accused was a compounder in the employ of Treacher & Co. He was tried and convicted by the Presidency Magistrate of criminal breach of trust as a servant in respect of certain goods belonging to the company. It appeared that the Magistrate was a shareholder in the company which prosecuted the accused. *Held* that the Magistrate was disqualified from trying the case. As a shareholder of the company, he had a pecuniary interest, however small, in the result of the accusation, and was therefore "personally interested" in the case within the meaning of s. 555 of the Code of Criminal Procedure (Act X of 1882). The words "personally interested" in the section are not intended to exclude pecuniary as distinguished from a personal interest. IN RE RODRIGUES

[I. L. R., 20 Bom., 502

16. ———— **Incompetence of Magistrate who is Chairman of Municipality to try municipal cases**—*Criminal Procedure Code (1882), ss. 526 and 555—"Any case," Meaning of—Prosecution under Bengal Municipal Act (Ben. Act III of 1884)—Grounds for transfer of case.*—An appeal against a conviction under s. 217, cl. 5, of the Bengal Municipal Act (Bengal Act III of 1884) was preferred to the District Magistrate, who was also Chairman of the Municipality. On an application to the High Court for a transfer to the Court of some other Magistrate,—*Held* that, apart from the question whether there was a disqualification under s. 555 of the Criminal Procedure Code, the case was one which it was expedient should be transferred to another Court. *Per* BANERJEE, *J.*—S. 555 of the Criminal Procedure Code renders a Magistrate incompetent to try a municipal case if he is the Chairman of the Municipality. The words "try any case" in that section are comprehensive enough to include the hearing of an appeal. NISTARINI DEBI *v.* GHOSE

[I. L. R., 23 Calc., 44

17. ———— **Disqualifying interest of Magistrate**—*Criminal Procedure Code (1882), ss. 537 and 555—Investigations preliminary to a trial—"Personally interested"—Court of competent jurisdiction."*—Where investigations of the police preliminary to a trial are directed to a very considerable degree by a Magistrate, such Magistrate is personally interested in the case, and is disqualified from trying it by the provisions of s. 555 of the Criminal Procedure Code. A disqualifying interest may result from a purely official connection with the initiation of criminal proceedings. *Grish Chunder Ghose* v. *Queen-Empress, I. L. R., 20 Calc., 857,* followed. A Magistrate who, in consequence of

MAGISTRATE—*continued.*

2. GENERAL JURISDICTION—*continued.*

such a personal disqualification, is forbidden by law to try a particular case, though he may be authorized generally to try cases of the same class, cannot be said, with respect to that case, to be a Court of competent jurisdiction, and his orders are not covered by the saving provisions of s. 537. SUDHAMA UPADHYA *v.* QUEEN-EMPRESS **I. L. R., 23 Calc., 328**

18. ———— Magistrate personally interested—*Criminal Procedure Code (1882), s. 555—Magistrate giving evidence before himself.*—Where a Magistrate, in whose Court a complaint of rioting and mischief had been filed, made a personal inspection of the *locus in quo*,—*Held* that by so doing he had made himself a witness in the case, and had thereby rendered himself incompetent to try it. *Held* further that, where a Judge is the sole Judge of law and fact in a case tried before himself, he cannot give evidence before himself or import matters into his judgment not stated on oath before the Court in the presence of the accused. QUEEN-EMPRESS *v.* MANIKAM . **I. L. R., 19 Mad., 263**

19. ———— Disqualification of Magistrate to try case—*Criminal Procedure Code (1882), ss. 202, 540, and 555—Examination of witnesses.*—Where a Magistrate before whom a complaint was made held an inquiry under s. 202 of the Criminal Procedure Code for the purpose of ascertaining the truth or falsehood of the complaint before issuing process, and, after holding such inquiry, summoned the accused, examined witnesses on both sides, and, after a short adjournment, examined a witness called by himself, and found the accused guilty under s. 341 of the Penal Code,—*Held* that there is nothing in the Criminal Procedure Code which disqualifies a Magistrate who holds a preliminary inquiry under s. 202 from trying the case himself, and that the provisions of s. 555 had no application, inasmuch as the Magistrate had not initiated or directed the proceedings against the accused person, nor taken an active part in the arrest or collection of evidence against such person. *Held* also that the Magistrate was strictly within his rights under s. 540 of the Criminal Procedure Code in receiving fresh evidence after evidence on both sides had been taken and the case adjourned for judgment, inasmuch as the case was still a pending case, when such evidence was taken. IN THE MATTER OF ANANDA CHUNDER SINGH *v.* BASU MUDH . **I. L. R., 24 Calc., 167**

20. ———— Magistrate expressing opinion in a report after local investigation, Competency of, to hold the trial—*Transfer, Ground of—Criminal Procedure Code, 1898, s. 202.*—The fact that a Subordinate Magistrate expressed his opinion in submitting a report in a case referred to him for local investigation under s. 202, Criminal Procedure Code, is no bar to his holding the trial on an order by the District Magistrate making over the case to him for that purpose. *Ananda Chunder Singh* v. *Basu Mudh, I. L. R., 24 Calc., 167,* referred to. BANI MADHEB ROY *v.* ROSARAJ GOSSAMI . . . **4 C. W. N., 604**

MAGISTRATE—*continued.*

2. GENERAL JURISDICTION—*concluded.*

21. ———— Disqualification of Magistrate to try case—*Witness—Omission to record statement of accused under Code of Criminal Procedure (1882), s. 364.*—Where a Magistrate before whom an accused person is brought omits to record, as provided by s. 364 of the Criminal Procedure Code, statements made by the accused, he does not thereby make himself a witness, and so become disqualified from trying the case. QUEEN-EMPRESS *v.* FATTAH CHAND . **I. L. R., 24 Calc., 499**

FATEH CHAND *v.* DURGA PROSAD **[1 C. W. N., 435**

22. ———— Disqualification of Magistrate—*Magistrate holding local investigation—Witness.*—A Magistrate, by going to view a place for the purpose of understanding the evidence, does not thereby make himself a witness in the case, and render himself disqualified from trying it. IN THE MATTER OF THE PETITION OF LALJI **[I. L. R., 19 All., 302**

23. ———— Magistrate becoming witness, Competence of, to try case—*Local inspection by Magistrate trying case—Information not obtained from inspection.*—Where a Magistrate visited the scene of occurrence of the alleged offence and not merely noted the various features thereon of importance to a proper decision of the case, both parties being present on the occasion, but obtained information outside the scope of such inspection as regards the presence of the accused and based his judgment thereon,—*Held* that the Magistrate had thus made himself a witness, and could not try the case; and that he should be examined as a witness at the re-trial. SATRI DULALI *v.* EMPRESS **[3 C. W. N., 607**

3. TRANSFER OF MAGISTRATE DURING TRIAL.

24. ———— Summary jurisdiction—*Transfer—Criminal Procedure Code, ss. 56 and 222—Furlough.*—The petitioner had been convicted by Mr. *C*, the Assistant Commissioner of Kamroop, in the exercise of a summary jurisdiction, under s. 222 of Act X of 1872. This officer was, in the year 1872, in charge of the Jorehaut Division in the district of Seebsaugor, "with first-class powers and powers under s. 222" of the Act. In 1874 he proceeded on furlough to England, and, on his return in 1875, was posted to the district of Kamroop, and invested with the powers of a Magistrate of the first class. *Held* that s. 56 of Act X of 1859 did not apply, and that Mr. *C* had no summary jurisdiction in Kamroop; *per* MARKBY, *J.*, on the ground that, by the terms in which the Government had conferred that jurisdiction on Mr. *C*, it had in effect "directed," within the meaning of s. 56 of Act X of 1872, that he should not exercise that jurisdiction anywhere but in Seebsaugor; *per* MITTER, *J.*, on the ground that the office to which Mr. *C* was appointed in Kamroop was not equal to, or higher than, that which he had held in Seebsaugor. *Quære per* MARKBY, *J.*—Whether the posting of

Mr. *C* to Kamroop, after his return from furlough, was a transfer from Seebsaugor within the meaning of s. 56 of Act X of 1872. IN THE MATTER OF PURSOORAM BOROOA

[I. L. R., 2 Calc., 117 : 25 W. R., Cr., 52

25. ——— **Jurisdiction to complete trial**—*Transfer of Magistrate while trying a case.*—Mr. *M* was appointed by the Local Government, under s. 37 of Act X of 1872, a Magistrate of the first class, under the designation of Joint Magistrate, in the district of Meerut. He was subsequently appointed to officiate as Magistrate of the district of Meerut during the absence of Mr. *F* or until further orders. While so officiating, he was appointed by a Government notification, dated the 10th July 1880, to officiate as Magistrate and Collector of Gorakhpur, "on being relieved by Mr. *F*." He was relieved by Mr. *F* in the forenoon of the 23rd July 1880; and in the afternoon of that day, under the verbal order of Mr. *F*, he proceeded to complete a criminal case which he had commenced to try while officiating as Magistrate of the district of Meerut. All the evidence in this case had been recorded, and it only remained to pass judgment. Mr. *M* accordingly passed judgment in this case and sentenced the accused persons to various terms of imprisonment. *Held* (SPANKIE, *J.*, dissenting) that Mr. *M* retained his jurisdiction in the district of Meerut so long as he stood appointed by the Government to that district and no longer, and the effect of the order of the 10th July 1880 was to transfer him from the district of Meerut from the moment he was relieved by Mr. *F* of the office of Magistrate of that district, and from that moment he no longer stood appointed to that district and could exercise no jurisdiction therein as a Magistrate of the first class; and that therefore the conviction of such accused persons had been properly quashed on the ground that Mr. *M* had no jurisdiction. EMPRESS OF INDIA *v.* ANAND SARUP

[I. L. R., 3 All., 563

26. ——— **Order passed by a Magistrate after his successor had entered upon his appointment**—*Criminal Procedure Code (1882), s. 12.*—By an order of the Local Government Babu Dila Ram, a Magistrate exercising jurisdiction in the Meerut district, was transferred from that district "on the arrival of Kunwar Kamta Prasad." *Held* by BANERJI, *J.*, that the effect of the order of transfer so expressed was that Babu Dila Ram ceased to have jurisdiction as a Magistrate within the Meerut district from the time when Kunwar Kamta Prasad commenced work as a Magistrate in that district. *Held* by AIKMAN, *J.*, that the effect of the said order was that Babu Dila Ram ceased to have jurisdiction on the arrival of Kunwar Kamta Prasad; but whether such arrival was his arrival within the limits of the district or at head-quarters was not clear from the order. *Empress of India* v. *Anand Sarup, I. L. R., 3 All., 513,* referred to. BALWANT *v.* KISHEN . . . **I. L. R., 19 All., 114**

27. ——— **Change of powers of Magistrate while case is proceeding**—*Notification taking effect retrospectively.*—On the 22nd of May 1878 a Deputy Magistrate, invested with third class powers only, sentenced an accused person to three months' imprisonment under s. 417 of the Penal Code, thus exercising second class powers. On appeal the Magistrate, on the 18th June, annulled the sentence and directed a new trial under s. 284 of the Code of Criminal Procedure. On the 26th of June the Government issued a notification, investing the Deputy Magistrate with second class powers, to take effect from the 25th of March to the 31st of May 1878. *Held* that the notification did not render the Magistrate's order illegal, as the Deputy Magistrate had no jurisdiction to exercise second class powers on the 22nd of May. IN THE MATTER OF SURGEE

[3 C. L. R., 281

28. ——— **Appointment of Magistrate**—*Time from which order of appointment dates.*—An Assistant Magistrate convicted an accused on the 12th August, and by an order of even date such Magistrate was invested with power to act as a Magistrate of the first class, although the fact that he had been so invested with full powers was not communicated to him until the 23rd idem. The accused appealed to the District Magistrate and was acquitted. On motion made to the High Court to set aside the acquittal, on the ground that, after the date of the order of the Lieutenant-Governor investing the Assistant Magistrate with further powers, no appeal lay to the District Magistrate,—*Held* that, even supposing the Lieutenant-Governor's order conferred first class powers upon the Assistant Magistrate from the moment it was made, it must be shown, before the District Magistrate's decision could be set aside, that the order of the Lieutenant-Governor was signed before the conviction. *Quære*—Whether an order investing a Magistrate with first class powers is of any force, or amounts to an authority to exercise such powers, until the order has been officially communicated to the Magistrate. IN THE MATTER OF THE PETITION OF MOHAMED ESHAK. CHUNDRO MARWARI *v.* MOHAMED ESHAK

[I. L. R., 6 Calc., 476

See EMPRESS OF INDIA *v.* ANAND SARUP

[I. L. R., 3 All., 563

29. ——— **Transfer of a Sub-Registrar invested with powers of a Special Magistrate**—*Criminal Procedure Code, s. 40—Madras Police Act (XXIV of 1859), s. 48.*—A Sub-Registrar, having been invested with magisterial powers with reference to offences under Act XXIV of 1859, was transferred from the place where he was officiating at the time he was so invested to another place, and there took on to his file and tried certain cases of offences under that Act. The District Magistrate having reported the cases for the orders of the High Court, the Court declined to quash his proceedings. QUEEN-EMPRESS *v.* VIRANNA

[I. L. R., 15 Mad., 132

3. TRANSFER OF MAGISTRATE DURING TRIAL—*concluded.*

30. ———— **Head Assistant Magistrate appointed Deputy Magistrate in same district**—*Criminal Procedure Code (1882), s. 350—Part-heard case.*—A Head Assistant Magistrate, during the pendency of a criminal case of which the trial was almost finished, was appointed to the office of Deputy Magistrate in another part of the same district. The case was transferred by an order of the District Magistrate to the file of the Deputy Magistrate. *Held* that the Deputy Magistrate could proceed with the trial from the point at which he had arrived as Head Assistant Magistarte. QUEEN-EMPRESS *v.* AHOBALAMATAM JEER

[I. L. R., 22 Mad., 47

4. POWERS OF MAGISTRATES.

31. ———— **Magistrate of first class**—*Sentence—Appellate Court—Enhancement of punishment.*—As an Appellate Court, a first class Magistrate has power to pass any sentence which a Subordinate Magistrate might have passed. ANONYMOUS CASE . . . . **I. L. R., 1 Mad., 54**

32. ———— **Magistrate of second class**—*Criminal Procedure Code, 1882, s. 206, and sch. III, arts. II, III (7)—Power to commit for trial—Case triable by Court of Session and Magistrate of the first class—Discharge of accused.*—A complaint of an offence made punishable by s. 392 of the Penal Code was brought in the Court of a Magistrate of the second class, who had been invested with the powers described in s. 206 of the Criminal Procedure Code. The Magistrate passed an order directing that the enquiry should be held in his Court, and accordingly an inquiry was held under the provisions of Ch. XVIII of the Criminal Procedure Code, and the accused was discharged. *Held* that powers conferred under s. 206 of the Criminal Procedure Code convey authority to carry into effect any of the provisions of Ch. XVIII of the Code; that the procedure to be adopted under Ch. XVIII is not confined to cases exclusively triable by a Court of Session, but is also applicable to cases which, in the opinion of the Magistrate concerned, ought to be tried by such Court; that the order of the Magistrate in the present case, directing enquiry to be held in his Court, must be taken to mean that, in his opinion, the case referred to was one which ought to be tried by a Court of Session; and that his order discharging the accused was therefore legal. RAMSUNDAR *v.* NIROTAM

[I. L. R., 6 All., 477

33. ———— *Penal Code, s. 71—Criminal Procedure Code, ss. 39, 235—Rioting, grievous hurt, and hurt—Punishment for more than one of several offences—Powers of Magistrate of first class conferred on Magistrate of second class during trial—Power to sentence as first class Magistrate.*—On the 8th August 1884 a Magistrate of the second class began an enquiry in a case in which several persons were accused of rioting and of voluntarily causing grievous hurt. On the 6th September the powers of a Magistrate of the first class were conferred on the Magistrate by an order of Government, which was communicated to him on the 8th September. On the 9th September, the case for the prosecution having closed, the Magistrate framed charges against each of the accused under ss. 323 and 325 of the Penal Code, recorded the statements of the accused and the evidence for the defence, and, on the 10th September, convicted the accused of all the charges, passing upon each of them, in respect of each charge, sentences which he could pass as a Magistrate of the first class, but could not have passed as a Magistrate of the second class. On appeal, the Sessions Judge, on the ground that the prisoners had committed the offence described in s. 148 of the Penal Code, held that the sentences passed by the Magistrate were illegal, as being inconsistent which the provisions of s. 71, paras. 2 and 4, and he accordingly reduced the sentences of imprisonment which the Magistrate had passed to the maximum of imprisonment which the Magistrate could have inflicted under s. 148. *Held* by the Full Bench (PETHERAM, *C.J.*, and BRODHURST, *J.*, dissenting) that the sentences passed by the Magistrate were legal. *Per* OLDFIELD, MAHMOOD, and DUTHOIT, *JJ.*, that, with reference to the terms of s. 39 of the Criminal Procedure Code, a Magistrate of the second class who has begun a trial as such and continued it in the same capacity up to the passing of sentence, and who, prior to passing sentence, has been invested with the powers of a Magistrate of the first class, is competent to pass sentence in the case as a Magistrate of the first class. *Per* PETHERAM, *C.J.*, that a case must be taken to be tried upon the day the trial commences; that, for all the purposes of the trial, the Magistrate in this case retained the status of a Magistrate of the second class, and that he was therefore not competent to pass sentence as a Magistrate of the first class. *Per* BRODHURST, *J.*, that the sentences passed by the Magistrate were, as a whole, illegal; that if he had convicted the accused under s. 148 of the Penal Code, his order would, under the circumstances, have been legal. QUEEN-EMPRESS *v.* PERSHAD

[I. L. R., 7 All., 414

34. ———— **Power to send boy to Reformatory School**—*Criminal Procedure Code, s. 399—Reformatory Schools Act, 1876, ss. 2, 7.*—The Reformatory Schools Act, 1876, provides only for male juvenile offenders being sent to reformatory schools by Magistrates of the first class, and s. 399 of the Code of Criminal Procedure, 1882, so far as it authorizes a Magistrate not of the first class to direct that a male juvenile offender be sent to a reformatory, is repealed. *Held* therefore, when a second class Magistrate directed a boy to be sent to a reformatory under s. 399 of the Code of Criminal Procedure, that the order was illegal. QUEEN-EMPRESS *v.* MADASAMI . . . . **I. L. R., 12 Mad., 94**

35. ———— **Joint Magistrate with powers of Magistrate of district**—*Criminal Procedure Code, 1861, ss. 15, 23, and 68.*—A Joint Magistrate who has been vested with the full powers of a Magistrate of a district, and to whom a case

MAGISTRATE—*continued.*

4. POWERS OF MAGISTRATES—*continued.*

is duly made over by the Magistrate, is competent, under ss. 15, 23, and 68 of the Code of Criminal Procedure, to initiate proceedings without any formal complaint against parties other than those mentioned in the original complaint. IN THE MATTER OF THE PETITION OF LUCHMIPUT SINGH **18 W. R., Cr., 43**

36. ———— Subordinate Magistrate—*Power of, to try case on report of police or on complaint.*—A Subordinate Magistrate (second class), who is not specially vested with powers under s. 66 (*a*) of the Code of Criminal Procedure, 1861 (as amended by Act VIII of 1869), has no jurisdiction to try a case on the report of a police officer or on a complaint directly preferred to him. IN THE MATTER OF THE PETITION OF SHANKAR ABAJI HOSHING

[6 Bom., Cr., 69

37. ———— Magistrate of third class—*Power to entertain charge in police report—Criminal Procedure Code, 1872, s. 123.*—A Magistrate of the third class can try a person accused of a cognizable offence, who has been forwarded to him by an officer in charge of a police station, under s. 123 of the Code of Criminal Procedure. REG. *v.* LALA SHAMBHU . . . . . **10 Bom., 70**

38. ———— Deputy Magistrate—*Default in appearance of party bailed.*—In consequence of the default in appearance of a person bailed, the surety was compelled to pay the penalty mentioned in the recognizance. The Deputy Magistrate applied for and received the permission of the District Magistrate to try the accused under s. 174 of the Penal Code. *Held* that the Deputy Magistrate had no jurisdiction to try the case, it not having been referred to him "either on complaint preferred directly to the Magistrate or on the report of a police officer." QUEEN *v.* TAJUMADDI LAHORY

[1 B. L. R., A. Cr., 1 : 10 W. R., Cr., 4

39. ———— Power of delegation of authority to receive complaints—*Criminal Procedure Code, 1869, ss. 23 (d) and 66 (b)—Order of Local Government, Effect of.*—The power of a Magistrate to delegate the receiving of complaints under s. 66 (*b*), Code of Criminal Procedure, is not equivalent to the power of the Local Government to invest with local jurisdiction under s. 23 (*d*), and no Magistrate can act under Ch. XX who has not been legally invested with the local jurisdiction. No order of the Local Government under the latter section can legally have retrospective effect. MACDONALD *v.* RIDDELL . . **16 W. R., Cr., 79**

40. ———— Power to refer case where no jurisdiction to try it—*Power to try case without complaint.*—A Subordinate Magistrate has no power to refer a case, which he has himself no jurisdiction to try, to a full-power Magistrate, and the latter has therefore, under such circumstances, no jurisdiction to take up the case without a complaint being made to him. REG. *v.* BAGU VALAD OWSARI

[4 Bom., Cr., 34

41. ———— Power to refer case sent for investigation by Civil Court—*Power to try case without complaint.*—*Held* that the Magistrate of a district, to whom a case has been sent for investigation by a Civil Court, has no power to refer it to a full-power Magistrate, and the latter has therefore, under such circumstances, no jurisdiction to take up the case without a complaint made to him. REG. *v.* DIP CHAND KHUSHAL . . **4 Bom., Cr., 30**

42. ———— Magistrate trying case himself after referring it—*Trial without recording proceeding under s. 36, Criminal Procedure Code, 1869.*—A Magistrate of a district, before whom a complaint had been made, without complying with the provisions of s. 66, Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate; and when the Deputy Magistrate had proceeded to some extent with the case, the Magistrate took it up and tried it himself. *Held* that the Magistrate, having once sent the case to the Deputy Magistrate for trial, had no power to try the case himself without formally recording a proceeding under s. 36 of Act VIII of 1869. QUEEN *v.* GIRISH CHANDRA GHOSE

[7 B. L. R., 513 : 16 W. R., Cr., 40

43. ———— Order for dismissal of complaint—*Discharge of accused—Code of Criminal Procedure, Act X of 1882, ss. 253, 259.*—A Magistrate is not competent to pass an order of dismissal or discharge in consequence of the absence of the complainant in warrant cases not coming within s. 259 of the Code of Criminal Procedure, except in cases coming within the last clauses of s. 253 of the same Code. GOVINDA DASS *v.* DULALL DASS

[I. L. R., 10 Calc., 67 : 13 C. L. R., 408

44. ———— Removal of case from file of Deputy Magistrate—*Criminal Procedure Code (Act XXV of 1861), s. 66—Act VIII of 1869, s. 36—Discretion of Court.*—Interference by the High Court in a case where the Magistrate had improperly exercised his discretion in removing a case from the file of a Deputy Magistrate. IN THE MATTER OF THE PETITION OF NABA KUMAR BANERJEE

[5 B. L. R., Ap., 45

45. ———— Power to refer to Subordinate Magistrate.—A full-power Magistrate has no authority to refer for disposal to a Subordinate Magistrate a complaint made originally to such full-power Magistrate. REG. *v.* PAPIDIO MUTHDO

[9 Bom., 167

46. ———— Reference to District Magistrate—*Powers of second class Magistrate—Committal to Court of Session—Criminal Procedure Code, 1882, s. 349.*—An Assistant Magistrate convicted a person under ss. 406 and 417 of the Penal Code, and referred the case to the District Magistrate for sentence under the provisions of s. 349 of the Code of Criminal Procedure. The District Magistrate was of opinion that the offence was one properly punishable under s. 420 of the Penal Code, and one which the Assistant Magistrate had no jurisdiction to deal with, and that therefore the reference under s. 349 was *ultra vires* and illegal. On a reference to the High Court,—*Held* that the Assistant Magistrate was not wholly without jurisdiction, as he was competent

MAGISTRATE—*continued.*

4. POWERS OF MAGISTRATES—*continued.*

to commit the accused to the Court of Session, though not to hold a trial, and that the District Magistrate might, if he thought proper, commit the accused to the Court of Session. ABDUL WAHAB *v.* CHANDIA [I. L. R., 13 Calc., 305

47. ———— *Criminal Procedure Code Amendment Act (III of 1884), s. 8 (6)—European British subject—Trial by District Magistrate with a jury—Procedure in a "trial by jury"—Criminal Procedure Code, s. 307—Power of District Magistrate dissenting from verdict to submit the case to High Court.*—The effect of cl. 6 of s. 8 of Act III of 1884 (Criminal Procedure Code Amendment Act) is to confer upon the District Magistrate precisely the same authority as the Sessions Judge has, under s. 307 of the Criminal Procedure Code, to submit to the High Court a case in which he disagrees with the verdict of a jury so completely that he considers a reference necessary. The expression "trial by jury," as used in cl. 6 of s. 8, does not only refer to proceedings up to the time when the jury pronounce their verdict, but refers generally to cases triable with a jury as contradistinguished from cases tried with the help of assessors or in any other manner mentioned in the Criminal Procedure Code. QUEEN-EMPRESS *v.* MCCARTHY . I. L. R., 9 All., 420

48. ———— **Magistrates not Justices of the Peace**—*Madras Boat Rules—Act IV of 1842—Act IX of 1846—Liability of owner under rule 7—Burden of proof.*—Under Act IX of 1846, the Madras Government is authorized to make, in respect of ports in the presidency, such regulations for the management of boats and such other matters as are provided for by Act IV of 1842 in respect of the Madras roads, being similar in principle to the provisions of the said Act, but varying in detail as local circumstances may require. Act IV of 1842, s. 24, empowers a Justice of the Peace of the town of Madras to hear and determine all pecuniary forfeiture and penalties had or incurred under or against that Act. *Held* that it was competent to the Government of Madras to provide that cases cognizable under the rules passed in accordance with Act IX of 1846 should be heard and determined by Magistrates not being Justices of the Peace. IN RE ROUTHAKONNI [I. L. R., 9 Mad., 431

49. ———— **Reference to first class Magistrate**—*Criminal Procedure Code, 1882, s. 349.*—A second class Magistrate having convicted a person of theft and sent him to a first-class Magistrate for enhanced punishment as an old offender, under s. 349 of the Code of Criminal Procedure, the first class Magistrate returned the prisoner to the second class Magistrate and directed that officer to commit the case to the Session. On a reference by the Sessions Judge, the High Court, while allowing the committal to stand, directed that in all cases referred under s. 349 of the Code of Criminal Procedure, the Court to which the case is referred should dispose of the case itself and not send it back to the Court by which the reference is made for committal to the Session. QUEEN-EMPRESS *v.* VIRANNA [I. L. R., 9 Mad., 377

MAGISTRATE—*continued.*

4. POWERS OF MAGISTRATES—*continued.*

50. ———— **Return by Subdivisional Magistrate of case referred to him**—*Criminal Procedure Code, s. 349—Order—Committal.*—Under s. 349 of the Criminal Procedure Code (Act X of 1882), a second class Magistrate transmitted a case to a Subdivisional Magistrate, being of opinion that a more severe punishment was deserved than he (the second class Magistrate) was empowered to inflict. The Subdivisional Magistrate, instead of disposing of the case himself, returned it to the second class Magistrate for committal, and thereupon the latter committed it. *Held* that the action of the Subdivisional Magistrate, in returning the case to the second class Magistrate, was illegal, as he was bound to pass a final judgment, sentence, or order. His order was therefore annulled, and he was directed to dispose of the case himself. QUEEN-EMPRESS *v.* HAVIA TELLAPA . I. L. R., 10 Bom., 196

51. ———— **Deputy Magistrate in charge of District Magistrate's office**—*Criminal Procedure Code, 1882, s. 437.*—A Deputy Magistrate placed in charge of the current duties of the District Magistrate's office is not thereby vested with jurisdiction under s. 437 of the Code of Criminal Procedure. RAMANUND MAHTAN *v.* KOYLASH MAHTAN . . . I. L. R., 11 Calc., 236

52. ———— **Reference to Deputy Magistrate for enquiry**—*Criminal Procedure Code, 1861, s. 273.*—Where a case was referred to a Deputy Magistrate for enquiry only, that enquiry cannot be regarded as a trial. Where a Deputy Magistrate is competent to try a case, it is doubtful whether it is in accordance with the spirit of s. 273 of the Criminal Procedure Code for the Magistrate to refer it to him for enquiry only. QUEEN *v.* BAWUL SINGH [1 N. W., Ed. 1873, 306

53. ———— **Reference to District Magistrate by Civil Court for enquiry**—*Power to refer it to Deputy Magistrate.*—A District Magistrate, to whom a case was sent in which four persons were specially committed by a Munsif for investigation of charges of forgery, perjury, etc., has no power under s. 273 of the Criminal Procedure Code, 1861, to refer it to the Deputy Magistrate. QUEEN *v.* RUTTEE RAM . . . . . . 2 N. W., 21

QUEEN *v.* ASSUF ALI KHAN . 3 N. W., 126

54. ———— **Power to transfer case sent for inquiry**—*Reference by Civil Court—Order of commitment by Subordinate Magistrate—Criminal Procedure Code, 1869, ss. 273 and 171.*—A Small Cause Court Judge sent a case for investigation to the Head Assistant Magistrate under the provisions of s. 171 of the Criminal Procedure Code. The Head Assistant Magistrate transferred the case for investigation to the Subordinate Magistrate, who committed the case to the Sessions. *Held* that the order of commitment was bad. S. 273 of the Code of Criminal Procedure is inapplicable to a case referred to a Magistrate under s. 171. ANONYMOUS [6 Mad., Ap., 41

MAGISTRATE—*continued.*

4. POWERS OF MAGISTRATES—*continued.*

55. ——— **Reference by District Magistrate to Subordinate Magistrate**—*Criminal Procedure Code, 1861, Ch. XIX.*—The Magistrate of a district or division is authorized, under s. 273 of the Criminal Procedure Code, to transfer proceedings under Ch. XIX of that Code to his subordinates. QUEEN *v.* ABDOOLLAH . **2 N. W., 401**

56. ——— **Reference to full-power Magistrate**—*Subordinate Magistrate—Criminal Procedure Code, 1861, Ch. XVI.*—*Held* that the Magistrate of a district before whom a criminal case is brought, either on complaint preferred directly to such Magistrate or on the report of a police officer, cannot, under s. 273 of the Criminal Procedure Code, refer such case to a full-power Magistrate. A full-power Magistrate, though executively inferior to the Magistrate of the district, was not a Subordinate Magistrate within the meaning of Ch. XVI of the Criminal Procedure Code, nor was he "immediately subordinate" to the District Magistrate within the meaning of s. 434 of the same Code. REG. *v.* KRISHNA PARASHRAM . . **5 Bom., Cr., 69**

57. ——— **Power to refer cases for inquiry**—*Criminal Procedure Code, 1861, s. 273.*—Under s. 273 of the Criminal Procedure Code, a full-power Magistrate may refer for enquiry to a Subordinate Magistrate (criminal cases, that is, *primâ facie*, any criminal case). The reference may be for inquiry or for trial by the Subordinate Magistrate, or with a view to commitment either to a Court of Session or the High Court. ANONYMOUS **[2 Mad., Ap., 40**

58. ——— *Criminal Procedure Code, 1869, ss. 68, 273.*—S. 273 of the Criminal Procedure Code, 1869, applies only to criminal cases brought before the Magistrate of the district, and either on complaint preferred direct to such Magistrate or on the report of a police officer. There is no provision of the Code which authorizes a Magistrate acting under s. 68 of the Code to refer the case for enquiry or trial to another Magistrate. S. 68 merely authorizes him to take cognizance of offences without complaint and to issue summons or warrant. ANONYMOUS . . . . **7 Mad., Ap., 2**

59. ——— *Criminal Procedure Code, 1861, s. 273—Criminal Procedure Code, 1869, s. 23 (g)—Power to refer cases to other Magistrates.*—S. 23 (*g*) of the Code of Criminal Procedure, 1869, makes the Magistrate of a district competent to refer cases under s. 273 of the Code to a Divisional Magistrate exercising full powers. ANONYMOUS . . . . . **7 Mad., Ap., 5**

60. ——— *Criminal Procedure Code (Act XXV of 1861), s. 273—Grievous hurt.*—A Magistrate has no power, under s. 273 of the Code of Criminal Procedure, to refer a case of grievous hurt for trial to a Deputy Magistrate having only the power of a Subordinate Magistrate of the second class. GABIND CHANDRA BISWAS *v.* HEM CHANDRA BARDER . . **6 B. L. R., Ap., 115**

MAGISTRATE—*continued.*

4. POWERS OF MAGISTRATES—*continued.*

61. ——— *Reference of case after initiation to Subordinate Magistrate—Criminal Procedure Code, 1872, ss. 44, 45, 47, 49.*—In all cases in which a Magistrate refers a complaint already initiated to a Subordinate Magistrate for inquiry, the procedure adopted for the purpose ought to conform either to s. 44 or s. 49 of the Criminal Procedure Code. RAMZAN ALI *v.* DURPO KOMILLA **[24 W. R., Cr., 58**

62. ——— *Criminal Procedure Code, 1872, s. 45.*—Pending inquiry into a charge of house-breaking, the second class Magistrate of B Division was transferred to A Division. The case was transferred to his file by the District Magistrate. In the course of inquiry it appeared to the second class Magistrate that the offence committed was robbery, and therefore not triable by him. Proceedings were accordingly stayed and the case submitted to the Magistrate of the division. The Magistrate of the division, considering he had no jurisdiction as the offence was not committed in his division, forwarded the case to the Magistrate of the district. The Magistrate of the district ordered that an inquiry should be held, and that the case should be committed to the Sessions by the second class Magistrate if there was sufficient evidence. The second class Magistrate accordingly committed the case to the Sessions. *Held* that the order of the District Magistrate was illegal. QUEEN *v.* ADAPA VENKANNA . . . **I. L. R., 4 Mad., 327**

63. ——— **Power of District Magistrate to refer case referred to him for trial**—*Reference to full-power Magistrate—Criminal Procedure Code, 1861, s. 276.*—It is competent for the Magistrate of a district to refer for trial to a full-power Magistrate a case submitted, under s. 276 of the Code of Criminal Procedure, to such Magistrate of the district by a Subordinate Magistrate. REG. *v.* MANGLA BHULIA . . **7 Bom., Cr., 69**

64. ——— *Power of, to pass orders in cases before subordinate Court without transfer to his own Court—Judicial enquiry before issue of process, Legality of—Code of Criminal Procedure, ss. 192, 202, 203, and 204.*—*Held*, where the complaints were not made to the District Magistrate nor had the cases based on those complaints been withdrawn to his Court by any order, but were in the Court of a Joint Magistrate, who had examined the complainants, that the District Magistrate was not justified in interposing in the trial of the cases, and had no authority under the law to pass any order in those cases. That even if the cases had been removed by the District Magistrate to his own Court for trial, it was very questionable whether the District Magistrate could pass orders directing a judicial inquiry by another Magistrate before the issue of processes so as to postpone the trial. JHUMUCK JHA *v.* PATHUK MANDAL . . . **I. L. R., 27 Calc., 798**

65. ——— *Code of Criminal Procedure (Act V of 1898), ss. 192, cls. (1) and (2), 529 (f), 145—Transfer, Order of, made by a Magistrate not empowered by law in that*

behalf and proceedings taken under such transfer whether void.—A Magistrate of the first class, not being a District Magistrate or a Subdivisional Magistrate, passed an order under s. 145 (*1*), Code of Criminal Procedure, and transferred the case to another Magistrate, and proceedings having been taken by the latter, the same was sought to be set aside as being without jurisdiction. *Held* that, although such transfer is not authorized by s. 192 (*2*) of the Code of Criminal Procedure, still the proceedings taken upon such transfer may be considered saved under the term of s. 529, cl. (*f*), of the Code. Under the terms of s. 192 (*2*), a Magistrate of the first class, even when duly empowered to transfer cases, can only transfer an enquiry or trial relating to an offence. *Queen-Empress* v. *Chidda, I. L. R., 20 All., 40,* explained and distinguished. AKBAR ALI KHAN *v.* DOMI LAL

[4 C. W. N., 821

66. ———— *Reference of case for trial of offence by subordinate Court—Power of District Magistrate to issue warrants for arrest of other persons concerned in that offence.*—Where cognizance was taken of an offence on a police report and the case was made over to a Subordinate Magistrate,—*Held* that, so long as the case connected with that offence remained with the Subordinate Magistrate, no other Magistrate was competent to deal with it, and that applications for warrants against other persons concerned in that offence should be made to the Magistrate before whom the case was and to no other Magistrate. GOLAPDY SHEIKH *v.* QUEEN-EMPRESS . . . . I. L. R., 27 Calc., 979

IN THE MATTER OF GOLABDY SHEIKH

[4 C. W. N., 827

67. ———— *Criminal Procedure Code, 1882, ss. 155, 202, and 203—Magistrate's power to direct a local investigation by the police—Complaint of an offence cognizable by a Magistrate—Examination of complainant.*—S. 155 of the Code of Criminal Procedure (Act X of 1882) deals only with the powers of police officers. It confers no power or authority on Magistrates to direct a local investigation by the police, or call for a police report. It is not a proper course for a Magistrate, when a complaint is made before him of an offence of which he can take cognizance, to refer the complaint to a police officer. He is bound to receive the complaint, and after examining the complainant to proceed according to law. IN RE JANKIDAS GURU SITARAM

[I. L. R., 12 Bom., 161

68. ———— *District Magistrate, Power of, to order further enquiry—Improper discharge—Sessions case, Further enquiry directed in—Criminal Procedure Code (Act X of 1882), ss. 436, 437.*—It is competent to a District Magistrate who has issued a notice to an accused person who in his opinion has been improperly discharged to show cause under s. 436 of the Criminal Procedure Code why he should not be committed to the Court of Sessions, on cause being shown to order a further inquiry under the provisions of s. 437. QUEEN-EMPRESS *v.* MANIRUDDIN MUNDUL . I. L. R., 18 Calc., 75

69. ———— *Penal Code, s. 228—Insulting a Magistrate—Criminal Procedure Code, s. 195.*—The accused intentionally insulted a Village Munsif in the discharge of his magisterial duties: the Village Munsif did not prefer a complaint or sanction a prosecution, but a second class Magistrate charged the accused under Penal Code, s. 228, on a police report and convicted him. *Held* that the second class Magistrate was competent to try the complaint, and the conviction was right. QUEEN-EMPRESS *v.* VENKATASAMI

[I. L. R., 15 Mad., 131

70. ———— *Criminal Procedure Code, s. 191—Magistrate taking cognizance of an offence on his own personal knowledge—Right of accused to have the case transferred.*—Where a Magistrate was found to have taken cognizance of an offence under cl. (*c*) of s. 191 of the Code of Criminal Procedure,—*Held* that he had no power, on an application being made under the last clause of the section abovenamed, to refuse to transfer the case. QUEEN-EMPRESS *v.* HAWTHORNE

[I. L. R., 13 All., 345

71. ———— *Criminal Procedure Code (Act X of 1882), s. 191 (c); (Act V of 1898), ss. 190, 191—Transfer of case or commitment to Sessions Court.*—A Magistrate, when a valid objection is taken under Criminal Procedure Code, s. 191, that he cannot try a case, is not bound to transfer it, but may elect to commit the case to a Court of Session. QUEEN-EMPRESS *v.* FELIX

[I. L. R., 22 Mad., 148

72. ———— *Criminal Procedure Code, s. 454—European British subject—Relinquishment of right to be dealt with as such British subject—Trial by second class Magistrate.*—A European British subject was prosecuted in the Court of a second class Magistrate, who was a Hindu, on a charge of mischief. The accused appeared and did not plead to the jurisdiction of the Magistrate, who proceeded with and disposed of the case. *Held* that the Magistrate had not acted *ultra vires,* since the accused had relinquished his right to be dealt with as a European British subject. QUEEN-EMPRESS *v.* BARTLETT

[I. L. R., 16 Mad., 308

73. ———— *Criminal Procedure Code (Act X of 1882), s. 164—Oaths Act (X of 1873), ss. 4, 5, 14—False evidence.*—A Magistrate, acting under Criminal Procedure Code, s. 164, has power to administer an oath, and a charge of perjury can be framed with regard to statements made before him on oath when he is so acting. QUEEN-EMPRESS *v.* ALAGU KONE

[I. L. R., 16 Mad., 421

74. ———— *Criminal Procedure Code (1882), s. 487—Power of Magistrate to try an accused person for disobedience of a summons issued by him as Mamlatdar—Penal Code, s. 174—Construction of statute.*—A Magistrate is not debarred by s. 487 of the Code of Criminal Procedure

(Act X of 1882) from trying an accused person under s. 174 of the Penal Code (XLV of 1860) for disobedience of a summons issued by him in his capacity of Mamlatdar. In construing s. 487 of Act X of 1882, effect must be given to the words "as such Judge or Magistrate," and these words must be read in connection with all the three classes of offences previously referred to. *Queen-Empress* v. *Sarat Chandra Rakhit, I. L. R., 16 Calc., 766,* followed. QUEEN-EMPRESS *v.* RAIJI DAJI

[I. L. R., 18 Bom., 380

75. ——————— *Distress warrant—Claim by third party to the property distrained—Criminal Procedure Code (1882), s. 386.*—A Magistrate, who has issued a distress warrant under s. 386 of the Criminal Procedure Code, is not required by law to try any claim which may be preferred to the ownership of the property distrained. QUEEN-EMPRESS *v.* GASPER . **I. L. R., 22 Calc., 935**

76. ——————— *Criminal Procedure Code (1882), s. 144—Executive powers of Magistrate—Order which might have the effect of interfering with the execution of a decree of a Civil Court.*—A District Magistrate has no power, either under s. 144 of the Code of Civil Procedure or in his executive capacity, to make an order for the re-building of a structure on private land which has fallen into disrepair or been pulled down; neither has he power to make any order which would have the direct effect of interfering with the execution of a decree of a Civil Court. IN THE MATTER OF THE PETITION OF RAHMAT-ULLAH

[I. L. R., 17 All., 485

77. ——————— *Criminal Procedure Code (Act X of 1882), s. 497—Transfer of case—Bail—Order admitting to bail—Power of District Magistrate to revise order.*—An order admitting an accused person to bail made by a Magistrate is not revisable by a District Magistrate. If the latter considers the order wrong, he can refer it to the High Court. QUEEN-EMPRESS *v.* SADASHIB NARAIN JOSHI . . **I. L. R., 22 Bom., 549**

78. ——————— *Criminal Procedure Code (Act V of 1898), s. 190, sub-s. (1), cls. (a) and (c), and s. 191—Taking cognizance of offence by Magistrate upon receiving a complaint of facts—Right of the accused to claim a transfer—Penal Code (Act XLV of 1860), ss. 193 and 195—Sanction unnecessary when offence alleged to have been committed in the course of an investigation by the police.*—The complainant made a complaint to the Magistrate by a petition in which he named three persons and charged them with offences under certain sections of the Penal Code. The Magistrate thereafter examined the complainant and some witnesses on his behalf, and issued summonses against the three persons mentioned in the petition of complaint as well as against the petitioner in this case for an offence other than those mentioned in the said petition. *Held* the Magistrate took cognizance of the offence as against the petitioner under cl. (*a*), and not cl. (*c*) of sub-s. (*1*) of s. 190, and consequently he was not debarred by s. 191 of the Criminal Procedure Code from trying the case. No sanction under s. 195 of the Criminal Procedure Code is necessary for taking cognizance of an offence under s. 193 of the Penal Code when the alleged false evidence is said to have been fabricated, not in relation to any proceeding pending in any Court, but in the course of an investigation by the police into the matter of an information received by them. JAGAT CHANDRA MOZUMDAR *v.* QUEEN-EMPRESS

[I. L. R., 26 Calc., 786
3 C. W. N., 491

See QUEEN-EMPRESS *v.* ABDUL RAZZAK KHAN

[I. L. R., 21 All., 109

and QUEEN-EMPRESS *v.* FELIX

[I. L. R., 22 Mad., 148

5. REFERENCE BY OTHER MAGISTRATES.

79. ——————— **Power in case referred for enhancement of punishment**—*Criminal Procedure Code, 1872, s. 46—Power to order committal for trial.*—A Magistrate, to whom a case is referred for enhancement of punishment under s. 46 of the Criminal Procedure Code, may order the committal of the case for trial by the Sessions Court. IN THE MATTER OF CHINNIMARRIGADU

[I. L. R., 1 Mad., 289

80. ——————— *Criminal Procedure Code, 1872, s. 46.*—A Magistrate to whom a case is referred for enhanced punishment has no power to send the case for enquiry to another Magistrate. QUEEN *v.* VELAYUDUM

[I. L. R., 4 Mad., 233

81. ——————— *Criminal Procedure Code, 1872, s. 46—Return of case referred under s. 46.*—It is not competent for a Magistrate, to whom a case has been referred under s. 46 of the Code of Criminal Procedure, to return the case to the referring Magistrate, on the ground that in his opinion the latter has power to pass an adequate sentence. All orders passed after a case has been so returned are illegal. DULA FAQUEER *v.* BHAGIRAT SIRCAR

[6 C. L. R., 276

82. ——————— *Criminal Procedure Code, 1872, ss. 41, 44, 46, and 284—Covenanted Magistrate of the third class on tour in division of a district—Subordination to Magistrate of the division.*—A Magistrate of a division of a district made over, under s. 44 of Act X of 1872, a case of theft for trial to a Magistrate of the third class, who was on tour in his division, in the discharge of his public duties. The latter, who had jurisdiction, found the accused person guilty, and considering that the accused person ought to receive more severe punishment than he was competent to inflict, under the provisions of s. 46 of Act X of 1872, submitted his proceedings to the former, who thereupon under the provisions of the same section, passed sentence on the accused person. *Held* that the third class Magistrate was "subordinate" to the Magistrate who

originally made over the case to him, within the meaning of s. 41 of Act X of 1872, and the procedure of the Magistrate was therefore according to law. *Held* also that, assuming that he was not so "subordinate," the provisions of s. 284 of Act X of 1872 would not have been applicable, as those provisions do not refer to the illegality of a sentence or to the case of a Magistrate transferring a case who has no power of transfer, but to the invalidity of a conviction for want of jurisdiction. EMPRESS *v.* KALLU
[I. L. R., 4 All., 366

83. ———— Power to annul conviction in offence not triable by Subordinate Magistrate—*Criminal Procedure Code, 1872, s. 284.*—Where, on appeal from a conviction by a Subordinate Magistrate of an offence triable by him, the Magistrate of the district is of opinion that the evidence in the case establishes a graver offence against the accused not triable by the Subordinate Magistrate,—*Held* that the Magistrate of the district has no power to annul the conviction and sentence under s. 284 of the Code of Criminal Procedure, but should report the matter for the orders of the High Court. REG. *v.* TUKARAM RAGHO . . 12 Bom., 234

84. ———— Reference to Magistrate with power to hear appeals—*Criminal Procedure Code, 1861, s. 276—Reference of cases by Subordinate Magistrates.*—*Held* that a full-power Magistrate, though empowered to hear appeals, is not thereby placed in the position of the Magistrate of the district, and that therefore Subordinate Magistrates should not refer cases, under s. 276 of the Code of Criminal Procedure, to such Magistrate, but to the Magistrate of the district, to whom alone they are subordinate. REG. *v.* BHAGU BIN SHABAJI
[5 Bom., Cr., 47

85. ———— Reference to Magistrate under s. 277, Criminal Procedure Code, 1861—*Power to send to Sessions for higher sentence.*—Where a case is referred to a Magistrate under s. 277 of the Code of Criminal Procedure, the Magistrate alone has jurisdiction, and cannot commit to the Sessions, on the ground that he considers the sentence which he is empowered to inflict is insufficient. IN RE BHICKAREE MULLICK
[10 W. R., Cr., 50

86. ———— *Subordinate Magistrate.*—*Held* that a Subordinate Magistrate acted correctly, under s. 277 of the Code of Criminal Procedure, 1861, in referring a case, not to the Magistrate of the district, but to the Assistant Magistrate in charge of the subdivision to which he was attached. IN THE MATTER OF NIDREE TELHINEE
[11 W. R., Cr., 7

87. ———— *Issue of circulars.*—Circulars issued by a District Magistrate forbidding all the Subordinate Magistrates from taking up cases, if they thought they should have to act under the provisions of s. 277 of the Criminal Procedure Code, 1861, were, on reference by a Sessions Judge, annulled as beyond the competence of the District Magistrate, and based on a misunderstanding of s. 277. REG. *v.* GUNA BIN REGNAK
[3 Bom., Cr., 29

88. ———— *Power to dispose of case.*—On reference by a District Magistrate, a sentence passed by a full-power Magistrate, in a case submitted to him by a second class Subordinate Magistrate, under s. 277 of the Criminal Procedure Code, 1861, annulled, as the Magistrate of the district alone had power to dispose of cases under that section. REG. *v.* KUBERIO RATNO
[4 Bom., Cr., 8

ANONYMOUS . . . 5 Mad., Ap., 43

89. ———— *Criminal Procedure Code, ss. 195, 476—Reference to "nearest Magistrate of the first class"—Sanction to Prosecution.*—A Head Assistant Magistrate sanctioned a prosecution under Criminal Procedure Code, s. 195, on the charge of preferring a false complaint, and forwarded his proceedings to the Deputy Magistrate of another division of the district who ordinarily had no jurisdiction to try offences committed in the division under the Head Assistant Magistrate. *Held* that the Deputy Magistrate had jurisdiction to try the charge. QUEEN-EMPRESS *v.* NAGAPPA
[I. L. R., 16 Mad., 461

6. COMMITMENT TO SESSIONS COURT.

90. ———— Obligation to commit—*Perjury committed in proceeding under s. 318, Criminal Procedure Code, 1861.*—A Magistrate has no jurisdiction to try, but must commit to the Sessions, a case of perjury committed before him in the course of a proceeding taken under s. 318 of the Code of Criminal Procedure. QUEEN *v.* BULORAM
[7 W. R., Cr., 104

91. ———— Power to commit—*Criminal Procedure Code, 1861, s. 171—False evidence—Preliminary inquiry.*—A Munsif sent a witness before a Magistrate, in order that the latter might hold a preliminary investigation on a charge of giving false evidence, under s. 193 of the Penal Code. The Magistrate, without completing the investigation, sent the case back to the Munsif, who finally committed the prisoner. *Held* that, while the Munsif could have committed the prisoner himself under s. 173 of the Criminal Procedure Code, without sending him before the Magistrate to conduct the preliminary investigation on a charge of giving false evidence, the Magistrate had acted irregularly in not himself completing the inquiry. Case remanded to the Magistrate accordingly. QUEEN *v.* JAN MAHOMED
[3 B. L. R., A. Cr., 47 : 12 W. R., Cr., 41

92. ———— *Case sent by Civil Court for investigation under s. 171, Criminal Procedure Code, 1861.*—When a Civil or Criminal Court sends a case for investigation to a Magistrate under s. 171 of the Code of Criminal Procedure, the Magistrate to whom the case is sent must himself hold the investigation. ANONYMOUS [**6 Mad., Ap., 2**

93. ——— *Commitment by Subordinate Magistrate in case not exclusively triable by Sessions Court.*—A commitment by a Subordinate Magistrate to the Sessions Court with respect to offences not exclusively triable by the Sessions Court is good. ANONYMOUS . **6 Mad., Ap., 17**

94. ——— *Criminal Procedure Code, 1872, ss. 46, 143—Order—Committal.*—The word "order" in s. 46 of the Code of Criminal Procedure, associated as it is with the words "judgment and sentence," means a final order,—*i.e.*, one disposing of a case so far as the Magistrate, to whom a Subordinate Magistrate submits the proceedings of the case for higher punishment, is concerned. It does not deprive that Magistrate of the exercise of his discretion as to its being a proper case for the Sessions, and of the power of committing it for trial given by s. 143 of the Code of Criminal Procedure. IMPERATRIX *v.* ABDULLA **I. L. R., 4 Bom., 240**

95. ——— **Power to direct committal**—*Sessions Judge, Power of.*—A Magistrate of the district has no power to direct a Subordinate Magistrate to commit for trial in the Sessions Court accused persons who have been discharged by the Subordinate Magistrate, and such committal when made by the Subordinate Magistrate is illegal. The Sessions Court is the only authority empowered by law to direct a committal. ANONYMOUS [**4 Mad., Ap., 31**

96. ——— *Commitment by Sessions Judge to Magistrate—Trial by Joint Magistrate.*—Where a Magistrate of a district who had discharged a prisoner was subsequently directed by the Sessions Judge to commit him for trial, and the commitment was eventually made by the Joint Magistrate,—*Held* that such commitment was not illegal. Although ordinarily the order of the Sessions Judge would be directed to the Magistrate who had discharged the accused person, yet there is nothing in the Criminal Procedure Code to prevent such Sessions Judge from directing a committal by any Magistrate who is authorized to make commitments. QUEEN *v.* LEKHRAJ . . . **2 N. W., 132** [**S. C. Agra., F. B., Ed. 1874, 206**

97. ——— *Reference to Sessions Court—Criminal Procedure Code, 1861, 1869, s. 435.*—Where a Magistrate of the district thinks that in any case tried by a Magistrate subordinate to him a failure of justice has occurred, in consequence of the latter not committing the accused for trial at the Court of Session, he should refer the case, with an expression of his opinion, to the Sessions Court, which has power, under s. 435 of the Code of Criminal Procedure, to direct a commitment to the Sessions Court for trial. S. 435 having been altered by Act VIII of 1869, it is no longer necessary to refer such cases to the High Court, as required by the Court's ruling in *Reg.* v. *Chanveraya bin Chanbasaya, 5 Bom., Cr., 65.* REG. *v.* KALA BIN HARI GAMA [**7 Bom., Cr., 72**

98. ——— *Criminal Procedure Code (Act VIII of 1869), s. 435—Case dismissed without sufficient inquiry.—Semble*—When a charge is dismissed by a Subordinate Magistrate without inquiry, a Magistrate has no power, under s. 435 of Act VIII of 1869, to order a trial before another Magistrate, but can only order a commitment to the Court of Session. QUEEN *v.* HIRALAL SING [**5 B. L. R., Ap., 48 : 14 W. R., Cr., 8**

99. ——— *Power to set aside finding where the Magistrate acted without jurisdiction—Criminal Procedure Code, 1869, s. 435.*—Where a Subordinate Magistrate of the first class acting without jurisdiction held a trial and acquitted the accused person under s. 255 of the Code of Criminal Procedure,—*Held* that the High Court alone could set aside the finding under s. 404, and that the Magistrate of the district had no power to do so under s. 435 of the Code as amended by Act VIII of 1869. ANONYMOUS . . **4 Mad., Ap., 61**

100. ——— *Magistrate and Joint Magistrate, Power of—Preliminary enquiry.*—Legally, and for the purposes of a commitment, a Magistrate and Joint Magistrate have equal powers, and the Joint Magistrate is not bound to act upon the instructions of the Magistrate in a judicial proceeding, such as the commencement of a preliminary enquiry. QUEEN *v.* TILKOO GOALA **8 W. R., Cr., 61**

101. ——— *Power to direct re-trial—Criminal Procedure Code, 1861, s. 435.*—Where a Subordinate Magistrate discharges a person accused of an offence not being an offence specified in the seventh column of the schedule to the Criminal Procedure Code as trial by the Court of Session only or by the Court of Session or Magistrate of the district, the District Magistrate has no power to direct a re-trial under the provisions of s. 435 of the Code of Criminal Procedure. REG. *v.* SUBHANA BIN GANU . . . . . . **9 Bom., 169**

102. ——— *Courts of Head Assistant Magistrate and Deputy Magistrate—Trial of Munsif for extortion—Mad. Reg. VI of 1816, s. 8.*—The Courts of the Head Assistant Magistrate and of the Deputy Magistrate have jurisdiction to try a District Munsif on charges of extortion in the course of the exercise of his judicial functions. The Sessions Judge is a proper person to sanction the prosecution. *By* INNES, *J.*—The rule (laid down in s. 8, Regulation VI of 1816) requiring the committal of such cases to the Court of Session has been impliedly, though not expressly, repealed. IN THE MATTER OF THE PETITION OF NARAYANASAMI AYYAR [**7 Mad., 182**

103. ——— **Duty of Magistrate to commit**—*Magistrate making enquiry in Sessions case—Discharge of accused—Criminal Procedure Code,*

MAGISTRATE—*continued.*

6. COMMITMENT TO SESSIONS COURT —*continued.*

1872, s. 195.—A Magistrate enquiring into a case exclusively triable by the Court of Session is not bound to commit the accused person for trial, where the evidence for the prosecution, if believed, would end in a conviction, but is competent, if he discredits such evidence, to discharge the accused. LACHMAN *v.* JUALA . . . . **I. L. R., 5 All., 161**

104. ——— *Enquiry into case triable by Court of Session.*—*Held,* where a Magistrate had tried a case exclusively triable by a Court of Session, and the conviction of the accused person and the sentence passed upon him at such trial were for that reason annulled by the Court of Session, but the proceedings held at such trial were not annulled, that such Magistrate might commit the accused person to the Court of Session on the evidence given before him at such trial. EMPRESS *v.* ILAHI BAKHSH . . . **I. L. R., 2 All., 910**

105. ——— *Criminal Procedure Code (1898), s. 208—Duty of Magistrate enquiring into a case triable by the Court of Session to take the evidence of all the witnesses produced by the accused.*—A Magistrate enquiring into a case under Ch. XVIII of the Code of Criminal Procedure is not empowered to frame a charge or make out an order for commitment until and after he has taken all such evidence as the accused may produce before him for hearing. QUEEN-EMPRESS *v.* AHMADI **[I. L. R., 20 All., 264**

106. ——— *Criminal Procedure Code (1882), s. 253—Duty of Magistrate in dealing with the evidence produced in a case triable by a Court of Session.*—*Held* that a Magistrate enquiring into a case triable by the Court of Session is not bound to commit simply because the evidence for the prosecution, if believed, discloses a case against the accused, but he is competent to consider the reliability of such evidence and to discharge the accused if he find it untrustworthy. IN RE THE PETITION OF KALYAN SINGH **I. L. R., 21 All., 265**

107. ——— *Criminal Procedure Code (Act X of 1882), s. 349.*—Under s. 349 of the Criminal Procedure Code, a second class Magistrate transmitted a case to the District Magistrate, being of opinion that a more severe punishment was deserved than he was empowered to inflict. The District Magistrate returned the record to the second class Magistrate, directing him to commit the case to the Sessions Court. The committal directed was duly made. The High Court refused to interfere in the matter, holding that the proceedings of the second class Magistrate were not illegal, and that there was nothing done which took away the jurisdiction of the second class Magistrate to commit. QUEEN-EMPRESS *v.* CHANDU GOWALA **[I. L. R., 14 Calc., 355**

See QUEEN-EMPRESS *v.* HAVIA TELLAPA **[I. L. R., 10 Bom., 196**

108. ——— *Criminal Procedure Code, 1882, ss. 209 and 210—Discharge of accused—Magistrate, Obligation of, to commit when primâ facie case is made out against accused.*—Under ss. 209 and 210 of the Criminal Procedure Code (Act X of 1882), a Magistrate holding a preliminary enquiry ought to commit the accused to the Court of Session when the evidence is enough to put the party on his trial, and such a case obviously arises when credible witnesses make statements which, if believed, would sustain a conviction. QUEEN-EMPRESS *v.* NAMDEV SATVAJI **[I. L. R., 11 Bom., 372**

MAGISTRATE—*continued.*

6. COMMITMENT TO SESSIONS COURT —*concluded.*

109. ——— *Penal Code, ss. 75, 411—Punishment not within jurisdiction of Magistrate.*—Where an offence under s. 411 read with s. 75 of the Penal Code appears to be deserving of a greater punishment than the Magistrate trying it can award, the best course for him to adopt is to commit the accused for trial to the Court of Session. QUEEN-EMPRESS *v.* KHALAK **I. L. R., 11 All., 393**

110. ——— *Power of commitment to Sessions Judge—Code of Criminal Procedure (1882), s. 254—Penal Code (Act XLV of 1860), s. 147—Circular order No. 9 of 6th September 1869—Rioting.*—The commitment of a case under s. 147 of the Penal Code to the Court of Session by a Deputy Magistrate is not necessarily illegal. Although the case is shown to be triable only by a Magistrate under the second schedule of the Criminal Procedure Code, there is nothing in s. 254 of the Criminal Procedure Code which prevents a Magistrate committing a case under s. 147 of the Penal Code to the Court of Session, provided he finds that the accused has committed an offence, which, in his opinion, cannot be adequately punished by him. The instructions contained in Circular No. 9 of 6th September 1869 are to be read subject to the provisions of the Criminal Procedure Code. QUEEN-EMPRESS *v.* KAYEMULLAH MANDAL . **I. L. R., 24 Calc., 429**
[1 C. W. N., 414

7. WITHDRAWAL OF CASES.

111. ——— **Withdrawal of case for trial**—*Criminal Procedure Code, 1872, ss. 45, 47, 328, 329.*—The provisions of Act X of 1872, s. 328, only apply when a Magistrate, after hearing part of the evidence in a case, ceases to exercise jurisdiction, and is succeeded by another, who has, and exercises, jurisdiction in such case. So s. 329 only applies to "enquiries" under Ch. XV, and only when the Magistrate is "unable" to complete the enquiry himself. But when a case under trial is removed under s. 47, the whole proceedings must commence *de novo* in the manner provided for in s. 45. QUEEN *v.* KHAN MAHOMED . . **24 W. R., Cr., 53**

112. ——— **Power to withdraw case**—*Criminal Procedure Code, 1872, s. 47.*—Magistrates of districts should exercise the powers conferred on them by s. 47 of Act X of 1872 only when it is absolutely necessary for the interests of justice that they should do so; and when one of the parties to a

MAGISTRATE—*continued.*

7. WITHDRAWAL OF CASES—*continued.*

case applies to have it withdrawn from the Magistrate enquiring into or trying it and referred to another Magistrate, the Magistrate of the district should give the other party notice of such application, and an opportunity of showing cause why such application should not be granted. Where the accused in a criminal case applied to the Magistrate of the district, after the evidence of the complainant and his witnesses had been taken, to withdraw such case from the Subordinate Magistrate trying it and to try it himself, such application not containing any sufficient reason justifying the granting of the same, and the Magistrate of the district, without giving the complainant notice of such application or opportunity of showing cause against it, and without stating any reason, withdrew such case from the Subordinate Magistrate trying it and referred it to another for trial, the High Court set aside the order of the District Magistrate and of the Magistrate to whom such case was referred for trial, and directed the Magistrate from whom it had been withdrawn to proceed with it. IN THE MATTER OF THE PETITION OF UMRAO SINGH *v.* FAKIR CHAND

[I. L. R., 3 All., 749

113. ——————— *Criminal Procedure Code, 1872, ss. 47, 491—Act XI of 1874, s. 6.*—The provisions of s. 47 of the Code of Criminal Procedure, Act X of 1872, as amended by s. 6 of Act XI of 1874, are wide enough to empower a District Magistrate to withdraw a case falling under s. 491 of the same Code. IN THE MATTER OF THE PETITION OF DINENDRO NATH SHANIAL

[I. L. R., 8 Calc., 851

114. ——————— **Transfer of criminal case** —*Criminal Procedure Code (Act X of 1882), ss. 17, 528.*—A Magistrate who is subordinate to a Subdivisional Magistrate is also subordinate to the District Magistrate within the meaning of Criminal Procedure Code, s. 528. Neither s. 17 of the Code nor sch. III can be so construed as to take away the special power conferred by s. 528. Where therefore a Joint Magistrate transferred a complaint from the second class Magistrate of K to the Taluk Magistrate of P,—*Held* that the District Magistrate had jurisdiction, under s. 528 of the Code, to withdraw the case from the Magistrate of P and to re-transfer it to the Magistrate of K. THAMAN CHETTI *v.* ALAGIRI CHETTI . **I. L. R., 14 Mad., 399**

115. ——————— *Criminal Procedure Code, s. 528—Village Munsif.*—A Village Munsif not being a Magistrate under the Criminal Procedure Code, a Joint Magistrate has no power under the Criminal Procedure Code, s. 528, to withdraw a case from a Village Munsif and transfer it for disposal to a second class Magistrate. MADAVARAYACHAR *v.* SUBBA RAU **I. L. R., 15 Mad., 94**

116. ——————— *Criminal Procedure Code (Act X of 1882), s. 528.*—An order under s. 528 of the Criminal Procedure Code (Act X of 1882) transferring a case for enquiry or trial from one Magistrate to another ought not to be made without notice to the accused. QUEEN-EMPRESS *v.* SADASHIV NARAYAN JOSHI . **I. L. R., 22 Bom., 549**

8. RE-TRIAL OF CASES.

117. ——————— **Fresh trial after discharge** —*Criminal Procedure Code, 1861, ss. 68 and 225—Discharge of accused—Institution of fresh proceedings.*—Where an accused person is discharged by a Deputy Magistrate under s. 225 of the Code of Criminal Procedure, after a preliminary enquiry, the Magistrate of the district may proceed against him afresh under s. 68 of the Criminal Procedure Code. IN THE MATTER OF THE PETITION OF RAMJAI MAJUMDAR . . . **6 B. L. R., Ap., 67**

[14 W. R., Cr., 65

118. ——————— *Orders under s. 536, Criminal Procedure Code, 1872—Hearing by District Magistrate after prior dismissal.*—When a duly empowered Magistrate has decided a matter under s. 536, Code of Criminal Procedure, by dismissing the application after hearing the evidence offered, the District Magistrate is not competent to entertain the complaint *de novo.* IN THE MATTER OF JAMOTI *v.* GADADO KAMAR . . . **1 C. L. R., 89**

9. REVIEW OF ORDERS.

119. ——————— **Committing order, Power to cancel.**—Where a Deputy Magistrate has once made an order transferring a case for trial to the Magistrate, he has no power to cancel the order and replace the case on his own file. QUEEN *v.* CHUNDER SEEKUR ROY . . . **12 W. R., Cr., 18**

120. ——————— **Power to vary sentence.**—A Magistrate has not authority to vary any sentence he may have once passed on a prisoner and which has been finally recorded. REG. *v.* TOOKIA . **1 Bom., 3**

121. ——————— **Power to revive order which has been quashed.**—On the 7th of June 1881 the Assistant Commissioner of Hylakandi, in Sylhet, passed an order under s. 518 of the Criminal Procedure Code, 1872, that the manager of a certain tea garden should discontinue holding a market on Thursdays until further notice. On the 25th of August 1881 the Assistant Commissioner reviewed this order, and having come to the conclusion that he had no power to issue a permanent injunction, struck the case off the file, at the same time referring the matter to the Deputy Commissioner. The latter declined to interfere, informing the Assistant Commissioner that he saw no illegality in his order. Thereupon the Assistant Commissioner passed an order declaring that his order of the 7th of June 1881 remained in full force. On a reference to the High Court, made by the Officiating Sessions Judge of Sylhet, under s. 297 of the Code of Criminal Procedure,—*Held* that the Magistrate having, on the 25th of August 1881, set aside his order of the 7th of June 1881, and struck the case off the file, he had

MAGISTRATE—*continued.*

9. REVIEW OF ORDERS—*concluded.*

no power to revive it without a fresh proceeding. BRADLEY v. JAMESON . **I. L. R., 8 Calc., 580** **[11 C. L. R., 414**

10. SPECIAL ACTS.

122. ——— **Act XIX of 1838, s. 13 (Coasting Vessels, Bombay).**—Only a full-power Magistrate had jurisdiction to convict of an offence under s. 13 of Act XIX of 1838. REG. *v.* KASAMJI . . . . **5 Bom., Cr., 6**

123. ——— **Act XXVI of 1850 (Towns Improvement, Bombay)**—*Infliction of penalty for breach of rule under.—Held* that a Subordinate Magistrate has no jurisdiction to impose a penalty for breach of a rule made by the Town Commissioners under Act XXVI of 850, s. 7, cl. 5. REG. *v.* MALHARJI BIN NAULOJI . . **3 Bom., Cr., 36**

124. ——— *Municipal Commissioners, Committee of, appointed under.*—The Managing Committee of Municipal Commissioners appointed under Act XXVI of 1850 have no power to try and convict persons for alleged breaches of rules made in pursuance of that Act. The power to inflict fines for such offences is, by s. 10, vested in the Magistrate. REG. *v.* MAVJI DAYAL. REG. *v.* KALIDAS KEVAL . . . . **5 Bom., Cr., 10**

125. ——— *Criminal Procedure Code, VIII of of 186 — Schedule—Breach of Municipal rules under Act XXVI of 1850.*—By virtue of the last part of the schedule headed "offences against other laws" added to the Code of Criminal Procedure by Act VIII of 1869, a Subordinate Magistrate, second class, can take cognizance of the offence of a breach of the Municipal rules promulgated under Act XXVI of 1850. REG. *v.* DHARMAYA VALAD SANGAPA . . . **8 Bom., Cr., 12**

126. ——— *Municipal Commissioners, Power of, to assume judicial powers—Power to try offenders under rules made by Municipal Commissioners.*—Municipal Commissioners appointed under Act XXVI of 1850 have not, by that Act, conferred upon them, nor are they entitled to assume, judicial powers with reference to breaches of rules or bye-laws made by them under that Act; and such rules are *ultra vires* in giving them such powers. *Reg.* v. *Kalidas Keval, 5 Bom., Cr., 10,* approved and followed. The authority to try offenders against such rules or bye-laws is vested in the Magistrates of the country, and Subordinate as well as other Magistrates have jurisdiction to try such offenders. *Reg.* v. *Dhurmaya valad Sangapa, 8 Bom., Cr., 12,* approved. REG. *v.* YENKU BAPUJI **[8 Bom., Cr., 39**

127. ——— **Act XXXV of 1850 (Bombay Ferries), ss. 9 and 16.**—A conviction by a full-power Magistrate under s. 9 of the Bombay Ferries Act annulled for want of jurisdiction, as the Magistrate of the zillah alone was empowered by s. 16 summarily to hear and determine all offences against the Act. REG. *v.* PRABHAKAR N. SOMAN **[3 Bom., Cr., 11**

MAGISTRATE—*continued.*

10. SPECIAL ACTS—*continued.*

128. ——— **Act XXII of 1855 (Ports and Port Dues), ss. 46 and 62**—*Magistrate.*—The word "Magistrate" in s. 62 of Act XXII of 1855 includes a Subordinate Magistrate; such Magistrate has therefore power to try the master of a vessel for an offence committed against s. 46 of that Act. REG. *v.* TUNGA TUKA . **5 Bom., Cr., 14**

129. ——— **Act I of 1858 (Compulsory Labour, Madras), ss. 1 and 6**—*Acts and omissions.*—The only acts or omissions over which a Magistrate has jurisdiction under Act I of 1858 are those specified in the 1st section. Cases under s. 6 of the Act are not cognizable by a Magistrate. ANONYMOUS . . . . . **4 Mad., Ap., 21**

130. ——— **Beng. Act III of 1863 (Transport of Native Labourers)**—*Penal Code, ss. 65 and 67.—Held* that a Subordinate Magistrate of the first class has power to deal with the case of an offence provided for by a special law (in this case Bengal Act III of 1863) when the punishment awardable is six months' fine, and fine only, s. 67, and not s. 65, of the Penal Code being applicable to such a case. QUEEN *v.* CHUNDER PROSAUD SINGH **[10 W. R., Cr., 30**

131. ——— **Bom. Act IX of 1863 (Cotton Frauds), s. 9.**—Conviction under s. 9 of Bombay Act IX of 1863, and sentences of one month's rigorous imprisonment, as well as an order for confiscation of cotton, set aside for want of evidence to show that the Deputy Magistrate who tried the case had jurisdiction in the matter over the person convicted, and for want of evidence of fraud. REG. *v.* JIVAN USMAN . . **3 Bom., Cr., 12**

132. ——— **Bom. Act VIII of 1866 (Poisonous Drugs), s. 11.**—Convictions under s. 11 of Bombay Act VIII of 1866 (Poisonous Drugs Act) can only be obtained outside the town and island of Bombay before Magistrates of the first class. EMPRESS *v.* IMAMBU . **I. L. R., 4 Bom., 167**

133. ——— **Bom. Act V of 1879 (Bombay Land Revenue Act)**—*Magistrate of first class and second class—Rules made under s. 214, Bom. Act V of 1879 (Bombay Land Revenue Act)—Bom. Act X of 1866, s. 1, cl. 7—Removal of earth from Government land.*—The offence committed in contravention of rule 3, cl. 1, item (*d*), of the rules framed under s. 214 of the Land Revenue Code (Bombay Act V of 1879) is exclusively triable by a Magistrate of the first class. Accordingly, a conviction and sentence by a Magistrate of the second class were set aside by the High Court. QUEEN-EMPRESS *v.* SHIVARAM **[I. L. R., 8 Bom., 591**

134. ——— **ss. 125, 214, and 215**—*Boundary-marks—Rules 101 and 111, cl. 3 (a).*—The accused was charged before a second class Magistrate with digging earth within a space of two cubits of earthen boundary-mark, in contravention of rule 101 of the Rules made by Government under s. 214 (*g*) of the Bombay Land Revenue Code (Act V of 1879). The Magistrate convicted the accused under rule 111, cl. 3 (*a*), and sentenced him,

MAGISTRATE—*continued.*

10. SPECIAL ACTS—*continued.*

to a fine of one rupee. *Held* that the conviction and sentence were illegal. S. 125 of the Land Revenue Code does not give jurisdiction to any Magistrate to try a person accused of injuring a boundary-mark. Queen-Empress *v.* Irappa [I. L. R., 13 Bom., 291

135. ——— **Bom. Reg. XXI of 1827**—*Offence against opium laws—Power of fine.*—The District Magistrate (whose Court is the proper tribunal for the trial of an offence relating to the smuggling of opium) has, under s. 21 of the Code of Criminal Procedure, power to inflict any fine provided by Regulation XXI of 1827 for such offence, even though the fine may exceed R1,000. Reg. *v.* Narayan Gangaram . . . 9 Bom., 343

136. ——— *Illegal possession of opium.*—The offence of possessing above a quarter of a Surat ser of opium not shown to have been legally obtained is exclusively cognizable by the District Magistrate. *Reg.* v. *Narayan Natha, Criminal Reference No. 209 of 1869*, overruled. Reg. *v.* Hira Jiva . . . 7 Bom., Cr., 59

137. ——— **s. 7**—*Offence against opium laws.*—The offence of unlawfully being in possession of smuggled opium is an offence exclusively cognizable by a Magistrate of a district or of a division of a district, as representing the Zillah Magistrate referred to in Regulation XXI of 1827, s. 7. No other Magistrate or Court has now jurisdiction to hold a preliminary enquiry into, or to try a person accused of, such an offence. *Reg.* v. *Hira Jiva, 7 Bom., Cr., 59*, approved; and the Court's reply, No. 1231 of 19th August 1867, to the Khandesh Sessions Judge's reference No. 702 of 1867, dissented from. Reg. *v.* Lakhu valad Sakru [8 Bom., Cr., 118

But *see* Reg. *v.* Sadu Dadabhai . 9 Bom., 166

138. ——— **s. 10**—*Breach of rules for sale of opium.*—A conviction and sentence by a full-power Magistrate for breach of the rules for the retail sale of opium under Regulation XXI of 1827 (Bombay), s. 10, annulled for want of jurisdiction, as the Zillah Magistrate alone was empowered to enforce the penalty. Reg. *v.* Sadu valad Pavadi . . . . 3 Bom., Cr., 39

Reg. *v.* Gania bin Bapu . 3 Bom., Cr., 50

139. ——— **Cattle Trespass Act, III of 1857, s. 13**—*Act XVII of 1862.*—The repealing section of Act XVII of 1862 did not affect the powers of a Subordinate Magistrate under s. 13 of Act III of 1857. Reg. *v.* Kassamia 1 Bom., 100

140. ——— *Act XVII of 1862.*—The latter portion of s. 13 of Act III of 1857 having been repealed by Act XVII of 1862, —*Held* that the offences created by that section might be dealt with by the ordinary criminal tribunals, subject to the provisions of the Code of Criminal Procedure. Reg. *v.* Mathur Purshotam [4 Bom., Cr., 13

141. ——— A Magistrate cannot, under s. 13, Act III of 1857, punish except for an act of forcible opposition to the seizure of cattle damage feasant. Hills *v.* Sreehuree Roy [7 W. R., 155

142. ——— **s. 18**—*Criminal Procedure Code, 1861, s. 21.*—By virtue of s. 21 of the Criminal Procedure Code, a Subordinate Magistrate of the first class had jurisdiction to try an offence under s. 18 of Act III of 1857 (Cattle Trespass Act), there being no provision in that Act as to the authorities by which offences committed under it were to be tried. Reg. *v.* Ganga kom Mhasu . . . . . 5 Bom., Cr., 13

143. ——— **Cattle Trespass Act (I of 1871), ss. 20 and 23**—*Special jurisdiction—Criminal Procedure Code (1882), ss. 1 and 192—Transfer of criminal case.*—The jurisdiction conferred by ss. 20 to 23 of the Cattle Trespass Act (I of 1871) is a special jurisdiction, and, as such, it is under s. 1 of the Criminal Procedure Code (Act X of 1882) unaffected by its provisions; and therefore s. 192 does not authorize the transfer of a case to which ss. 20 to 23 of the Cattle Trespass Act apply. Shama *v.* Lechhu Shekh I. L. R., 23 Calc., 300

144. ——— *Order by a Magistrate other than the Magistrates specified in s. 20—Criminal Procedure Code (1882), ss. 28, 192, 529, and 537—Power of District Magistrate to transfer cases to a Subordinate Magistrate—Compensation, Order awarding.*—S. 192 of the Criminal Procedure Code (Act X of 1882) does not authorize a District Magistrate to transfer for trial to a Subordinate Magistrate cases which are not within the powers of that Magistrate to try either under s. 28 of the Code or under some special or local law. A District Magistrate cannot transfer to any Magistrate cases under s. 2 of the Cattle Trespass Act (I of 1871) which are triable only by the two classes of Magistrates specified in that section. An order awarding compensation under s. 22 of the Act passed by any other Magistrate is illegal, and cannot be cured by the provisions of s. 529 or s. 537 of the Criminal Procedure Code. Raghu Singh, *v.* Abdul Wahab . . . I. L. R., 23 Calc., 442

145. ——— **Chowkidars**—*Maintenance of chowkidar on chakeran land.*—A Magistrate can maintain a chowkidar in the possession of his chakeran land (*i.e.*, land set apart for his subsistence by his zamindar). Any such order of the Magistrate is appealable to the Superintendent of Police. Queen *v.* Zamindar of Colgong . 1 W. R., Cr., 12

146. ——— **Companies Act (VI of 1882), ss. 35, 252**—*"Forfeit"—"Penalty"—Share warrant not duly stamped—Stamps on share warrants—Criminal Procedure Code (Act X of 1882), s. 32—Fine.*—There is no distinction between the word "forfeit" as used in s. 35 of the Indian Companies Act and the word "penalty" as used in other sections of the Act, and the omission to duly stamp a share warrant under that section is an offence under the Act punishable by a penalty, to enforce the

MAGISTRATE—*continued.*

10. SPECIAL ACTS—*continued.*

payment of which a Magistrate has jurisdiction under s. 252. In a case under s. 35 a Magistrate has no option but to inflict the full fine of R500 if the offence be proved. Where a person was charged, as being the principal officer of a company, with having issued nine share warrants not duly stamped in respect of which the penalties claimed under s. 35 amounted to R4,500 and where it was contended that the infliction of such a penalty was beyond the jurisdiction of the Magistrate, which under the provisions of s. 32 of the Code of Criminal Procedure was limited to inflicting a fine of R1,000,—*Held* that the issue of each of the nine share warrants was a separate offence, and the fact that several offences have been committed, and therefore that the Magistrate's power to fine would extend to more than R1,000, was not affected by that section of the Code. QUEEN-EMPRESS *v.* MOORE

[I. L. R., 20 Calc., 676

147.———— **Illegal confinement**—*Deputy Magistrate, Power of.*—The offence of illegal confinement for more than ten days is triable only by the Court of Session or by the Magistrate of the district, but not by a Deputy Magistrate. QUEEN *v.* KOMUL MANJEE . . . . **7 W. R., Cr., 13**

148. ———— **Madras Abkari Act—Mad. Act I of 1886, s. 43**—*Default by persons bailed to appear before the Abkari Inspector—Procedure—Criminal Procedure Code (1882), s. 514.*—S. 43 of the Madras Abkari Act gives a Magistrate enforcing a penalty on the application of an abkari inspector jurisdiction to proceed in the same manner and with the same powers as if the default had been made by a person bailed to appear in his own Court. When an abkari inspector therefore, under the Abkari Act, s. 43, forwards a bail bond to a Magistrate in order that payment may be compelled of the penalty mentioned therein, the Magistrate should call upon the person liable to appear and show cause against such order being made, and should otherwise observe the procedure prescribed in Criminal Procedure Code, s. 514. QUEEN-EMPRESS *v.* PALAYATHAN . . **I. L. R., 18 Mad., 48**

149. ———— **Mad. Act III of 1865 (offences against special and local laws)**—*Offences under Act XIII of 1859.*—Madras Act III of 1865 authorizes every Magistrate to take cognizance of offences against Act XIII of 1859. ANONYMOUS . . . . **4 Mad., Ap., 64**

150. ———— *Criminal Procedure Code, 1869—Schedule—Mad. Act III of 1865.*—The jurisdiction conferred on Magistrates in the Madras Presidency by Madras Act III of 1865 is not ousted by the schedule to the Code of Criminal Procedure as amended by Act VIII of 1869. ANONYMOUS . . . . **7 Mad., Ap., 6**

151. ———— *Native Deputy Magistrate—Madras Police Act (XXIV of 1859), s. 50.*—By Madras Act III of 1865 a Native Deputy Magistrate has power to try police officers above the rank of a private charged with offences under the Madras General Police Act (XXIV of 1859), notwithstanding the proviso in s. 50 of the latter enactment. ANONYMOUS . . **4 Mad., Ap., 54**

152.———— *Repeal of Act XVI of 1874—Repeal, Effect of.*—The repeal of Madras Act III of 1865 by Act XVI of 1874 has not deprived Magistrates in the Madras Presidency of jurisdiction over offences created by special and local laws thereby given to them. REG. *v.* KANDAKORA

[I. L. R., 1 Mad., 223

153. ———— *Criminal Procedure Code, 1872, s. 8—Act XVI of 1874—Special and local laws.*—Madras Act III of 1865 declared every Magistrate in the Madras Presidency authorized to take cognizance of every offence committed against any special or local law then in force in the said Presidency, notwithstanding any provision to the contrary in any Act or Regulation then existing, and also of any offence against any special or local law which might thereafter be passed, unless such law should make the offences to which it might refer punishable by some other authorities therein specially mentioned. The effect of this Act was to remove the restrictions imposed by special or local laws theretofore passed, and to enable Magistrates within the limits of their ordinary powers to deal with offences punishable under any such special or local law, notwithstanding the special or local law indicated a particular tribunal as alone competent to try such offences, and to confer upon them jurisdiction also in the case of any special or local laws that might be passed after the enactment of Act III of 1865, unless jurisdiction was in any such later law specially conferred upon some other authority. S. 8 of the subsequent enactment, Act X of 1872 (the Criminal Procedure Code), limited the jurisdiction of Subordinate Magistrates over offences punishable under special and local laws, a third class Magistrate's jurisdiction being restricted to the trial of offences punishable under such laws with less than one year's imprisonment, while a second class Magistrate's jurisdiction was similarly restricted to the trial of offences punishable with less than three years' imprisonment. Act XVI of 1874, while repealing Act III of 1865, left unaffected the jurisdiction of the Subordinate Magistrate under that Act so far as it still remained in existence as limited by the provisions of s. 8 of Act X of 1872 (Criminal Procedure Code). EMPRESS *v.* ACHI

[I. L. R., 2 Mad., 161

154. ———— **Mad. Reg. XI of 1816, s. 10**—*Village Magistrate—Fine for abusive language.*—A Village Magistrate has no jurisdiction to impose a fine upon a person who uses abusive language to the Village Magistrate in the course of a trial under s. 10, Regulation XI of 1816. ANONYMOUS

[5 Mad., Ap., 32

155. ———— **Mad. Reg. IV of 1821**—*Village Magistrate—Sheep-stealing—Mad. Reg. XI of 1816.*—Sheep-stealing, when the value of the sheep is less than a rupee, is cognizable by a Village Magistrate under Regulation IV of 1821 as a petty

MAGISTRATE—*continued.*

10. SPECIAL ACTS—*continued.*

theft; but a sentence of fine by a Village Magistrate in such cases is illegal. QUEEN *v.* BOYA LINGA [I. L. R., 5 Mad., 268

156. ——— **Merchant Seaman's Act (I of 1859), s. 83**—*European British subject—Criminal Procedure Code, 1872, s. 72.*—A Magistrate is not empowered to try a European British subject under cl. 5, s. 83 of Act I of 1859 (The Merchant Shipping Act). *See* s. 72 of the Criminal Procedure Code, 1872. ANONYMOUS [4 Mad., Ap., 23

ANONYMOUS . . . . 7 Mad., Ap., 32

157. ——— **N.-W. P. & Oude Municipalities Act (XV of 1883), s. 46**—*Issue of distress warrant for recovery of alleged arrears of Municipal tax—Question as to arrears being due.*—*Held* that, where a Magistrate, acting under s. 46 of Act XV of 1883, issues a warrant for the realization of arrears of municipal taxes alleged to be due, the Magistrate is acting in a ministerial capacity only and has no jurisdiction to enquire as to whether such arrears are really due or not. ELLIS *v.* MUNICIPAL BOARD OF MUSSOORIE . . . I. L. R., 22 All., 111

158. ——— **Opium Act (I of 1878), s. 9**—*Criminal Procedure Code (1882), s. 29—Commitment by Magistrate to Court of Session of case exclusively triable by Magistrate.*—*Held* that, inasmuch as a conviction of an offence punishable under Act I of 1878 must be by a Magistrate, a Magistrate taking cognizance of such an offence has no power to commit to the Court of Session. *In the matter of Indrobee Thaba, 1 W. R., Cr., 5,* and *Reg.* v. *Donoghue, 5 Mad., 277,* referred to. QUEEN-EMPRESS *v.* SCHADE [I. L. R., 19 All., 465

159. ——— **Penal Code, s. 174**—*Offence in contempt of Court.*—A Magistrate can take cognizance of an offence under s. 174, Penal Code, committed against his own Court. QUEEN *v.* GUGUN MISSER . . . . . 8 W. R., Cr., 61

160. ——— **s. 213**—*Subordinate Magistrate—Illegal gratification.*—A Subordinate Magistrate of the second class is not competent to initiate a charge, under s. 213 of the Penal Code, of accepting an illegal gratification to screen an offender. OMRIT RAM *v.* NONAO RAM [6 W. R., Cr., 90

161. ——— **s. 392**—*Robbery—Deputy Magistrate, Power of.*—A charge of robbery, under s. 392 of the Penal Code, is, under Act VIII of 1866, triable only by the Court of Session or by the Magistrate of the district, but not by a Deputy Magistrate. MADHUB GHOSE *v.* BULLYE METEA . . . 7 W. R., Cr., 11

162. ——— **s. 458**—*Deputy Magistrate, Power of.*—A Deputy Magistrate has no jurisdiction in the case of an offence coming under s. 458 of the Penal Code. QUEEN *v.* SHADRY [1 W. R., Cr., 34

MAGISTRATE—*continued.*

10. SPECIAL ACTS—*continued.*

163. ——— **ss. 380, 458, 459**—*Lurking house-trespass by night with aggravating circumstances.*—A Deputy Magistrate has no power to convict of theft (s. 380, Penal Code), where the offence charged is lurking house-trespass by night with aggravating circumstances (ss. 458 and 459, Penal Code), but must commit on the latter charge. PURAN TELEE *v.* BHUTTOO DOME [9 W. R., Cr., 5

164. ——— **s. 471**—*Forged document—Power to commit for forgery produced before the Collector.*—Where a forged document is put in evidence before the Collector, the power of commitment rests with the revenue authorities, and does not under any circumstances extend to the Magistrate. GOVERNMENT *v.* HUNGESSUR SEIN [1 Ind. Jur., O. S., 11

165. ——— **s. 486**—*Possession—Goods with counterfeit trade mark not intended to be sold within jurisdiction.*—A Magistrate has jurisdiction to try an offence under s. 486 of the Penal Code if the accused be shown to be in possession of goods with a counterfeit trade mark for sale or any purpose of trade or manufacture, though the sale or the trade or the manufacture for the purpose of which the accused has the goods in his possession be not intended to take place within the jurisdiction of the Court in which the complaint is lodged. YUSUF MAHOMED ABARUTH *v.* BANSIDHUR SIRAOGI [I. L. R., 25 Calc., 639
2 C. W. N., 450

166. ——— **s. 509**—*Making indecent gestures to annoy.*—Offences coming under s. 509 of the Penal Code are triable by the Magistrate of the district only. KULREE *v.* JHOONOO [7 W. R., Cr., 52

167. ——— **Police Act (V of 1861)**—*Criminal Procedure Code, 1861, s. 133—Offence under local Act.*—A Magistrate is competent, under s. 133 of the Code of Criminal Procedure, to direct an enquiry to be made by a police officer into an offence punishable under a local Act, such as the Police Act. QUEEN *v.* PRANKISTO PAL . 14 W. R., Cr., 41

168. ——— **s. 29**—*Deputy Magistrate—Power of fine.*—A Deputy Magistrate exercising the full powers of a Magistrate has jurisdiction, under s. 29, Act V of 1861, to fine police officers for violation of duty. ANONYMOUS [4 W. R., Cr., 2

169. ——— *Magistrate—Sessions Judge.*—A Magistrate only, and not a Sessions Judge, has power to try cases under s. 29, Act V of 1861. INDROBEE THABA *v.* QUEEN [1 W. R., Cr., 5

170. ——— **Post Office Act, XIV of 1866, s. 47**—*Subordinate Magistrate.*—A Subordinate Magistrate has jurisdiction to try a prisoner for an offence under s. 47 of the Indian Post Office (Act XIV of 1866). REG. *v.* VITHU BIN MALLU [5 Bom., Cr., 36

MAGISTRATE—*continued.*

10. SPECIAL ACTS—*continued.*

171. ——— **Post Office Acts, XVII of 1854 and XIV of 1836, s. 48**—*Magistrate, Obligation of, to commit.*—On a reference by a Sessions Judge in reviewing the monthly magisterial returns,—*Held* that a conviction and sentence recorded by a Magistrate under s. 50 of Act XVII of 1854 (corresponding with s. 48 of the Act of 1866) were illegal, as the Magistrate had no jurisdiction finally to dispose of the case, but was bound to commit it for trial before the Court of Session. Reg. *v.* Atmaram Vaman Bhandarkar . . . **3 Bom., Cr., 8**

172. ——— **Railways Act (XVIII of 1854, ss. 17, 35)**—*Bom. Reg. XII of 1827, ss. 5, 41.*—By s. 35 of the Railway Act, district police officers in the Presidency of Bombay could punish, to the extent of the power conferred upon them in petty offences, any offence made punishable under the Act by fine not exceeding R21. But s. 5, Regulation XII of 1827 (authorizing the appointment of district police officers), and s. 41 of the same Regulation (defining the limits of their jurisdiction), being both repealed by Act XVII of 1862,—*Held* that a Subordinate Magistrate had no jurisdiction to impose a fine under s. 17 of the Railway Act. Reg. *v.* Tribhuvan Ishwar **[3 Bom., Cr., 54**

173. ——— **s. 26**—*Mad. Act III of 1865.*—Magistrates of all grades are, under Madras Act III of 1865, competent to try persons charged with offences under s. 26 of the Railway Act, XVIII of 1854. Anonymous . **4 Mad., Ap., 9**

Anonymous . . . **6 Mad., Ap., 41**

The schedule to the Criminal Procedure Code, 1869, made no alteration in this respect. Anonymous **[7 Mad., Ap., 8**

174. ——— *Conviction by full-power Magistrate.*—*Held* that a conviction by a Magistrate with full powers under s. 26 of the Railway Act was illegal for want of jurisdiction. Reg. *v.* Lakshman Balaji . . **3 Bom., Cr., 10**

175. ——— **Railways Act (IX of 1890), s. 125**—*Permitting cattle to stray upon a railway—Discretion of Magistrate.*—When the owner of cattle, which have been allowed to stray upon a railway, is prosecuted under the Railway Act, 1890, s. 125, cl. 1, the Magistrate is bound to ascertain whether the person charged was himself guilty. Queen-Empress *v.* Andi . **I. L. R., 18 Mad., 228**

176. ——— **Registration Act, 1866, ss. 91 and 95**—*Committal to Sessions Judge.*—*Held* that the committal of the accused to the Court of Session by a Magistrate for trial on a charge under s. 91 of the Registration Act (XX of 1866) was legal as being within the powers of the Magistrate. The Sessions Court was accordingly directed to try the accused. Reg. *v.* Ravlojirav bin Hanmantrav **[5 Bom., Cr., 7**

177. ——— **Registration Act, 1877, s. 83**—*Criminal Procedure Code, s. 29 Jurisdiction of second class Magistrate.*—S. 29 of the Code of Criminal Procedure, 1882, does not affect the jurisdiction given to a second class Magistrate by s. 83 of the Registration Act, 1877, as amended by Act XII of 1879. Queen-Empress *v.* Krishna **[I. L. R., 7 Mad., 347**

178. ——— **Salt laws**—*Criminal Procedure Code, 1861, s. 21—Cases under local laws.*—A Magistrate is bound, with reference to s. 21 of the Code of Criminal Procedure, to proceed in the investigation of cases arising under a special law such as the Salt Law), according to all the provisions of the Code of Criminal Procedure. Queen *v.* Abdool Azeez Khan . . **14 W. R., Cr., 36**

179. ——— **Stamp Act, 1869, s. 43**—*Magistrate authorized by Collector to prosecute.*—A Magistrate, who has been authorized by the Collector of a district, under s. 43 of the Stamp Act, to prosecute offenders against the stamp laws, is not competent also to try persons whom he prosecutes. The Collector should appoint some person other than a Magistrate to conduct the prosecutions. Empress *v.* Gangadhur Bhunjo . **I. L. R., 3 Calc., 622 [2 C. L. R., 179**

180. ——— **Whipping**—*Second class Magistrate—Sentence of whipping—Code of Criminal Procedure (Act X of 1872) (Act X of 1882), ss. 2 and 32.*—A person appointed a Magistrate of the second class under Act X of 1872 is incompetent, since the coming into force of Act X of 1882, to pass a sentence of whipping, unless he is specially empowered so to do according to the provisions of s. 32 of the latter Act. Empress *v.* Bhagvanta Ravji **[I. L. R., 7 Bom., 303**

181. ——— **Witness**—*Money deposited as expenses of witness, Order as to—Order to credit money deposited under Criminal Procedure Code, 1861, s. 228, to Government.*—A Magistrate has no jurisdiction to order a sum of money, deposited under s. 228 of the Code of Criminal Procedure, for the refund of which an application was made, to be credited to Government. Anonymous **[6 Mad., Ap., 9**

MAHOMEDAN COMMUNITY.

See Hindu Law—Custom—Mahomedans. **[I. L. R., 3 Calc., 694**

See Jurisdiction of Civil Court—Caste. **[I. L. R., 13 Bom., 429**
I. L. R., 20 Bom., 190

MAHOMEDAN LAW.

See Grant—Construction of Grants. **I. L. R., 18 Mad., 257**

See Husband and Wife. **[I. L. R., 21 Bom., 77**

See Purdanishin Women. **[I. L. R., 12 Mad., 380**

——— Ecclesiastical Law.

See Religion, Offences relating to. **[I. L. R., 7 All., 461**

MAHOMEDAN LAW—*concluded.*

1. ———— **Extent of**—*Religion.*—Although the Mahomedan law, pure and simple, is part of the Mahomedan religion, it does not of necessity bind all who embrace the Mahomedan creed. MAHOMED SIDICK *v.* AHMED. ABDULA HAJI ABDSATAR *v.* AHMED . . . . **I. L. R., 10 Bom., 1**

2. ———— **Authorities on Mahomedan law, Value of**—*Rule of interpretation.*—It is a general rule of interpretation of the Mahomedan law that in cases of difference of opinion amongst the jurisconsults Imam Abu Hanifa and his two disciples, Qazi Abu Yusuf and Imam Muhammad, the opinion of the majority must be followed; and in the application of legal principles to temporal matters, the opinion of Qazi Abu Yusuf is entitled to the greatest weight. ABDUL KADIR *v.* SALIMA **[I. L. R., 8 All., 149**

3. ———— **Doubtful point of law**—*Rule of interpretation—Practice of Court.*—Where by writers of the highest authority on the law of a particular sect a point of law is admitted to be doubtful, regard should be had to the practice of the Courts. DAIM *v.* ASOOHA BEBEE . **2 N. W., 360**

MAHOMEDAN LAW—ACKNOWLEDGMENT.

1. ———— **Acknowledgment by father**—*Effect of acknowledgment of son or daughter.*—According to Mahomedan law, the acknowledgment of a father renders a son or daughter a legitimate child and heir, unless it is impossible for the son or daughter to be so. OOMDA BIBEE *v.* JONAB ALI **[5 W. R., 132: 1 Jur., N. S., 143**

FUZEELUN BEEBEE *v.* OMDAH BEEBEE **[10 W. R., 469**

WUHEEDUN *v.* WUSEE HOSSEIN **15 W. R., 403**

2. ———— ———— *Effect of acknowledgment of son.*—According to Mahomedan law, the acknowledgment of the father renders the son a legitimate son and heir, whether the mother was or was not lawfully married to the father. NUJMOODEEN AHMED *v.* ZUHOORUN . **10 W. R., 45**

3. ———— ———— *Proof of legitimacy—Inference.*—The Mahomedan law allows legitimacy to be inferred from circumstances without direct proof. MAHOMED GOUHUR ALI KHAN *v.* HARRATOONISSA . . . . . **2 W. R., 52**

Upheld on the facts by the Privy Council. HABEEBOOLLAH *v.* GOUHUR ALLY KHAN **[18 W. R., 523**

4. ———— ———— *Proof of legitimacy—Marriage—Inference.*—According to the Mahomedan law, the legitimacy or legitimation of a child of Mahomedan parents may be presumed or inferred from circumstances, without proof, or at least without any direct proof, of a marriage between the parents, or of any formal act of legitimation. MAHOMED BAUKER HOSSEIN KHAN *v.* SHURFOONISSA BEGUM **[3 W. R., P. C., 37: 8 Moore's I. A., 136**

MAHOMEDAN LAW—ACKNOWLEDGMENT—*continued.*

5. ———— ———— *Presumption as to cohabitation—Legitimacy of issue.*—The Mahomedan law is very scrupulous in bastardising the issue of any connexion in which it can be shown by presumption that there has been cohabitation and acknowledgment of paternity. ROSHUN JEHAN *v.* ENAET HOSSEIN. ENAET HOSSEIN *v.* ROSHUN JEHAN . . . . **5 W. R., 5**

Affirmed by Privy Council in KHAJOOROONISSA *v.* ROWSHAN JEHAN . . **I. L. R., 2 Calc., 184 [26 W. R., 36: L. R., 3 I. A., 291**

6. ———— ———— *Presumption of marriage—Onus probandi.*—According to the Mahomedan law, a public acknowledgment of paternity will of itself raise a presumption of marriage between the person who makes it and the mother of the child, without the father specifically connecting his paternity with any particular woman. To rebut this presumption, the onus of proving the impossibility of the marriage is on the other side. ROOK BEGUM *v.* WALAGOWHUR SHAH . . . **3 W. R., 187**

7. ———— ———— *Legitimacy of son.*—An acknowledgment by a Mahomedan that a certain person is his son is not *primâ facie* evidence of the fact which may be rebutted, but establishes the fact acknowledged. Such acknowledgment is valid when the ages of the parties admit of the relationship between them, and where the descent of the party acknowledged has not been already established from another. IN THE MATTER OF THE PETITION OF NAJIBUNNISSA . . **4 B. L. R., A. C., 55**

JAIBUN *v.* NUJEEBOONISSA . **12 W. R., 497**

affirming, on appeal, NUJEEBOONISSA *v.* ZUMEERUN **[11 W. R., 426**

8. ———— ———— *Presumption of legitimacy.*—In the case of a Mahomedan child born in wedlock, there being no reliable evidence to show why the ordinary presumption should not prevail, it must be deemed the child of the husband. JESWUNT SINGJEE UBBY SINGJEE *v.* JET SINGJEE UBBY SINGJEE **3 Moore's I. A., 245: 6 W. R., P. C., 46**

9. ———— ———— *Presumption as to legitimacy of son—Custom of primogeniture.*—Observations on the law laid down by the Privy Council regarding the presumption of legitimacy which arises, under the Mahomedan law, in the absence of proof of marriage, when a son has been uniformly treated by his father and all the members of the family as legitimate. MUHAMMAD ISMAIL KHAN *v.* FIDAYATUNNISSA . . **I. L. R., 3 All., 723**

10. ———— ———— *Legitimacy of son—Presumption of marriage.*—Where a son has been uniformly treated by his father and all the members of the family as legitimate, a presumption arises under the Mahomedan law that the son's mother was his father's wife. KHAJOOROONISSA *v.* ROWSHAN JEHAN **[I. L. R., 2 Calc., 184: 26 W. R., 36 L. R., 3 I. A., 291**

MAHOMEDAN LAW—ACKNOWLEDGMENT—*continued.*

Affirming decision of High Court in ROSHUN JEHAN *v.* ENAET HOSSEIN. ENAET HOSSEIN *v.* ROSHUN JEHAN . . . . . **5 W. R., 5**

11. ———— *Acknowledgment of children as sons.*—The acknowledgment and recognition of children by a Mahomedan as his sons, giving them the status of sons capable of inheriting as being of legitimate birth, may, without proof of his express acknowledgment of them, be inferred from his treatment of such children, provided that certain conditions negativing this relationship are absent. The question whether such acknowledgment should be presumed or not, depends on the circumstances of each particular case. *Ashrufooddowlah Ahmed Hossein Khan* v. *Hyder Hossein Khan, 11 Moore's I. A., 94,* referred to and followed. MAHAMMAD AZMAT ALI KHAN *v.* LALLI BEGUM

[I. L. R., 8 Calc., 422
L. R., 9 I. A., 8

12. ———— *Presumption of marriage.*—According to Mahomedan law, mere continued cohabitation without proof of marriage or of acknowledgment is not sufficient to raise such a legal presumption of marriage as to legitimise the offspring. Marriage and acknowledgment may be presumed, but the presumption must be one of fact, and, as such, subject to the application of the ordinary rules of evidence. A subsequent marriage, so far from raising the presumption of a prior marriage, *primâ facie* at least excludes that presumption. ASHRUFOODDOWLAH AHMED HOSSEIN *v.* HYDER HOSSEIN KHAN

[7 W. R., P. C., 1 : 11 Moore's I. A., 94

13. ———— *Illegitimacy of birth—Insufficiency of father's acknowledgment without intention to legitimate—Marriage, Validity of.*—On the question of the legitimacy of a son born to a Mahomedan by a Burmese woman, the question did not arise on this appeal whether the father could have entered into a valid marriage with the mother without her having relinquished Buddhism. The Court below found against her alleged conversion to the Mahomedan religion, and also found upon the facts that no marriage of the parents as distinguished from concubinage had taken place. The latter finding was affirmed. As to the question whether the son born to them had been legitimated by the father's acknowledgment of him, it was *held* that under the Mahomedan law the legitimation of a son, born out of legal wedlock, may be effected by the force of his father's acknowledgment of his being of legitimate birth; but that a mere recognition of sonship is insufficient to effect it. Acknowledgment in the sense meant by that law is required, *viz.*, of antecedent right, and not a mere recognition of paternity. *Ashrufooddowla Ahmed Hossein* v. *Hyder Hossein Khan, 11 Moore's I. A., 94,* referred to and followed. ABDUL RAZAK *v.* AGA MAHOMED JAFFER BINDANIM . **I. L. R., 21 Calc., 666**

[L. R., 21 I. A., 56

14. ———— *Validity of—Acknowledgment of son.*—Where in a transaction with a third party *A* describes *B* as his son, and *B* speaks of *A* as his father, the acknowledgment of sonship is complete and formal, and, under the Mahomedan law, conclusive against all parties. NUBO KANT ROY CHOWDHRY *v.* MAHATAB BIBEE

[20 W. R., 164

15. ———— *Legitimation of offspring by acknowledgment.*—The acknowledgment and recognition of a natural son by a Mahomedan as his son gives him the status of a son capable of inheriting as a legitimate son, unless certain conditions exist. *Mahomed Azmat Ali Khan* v. *Lalli Begum, I. L. R., 8 Calc., 422,* referred to. Whether the offspring of an adulterous intercourse can be legitimated by any acknowledgment is an open question. SADAKAT HOSSEIN *v.* MAHOMED YUSUF

[I. L. R., 10 Calc., 663
L. R., 11 I. A., 31

16. ———— *Legitimacy—Effect of acknowledgment of sonship.*—*Held* by PETHERAM, *C.J.*, that, according to the Mahomedan law, the effect of an acknowledgment by a Mahomedan that a particular person, born of the acknowledger's wife before marriage, is his son in fact, though the acknowledger may never have treated him as a legitimate son or intended to give him the status of legitimacy, is to confer upon such person the status of a son capable of inheriting as legitimate, unless conditions exist which make it impossible that such person can have been the acknowledger's son in fact. *Ashrufooddowlah Ahmed Hossein Khan* v. *Hyder Hossein Khan, 11 Moore's I. A., 94; Muhammad Azmat Ali Khan* v. *Lalli Begum, I. L. R., 8 Calc., 422;* and *Sadakat Hossein* v. *Mahomed Yusuf, I. L. R., 10 Calc., 663,* referred to. In a suit for possession, by right of inheritance, of a share of the property of a deceased Mahomedan by a person alleging himself to be a son of the deceased, the defendants pleaded that the plaintiff was not a son, but a step-son, having been born of the deceased's wife before her marriage. The plaintiff filed certain letters and other documents in which the deceased in express terms referred to him as his son; and he contended that these references amounted to acknowledgments of him as a son made by the deceased, which, under the Mahomedan law, entitled him to inherit as a legitimate son. *Held* by PETHERAM, *C.J.* (BRODHURST, *J.*, dissenting), that the acknowledgment by the deceased of the plaintiff as his son in fact conferred upon the latter the status of a legitimate son capable of inheriting the deceased's estate, although the evidence showed that the deceased never treated him as a legitimate son, or intended to give him the status of legitimacy. *Held* by BRODHURST, *J.*, *contra*, that the documents above referred to did not show more than that the deceased regarded the plaintiff as his step-son; that the plaintiff was never called his son except by courtesy and in the sense in which a European would ordinarily describe his step-son as his son; and that there was no sufficient evidence of the acknowledgment from which an inference was fairly to be deduced that the deceased ever intended to recognize the plaintiff and give him the status of a son capable of inheriting. *Sadakat Hossein* v.

MAHOMEDAN LAW—ACKNOWLEDGMENT—*continued.*

Mahomed Yusuf, I. L. R., 10 Calc., 663, referred to. MAHAMMAD ALLAHDAD KHAN *v.* MAHAMMAD ISMAIL KHAN . . . **I. L. R., 8 All., 234**

17. ——— *Inheritance—Legitimacy—Acknowledgment of sonship.—Per* EDGE, *C.J.,* and STRAIGHT, *J.*—The rules of the Mahomedan law relating to acknowledgment by a Mahomedan of another as his son are rules of the substantive law of inheritance. Such an acknowledgment, unless certain impediments exist, confers upon the person acknowledged the status of a legitimate son capable of inheriting. Where there is no proof of legitimate birth or of illegitimate birth, and the paternity of a child is unknown, in the sense that no specific person is shown to be the father, then the acknowledgment of him by another who claims him as a son affords a conclusive presumption that he is the legitimate child of the acknowledger, and places him in that category. Such a status once conferred cannot be destroyed by any subsequent act of the acknowledger or of any one claiming through him. *Per* MAHMOOD, *J.*—Although, according to the Mahomedan law, ikrar or acknowledgment in general stands upon much the same footing as an admission as defined in the Evidence Act, aknowledgments of parentage and other matters of personal status stand upon a higher footing than matters of evidence and form a part of the substantive Mahomedan law. So far as inheritance through males is concerned, the existence of consanguinity and legitimate descent is an indispensable condition precedent to the right of succession, and such legitimate descent depends upon the existence of a valid marriage between the parents. Where legitimacy cannot be established by direct proof of such a marriage, acknowledgment is recognized by the Mahomedan law as a means whereby marriage of the parents or legitimate descent may be established as a matter of substantive law. Such acknowledgment always proceeds upon the hypothesis of a lawful union between the parents and the legitimate descent of the acknowledged person from the acknowledger, and there is nothing in the Mahomedan law similar to adoption as recognized by the Roman and Hindu systems, or admitting of an affiliation which has no reference to consanguinity or legitimate descent. A child whose illegitimacy is proved beyond doubt, by reason of the marriage of its parents being either disproved or found to be unlawful, cannot be legitimatised by acknowledgment. Acknowledgment has only the effect of legitimation where either the fact of the marriage or its exact time, with reference to the legitimacy of the child's birth, is a matter of uncertainty. *Ashrufooddowlah Ahmed Hossein Khan* v. *Hyder Hossein Khan, 11 Moore's I. A., 94; Muhammad Azmat Ali Khan* v *Lalli Begum, L. R., 9 I. A., 8 : I. L. R., 8 Calc., 422;* and *Sadakat Hossein* v. *Mahomed Yusuf, L. R., 11 I. A., 31 : I. L. R., 10 Calc., 663,* referred to. MUHAMMAD ALLAHDAD KHAN *v.* MUHAMMAD ISMAIL KHAN . . . **I. L. R., 10 All., 289**

18. ——— *Legitimacy.—Held* that a Mahomedan could not, by acknowledging him as his son, render legitimate a child whose mother at the time of his birth he could not have married by reason of her being the wife of another man. *Muhammad Allahdad Khan* v. *Muhammad Ismail Khan, I. L. R., 10 All., 289,* followed. LIAQUAT ALI *v.* KARIM-UN-NISSA . **I. L. R., 15 All., 396**

MAHOMEDAN LAW—ACKNOWLEDGMENT—*continued.*

19. ——— *Acknowledgment, Effect of, on illegitimate children.*—The doctrine of acknowledgment is not applicable to a case in which the paternity of the child is known, and it cannot therefore be called in to legitimate a child which is illegitimate by reason of the unlawfulness of the marriage of its parents. *Mahomed Allahdad Khan* v. *Muhammed Ismail Khan, I. L. R., 10 All., 289,* followed. AIZUNNISA KHATOON *v.* KARIMUNNISSA KHATOON **I. L. R., 23 Calc., 130**

20. ——— *Acknowledgment, Effect of—Legitimacy of children—Fornication—Sunni Mahomedans.*—Under the Mahomedan law, where a child is begotten by a Mahomedan father by a Hindu prostitute living with him, no acknowledgment by the father can confer on the child the status of legitimacy. BHAN BIBI *v.* LALON BIBI **I. L. R., 27 Calc., 801**

21. ——— *Mode of acknowledgment.*—In order to an acknowledgment of paternity legitimating children under the Mahomedan law, the declaration ought to be clear and distinct in respect to each child; and the children, or those of them who have reached years of discretion, ought to come forward and acknowledge their father. KEDARNATH CHUCKERBUTTY *v.* DONZELLE **20 W. R., 352**

22. ——— *Form of acknowledgment—Evidence of marriage.*—The acknowledgment need not be of such a character as to be evidence of marriage. WUHEEDUN *v.* WUSEE HOSSEIN **15 W. R., 403**

23. ——— *Legitimacy of children—Presumption as to marriage.*—Where a Mahomedan lady sued for a declaration of the validity of her marriage with the man with whom she had lived and of the legitimacy of their children, and relied upon the position which her reputed husband gave her during his lifetime in his family and on his treatment of their children,—*Held,* following Privy Council in *Ashrufooddowlah Ahmed Hossein Khan* v. *Hyder Hossein Khan, 11 Moore's I. A., 94,* that though the presumption of legitimacy "follows from the bed," and legitimacy may be inferred from the treatment shown during lifetime to a woman and her children, yet a Court, in dealing with this subject, would not be justified in making any presumption of fact which a rational view of the principles of evidence would exclude; and that, as the force of presumptions of fact must vary with varying circumstances,—and in the present case the circumstances were all such as to throw the Court upon direct evidence rather than upon presumptions,—the Court could not, in the absence of substantive evidence, allow the claim. The appeal was accordingly dismissed. The circumstances above referred to, as throwing the Court upon direct testimony, were that the lady herself was in the suit, and might have

MAHOMEDAN LAW—ACKNOWLEDGMENT—*concluded.*

given her evidence; that a valid Mahomedan marriage must always be made in the presence of witnesses, who might have been summoned as witnesses, together with the officiating mollah or kazi; and that the evidence of one such witness, who had been called, actually threw doubt upon itself. Butoolun *v.* Koolsoom. Butoolun *v.* Lloyd **25 W. R., 444**

24. ———— *Illegitimate son—Informal acknowledgment.*—The son of a Mahomedan by a slave girl, if acknowledged by his father, is entitled to the same share as the son of a lawful wife. The acknowledgment of a son by a Mahomedan need not be a formal acknowledgment: if it can be made out from his acts and conduct, it will be sufficient. Waliulla *v.* Miran Saheb **[2 Bom., 285**

25. ———— *Legitimacy of child.*—Notwithstanding Mahomedan law, a Court of Justice cannot pronounce a child to be the legitimate offspring of a particular individual when such a conclusion would be contrary to the course of nature and impossible. Ashruf Ali *v.* Ashad Ali **[16 W. R., 260**

26. ———— **Acknowledgment by brother**—*Brotherhood—Nasab—Illegitimacy.*—A man cannot acknowledge a brother so as to establish the nasab. Shahebzadi Begum *v.* Himmut Bahadur . **4 B. L. R., A. C., 103: 12 W. R., 512**

S. C. affirmed on review. Himmut Bahadoor *v.* Shahazada Begum . . **14 W. R., 125**

27. ———— *Validity of acknowledgment—Insufficient acknowledgment, Effect of.*—The plaintiffs, *E* and *M*, were the illegitimate son and daughter of *B*, a Mahomedan woman. *E* died, and after his death the plaintiff sued his widow and *M* to recover his share of the property of *B*, which he claimed as co-heir of *E*. He relied upon a recital in a petition, in which *E*, the plaintiff, and *M*, describing themselves as the son and daughter of *B*, had prayed for a certificate under Act XXVII of 1860. *Held* that this was not such an acknowledgment of the plaintiff by *E* as to constitute between them the status of full brotherhood and heirship by Mahomedan law. *Semble*—The acknowledgment by one man of another as his brother is not by Mahomedan law valid so as to be obligatory on the other heirs, but is binding against the acknowledger. Himmut Bahadur *v.* Shahebzadi Begum **13 B. L. R., 182: 21 W. R., 113 [L. R., 1 I. A., 23**

affirming decision of High Court in preceding case.

MAHOMEDAN LAW—BILL OF EXCHANGE.

———— **Notice of dishonour.**—Notice of dishonour of a bill of exchange is not necessary by Mahomedan law. Gapinath *v.* Abbas Hossein **[7 B. L. R., 434 note**

MAHOMEDAN LAW—CONTRACT.

1. ———— **Consideration**—*Relationship.*—By Mahomedan law an agreement to pay an annuity, though signed and registered, has not the effect of a deed in English law, but requires a consideration to support it. The relationship existing between cousins is not a sufficient consideration to support such an agreement. Jafar Ali Nizam Ali *v.* Ahmad Ali Imam Haidarbaksh **[5 Bom., A. C., 37**

2. ———— **Mortgage**—*Redemption of separate mortgagee from debt.*—The rule that if the owner of different estates mortgage them to one person separately for distinct debts, or successively to secure the same debt, the mortgagee may insist that one security shall not be redeemed alone, applies to a Mahomedan mortgage. Vithal Mahadev *v.* Daud valad Muhammad Husen **[6 Bom., A. C., 90**

MAHOMEDAN LAW—CUSTODY OF WIFE.

See Habeas Corpus . **13 B. L. R., 160**

———— **Rights of mother and husband.**—By Mahomedan law the mother is entitled to the custody of a female child, although married, until she has attained puberty. Where a husband applied that his wife, stated in the return to a writ of *habeas corpus* to be "an infant under the age of sixteen years, to wit of the age of eleven years or thereabouts," might be delivered over into his custody, the Court, on the ground that she had not attained the age of puberty, and that her dower had not been paid, refused to order her to be taken from the custody of the mother, although the mother had taken her away secretly, in the absence of her father and husband from Bandari, where they were all living together, to Calcutta. In the matter of Khatija Bibi . . . . . . **5 B. L. R., 557**

See In the matter of Mahim Bibi **[13 B. L. R., 160**

MAHOMEDAN LAW—CUSTOM.

See Converts . **I. L. R., 20 Bom., 53**

See Jurisdiction of Civil Court—Religion . **I. L. R., 15 Mad., 355**

See Limitation Act, 1877, art. 120.
[I. L. R., 21 Calc., 157
L. R., 20 I. A., 155

See Mahomedan Law—Endowment.
[I. L. R., 13 Bom., 555
I. L. R., 22 Calc., 324
L. R., 22 I. A., 4
I. L. R., 19 All., 211

See Mahomedan Law—Kazi.
[I. L. R., 18 Bom., 103

See Relinquishment of, or Omission to sue for, Portion of Claim.
[I. L. R., 21 Calc., 157
L. R., 20 I. A., 155

1. ———— **Kazi, Appointment of**—*Hereditary office, Grant of.*—In the absence of an established local custom to that effect, the office of Kazi is not hereditary. *Quære*—Whether such a custom would be valid. JAMAL WALAD AHMED *v.* JAMAL WALAD JALLAL . **I. L. R., 1 Bom., 633**

2. ———— **Custom of right to eject on sale**—*Lease – Sale by lessor.*—A Mahomedan residing at Zanzibar let a house situated there to the defendant, to be held by the latter as long as he pleased, under a lease in which he (the lessor) stipulated never to remove the lessee. The plaintiff subsequently, with full knowledge of the lease, purchased the same house from the lessor, and as such purchaser sued to eject the defendant. The plaintiff tendered evidence to show that by the custom of Zanzibar the defendant's tenancy was determined upon the sale by the landlord. This evidence was refused. *Held* that the alleged custom, even if proved, was invalid. It was unreasonable, as enabling a man, after having granted a lease, to deprive the lessee of the entire benefit of his lease. DESOUZA *v.* PESTANJI DHANJIBHAI . . . . **I. L. R., 8 Bom., 408**

3. ———— **Exclusion from inheritance of females by sons**—*Labis—Ravuthans of Palgat—Mahomedan religion—Hindu law of inheritance—Evidence necessary to support valid custom.*—A claim by the widow of *S*, Ravuthan, a Labi of Palgat, and her daughters, for their shares of his estate under Mahomedan law, was opposed by other members of the family, who pleaded that, according to a special custom obtaining among the Ravuthans of that part of the country adopted from Hindu law, females are excluded from inheritance if sons or sons' sons exist. In two instances it was proved that women of this class had obtained shares under Mahomedan law by suits without this plea having been put forward. The District Munsif described these cases as interruptions, and found on the evidence that the custom was proved. On appeal this decree was confirmed by the Subordinate Judge. *Held* that no valid custom was established by the evidence. A custom, to be valid, must be consciously accepted as having the force of law. MIRABIVI *v.* VELLAYANNA . . **I. L. R., 8 Mad., 464**

4. ————**Division of estate in cases of intestacy**—*Impartible estate—Beng. Reg. XI of 1793—Beng. Reg. X of 1800.*—The family usage that a zamindari has never been separated, but has devolved entire on every succession, though proved to have existed as the custom for many generations, will not exempt the zamindari from the operation of Regulation XI of 1793, which provides in case of intestacy for the division of landed estate among the heirs of the deceased according to the Mahomedan or Hindu law. Regulation X of 1800 does not apply to undivided zamindaris in which a custom prevails that the inheritance should be indivisible, but only to jungle mehals and other entire districts where local customs prevail, and therefore only partially, and to that extent, repeals Regulation XI of 1793. DEEDAR HOSSEIN *v.* ZUHOOROONNISSA

[2 Moore's I. A., 441

5. ———— **Public worship in mosque**—*Injunction restraining defendants from interrupting religious ceremonies in a musjid—Right of imam and of mutwali to be protected in their offices—Differences of opinion between the imam and certain of the worshippers as to observances at prayer.*—Among Sunni Mahomedans, neither on the ground of any general and express rule of Mahomedan law nor on the ground of the growth of customs separating different schools in so marked a manner that the followers of one school could not properly worship with those of another, did the introduction by the imam of (*a*) the loud-toned Amen, and of (*b*) the Rafadain, show such a change of tenets. Nor was it in itself such an important departure from the custom of Sunnis as that it would disqualify the imam for officiating in a musjid where those ceremonies had not previously been used. Nor did the introduction of (*a*) and of (*b*) justify a section of the worshippers in setting up another leader of prayer at the same time that prayer was being conducted by the duly authorized imam. On the lower Appellate Court's findings of fact there was nothing in the constitution of the mosque which prohibited the adoption of (*a*) and (*b*), and those findings were conclusive. For the purpose, however, of considering the case from other points of view, their Lordships examined the whole of the evidence, and they agreed with the Subordinate Judge that there was no evidence showing that the mosque was not intended for the worship of all Sunnis or for all Mahomedans. Nor was there any rule of law that, when public worship had been performed in a certain way for twenty years, there could not be any variation, however slight, from that way. The question in each case of dispute must be as to the magnitude and importance of the alleged departure. There had not been produced any text to show that a follower of Abu Hanifa would do wrong in following a practice recommended by others of the four imams. Nor was there any usage having the force of law among Sunni communities, forbidding the introduction of (*a*) and (*b*) into ceremonial prayer as shown by the evidence of learned Mahomedans, and by proof of their actual practice. The judgments in *Empress* v. *Ramzan, I. L. R., 7 All., 461,* and *Ataulla* v. *Azimulla, I. L. R., 12 All., 494,* referred to. The Court ought not to declare that the imam or mutwalis of the musjid had authority to eject the dissentients, if and when they interfered. The plaintiffs must rely on the prohibitory order or injunction, which could be enforced according to law if the occasion arose. FAZL KARIM *v.* MAULA BAKSH . **I. L. R., 18 Calc., 448**

[L. R., 18 I. A., 59

6.————**Immoral customs**—*Succession to property among Kanchans—Practices not recognizable by law as customs.*—Among Mahomedan Kanchans, practices relating to their holding and inheritance of property, having an immoral tendency, were held to be not recognizable as customs, or enforceable as law. To recognize practices tending

MAHOMEDAN LAW—CUSTOM —*concluded.*

o promote prostitution, which the Mahomedan law reprobates and prohibits absolutely, would be contrary to the policy of that law. Where property left by a female Kanchani, deceased, was claimed by her legitimate kindred, it was *held* that an "adoption," so called, in conformity with those practices, had not operated to separate her from the family in which she was born. The mode in which her property had been acquired was not the subject of the present question, which was only concerned with the right of personal succession to it; and that property was held to be distributable according to the rules of Mahomedan law governing inheritance. GHASITI *v.* UMRAO JAN. GHASITI *v.* JAGGU . . . . **I. L. R., 21 Calc., 149** **[L. R., 20 I. A., 193**

MAHOMEDAN LAW—CUTCHI MEMONS.

See CASES UNDER HINDU LAW—INHERITANCE—SPECIAL LAWS—CUTCHI MEMONS.

1. ———— **Hindus**—*Hindu Wills Act, s. 2* —*Probate of will.*—Cutchi Memons are not Hindus within the meaning of s. 2 of the Hindu Wills Act (XXI of 1870), and therefore probate, to take effect throughout India, cannot be granted in the case of a will of a Cutchi Memon testator. Cutchi Memons are Mahomedans to whom Mahomedan law is to be applied, except when an ancient and invariable special custom to the contrary is established. IN RE ISMAIL . . . . **I. L. R., 6 Bom., 452**

2. ———— **Law of inheritance applicable to.**—In the absence of proof of any special custom of inheritance, the Hindu law of inheritance applies to Cutchi Memons. ASHABAI *v.* TYEB HAJI RAHIMTULLA . . . **I. L. R., 9 Bom., 115**

ABDOOL CADUR HAJI MAHOMED *v.* TURNER **[I. L. R., 9 Bom., 158**

MAHOMEDAN LAW—DEBTS.

See DEBTOR AND CREDITOR. **[I. L. R., 8 All., 178**

See CASES UNDER REPRESENTATIVE OF DECEASED PERSON.

See CASES UNDER SALE IN EXECUTION OF DECREE—DECREES AGAINST REPRESENTATIVES.

1. ———— **Decree against heir of debtor** —*Effect of decree against one heir.*—Under Mahomedan law, a decree against one heir of a deceased debtor cannot bind the other heirs. SITANATH DAS *v.* ROY LUCHMIPUT SINGH . **11 C. L. R., 268**

2. ———— **Consent decree against one heir, Effect of**—*Heir of deceased debtor—Intestacy—Succession—Parties—Suit by creditor of intestate Mahomedan—Representation of deceased debtor.*—*Per* GARTH, *C.J.*—A decree by consent against one heir of a deceased debtor cannot, under the Mahomedan law, legally bind the other heirs. *Per* MARKBY, *J.*—Under the Mahomedan law, the estate of an intestate descends entire, together with all the debts due from and owing to the deceased. The creditor of an intestate Mahomedan must enforce his claim against the estate in a suit properly framed for the purpose. Such a suit is properly framed if all the persons in possession of that particular portion of the estate which it is intended to charge are made parties to it. The right of a Mahomedan heir claiming the property of his deceased ancestor, who died indebted, is a right of representation only, and except as representative he has no right to the property whatsoever. ASSAMATHEMNESSA BIBEE *v.* ROY LUTCHMEEPUT SINGH **[I. L. R., 4 Calc., 142 : 2 C. L. R., 223**

3. ———— **Creditors of deceased person** —*Alienation by her—Purchaser from heir of Mahomedan—Lis pendens.*—The creditor of a deceased Mahomedan cannot follow his estate into the hands of a *bonâ fide* purchaser for value, to whom it has been alienated by the heir-at-law, whether the alienation has been by absolute sale or by mortgage. But where the alienation is made during the pendency of a suit in which the creditor obtains a decree for the payment of his debt out of the assets of the estate which have come into the hands of the heir-at-law, the alienee will be held to take with notice, and be affected by the doctrine of *lis pendens.* BAZAYET HOSSEIN *v.* DOOLI CHUND. MAHOMED WAJID *v.* TAYYUBAN **[I. L. R., 4 Calc., 402 : L. R., 5 I. A., 211**

4. ———— *Alienation by heirs—Rights of mortgagee.*—The debts of a deceased Mahomedan are not a charge upon the estate which gives the creditor a priority over all persons who after his death purchase or take a mortgage of his estate. See *Bazayet Hossein* v. *Dooli Chund, L. R., 5 I. A., 211 : I. L. R., 4 Calc., 402.* LAND MORTGAGE BANK *v.* BIDYADHARI DASI **[7 C. L. R., 460**

5. ———— ———— The creditor of a deceased Mahomedan cannot follow his estate into the hands of a *bonâ fide* purchaser from his heir, *Bazayet Hossein* v. *Dooli Chund, L. R., 5 I. A., 211,* followed. LAND MORTGAGE BANK *v.* ROY LUCHMIPUT SINGH . . . **8 C. L. R., 447**

6. ———— *Sale in execution of money-decree against the representatives of deceased Mahomedan—Rights of purchaser at execution-sale against mortgagee—Notice.*—In execution of a money-decree against the heirs of a deceased Mahomedan for a debt incurred by him, *A* purchased certain property which had been allotted to the widow of the deceased in lieu of dower and of her share of the inheritance. Previously to the purchase, however, the widow had mortgaged the same property to *B*, who, at the time of the mortgage, knew of the debt for which the decree was obtained. In a suit by *B* against *A* on the mortgage, it was not shown that there were not assets in the hands of the heirs-at-law to satisfy the debt due to *A*'s vendor. *Held* that *B* was entitled to recover. *Bazayet Hossein* v. *Dooli*

Chund, L. R., 5 I. A., 211, followed. NARSINGH DASS *v.* NAJMOODDIN HOSSEIN

[I. L. R., 8 Calc., 20 : 10 C. L. R., 225

7. ——————— *Administration, Suit for—Suit by creditor of deceased Mahomedan against his heir—Sale in execution of decree.*—After the death of a Mahomedan, several of his creditors sued his widow and daughter, and obtained decrees against the assets of the deceased, which assets had come into the possession of the mother and daughter. In execution of these decrees, portions of the property were sold: thereupon two married sisters of the deceased, who lived with their husbands apart from the widow and daughter, sued as heirs of the deceased to recover their shares of the property sold. *Held* that the property of the deceased having been attached and sold in payment of his debts, the plaintiffs' suit must be dismissed. When a creditor of a deceased Mahomedan sues the heir in possession, and obtains a decree against the assets of the deceased, such a suit is to be looked upon as an administration suit; and those heirs of the deceased who have not been made parties cannot, in the absence of fraud, claim anything but what remains after the debts of the testator have been paid. *Nuzeerun* v. *Ameerooddeen, 24 W. R., 3; Assamathemnessa Bibee* v. *Roy Lutchmeeput Singh, I. L. R., 4 Calc., 142; Kishwur Khan* v. *Jewun Khan, 1 Sel. Rep., 25; Khajah Hidayutoollah* v. *Rai Jan Khanum, 3 Moore's I. A., 295;* and *Bazayet Hossein* v. *Dooli Chund, L. R., 5 I. A., 211,* referred to. MUTTYJAN *v.* AHMEDI ALLY . **I. L. R., 8 Calc., 370 : 10 C. L. R., 346**

8. ——————— *Suit by creditor of deceased Mahomedan against his heir—Administration, Suit for.*—In a suit against the widow of a Mahomedan on the ground that she was in possession of his estate, and where there were other heirs of the deceased, *held,* following the principle laid down in the case of *Mutty Jan* v. *Ahmed Ally, I. L. R., 8 Calc., 370,* that the suit was properly brought against the widow, and that her liability was to be measured, not by the extent of her interest in her late husband's property, but by the amount of the assets of his estate which had come into her hands, and which she had not duly disbursed in the discharge of the liabilities to which the estate was subject at her husband's death. AMIR DULHIN *alias* MOHAMDI JAN *v.* BAIJ NATH SINGH *alias* BAIJU SINGH

[I. L. R., 21 Calc., 311

9. ——————— *Suit by creditors against representatives.*—Two of the widows of a deceased Mahomedan sold a portion of his real estate to satisfy decrees obtained by creditors of the deceased against them as his representatives. The sale-deed was executed by them on behalf of the plaintiff, a daughter of the deceased, she being a minor, in the assumed character of her guardians. *Held,* if the plaintiff was in possession, and was not a party to, or properly represented in, the suits in which the creditors obtained decrees, she could not be bound by the decrees nor by the sale subsequently effected, and she was entitled to recover her share, but subject to the payment by her of her share of the debts for the satisfaction of which the sale was effected. HAMIR SINGH *v.* ZAKIA . . . **I. L. R., 1 All., 57**

HENDRY *v.* MUTTYLALL DHUR

[I. L. R., 2 Calc., 395

10. ——————— *Succession—Suit against one of the heirs of a deceased person for debt.*—The heirs to a deceased Mahomedan divided his estate among themselves according to their shares under the Mahomedan law of inheritance, a small debt being due from the estate at the time of division. Two of the heirs were subsequently sued for the whole of such debt. *Held* that, inasmuch as such heirs had not by sharing in the estate rendered themselves liable for the whole of such debt, Mahomedan law allowing the heirs of a deceased person to divide his estate, notwithstanding a small debt is due therefrom, and as a decree against such heirs would not bind the other heirs, a decree should not be passed against such heirs for the whole of such debt, but a decree should be passed against them for a share of such debt proportionate to the share of the estate they had taken. *Hamir Singh* v. *Zakir, I. L. R., 1 All., 57,* referred to. PIRTHIPAL SINGH *v.* HUSAINI JAN

[I. L. R., 4 All., 361

11. ——————— *Inheritance—Devolution not suspended till payment of deceased ancestor's debts—Decree in respect of deceased ancestor's debts passed against heirs in possession of estate—Decree not binding on other heirs not parties thereto and not in possession, so as to convey their shares to auction-purchaser in execution—Recovery of possession by other heirs contingent on payment of proportionate shares of debt for which decree was passed.*—Upon the death of a Mahomedan intestate, who leaves unpaid debts, whether large or small with reference to the value of his estate, the ownership of such estate devolves immediately on his heirs, and such devolution is not contingent upon and suspended till payment of such debts. A decree relative to his debts, passed in a contentious or non-contentious suit against only such heirs of a deceased Mahomedan debtor as are in possession of the whole or part of his estate, does not bind the other heirs who, by reason of absence or other cause, are out of possession, so as to convey to the auction-purchaser, in execution of such a decree, the rights and interests of such heirs as were not parties to the decree. In execution of a decree for a debt due by a Mahomedan intestate, which was passed against such of the heirs of the deceased as were in possession of the debtor's estate, the decree-holder put up for sale and purchased certain property which formed part of the said estate. One of the heirs, who was out of possession, and who was not a party to these proceedings, brought a suit against the decree-holder for recovery of a share of the property sold in execution of the decree, by right of inheritance. *Held* by the Full Bench that the plaintiff was not entitled to recover from the auction-purchaser, in execution of the decree, possession of his share in the property sold, without such recovery of possession being rendered contingent upon payment by him of his proportionate share of the ancestor's debt for which the decree was passed, and in satisfaction whereof the sale took place. *Wahidunnissa* v. *Sheobrattun, 6 B. L. R., 54; Assamathennessa Bibee* v. *Roy Lutchmeeput Singh, I. L. R., 4 Calc., 142; Mazhar Ali* v. *Budh Singh, I. L. R., 7 All., 297; Bachman* v. *Bachman, I. L. R., 6 All., 583; Hamir Singh* v. *Zakia, I. L. R., 1 All., 57;* and *Muttyjan* v. *Ahmed Ally, I. L. R., 8 Calc., 370,* referred to by MAHMOOD, *J.* JAFRI BEGAM *v.* AMIR MUHAMMAD KHAN . . . . **I. L. R., 7 All., 822**

12. ———————— *Inheritance—Devolution not suspended till payment of deceased ancestor's debts.*—A creditor of *A*, a deceased Mahomedan, under a hypothecation bond, obtained a decree on the 20th December 1876 for recovery of the debt by enforcement of lien against *M*, one of *A*'s heirs, who alone was in possession of the estate; and, in execution of the decree, the whole estate was sold by auction on the 21st March 1878, and purchased by the decree-holder himself. *J*, another of *A*'s heirs, was not a party to these proceedings. On *J*'s death, her son and heir, *A H*, conveyed to *M A* the rights and interests inherited by him from his mother,—namely, her share in *A*'s estate. The purchaser of the share thereupon brought a suit against the decree-holder for its recovery. *Held* that, immediately upon the death of *A*, the share of his estate claimed in the suit devolved upon *J*; that she being no party to the decree of the 20th December 1876, her share in the property could not be affected by that decree, nor by the execution-sale of the 21st March 1878; that upon her death that share devolved upon her son, who conveyed his rights to the plaintiff; that the plaintiff was therefore entitled to recover possession of the share which he has purchased, but that he could not do so without payment to the defendant of his proportionate share of the debts of *A*, which were paid off from the proceeds of the auction-sale of the 21st March 1878. *Jafri Begum* v. *Amir Muhammad Khan, I. L. R., 7 All., 822,* followed. MUHAMMAD AWAIS *v.* HAR SAHAI . **I. L. R., 7 All., 716**

13. ———————— *Liability of one of several heirs to pay ancestors' debt, when but for his own action debt would be barred by limitation—Justice, equity, and good conscience, Application of principle of—Act VI of 1871, s. 24.*—*A*, a Hindu and a creditor of *B*, a deceased Mahomedan, sued *C, D, E,* and *F*, his heirs, to recover a sum of money alleged to be due on a roka, alleging that they were in possession of *B*'s estate, and praying for a decree against the estate upon that footing. It was not disputed that the debt would have been barred by limitation but for a part payment made by *C*, and endorsed by him on the back of the roka. *D, E,* and *F* were no parties to such payment, and it was found not to have been made with their consent. The first Court, considering that collusion existed between *A* and *C*, and having regard to the fact that *C* did not dispute his liability, gave *A* a decree for the full amount of the debt against *C* without finding whether the roka was genuine or not, and held that the shares of *D, E,* and *F* in *B*'s estate were not liable for any portion of the debt. *A* accepted this decision and did not appeal. *C* appealed on the ground that he could only, under the Mahomedan law, be held liable for a part of the debt in proportion to the amount of *B*'s estate which had come into his hands. The lower Appellate Court decided in *C*'s favour, and varied the decree by directing that *A* was only entitled to recover two-fifths of the debt from *C*, that being the amount of *C*'s share. *D, E,* and *F* were not made parties to that appeal. *A* then preferred a special appeal to the High Court, making *D, E,* and *F* parties. *Held* that, under the circumstances of the case, and having regard to the rule of Mahomedan law, *A* was not entitled to a decree against *C* for more than two-fifths of the debt. *Held* further that, applying the principle of justice, equity, and good conscience to the case, inasmuch as *A* was a Hindu, it would not, under the circumstances of the case, be equitable to hold *C* liable for the whole of the debt. BUSSUNTERAM MARWARY *v.* KAMALUDDIN AHMED **I. L. R., 11 Calc., 421**

14. ———————— *Money due by a deceased Mahomedan—Suit by a creditor against only one of the heirs of the deceased—Right of suit—Debtor and creditor.*—A suit for money due by a deceased Mahomedan lies against one of his heirs in respect of his share in the property left by the deceased, though it may not bind the share of another heir. *Assamathemunissa Bebee* v. *Roy Lutchmeeput Singh, I. L. R., 4 Calc., 142,* and *Jafri Begam* v. *Amir Muhammed Khan, I. L. R., 7 All., 822 (827),* followed. *Quære*—Whether, there having been no division of the estate, the share of the heir sued is liable for the whole debt of the deceased. *Bussunteram Marwary* v. *Kamaluddin Ahmed, I. L. R., 11 Calc., 421,* and *Pirthi Pal Singh* v. *Husaini Jan, I. L. R., 4 All., 361,* referred to. AMBASHANKAR HARPRASAD *v.* ALI RASUL **I. L. R., 19 Bom., 273**

15. ———————— *Mahomedan family—Mortgage by Mahomedan father—Suit by mortgagee against minor son represented by mother after mortgagor's death and decree for possession—Some of the heirs not parties—Subsequent suit by daughters as heirs of mortgagor for redemption.*—When in a mortgage suit the debt is due from the father, and after his death the property is brought to sale in execution of a decree against the widow or some of the heirs of the mortgagor, and the whole property is sold, then the heirs not brought on the record cannot be permitted to raise the objection that they are not bound by the sale simply because they are not parties to the record. This principle of law applies as much to a Mahomedan family as to a Hindu family governed by the Mitakshara law. *Hari* v. *Jairam, I. L. R., 14 Bom., 597,* and *Khurshetbibi* v. *Keso, I. L. R., 12 Bom., 101,* referred to and followed. One *N* mortgaged his property in 1862 to *B* and died in 1864, leaving a widow, a son, and two daughters. In 1864, *B* (the mortgagee) sued the minor son, represented by his mother, for possession as owner under the gahan lahan clause and got a decree on the 30th September 1864, and obtained possession in

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1865. To this suit the daughters of *N* were not parties. *B* held the land till 1887, and then sold it to *S*. In 1890 *N*'s daughters brought this suit against *B* and *S* to redeem the mortgage of 1862, contending that they were not bound by *B*'s suit in 1864, not having been parties to it. *Held* that the plaintiffs could not redeem. They were bound by the decree obtained by the mortgagee in 1864. DAVALAVA *v.* BHIMAJI DHONDO

[I. L. R., 20 Bom., 338

16. ———— **Power of alienation of heir**—*Executor—Purchaser from heir.*—*A*, a Mahomedan, died, being indebted to *B* in a sum of money. *B* sued the heirs of *A* for the amount and obtained a decree. Before *B* obtained his decree, the heirs of *A* had mortgaged the estate of *A* to *C*. The property was put up to sale in execution of *B*'s decree, and *B* became the purchaser, and now sued to obtain possession from *C*. *Held* that the mere fact of the property having once belonged to the estate of *A* did not entitle *B* to follow it in the hands of *C*, so as to enable him to recover possession without redeeming. The heir of a Mahomedan may, as executor, sell a portion of the estate of the deceased, if necessary, for the payment of debts; and such sale will not be set aside if the purchaser acted *bonâ fide*. ENAYET HOSSEIN *v.* RAMZAN ALI

[1 B. L. R., A. C., 172: 10 W. R., 216

See HASAN ALI *v.* MEHDI HUSAIN

[I. L. R., 2 All., 533

17. ———— *Sale for debts of father.*—*M*, a Mahomedan, inherited certain property from his father, which, while he was a minor, his mother sold to the defendant, in good faith, for the discharge of a debt adjudged to be due to the defendant by *M*'s father. *M*, when he became of age, sold the same property to the plaintiff, who sued to obtain possession thereof by avoidance of the sale to the defendant. *Held* that the plaintiff, having no better title or other right than *M* could assert, was not competent to maintain the suit, without tendering payment of the debt. *Held* also that, even if Mahomedan law were applied, and *M*'s mother was not legally competent to sell his property in the assumed character of his guardian, the plaintiff was bound to pay the debt due from *M*'s father to the defendant before he could claim, by avoidance of the sale in question, the possession of the property in suit. SAHEB RAM *v.* MAHOMED ABDUL RAHAMAN . . . **6 N. W., 268**

18. ———— **Liability for assets**—*Evidence of receipt of assets.*—Where it is sought to fix a person under the Mahomedan law with liability for the debt of a person deceased, by reason of the receipt of assets, it is incumbent on the creditor to give some evidence of assets having been received. FUZEELUTOONISSA *v.* HOORMUTOONISSA

[Marsh., 218: 1 Hay, 559

MAHOMEDAN LAW—DIVORCE.

1. ———— **Validity of divorce**—*Release of dower by wife—Evidence of divorce.*—According to the Mahomedan law, the non-payment by the wife of the consideration for a divorce does not invalidate the divorce. The divorce is the sole act of the husband, though granted at the instance of the wife, and purchased by her. The kholanamah, or the deed securing to the husband the stipulated consideration, does not constitute the divorce, but assumes and is founded upon it. The divorce is created by the husband's repudiation of the wife and the consequent separation. The husband having distinctly alleged a divorce by khola, and relied on two instruments,—one an ibranamah (or deed of voluntary release by the wife of her denmohr or dowry) to which there was no satisfactory proof that she ever gave her assent with a knowledge of its contents, and a kholanamah (surrendering the wife's settlement) obtained from her mother by means of cruelty and ill-usage practised on her daughter, to confirm the ibranamah,—*Held* that instruments so obtained could have no legal effect when used as a defence against the wife's claim to her dowry. BUZL-UL-RUHEEM *v.* LUTEEFUTOONNISSA

[1 W. R., P. C., 57: 8 Moore's I. A., 379
1 Ind. Jur., O. S., 1

2. ———— **Evidence of divorce**—*Husband's statement.*—The Mahomedan law does not provide for the nature of the evidence required to prove a divorce. *Quære*—Whether the husband's statement that he has divorced his wife is sufficient proof of the fact. BUKSH ALI *v.* AMEERUN BEBEE

[2 W. R., 208

3. ———— *Necessity of written document.*—Although writing is not necessary to the validity of a divorce under Mahomedan law, yet where a divorce takes place between persons of rank and property, and where valuable rights depend upon the marriage and are affected by the divorce, the parties, for their own security, may be expected to have some document affording satisfactory evidence of what they have done. GOWHUR ALI KHAN *v.* AHMED KHAN . **20 W. R., 214**

4. ———— *Deed of divorce signed in absence of wife, Validity of.*—An instrument of divorce signed by the husband in the presence of, and given to, the wife's father, was held to be valid, notwithstanding that it was not signed in the presence of the wife. WAJ BIBEE *v.* AZMUT ALI . . . . . . **8 W. R., 23**

5. ———— *Marriage.*—Where a Mahomedan was shown to have been duly married, her subsequent divorce should not be presumed only from the fact of her husband having taken another woman to live with him, in consequence of which his wife left his house and went to live with a relative, nor from the fact of his having stated in his will that he had no wife, lawful or niece. NOOR BIBEE *v.* NAIVAS KHAN

[1 Ind. Jur., N. S., 221

6. ———— **Right to leave husband**—*Man taking another wife.*—A Mahomedan in the kubinnamah or deed of dower on his marriage with *S* stipulated that he should not take a second wife without the permission of *S*. *Held* that *S* was not

entitled to leave him upon his taking a second wife without her permission. MOHABUTH ALLY *v.* MYMONISSA . . . . . **Marsh., 361**

S. C. MYMONISSA *v.* MOHABUTH ALLY **[2 Hay, 404**

7. ———— **Right to divorce**—*Suit by wife for divorce—Agreement for divorce.*—A husband entered into a private agreement with his wife authorizing her to divorce him upon his marrying a second wife during her life, and without her consent. *Held* that the Mahomedan law sanctioned such an agreement, and that the wife, on proof of her husband having married a second time without her consent, was entitled to a divorce. BADARANISSA BIBEE *v.* MAFIATTALA **[7 B. L. R., 442 : 15 W. R., 555**

8. ———— **Mode of divorce**—*Charge of adultery—Ill-usage.*—A charge of adultery by a Mahomedan against his wife does not operate as a divorce, though, if false, it might be an item of ill-usage towards making up a sufficient answer to his claim for restitution of conjugal rights. The husband cannot enforce his right to his wife till he pays the dower,—in the absence, that is, of any sufficient answer to his claim. Ill-treatment by him and his second wife would justify the first wife in leaving him. JAUN BEEBEE *v.* BEPAREE . **3 W. R., 93**

9. ———— *What amounts to divorce—Revocable divorce.*—Under Mahomedan law, no special expressions are necessary to constitute a valid divorce, nor, except when the repudiation is final, need the words be repeated thrice. If the divorce pronounced is liable to be, but is not, revoked within the period of iddat, it becomes final. IBRAHIM *v.* SYED BIBI . . **I. L. R., 12 Mad., 63**

10. ———— *Divorce in absence of wife.*—Suit by a Mahomedan female against her husband for maintenance. Defendant pleaded that he had divorced the plaintiff on the 8th January 1862. Both the lower Courts found that no divorce had taken place upon the following facts. Defendant went to Trichinopoly leaving his wife at Tinnevelly. While at Trichinopoly, he received letters from Tinnevelly informing him that his wife was leading an immoral life. He therefore went before the Town Kazi of Trichinopoly, made a written declaration in the shape of a letter to plaintiff to the effect that he had divorced her, and repeated the divorce three times successively before the Town Kazi of Trichinopoly. Defendant directed also that the letter of divorce should be sent to the plaintiff, but there was no evidence of her having received it. *Held*, upon special appeal, that it was clear upon the authorities that there had been a valid divorce. The compressing the expression of the intention into one sentence seems, on the authorities, not to affect the legality of the repudiation, although some doctors consider the process immoral. SHERIF SAIB *v.* USANABIBI AMMAL . . . . **6 Mad., 452**

11. ———— *Khoola divorce.*—Where a Mahomedan woman claimed a divorce from her husband on grounds which she failed to establish, but the husband, at the suggestion of the Court, agreed to a khoola divorce on terms to be settled by a Kazi,—*Held* that the action of the Court in not dismissing the suit, but proceeding to suggest a compromise by means of a khoola divorce, was not illegal. *Held* also that a khoola divorce is valid, though granted under compulsion. VADAKE VITIL ISMAL *v.* ODAKEL BEYAKUTTI UMAH **[I. L. R., 3 Mad., 347**

12. ———— *Wife's right of option, Non-user of.*—Under Mahomedan law, where the husband gives the wife an option as to declaring herself repudiated and she avails herself of it, the repudiation or divorce is binding on him; and a discretion to repudiate when attached to a condition need not be limited to any particular period, but may be absolute as regards time. Such option is not lost by non-user where there is nothing in the contract between the parties obliging the wife to exercise the option directly a breach of the condition occurs. ASHRUF ALI *v.* ASHAD ALI . **16 W. R., 260**

13. ———— *Divorce by wife.*—Under the Mahomedan law, a husband may give his wife the power to divorce herself from him according to the form prescribed by that law for divorce by the husband. HAMIDOOLLA *v.* FAIZUNNISSA **[I. L. R., 8 Calc., 327 : 10 C. L. R., 291**

14. ———— *Pronunciation of word "talak" by husband.*—The mere pronunciation of the word "talak" three times by the husband, without its being addressed to any person, is not sufficient to constitute a valid divorce by Mahomedan law. *Semble* That a divorce pronounced in due form by a man against a woman who is in fact his wife dissolves the marriage, though he pronounces it under a belief that she is not his wife. FURZUND HOSSEIN *v.* JANU BIBEE **I. L. R., 4 Calc., 588**

15. ———— *Divorce by one acting on compulsion from threats.*—According to Mahomedan law, the divorce of one acting upon compulsion from threats is effective. IBRAHIM MULLA *v.* ENAYETUR RUHMAN **[4 B. L. R., A. C., 13 : 12 W. R., 460**

16. ———— *Repudiation by ambiguous expression—Custody of minor children.*—Where a Mahomedan said to his wife when she insisted against his wish on leaving his house and going to that of her father, that if she went she was his paternal uncle's daughter, meaning thereby that he would not regard her in any other relationship and would not receive her back as his wife,—*Held* that the expression used by the husband to the wife, being used with intention, constituted, under Mahomedan law, a divorce which became absolute if not revoked within the time allowed by that law. *Held* also, the divorce having become absolute, the parties being Sunnis, that the husband was not entitled to the custody of his infant daughter until she had attained the age of puberty. HAMID ALI *v.* IMTIAZAN . . . . **I. L. R., 2 All., 71**

17. ———— *Zihar—Mutta form of marriage.*—*Quære*—Whether the form of divorce called zihar may be exercised in the mutta

MAHOMEDAN LAW—DIVORCE
—continued.

form of marriage. IN THE MATTER OF THE PETITION OF LUDDUN SAHIBA. LUDDUN SAHIBA *v.* KAMAR KUDDER
[I. L. R., 8 Calc., 736: 11 C. L. R., 237

18. ——— *Khoja Mahomedans—Custom.*—Custom as to divorce among Khoja Mahomedans of the Suuni sect considered. IN RE KASAM PIRBHAI . . **8 Bom., Cr., 95**

19. ——— *Shiah school—Mutta marriage—Gift of term.*—In a suit brought by a Mahomedan of the Shiah sect against his wife belonging to the same persuasion, for a declaration that the relationship of husband and wife had terminated, and that he was not liable to pay maintenance to her, which he had been directed to do by an order passed under the provisions of the Code of Criminal Procedure, on the allegation that the marriage was of a mutta form, and that he, on the 22nd February 1882, had made hiba-i-muddat (gift of the term) of whatever period there then might remain unexpired, the wife pleaded *inter alid* that her husband was not competent to dissolve the marriage tie within the contracted period without her consent, and that, if under the Mahomedan law the consent was unnecessary, the Court was bound, in administering justice, equity, and good conscience, to modify the strict law in this respect. *Held* that, although the ordinary law of divorce does not exist in respect of marriages by the mutta form, they can nevertheless be terminated by the husband giving away the unexpired portion of the term for which the marriage was contracted, and the consent or acceptance on the part of the wife is not necessary for the dissolution of the marriage. MAHOMED ABID ALI KUMAR KADER *v.* LUDDEN SAHIBA . . . **I. L. R., 14 Calc., 276**

20. ——— **Effect of divorce**—*Irreversible divorce.*—According to Mahomedan law, a divorce is irreversible if the husband does not take back the wife before the expiration of her "iddat," or term of probation. MOZUFFUR ALI *v.* KUMEERUNISSA BIBEE . . . **W. R., 1864, 32**

21. ——— *Talak biddat—Husband and wife—Order for maintenance upon husband—Effect upon order—Presidency Magistrate's Act, IV of 1877, s. 234—Borah Mahomedans.*—An order made under s. 234 of Act IV of 1877 by the Presidency Magistrate directing a Borah Mahomedan husband of the Imami sect to pay a sum monthly for the maintenance of his wife belonging to the Hanafi sect does not deprive the husband of his right to divorce his wife, and after such divorce the Magistrate's order can no longer be enforced. The talak biddat, or irregular divorce, which is effected by three repudiations at the same time, appears from the authorities to be sinful, but valid. IN RE ABDUL ALI ISHMAILJI
[I. L. R., 7 Bom., 180

So with an order made under Act XLVIII of 1860 (Police Amendment Act), s. 10. IN RE KASAM PIRBHAI . . . . **8 Bom., Cr., 95**

MAHOMEDAN LAW—DIVORCE
—concluded.

22. ——— *Maintenance of wife, Order for—Criminal Procedure Code, 1872, s. 536—"Iddat."*—An order for the maintenance of a wife, passed under Ch. XLI of Act X of 1872, becomes inoperative, in the case of a Mahomedan, by reason of his lawfully divorcing his wife, and thus putting an end to the conjugal relation, but it does not become so before the expiration of the divorced wife's "iddat." *Abdur Rohoman* v. *Sakhina, I. L. R., 5 Calc., 558; In re Kasam Pirbhai, 8 Bom., Cr., 95;* and *Luddun Sahiba* v. *Kamar Kadar, I. L. R., 8 Calc., 736; Madras High Court Proceedings, 2nd December 1879,* referred to and followed. The Mahomedan law of divorce relating to the maintenance of a divorced wife during her "iddat" referred to. IN THE MATTER OF THE PETITION OF DIN MAHOMED . . . **I. L. R., 5 All., 226**

MAHOMEDAN LAW—DOWER.

See DEBTOR AND CREDITOR.
[I. L. R., 8 All., 178

See EVIDENCE ACT, s. 32.
[I. L. R., 19 Calc., 689
L. R., 19 I. A., 157

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.
[I. L. R., 18 All., 400

See RESTITUTION OF CONJUGAL RIGHTS.
[I. L. R., 8 All., 149
I. L. R., 17 Calc., 670

1. ——— **Dower, Proof of claim to**—*Deed of dower, Necessity of—Verbal statement.*—A deed of dower is not in all cases indispensable to the truth and validity of a claim for dower. *Semble*—There appears to be no reason why a mukzernamah or statement made (not on oath before the Court) by parties in a position to know the facts should not have a certain weight. JUMULLA *v.* MULKA . . . . **1 Ind. Jur., N. S., 26**

S. C. MULLEEKA *v.* JUMEELA . **5 W. R., 23**

S. C. on appeal to Privy Council. MULLEEKA *v.* JUMEELA
[11 B. L. R., 375: L. R., I. A., Sup. Vol., 135

TAJOO BEEBEE *v.* NOORUN BEEBEE . **1 W. R., 31**

2. ——— *Verbal contract for dower—Customary dower, Evidence of amount of.*—A verbal contract of dower for a large sum is admissible only if proved by most clear and satisfactory evidence. A customary dower must be proved by showing a custom of the women of the wife's family to receive, rather than of the men of the husband's family to pay, a certain dower; the Mahomedan dower being the consideration paid by the bridegroom for the marriage, and therefore regulated by the position and conduct of the bride, especially as Mahomedan men often contract most unequal marriages, though the means and position of the bridegroom must

MAHOMEDAN LAW—DOWER —*continued.*

not altogether be excluded from consideration. NUJEEMOODDEEN AHMED *v.* HOSSEINEE [4 W. R., 110

3. ——— *Oral evidence in proof of claim.*—The very best description of oral evidence is absolutely necessary to support a claim for dower where no kabinamah is produced. HUSEENA *v.* HUSMUTOONISSA . 7 W. R., 495

ABDOOL JUBBAR CHOWDHRY *v.* COLLECTOR OF MYMENSINGH . . . . 11 W. R., 65

4. ——— **Deed in lieu of dower**—*Possession—Validity of deed.*—According to the Mahomedan law, possession under a deed of bye-mokasa executed in lieu of dower is not necessary to its validity. NUSEEBOONISSA *v.* DANUSH ALI [3 W. R., 133

5. ——— **Payment by husband to wife**—*Presumption of nature of payment—Gift.*—Where a husband granted a dower of five lakhs of Lucknow rupees, and subsequently directed Sicca rupees 4,50,000 Company's paper to be set aside for her,—*Held,* under the circumstances, that this was to be presumed to be a payment on account of dower, and not a gift. IFTIKARUNISSA BEGUM *v.* AMJAD ALI KHAN . . 7 B. L. R., P. C., 643

6. ——— **Right to dower.**—Where a Mahomedan (Shiah), on his marriage, being in poor circumstances, fixed a "deferred" dower of R51,000 upon his wife, and died without leaving sufficient assets to pay such dower, and his wife sued to recover the amount of such dower from his estate,—*Held* by STUART, *C.J.* (PEARSON, *J.*, dissenting), that, it being nowhere laid down absolutely and expressly by any authority on the Mahomedan law that, however large the dower fixed may be, the wife is entitled to recover the whole of it from her husband's estate, without reference to his circumstances at the time of marriage or the value of his estate at his death, the plaintiff was only entitled, under the circumstances, to a reasonable amount of dower. *Held* by the Full Bench, on appeal from the decision of STUART, *C.J.*, that a Mahomedan widow was entitled to the whole of the dower which her deceased husband had on marriage agreed to give her, whatever it might amount to, and whether or not her husband was comparatively poor when he married, or had not left assets sufficient to pay the dower-debt. SUGRA BIBI *v.* MASUMA BIBI . I. L. R., 2 All., 573

7. ——— *Omission to claim dower in legacy.*—According to Mahomedan law, if the widow assents to any person's taking a legacy without putting forward her claim to dower, she cannot afterwards retract her assent. REZZA HOSSEIN *v.* IFATOONNISSA . . 24 W. R., 564

8. ——— **Nature of dower**—*Dower not specified.*—According to Mahomedan law, dower is presumed to be prompt in the absence of express contract, and may be enforced at any time. TADIYA *v.* HASANEBIYARI . . . . 6 Mad., 9

MAHOMEDAN LAW—DOWER —*continued.*

9. ——— *Suit for dower—Dower prompt or deferred—Presumption.*—According to Mahomedan law, dower, being consideration for marriage, is, unless payment of the whole or part of it is expressly postponed, presumed to be prompt and exigible on demand. *Tadiya* v. *Hasanebiyari, 6 Mad., 9,* followed. MASTHAN SAHIB *v.* ASSAN BIVI AMMAL . I. L. R., 23 Mad., 371

10. ——— *Exigible dower, No amount specified as.*—*Held* where no specific amount of dower has been declared exigible, and as there was no clear evidence of what was customary, that the Assistant Judge in appeal committed no error in law in holding that one-third of the whole might be considered exigible during the life of the husband, the remaining two-thirds being claimable on his death. FATMA BIBI *v.* SADRUDDIN [2 Bom., 307 : 2nd Ed., 291

11. ——— *Mode of payment if divorced—Inheritance.*—Among Mahomedans deferred dower becomes payable on the dissolution of the marriage, whether by divorce or by the death of either of the parties. According to Mahomedan law, where the heirs of a woman claimed dower from her husband, which was mowajal, or deferred, and not due or payable till her death, their claim was a simple money claim founded solely on the contract made by the husband. The husband is not a trustee for the wife in respect of her dower, nor has the wife a lien on her husband's property. *Quære*—As to the nature of the wife's claim for dower against the heirs of her husband. MAHAR ALI *v.* AMANI [2 B. L. R., A. C., 306

S. C. KHYRATUN *v.* AMANI . 11 W. R., 212

MEHRAN *v.* KUBIRAM [6 B. L. R., 60 note : 13 W. R., 49

12. ——— *Prompt and deferred dower—Custom.*—Under Mahomedan law, when on marriage it is not specified whether a wife's dower is prompt or deferred, the nature of the dower is not to be determined with reference to custom, but a portion of it must be considered prompt. The amount to be considered prompt must be determined with reference to the position of the wife and the amount of the dower, what is customary being at the same time taken into consideration. TAUFIK-UN-NISSA *v.* GHULAM KAMBAR I. L. R., 1 All., 506

13. ——— **Non-payment of prompt dower, Effect of**—*Husband and wife—Shiah—Sunni—Suit for recovery of wife.*—A woman of the Sunni sect of Mahomedans marrying a man of the Shiah sect is entitled to the privileges secured to her married position by the law of her sect, and does not thereby become governed by the Shiah law. *Held* therefore where a husband sued to recover his wife, the one being a Shiah and the other a Sunni, that the wife's dower being "exigible" dower, and not having been paid, the suit was not maintainable under Sunni law. NASRAT HUSAIN *v.* HAMIDAN [I. L. R., 4 All., 205

14. ———— *Suit for restitution of conjugal rights—Custom—Prompt and deferred dower.*—When a Mahomedan sues his wife for restitution of conjugal rights, such suit is to be determined with reference to Mahomedan law, and not with reference to the general law of contract. Under Mahomedan law, if a wife's dower is "prompt," she is entitled, when her husband sues her to enforce his conjugal rights, to refuse to cohabit with him, until he has paid her her dower, and that notwithstanding that she may have left his house without demanding her dower and only demands it when he sues, and notwithstanding also that she and her husband may have already cohabited with consent since their marriage. When at the time of marriage the payment of dower has not been stipulated to be "deferred," payment of a portion of the dower must be considered "prompt." The amount of such portion is to be determined with reference to custom. Where there is no custom, it must be determined by the Court with reference to the status of the wife and the amount of the dower. Where a Court, following this rule, determined that one-fifth only of a dower of R5,000 not stipulated to be "deferred" must be considered "prompt," inasmuch as the wife had been a prostitute and came of a family of prostitutes, it exercised its discretion soundly. EIDAN *v.* MAZHAR HUSAIN

[I. L. R., 1 All., 483

15. ———— *Restitution of conjugal rights.*—A Mahomedan cannot, according to Mahomedan law, maintain a suit against his wife for restitution of conjugal rights, even after such consummation with consent as is proved by cohabitation for five years, where the wife's dower is "prompt" and has not been paid. *Abdool Shukkoar* v. *Raheem-oon-nissa, 6 N. W., 94,* followed. WILAYAT HUSAIN *v.* ALLAH RAKHI

[I. L. R., 2 All., 831

16. ———— *Marriage—Suit for restitution of conjugal rights—Plea of non-payment—Form of decree.*—According to the Mahomedan law, marriage is a civil contract, upon the completion of which, by proposal and acceptance, all the rights and obligations which it creates arise, immediately and simultaneously. There is no authority for the proposition that all or any of these rights and obligations are dependent upon any condition precedent as to the payment of dower by the husband to the wife. Dower can only be regarded as the consideration for connubial intercourse by way of analogy to price under the contract of sale. Although prompt dower may be demanded at any time after marriage, the wife is under no obligation to make such demand at any specified time during coverture, and it is only upon such demand being made that it becomes payable. This claim may be used by her as a means of obtaining payment of the dower, and as a defence to a claim for cohabitation on the part of the husband without her consent; but, although she may plead non-payment, the husband's right to claim cohabitation is antecedent to the plea, and it cannot be said that until he has paid prompt dower his right to cohabitation does not accrue. The sole object of the rule allowing the plea of non-payment of dower is to enable the wife to secure payment. Her right to resist her husband so long as the dower remains unpaid is analogous to the lien of a vendor upon the sold goods while they remain in his possession, and so long as the price of any part of it is unpaid; and her surrender to her husband resembles the delivery of the goods to the vendee. Her lien for unpaid dower ceases to exist after consummation, unless at such time she is a minor, or insane, or has been forced, in which case her father may refuse to surrender her until payment. It cannot in any case be pleaded so as to defeat altogether the suit for restitution of conjugal rights, which is maintainable upon the refusal of either party to cohabit with the other; and it can only operate in modification of the decree for restitution by rendering its enforcement conditional upon payment of so much of the dower as may be regarded as prompt, in accordance with the principle recognized by Courts of equity under the general category of compensation or lien, when pleaded by a defendant in resistance or modification of the plaintiff's claim. *Buzloor Ruheem* v. *Shumsoon-nissa Begum, 11 Moore's I. A., 551; Mulleeka* v. *Jumeela, 11 B. L. R., 375; Khajooroonissa* v. *Ryeesoonissa, L. R., 2 I. A., 235; Nawab Bahadoor Jung Khan* v. *Uzeez Begum, N. W., S. D. A., 1843, 46, p. 180; Jaun Bebee* v. *Beparee, 3 W. R., 93; Gatha Ram Mistree* v. *Moohita Kochin Atteah Doomoonee, 14 B. L. R., 298;* and *Eidan* v. *Mazhar Husain, I. L. R., 1 All., 483,* referred to. *Abdool Shukkoar* v. *Raheem-oon-nissa, 6 N. W., 94; Wilayat Husain* v. *Allah Rakhi, I. L. R., 2 All., 831; Nasrat Husain* v. *Hamidan, I. L. R., 4 All., 205;* and *Nasir Khan* v. *Umrao, Weekly Notes, All., 1882, p. 96,* dissented from. In a suit brought by a husband for restitution of conjugal rights, the parties being Sunni Mahomedans governed by the Hanafi law, the defendant pleaded that the suit was not maintainable, as the plaintiff had not paid her dower-debt. The plaintiff thereupon deposited the whole of the dower-debt in Court. It appeared that the defendant's dower had been fixed without any specification as to whether it was to be wholly or partly prompt. It also appeared that she had attained majority before the marriage, and that she had cohabited with the plaintiff for three months after marriage, and there was no evidence that she had ever demanded payment of her dower before the suit was filed, or that she had refused cohabitation on the ground of non-payment. Besides the plea already mentioned, she also relied upon allegations of divorce and cruelty, but these allegations were found to be untrue. The lower Appellate Court dismissed the suit, holding that, inasmuch as the plaintiff had not paid the dower-debt at the time when he brought his suit, he had no cause of action under the provisions of the Mahomedan law. *Held* by the Full Bench that the lower Appellate Court's view of the Mahomedan law relating to conjugal rights and the husband's obligation to pay dower was erroneous; and that the plaintiff, under the circumstances of the case, had a right to maintain the suit. ABDUL KADIR *v.* SALIMA . **I. L. R., 8 All., 149**

17. ——————— *Suit by husband for restitution of conjugal rights—Duty of wife to cohabit with husband—Non-payment of dower.*—Suit by a Mahomedan to recover possession of his wife, the defendant. Defendant pleaded that she was not bound to return to plaintiff until plaintiff paid R42 prompt for dower, which plaintiff promised to pay by the marriage contract and had not paid. The lower Courts, following *Eidan* v. *Mazhar Husain, I. L. R., 1 All., 483,* dismissed the suit. *Held* on appeal that defendant could not refuse cohabitation on the plea that her dower had not been paid. *Abdul Kadir* v. *Salima, I. L. R., 8 All., 149,* followed. KUNHI *v.* MOIDIN

[I. L. R., 11 Mad., 327

18. ——— **Suit for dower**—*Cause of action.*—In a suit by a Mahomedan widow to recover from the heirs of her husband the amount of dower which became due to her after her husband's death, the cause of action must be deemed to have arisen at the time when she was ejected by order of Court from the property left by her husband, and which she held as security for the satisfaction of her dues. SOORMA KHATOON *v.* ATTAFFOONNISSA KHATOON

[2 Hay, 210

19. ——————— *Exigible dower —Cause of action—Deferred dower.*—According to Mahomedan law, mojal or exigible dower is payable on demand at any time from the consummation of the marriage up to the death of the wife, and a suit preferred by heirs for their mother's mojal dower will be in time if brought within twelve years of the mother's death. Mowajal or non-exigible or deferred dower is claimable on the dissolution of the marriage either by death or divorce. Shares of dower when received by the legal inheritors thereof cease to be dower, and become part of the recipient's estate. HOSSEINOODDEEN CHOWDHRY *v.* TAJUNNISSA KHATOON . . . . . . **W. R., 1864, 199**

20. ——————— *Prompt and deferred dower.*—A Mussalman, on his marriage, entered into a written agreement (unregistered) with his wife to pay her a lakh of rupees, one fourth as prompt (mojal) dower, the remainder as deferred (mowajal) dower. A separation occurred between the husband and wife, but there was no divorce. During the separation, on 3rd May 1861, the wife petitioned for leave to sue as a pauper to recover the balance of her prompt dower. The husband, on the 1st July 1861, filed a petition denying her claim against him. The wife's application to sue as a pauper was rejected on 27th January 1862. The husband died on 30th August 1867. On the 13th May 1869 the widow brought her suit to recover the balance of prompt dower and the whole of the deferred dower. *Held* that she could recover the latter. The cause of action in respect of deferred dower could not arise until the husband's death. But the cause of action in respect of prompt dower arises upon demand by the wife and refusal by the husband. KHAJAROONISSA *v.* RISANNISSA BEGUM

[5 B. L. R., 84 13 W. R., 371

21. ——————— *Limitation—Divorce.*—Where dower is "prompt," limitation does not begin to run until the dower is demanded or the marriage is dissolved by death or otherwise. The amount claimed,—*viz.,* R16,25,000,—not having been disputed in the Court of original jurisdiction, was allowed. *Quære*—Whether, in the case of a divorce, a cause of action accrues in respect of deferred dower before the repudiation has become irrevocable, or the dower has been demanded. MULLEEKA *v.* JUMEELA . . . **11 B. L. R., 375**

[L. R., I. A., Sup. Vol., 135

S. C. in lower Court, JUMEELA *v.* MULLEEKA

[W. R., 1864, 252 : 5 W. R., 23
1 Ind. Jur., N. S., 26

22. ——————— *Exigible dower —Demand—Application to sue in formâ pauperis —Cause of action.*—The prompt or exigible dower of the Mahomedan law may be regarded as a debt always due and demandable during the subsistence of the marriage, and certainly payable on demand. On a clear and unambiguous demand by the wife for payment, and refusal by the husband to pay such dower, a cause of action accrues, against which limitation begins to run. An application under s. 299, Act VIII of 1859, by a Mahomedan woman for leave to sue her husband for exigible dower *in formâ pauperis,* may be taken to express her intention of bringing an action for dower only if she obtains leave to do so as a pauper. Until she has the Court's permission to sue, her application does not amount to a demand by way of action. A counter-petition by the husband objecting to the pauper suit being allowed, and denying his liability to pay the dower, does not alter the character of the proceedings, since no opposition on his part can constitute a cause of action unless there has been a previous demand by the wife; the option being with her to demand the dower or not, and to elect her time for demanding it. KHAJAROONISSA *v.* SAIFOOLLA KHAN

[15 B. L. R., 306 : 24 W. R., 163
L. R., 2 I. A., 235

Reversing the decision that the suit, as regarded the prompt dower, was barred by limitation in KHAJAROONISSA *v.* RISANNISSA BEGUM

[5 B. L. R., 84 : 13 W. R., 371

23. ——————— *Demand—Limitation.*—A Mahomedan of the Shiah sect by a deed of dower charged his whole estate with a certain sum when demanded by his wedded wife, but did not impignorate his estate to secure the sum put in settlement. The dower was not demanded during the lifetime of the husband, and his widow at his death took possession of his estate in satisfaction of her claim. *Held* by the Sudder Dewanny Court, and such decision on appeal confirmed by the Privy Council, that the widow had a lien upon her deceased husband's estate as being hypothecated for her dower, and could either retain property to the amount of her dower or alienate part of the estate in satisfaction of her claim. *Held* also that a demand in the lifetime of the husband was not necessary, and that, though more than twelve

years had elapsed from the date of the deed and the time the widow set up her claim for dower, the claim was not barred by limitation. AMEER-OON-NISSA *v.* MORAD-OON-NISSA . . **6 Moore's I. A., 211**

24. ———— *Genuineness of kabinamah—Right to sue without certificate under Act XXVII of 1860, s. 3—Prompt and deferred dower.*—The appellant, one of the royal family of Oudh, sued his father, the respondent, for R50,000 as his share of the dower alleged to have been settled on his mother, the late Oomrao Begum, who left as her heirs her husband (the appellant), her only son, and three daughters, who were made joint defendants. The plaintiff's case was that the dower being unpaid, he, as co-heir, became entitled to three-tenths; but, having regard to the circumstances of the husband, he had limited her claim. The respondent disputed the genuineness of the kabinamah and the amount of the alleged dower, pleading that whatever was its amount it had been satisfied during the lifetime of Oomrao Begum. The first Court decreed the suit, but the lower Appellate Court, holding that the defendant had established his plea of satisfaction, reversed the decision. *Held* that the mehrnamah was a genuine document, and that the dower was of the amount alleged by the plaintiff, subject to modification according to the law and practice in Oudh; but that, as plaintiff had taken out no certificate under Act XXVII of 1860, s. 3, the case should be remitted to the Judicial Commissioner to have it ascertained what amount of dower was payable by the respondent to the estate of his deceased wife, and what, after payment of debts, was the share of dower due to each co-sharer. Where it is not expressed whether the payment of the dower is to be prompt or deferred, the rule is to regard the whole ~~as~~ due on demand. *Quære*—Where no time for the payment of deferred dower is expressly limited by contract, must it be presumed to be payable on the death of either husband or wife, or only on the death of the husband? BEDAR BUKHT MOHUMMUD ALI *v.* KHURRUM BUKHT YAHYA ALI KHAN . . . . **19 W. R., P. C., 315**

25. ———— **Lien for dower**—*Fixing of amount of dower.*—On an issue whether an oral gift of an estate, consisting of certain talukhs and mouzahs, had been made by a Mahomedan proprietor in favour of his wife, the gift having been stated to have been made in consideration of a dower of a certain amount, which remained unpaid, it was not necessary to affirm in the decision that that amount of dower had been agreed upon prior to the marriage. It is not necessary to constitute dower by Mahomedan law that the dower should be agreed upon before marriage; it may be fixed afterwards. KAMARUNNISSA BIBI *v.* HUSSAINI BIBI

[I. L. R., 3 All., 266

26. ———— *Lien of widow against heir—Amount of dower unascertained.*—In a suit against the two widows of a deceased Mahomedan, who had obtained a certificate of administration to his estate under Act XXVII of 1860, the plaintiff claimed a 12-anna share of the estate, and prayed for the possession with mesne profits from the death of the deceased. The widows claimed to have their dower first satisfied. The amount of the dower had not been ascertained. *Held* that the widows had a lien for their dower on the estate, and the plaintiff was not entitled to recover possession so long as any portion of the dower remained unsatisfied. This was so, though the amount of the dower was unascertained. AHMED HOSSEIN *v.* KHADIJA

[3 B. L. R., A. C., 28 note : 10 W. R., 369

TAJIM *v.* WAHED ALI . . **22 W. R., 118**

NOUSHA BEGUM *v.* UMRAO BEGUM **7 N. W., 60**

ATAHUR ALI *v.* ALTAF FATIMA

[10 W. R., 370 note

27. ———— *Mahomedan widow—Widow's heir—Determination of amount of dower.*—A Mahomedan widow lawfully in possession of her husband's estate occupies a position analogous to that of a mortgagee, and her possession cannot be disturbed until her dower-debt has been satisfied, and after her death her heirs are entitled to succeed her in such possession, and if wrongfully deprived thereof, to maintain a suit for its recovery. *Held* that the ruling of the Court in *Balund Khan* v. *Janee, 2 N. W., 319*, that where a defendant is found to be in possession of landed property in lieu of dower, and it is held that the plaintiff is not entitled to sue for possession of the property until such claim for dower has been satisfied, it is not necessary to determine the question of the amount of such dower, the matter being one which could be settled properly in a suit for an account of what was due as dower,—was not applicable to a case where the plaintiffs seeking to recover possession did not claim as heirs of the widow's husband, but as heirs of the widow herself, and where the decree for possession passed in their favour would remain undisturbed even if an amount less than that fixed by the lower Appellate Court were found to be what was due as dower. AZIZULLAH KHAN *v.* AHMAD ALI KHAN

[I. L. R., 7 All., 353

28 ———— *Consent of heirs to possession of widow—Suit by heir claiming possession without payment of proportionate share of dower—Burden of proof as to nature of widow's possession.*—*Held per* BURKITT, *J.*—Where a Mahomedan widow is in possession of the property of her deceased husband, having obtained such possession lawfully and without force or fraud, and her dower or any part of it is due and unpaid, she is entitled as against the other co-heirs of her husband to retain possession of such property until her dower-debt is paid. It is immaterial to such widow's right to retain possession that such possession was obtained originally without the consent of the other co-heirs. *Bachun* v. *Hamid Hossein, 14 Moore's I. A., 377; Aziz-ullah Khan* v. *Ahmad Ali Khan, I. L. R., 7 All., 353;* and *Tajin* v. *Wahed Ali, 22 W. R., 118,* referred to. AMANI BEGAM *v.* MUHAMMAD KARIM-ULLAH KHAN

[I. L. R., 16 All., 225

Held in the same case on appeal under the Letters Patent by Edge, *C.J.*, and Banerji, *J.*—When a Mahomedan widow is in possession, and has been for some time in undisturbed possession, of property which had been of her husband in his lifetime, and dower is admitted or proved to be due to her, it lies upon the heir who claims partition without payment of his proportion of dower to prove that the Mahomedan widow was not let into possession by her husband in lieu of dower, or did not obtain possession in lieu of dower after her husband's death with the consent or by the acquiescence of the heirs. Muhammad Karim-ullah Khan *v.* Amani Begam . . **I. L. R., 17 All., 93**

29. ———— *Law in Oudh—Punjab Code.*—The widow of a Mahomedan in possession of her husband's estate under a claim of dower has a lien upon it as against those entitled as heirs, and is entitled to possession as against them, till her claim of dower is satisfied. According to the Punjab Code (held to be in force in Oudh in the years 1859 and 1860), the dower mentioned in a marriage contract (instead of being enforced as an absolute deed as claimed by the appellant) was subject to a modification at the discretion of the Court, both in the case of a divorce and on the death of the husband. Mulkah Do Alum Nawab Tajdar Bohoo *v.* Jehan Kudr

[2 W. R., P. C., 55 : 10 Moore's I. A., 252

30. ———— The heir of a deceased Mahomedan having dispossessed the widow of deceased, who was in possession in lieu of dower, takes the estate subject to her lien for the amount of her dower. Amed Ali *v.* Saffihan

[3 B. L. R., A. C., 175

So does a purchaser from her son, and the purchaser cannot dispossess the widow in possession in lieu of dower. Bunday Ali Khan *v.* Chotee Bibee . . . . . . **1 Agra, 273**

31. ———— *Law in Oudh—Discretionary power of the Courts over the amount of dower—The Oudh Laws Act (XVIII of 1876), s. 5.*—In a suit by a wife for her dower the Appellate Court altered the amount decreed by the first Court as a reasonable sum payable in lieu of an excessive one, which the husband had on the date of the marriage nominally entered in a nikahnama as the wife's dower. Both Courts acted under the Oudh Laws Act (XVIII of 1876), s. 5. The Judicial Committee, having examined the grounds on which each of the Courts had exercised its discretionary power, considered the reason given by the first Court to be sound and restored the decree. Suleman Kadr *v.* Mehdi Begum Sureeya Bahu

[I. L. R., 21 Calc., 135
L. R., 20 I. A., 144

32. ———— *Oudh, Law of, relating to reduction in amount of dower—Determination of amount of deferred dower recoverable from representatives of deceased husband married in, but a non-resident of, Oudh, not affected by law of that Province—Usage having force of law.*—A Mahomedan, a resident in Patna, since deceased, married the plaintiff, while he was for a time in Lucknow where she lived. Upon her claim, as his widow, for her deferred dower, it was found to have been contracted for at the amount alleged by her. The question of the amount of her dower was held to be determinable without reference to a usage having the force of law in Oudh, rendering dower reducible in certain cases by the Court. The place of celebration of the marriage did not make this applicable. Zakeri Begum *v.* Sakina Begum

[I. L. R., 19 Calc., 689
L. R., 19 I. A., 157

33. ———— *Effect of Oudh Laws Act (XVIII of 1876), s. 5.*—Advantage of the Oudh Laws Act, XVIII of 1876, s. 5, pointed out, as giving the Courts discretion to fix an amount of dower as being ".reasonable with reference to the means of the husband and the status of the wife," instead of making the decree for the amount of dower contracted for, however extravagant that amount may be. Collector of Moradabad *v.* Harbans Singh

[I. L. R., 21 All., 17

34. ———— *Widow in possession in lieu of dower—Charge on estate for dower.*—Where a Court holds that a defendant is in possession of certain landed property in lieu of dower, and that the plaintiff is not entitled to sue for possession of the property until such claim for dower has been satisfied, it is unnecessary to determine the question of the amount of such dower, plaintiff having pleaded that the dower had been surrendered. A Mahomedan widow is entitled to a lien for whatever dower remains due to her, although there may be a dispute as to what is the amount actually due, having reference to the amount originally filed as dower, or to the amount satisfied by payments. An heir to a share of the estate is not entitled to recover possession from the widow so long as any portion of the dower remains unsatisfied, nor can he be entitled to mesne profits, but his proper course is to bring a suit for an account of what is due as dower, and to pray that in satisfaction of that amount he may be put into possession of his share of the estate. Payment of the widows, like every other debt, must be made before the estate can be distributed amongst the heirs. Balund Khan *v.* Janee **2 N. W., 319**

See Ufzool Begum *v.* Ladlee Begum

[2 N. W., 325

and Imdad Hossein *v.* Hosseinee Buksh

[2 N. W., 327

35. ———— *Lien on estate of husband.*—Where the widow of a Mahomedan obtained actual and lawful possession of the estates of her husband under a claim to hold them as one of the heirs and for her dower, it was held that she was entitled to retain possession until her dower was satisfied, with the liability to account to those entitled to the property subject to the claim for the profits received. Bachun *v.* Hamid Hossein

[10 B. L. R., 45 : 14 Moore's I. A., 377
17 W. R., 113

36. ——————— *Right of widow to possession against heirs.*—A widow, who is not entitled to more than her legal share in her husband's estate, has no right to the exclusive possession of the entire estate, unless it be found that she was put in possession of the entire estate either by her husband or by the consent of the other heir or heirs in lieu of dower. AMEERUN *v.* RUHEEMUN

[2 Agra, Pt. II, 162

Where it is so found, she has such right. KUREEM BUKSH KHAN *v.* DOOLHIN KHOORD **15 W. R., 82**

37. ——————— *Hypothecation—Beng. Reg. VII of 1832.*—The widow's claim for dower under the Mahomedan law is only a debt against the husband's estate. It may be recovered from the heirs to the extent of assets come to their hands. It does not give the widow a lien on any specific property of the deceased husband so as to enable her to follow that property, as in the case of a mortgage, into the hands of a *bond fide* purchaser for value. *Semble*—Under the Mahomedan law, there is not hypothecation without seisin; but a creditor, whether widow or any other creditor, if in possession of the husband's property with the consent of the debtor or his heirs, might hold over until the debt is paid; and the cases cited to show that the widow had a right to hold until her dower was paid off proceeded on this principle. *Per* HOBHOUSE, *J.*—It is very questionable whether the Court is bound to apply the Mahomedan law to this case under the provisions of Regulation VII of 1832, the case not being one of succession, inheritance, marriage, caste, or religious usage, but simply one of contract. WAHIDUNNISSA *v.* SHUBRATTUN . **6 B. L. R., 54 : 14 W. R., 239**

38. ——————— *Assignment to wife in lieu of dower—Subsequent decree affecting share—Priority of assignee over decree-holders.*—Where a person had by deed assigned his share to his wife in lieu of dower, and the assignee had been put in possession of the share so assigned to her under the decree of the Court,—*Held* that the reduction of shares by any subsequent decree would not affect the assignment, and if at all affected, she (assignee) would be entitled to have the same extent of land made up to her out of whatever other interest her husband or his heirs may have had in the estate; that her right would be prior in time and preferable to any that could be set up by a creditor under a decree subsequent to assignment, and that the plaintiffs who purchased from the assignee were consequently entitled to decree. DHUN SINGH *v.* RAM SUHAI

[2 Agra, 39

39. ——————— *Right of widow to possession for dower as against heirs.*—A Mahomedan widow, even though she have a valid claim for dower against her husband's estate, cannot take possession of the estate as against the heirs, but must sue them regularly for the amount due to her. SELAMUT *v.* MOWLA BUKSH . . . **5 W. R., 194**

40. ——————— *Dispossession of widow—Wasilat.*—The widow of a Mussulman, in possession of her husband's estate under a claim of dower, has a lien upon it, and is entitled to possession as against those entitled as heirs, till her claim is satisfied. Should the widow in such a case be deprived of possession by a decree in favour of heirs who take with notice of her claim to dower, and more particularly where her right to sue has been expressly reserved, the heirs take subject to a lien of which the property is not divested by the decree. *Held* by the Appellate Bench that in a case in which a Mahomedan widow had, after many years of possession as above, been compelled to make over one-sixth of her estate to her mother-in-law, and then sued her mother-in-law for one-sixth of her dower without interest, she was entitled to recover her claim without reduction on account of wasilat. WOOMATOOL FATIMA BEGUM *v.* MEERUNMUNNISSA KHANUM

[9 W. R., 318

41. ——————— *Relinquishment by son in favour of mother for her unpaid dower.*—The Privy Council reversed so much of the decision of the High Court as ruled that the effect of an arrangement between the plaintiff and her son, by which the son relinquished his share in his late father's property, was not that the mother took an absolute interest in the property in satisfaction of her claim for unpaid dower, but that she should have only a life-interest, the son retaining the legal reversion in himself; the Privy Council being of opinion that the creation of such a life-estate did not seem to be consistent with Mahomedan usage, and that there ought to be very clear proof (which had not been shown in this case) of a transaction so unusual and so improbable amongst Mahomedans. A widow's claim for unpaid dower, when it does not, by virtue of a bye-mokusa executed by her husband, become a preferential charge on the estate, constitutes a debt payable *pari passu* with the demands of other creditors. HAMEEDA *v.* BUDLUN **17 W. R., P. C., 525**

42. ——————— *Widow out of, or in wrongful, possession.*—Where she is not in possession or her possession is unlawful, her right is to demand the amount of her dower from the heirs: such amount being realizable from their shares of the estates, like other debts, in the usual course of law. MEERUN *v.* NAJEEBUN . . . **2 Agra, 335**

43. ——————— *Right of widow deprived of estate by heir.*—Where a Mahomedan widow was improperly deprived of a portion of such estate under a decree in a suit by an heir of her husband, the question as to her right of dower having been before the Court, but not disposed of by the Judge in that suit,—*Held* that the heir must be treated as having taken the property subject to a right of lien which was not divested by the decree in the former suit. JANEE KHANUM *v.* AMATOOL FATIMA KHANUM . . . . **8 W. R., 51**

44. ——————— —*Inheritance—Transfer by widow in possession in lieu of dower—Right of purchaser—Heirs.*—*Held* that a purchaser of a deceased husband's estate from a Mahomedan widow, in possession thereof, pending payment of her dower, is not entitled to plead non-satisfaction of

her dower-debt to a claim by her husband's heirs for their share of his inheritance, as the widow's right to dower is personal to herself and does not pass to a purchaser of the estate. *Bachan* v. *Hamid Hossein, 10 B. L. R., 45,* and *Bazayet Hossein* v. *Dooli Chand, L. R., 5 I. A., 211,* referred to. ALI MUHAMMAD KHAN *v.* AZIZULLAH KHAN
[I. L. R., 6 All., 50

45. ——————— *Nature of widow's lien for dower.*—The lien which a Mahomedan widow whose dower is unpaid may obtain on lands which have belonged to her deceased husband is a purely personal right, and does not survive to her heirs. *Ali Muhammad Khan* v. *Azizullah Khan, I. L. R., 6 All., 50,* and *Ajuba Begam* v. *Nazir Ahmad, Weekly Notes (All.) 1890, 115,* referred to. HADI ALI *v.* AKBAR ALI . **I. L. R., 20 All., 262**

46. ——————— *Right of mortgagee prior to suit for dower.*—A Mahomedan dying, his son *N,* who was in possession of the whole of the deceased's property, mortgaged it to secure repayment of money advanced to him by the mortgagee. In the following year the three widows of the deceased brought a suit against *N* to assert their right of dower, obtained a decree, and in execution attached and sold the property, and, buying it themselves, got into possession. The mortgagee then brought a suit to obtain from the widows the property which he had purchased. *Held* that until the widows brought their suit the property in *N*'s hands was not subject to a lien or charge in favour of them, and that it passed free from incumbrances to the mortgagee as a *bonâ fide* purchaser for valuable consideration. *Held* also that the plaintiff was entitled to so much of the property as was *N*'s share. BEGUM *v.* DOOLEE CHUND
[20 W. R., 93

47. ——————— *Widow taking possession against the consent of the other heirs.*—If a Mahomedan widow entitled to dower has not obtained possession of property of her deceased husband lawfully, that is, by contract with her husband, by his putting her into possession, or by her being allowed with the consent of the heirs on his death to take possession in lieu of dower, and thus obtained a lien for her dower, she cannot obtain that lien by taking possession adversely to the other heirs of property to the possession of which they, and she in respect of her share in the inheritance, are entitled. *Bachun* v. *Hamid Hossein, 14 Moore's I. A., 377; Wahid-un-nissa* v. *Shahrattun, 6 B. L. R., 54; Bazayet Hossein* v. *Dooli Chund, I. L. R., 4 Calc., 402: L. R., 5 I. A., 211; Meerun* v. *Najeebun, 2 Agra (1867), 335; Ali Muhammad Khan* v. *Azizul-lah Khan, I. L. R., 6 All., 50;* and *Mehrun* v. *Kubeerun, 13 W. R., 49: 6 B. L. R., 60 note,* referred to. *Woomatool Fatima Begum* v. *Meerunmun-nissa Khanum, 9 W. R., 318; Ahmad Hossein* v. *Khodeja, 10 W. R., 369: 3 B. L. R., A. C., 28 note;* and *Bolund Khan* v. *Janee, 2 N. W. (All., 1870), 319,* distinguished. AMANAT-UN-NISSA *v.* BASHIR-UN-NISSA . . . **I. L. R., 17 All., 77**

48. ——————— *Suit by heirs of Mahomedan widow for her dower—Alienation of property of the deceased husband by his heirs pendente lite.*—While a suit for the dower debt due to a Mahomedan widow was pending on behalf of her heirs, the heirs of her deceased husband mortgaged certain property which had been of the deceased in his lifetime. The heirs of a widow obtained a decree which could only be executed against the assets of the deceased husband. *Held* that this decree took priority over the mortgagee's decree and a sale held in execution thereof. *Bazayet Hossein* v. *Dooli Chand, I. L. R., 4 Calc., 402.* YASIN KHAN *v.* MUHAMMAD YAR KHAN . **I. L. R., 19 All., 504**

49. ——————— *Mortgage by widow in possession in lieu of dower of immoveable property which had been of her husband.*—A Mahomedan widow in possession of immoveable property of her late husband in lieu of her dower has no power to mortgage such property. CHUHI BIBI *v.* SHAMS-UN-NISSA BIBI . . . **I. L. R., 17 All., 19**

50. ——— **Power of widow to alienate share of which she is in possession in lieu of dower**—*Suit to avoid alienation.*—*Held* that a widow in possession of the share of her deceased husband's heirs in lieu of dower is not competent to alienate it, and the heirs can sue for the avoidance of such transfer made by the widow. MAHOMED USSUDOOLLAH KHAN *v.* GHASHEEA BEEBEE
[1 Agra, 150

They cannot, however, claim possession before the dower is paid. AZEEMUN *v.* ASGUR ALI
[2 Agra, Pt. II, 167

51. ——————— *Share by right of inheritance.*—*Held* that a widow who is in possession of her husband's estate in lieu of her dower is not competent to alienate the whole estate permanently, but can only sell what belonged to her by right of inheritance. KUMMUR-OOL-NISSA BEGUM *v.* MAHOMED HUSSUN . . . . **1 Agra, 287**

52. **Power of mother in possession of daughter's shares in husband's estate in lieu of dower**—*Daughters without immediate right.*—*Held* that the mother who is in possession of her daughter's shares in her husband's estate in lieu of dower is not at liberty to sell them, and the sale can be invalidated, although the daughters may not be entitled to immediate entry upon their shares. GHUFOORUN BEBEE *v.* MUSTUKEDEH
[2 Agra, 300

53. ——— **Purchase of property by wife out of money given on account of dower**—*Husband and wife.*—Under the Mahomedan law, a wife may (except with fraudulent intent) purchase property as her own during her husband's lifetime with money given to her by him on account of dower. NASOO *v.* MAHATAL BEEBEE **4 W. R., 7**

MAHOMEDAN LAW—ENDOWMENT.

See CUSTOM . . . . **1 Bom., 36**

See CASES UNDER MAHOMEDAN LAW—MOSQUE.

See RIGHT OF SUIT—CHARITIES AND TRUSTS . **I. L. R., 20 Calc., 810**

1. ———— **Creation of endowment**—*Verbal endowment.*—According to Mahomedan law, a valid endowment may be verbally constituted without any formal deed. SHURBO NARAIN SINGH *v.* ALLY BUKSH SHAH . . . **2 Hay, 415**

2. ———— *Charges on profits for definite period.*—The primary objects for which lands are endowed under the Mahomedan law are to support a mosque and to defray the expenses of worship therein. The mere charge upon the profits of an endowed estate of certain items which must in time cease, and the lapse of which will leave the whole profits available for the purposes of the endowment, does not render an endowment invalid under the Mahomedan law. MUZHUROOL HUQ *v.* PUHRAJ DITAREY MOHAPATTUR . . . . **13 W. R., 235**

3. ———— *Words declaratory of appropriation—Motive.*—The chief elements of wukf are special words declaratory of the appropriation and a proper motive cause; and where the declaration is made in a solemnly, published document, the wukf is completed. DOYAL CHUND MULLICK *v.* KERAMUT ALI . . . . **16 W. R., 116**

4. ———— *Lands set apart for support of mosque.*—The payment of expenses of a mosque out of the rents of certain property is not proof of itself that the property is endowed. SHUREFOONNISSA *v.* KOOLSOOM . . **25 W. R., 447**

5. ———— *Grants for subsistence.*—Grants to an individual in his own right, and for the purpose of furnishing him with the means of subsistence, do not constitute a work for endowment. KUNEEZ FATIMA *v.* SAHEBA JAN . **8 W. R., 313**

6. ———— *Wukf—Construction of deed of endowment—Settlement on person and his descendants to three generations, and afterwards to charity—Appropriations of property by settlement.*—A Mahomedan settled a portion of his immoveable property as follows: "I have made wukf the remaining four annas in favour of my daughter *B* and her descendants, as also her descendants' descendants' descendants, how low soever, and when they no longer exist, then in favour of the poor and needy." *Held* this settlement did not create a valid wukf. To constitute a valid wukf, there must be a dedication of the property solely to the worship of God or to religious or charitable purposes. *Semble*—Appropriations in the nature of a settlement of property on a man and his descendants can only be treated as legitimate appropriations under the designation of wukf where the term "sadukah" is used. Even supposing they could be so treated, it would be necessary, in order to validate a wukf by making a settlement of property on himself or his descendants, for a man to reduce himself to a state of absolute poverty. MAHOMED HAMIDULLA KHAN *v.* LOTFUL HUQ

[I. L. R., 6 Calc., 744: 8 C. L. R., 164

MAHOMEDAN LAW—ENDOWMENT —*continued.*

7. ———— *Wukf—Settlement on man and his descendants.*—*Semble*—To constitute a valid wukf according to Mahomedan law, it is not sufficient that the word "wukf" be used in the instrument of endowment. There must be a dedication of the property solely to the worship of God or to religious and charitable purposes. A Mahomedan cannot therefore, by using the term "wukf," effect a settlement of property upon himself and his descendants, which will keep such property inalienable by himself and his descendants for ever. *Held* that the plaintiffs, who were sons of a daughter of one of the original settlors, did not come within the meaning of the term "aulad dar aulad" or the term "warrasan," used in the instrument of settlement. ABDUL GANNE KASAM *v.* HUSSEN MIYA RAHIMTULA

[10 Bom., 7

8. ———— *Wukf—Possession, Delivery of—Grant of endowed property.*—To constitute a valid "wukf," or grant made for charitable and religious purposes, it must, according to the doctrine of the Shias, be absolute and unconditional, and possession must be given of the "mowkoof," or thing granted. Where a Mahomedan lady executed a deed conveying her property on trust for religious purposes, reserving to herself for life two-thirds of the income derivable from the property, and only making an absolute and unconditional grant of the rest for the purposes of the trust,—*Held* that, under the Mahomedan law, the deed must be considered invalid with respect to that portion of the income reserved by the grantor to herself for life; but as to the rest, that the deed operated as a good and valid grant. KALUB HOSSEIN *v.* MEHRUM BEEBEE . **4 N. W., 155**

9. ———— *Wukf—Mutwali—Right to sue.*—A Mahomedan of the Shafi sect, by a deed of settlement executed in 1838, called a wukfnamah, settled moieties of his estate on his two wives, their daughters, and the descendants of the donees in each line so long as it should subsist, with cross remainders, on the extinction of either line, to the representatives of the other, with final remainders, on the extinction of both, to the heirs of the settlor. The settlor constituted himself the nazir or mutwalli (superintendent or trustee) of the estate during his life, and nominated *A* and *B* to act as such after his death with the consent of his wives. In 1840 the settlor died; *A* died in 1865; *B* survived. The wives and daughters of the settlor also died. The representatives of one of the settlor's daughters sued the defendant to recover a part of the estate, which had been sold to him by the Civil Court, as the property of another of the daughters, on the ground that the estate, on the death of that daughter, passed as wukf to her surviving sister. *Held* that, supposing the wukf to have been validly created, the right to bring the suit belonged (according to Mahomedan law), not to the heirs or descendants of the settlor, but to the mutwallis (superintendents) jointly. On the death of one of the mutwallis, a successor to him should have been appointed in the first place by the settlor, and, failing him, by his executor, if he had appointed any, otherwise by the

Court on the application of the parties beneficially interested in the estate. *Quære*—Whether a wukf could be created for the purpose merely of conferring a perpetual and inalienable estate on a particular family without any ultimate express limitation to the use of the poor or some other inextinguishable class of beneficiaries. PHATE SAHEB BIBI *v.* DAMODAR PREMJI . . . . **I. L. R., 3 Bom., 84**

10. ——————— *Charitable object—Subject of wukf—Shares in company.*—According to Mahomedan law, a wukf cannot be created of shares in a limited liability company. A wukf, the purpose of which is to create a mere family settlement without a charitable object, is invalid. *Abdul Gunne Kasam* v. *Hussen Miya Rahimtula, 10 Bom., 7,* and *Mahomed Hamidulla Khan* v. *Budrunissa Khatoon, 8 C. L. R., 164,* followed FATIMA BIBEE *v.* ARIF ISMAILJEE BHAM . . **9 C. L. R., 66**

11. ——————— *Wukf—Provisions for payment of debts and maintenance—Minor plaintiff—Guardian.*—A Mahomedan created a wukf of all his property, and appointed his minor grandson mutwalli, providing that during the minority the property should be managed by the minor's father. The deed contained a provision that, in the first place, certain debts should be paid, and then provided that the property should be applied towards the religious uses created and the maintenance of the settlor's grandson and their male issue. In execution of a decree against the minor's father, the endowed property was attached and sold. In a suit by the minor through his sister, as guardian, to recover possession of the property, in which suit the sister was not made guardian *ad litem* by an order of Court, but was allowed to sue by the District Judge,—*Held* that the suit was maintainable as framed. *Held* also that, notwithstanding the provisions for payment of debts and maintenance, the wukf was valid. LUCHMIPUT SINGH *v.* AMIR ALUM

[I. L. R., 9 Calc., 176 : 12 C. L. R., 22

12. ——————— *Grant to grantees and their aulad va ahfad—Meaning of the word "ahfad"—Wukf—Tavlyat and sajjadanashin, Right of females to hold the offices of.*—A certain village was granted by the Mogul Government in inam to two persons and their "aulad va ahfad" for the maintenance of a durga (mausoleum) of a pír (saint). The plaintiff and the defendant were the descendants of the original grantees. In 1878 the plaintiff sued the defendant for the recovery of the profits of a one-fourth share in the inam, claiming to be entitled thereto through his mother and grandmother, who was the daughter of the son of the great-grandson of one of the two original grantees. It was contended (*inter alia*) for the defendant that the expression "aulad va ahfad" used in the grant would include only the lineal male descendants, and not the plaintiff, who claimed through females, who were incapable of performing the spiritual offices connected with the mausoleum. The Court of first instance dismissed the plaintiff's claim. He appealed and the lower Appellate Court allowed his claim to the extent of one-eighth share. On appeal by the defendant to the High Court,—*Held*, confirming the decision of the lower Appellate Court, that the plaintiff was entitled to share both in the offices of the durga and the endowment. The term "ahfad," being a term of the largest and most general signification, includes the descendants of females as well as of males. The primary object of the grant was to provide for the tavlyat and the office of sajjadanashin of a mausoleum of the saint, and with that view to supply the means for the maintenance of the persons who should perform the offices, as well as for the ordinary expenses of keeping up the mausoleum. A female could not be the sajjadanashin, whose duties were of a strictly spiritual nature requiring peculiar personal qualifications so as to exclude female descendants from participating in the endowment; but it would not follow that males who established their descent from the propositus through females should be excluded. Had the intention of the grant in the present case been to limit the class of descendants exclusively to persons claiming through males, the expression "aulad dar aulad" would have been used, instead of the general expression "aulad va ahfad." *Hussain Beebee* v. *Hussain Sherif, 4 Mad., 23,* and *Mujavar Ibrambibi* v. *Mujavar Hussain Sherif, I. L. R., 3 Mad., 95,* distinguished. KARIMODIN *v.* ALAM KHAN . . . **I. L. R., 10 Bom., 119**

13. ——————— *Wukf, Essentials of—Increase in value of wukf properties how appropriated.*—Where by a sanad a gift was made of the then income of certain villages with a specification that one-third of it was for the defrayal of the expenses of the servants of a mosque, and fursh and light, etc., one-third for the expenses of a madrassa, and the remaining one-third for the maintenance allowance of the mutwalli,—*Held* that the gift complied with the four essential conditions necessary to create a valid wukf according to Mahomedan law. *Held* also that, in the absence of any express direction as to what was to be done with any surplus profits of the dedicated property, the reasonable presumption is that the improved value of the dedicated property, or any excess of profit over and above the amount stated in the sanad, was intended by the grantor to be devoted to the same purpose for which the amount, which was the actual value of the property at the time of the gift, was expressly assigned. JUGATMONI CHOWDRANI *v.* ROMJANI BIBEE

[I. L. R., 10 Calc., 533

14. ——————— *Wukf—Descent per stirpes—Grant in inam to grantee and children without restriction as to names—Direction to pray for perpetuity of Government.*—A sanad of the Emperor Shah Jehan, dated A.D. 1651-52, granted in inam to one Sayad Hasan the village of Dharoda and certain lands of another village in these terms: "Let the whole village abovementioned, as well as the abovementioned land, be hereby settled and conferred as above, manifestly and knowingly, as a help for the means of subsistence for the children of the abovementioned Sayad Hasan without restriction as to names, in order that, using the income thereof from season to season and from year to year for their own maintenance, they may engage themselves in praying for the perpetuity of this ever-enduring Government." *Held* that this grant did not constitute wukf or a religious endowment, making the village descendible to the issue of the donee *per stirpes* (that is, allowing representation) rather than according to the ordinary Mahomedan law; and the direction that the donee and his issue were to pray for the perpetuity of the then existing Government meant no more than an inculcation of gratitude for the gift; and that neither neglect to fulfil the direction nor the downfall of the Government would work a forfeiture or avoidance of the grant. Although a wazifa grant may be a religious endowment, such is neither necessarily nor even generally its nature. Hence the use of the term "mauzif" (*alias* "wazif" or "wazifa"), with regard to the grant of a village, does not stamp the grant as a wukf or religious endowment. MAHOMED ALI *v.* GOBAR ALI

[I. L. R., 6 Bom., 88

15. ——————— *Wukf—Power of revocation—Reservation of rents and profits to donor for life—Ultimate dedication of property to charity with intervening private interests—Rule against perpetuities how far applicable in a colony subject to English law—Charities, What are—Trust for maintenance of idol, for benefit of poor, for building tanks—Dedication by minor—Subsequent ratification—Estoppel.*—A wukf must be certain as to the property appropriated, unconditional, and not subject to an option. It must have a final object which cannot fail, and this object must be expressly set forth. When a wukf is created, the reservation in the deed of settlement of the annual profits of the property to the donor for life does not invalidate the deed. If, however, there is a provision for the sale of the corpus of the property and an appropriation of the proceeds to the donor, the settlement is invalid. If the condition of an ultimate dedication to a pious and unfailing purpose be satisfied, a wukf is not rendered invalid by an intermediate settlement on the founder's children and their descendants. The benefits these successively take may constitute a perpetuity in the sense of the English law; but according to the Mahomedan law, that does not vitiate the settlement, provided the ultimate charitable object be clearly designated. The rule against perpetuities extends to a colony in which English law is enforced only so far as it is adapted to the circumstances of the community. The case of "charities useful and beneficial" to the community is an exception to this rule. It is for the Courts to pronounce whether any particular object of bounty falls within this class. In order to decide this question, they must, in general, apply the standard of customary law and common opinion amongst the community to which the parties interested belong. Objects which the English law would possibly regard as superstitious uses are allowable and commendable according to Mahomedan law. A trust for the benefit of the poor, for aiding pilgrimages and marriages, and for the support of wells and temples, is a charity amongst Mahomedans. The law and opinion of Mahomedans regard such a trust as a charity; and granting there is a charity, the objection to a perpetuity fails according to the principles of the English law. Where the proposed object of the endowment is one which is directly contrary to the public law of the State, the above rule does not apply. By an indenture of voluntary settlement, dated 16th March 1866, *F*, a Mahomedan girl of the age of fourteen, conveyed certain immoveable property in the Island of Bombay to trustees upon trust—(1) During her life-time to pay the rents and profits to her for her sole and separate use without power of anticipation. (2) After her death to pay the rents and profits to her children and descendants as she might by deed or will appoint. In default of appointment the trustees were to pay life-allowances to such descendants at their discretion. The rents and profits only were to be thus distributed among such descendants for ever, the corpus of the property being kept intact. (3) In case there should be no such descendants, or in the event of failure of such descendants, the rents and profits were to be expended on charitable purposes, such as expenses of poor pilgrims going to Mecca, building mosques, funeral and marriage expenses of poor people, sinking wells or tanks, or in such other manner as the trustees should think fit. Shortly after the execution of the settlement, the trustees took possession of the property, and for fifteen years continued to pay the rents and profits to the settlor. The settlor was married in 1866 to *H*, and there was issue of the marriage only one son, who died in 1872, an infant under the age of five years. *H* died in 1872, and the settlor remained a widow. In 1881 she became desirous of revoking the above settlement, and under s. 527 of the Civil Procedure Code (Act X of 1877) she stated a case for the opinion of the Court, contending that she could lawfully revoke the trusts declared by the said indenture; that if she could not revoke, then that the trust therein declared in favour of charity was void for remoteness; and generally that she was, under the circumstances, entitled to have the property reconveyed to her by the surviving trustee. *Held* that the settlement was irrevocable. The dedication, having been once made, could not be recalled. The interposed private interests, which might or might not endure, did not avoid the ultimate charitable trust. According to Mahomedan law, the latter gave effect to the former. Should the intermediate purposes of the dedication fail, the final trust for charity did not fail with them. It was but accelerated, being itself regarded as the principal object, in virtue of which effect was given to the intervening disposition. Charitable grants being thus tenderly regarded, it would be inconsistent that a power of revocation should be recognised in the grantor. *Held* also that, although the dedication by a girl of fourteen was not to be upheld without inquiry, yet the transaction never having being questioned by her husband during his life, and she having for fifteen years confirmed her own act by a continued acceptance of the profits of the estate from the trustees, could not with reason contend that the dedication was invalid on account either of its ceremonial defects or of a want of an accompanying volition. FATMABIBI *v.* ADVOCATE GENERAL OF BOMBAY . **I. L. R., 6 Bom., 42**

16. ——————— *Wukfnama—Wukf—Perpetuity—Ultimate trust in favour of*

charity.—M, the father of the three defendants, executed an instrument purporting to be a wukfnama in favour of his heirs and descendants, generation after generation. The office of mutwalli he reserved for himself for life, and, in the event of his death, he appointed his wife and youngest son *E* mutwallis, with certain powers of delegation, upon the following conditions: The said mutwallis, having received the annual income of the property and having defrayed the expenses of repairs and the taxes, etc., were to divide the balance into four equal shares, and to make over one share to his son *S* and his descendant after descendant for their expenses; one share, in like manner, to his son *H*; one share, in like manner, to his son *E*; and as to the remaining share, to pay one-half thereof to his wife, *A*, for expenses, and one-half thereof to his sister, for expenses. The deed then proceeded: "If any one from among my heirs and (? or) descendant after descendant should die, then the said mutwallis shall make his or her funeral outlays according to our custom and usage; and as to what may remain as a balance, they shall duly distribute and give the same to my heirs and descendants according to the book of God." Further as follows: "May God forbid it! If from among my heirs and descendants there shall be left no one surviving, then, as regards the income of the whole of the property endowed for religious and charitable purposes, the same for the sake of God, is duly to be distributed and given to Mahomedan fakirs and indigent people." Then followed a direction that the property was not to be sold or mortgaged. On the 25th February 1883 the first two defendants mortgaged the properties comprised in the wukfnama to the plaintiff for R3,000. The plaintiff brought the present suit against the said two defendants to enforce the mortgage. The third defendant was made a defendant at his own request, and alleged that the mortgage had been made without his consent. He submitted whether, having regard to the terms of the deed, the plaintiff had any claim as mortgagee; and he contended that in no case could the mortgage operate, except against the shares of the first two defendants. The plaintiff contended that the wukfnama was invalid, and that upon the death of *M* the property comprised in it devolved upon his three sons as his heirs, and also that, assuming the wukfnama to be valid, the first two defendants took an estate of inheritance under it, which they were at liberty to aliene and mortgage. *Held*, following *Fatmabibi* v. *Advocate-General of Bombay, I. L. R., 6 Bom., 42*, that the deed of the 17th May 1871 was valid as a wukfnama. *Semble*—That the mortgaged property being wukf, the plaintiff acquired no right under his mortgage, which would extend beyond the lifetime of his mortgagors. In such property no one has any interest as the heir of the appropriator. It is neither the subject of ownership nor inheritable, but each object of the charity who brings himself or herself within the terms of the endowment is entitled to receive the benefit which the founder has marked out for him. AMRUTLAL KALIDAS *v.* HUSSEIN **[I. L. R., 11 Bom., 492**

17. ——————— *Wukf—Settlement in favour of the settlor's family without any ultimate trust for charity—Document not establishing a trust for a religious or charitable purpose.*—A Mahomedan cannot settle his property in wukf on his own descendants in perpetuity without making an express provision for its ultimate devolution to a charitable or religious object. A Mahomedan executed a deed, called a wukfnama, by which he settled his property in wukf on his two wives and daughters and their descendants in perpetuity. For the management and devolution of this property he laid down the following rules: (1) that if one of the aulad (or daughters) of either wife died, the share of that person should go to the wife and the survivors of her aulad; that after the death of a wife her share should go to her surviving aulad; that if a wife and her aulad ceased to exist, their share should go to the other wife and her aulad; that on the failure of aulad and aflad of both wives, the next of kin of the settlor should receive the property; and he added that in this way the management should go on from generation to generation; (2) that neither of the said two wives nor any one of the aulad of the wives should alienate by sale, gift, or mortgage either their shares or any part of the property. A portion of this property, consisting of two nafars, was set apart for such purposes as the building of his own tomb, the saying of prayers, the recitation of the Koran, etc.; and he directed that in case the produce of the two nafars proved insufficient for these purposes, his wives and daughters and their descendants should contribute out of the property settled in wukf on them. *Held* that, with the exception of the two nafars set apart for religious purposes, the rest of the settlement was not a valid wukf, as it was solely for the benefit of the settlor's family, and contained no express provision for the ultimate devolution of the property to any religious or charitable object. NIZAMUDIN GULAM *v.* ABDUL GAFUR . **I. L. R., 13 Bom., 264**

Held on appeal by the Privy Council, affirming the above decision, that the instrument could neither be maintained as establishing a wukf, nor as a settlement: also that it could not be supported as a will, not having been validated by consent of heirs, as to two-thirds of the succession; and that, even if it could have been dealt with as a will, the above provision would have been void. A wukfnama, to be valid, must be a substantial dedication of property to a religious or charitable purpose at some time or other. *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu, L. R., 17 I. A., 28: I. L. R., 17 Calc., 498*, referred to and followed. ABDUL GAFUR *v.* NIZAMUDIN . . . **I. L. R., 17 Bom., 1**
[L. R., 19 I. A., 170

18. ——————— *Appropriation not within the principle of wukf—Property settled on members of grantor's family with a charge upon it for religious and charitable purposes—Effect of appropriation where the charge was not a substantial one.*—Although the making provision for the grantor's family out of property dedicated to religious or charitable purposes may be consistent with the property being constituted wukf, yet in order to render it wukf the property must have been substantially, and not merely colourably, dedicated to such purposes. Although an instrument purporting to dedicate property as "fisabilillah wukf," and vesting it in members of the grantor's family in succession, "to carry on the affairs in connection with the wukf," might include provisions for the benefit of the grantor's family without its operation as a wukf being annulled, yet, on the other hand, it would not operate to establish wukf, as it did not devote a substantial part of the property to religious or charitable purposes. Without determining how far provisions for the grantor's family might form part of a settlement for religious or charitable purposes, and yet not deprive it of its character as establishing wukf, the Committee approved the decision in *Muzhurool Huq* v. *Puhraj Ditarey Mohapattur, 13 W. R., 235,* to the effect that the mere charge upon the profits of the estates of certain items which must in the course of time have ceased, being for the benefit of one family, did not render an endowment invalid as a wukf. In the present case, however, there being no authority for holding a gift to be good as a wukf without there being a substantial dedication of the property to charitable or religious uses at some time or other, and the uses prescribed involving only an outlay suitable for such a family to make in charity, the gift was held not to be a substantial or *bonâ fide* dedication of the property as wukf. The use of this expression, and others, being only to cover arrangements for the benefit of the family and to make their property inalienable, the property was not constituted wukf, nor was it freed from liability to attachment in execution of a decree against one of the grantees. MAHOMED AHSANULLA CHOWDHRY *v.* AMARCHAND KUNDU

[I. L. R., 17 Calc., 498
L. R., 17 I. A., 28

19. ——————— *Wukf. Constitution of—Dedication of property with temporary intermediate interests—Uncertain contingency.*—To constitute a valid wukf, there must be a dedication in favour of a religious or charitable purpose, although there may be a temporary intermediate application of the whole or part of the benefits thereof to the family of the appropriator or wukif, and the dedication must not depend upon an uncertain contingency, such as the possible extinction of the wukif's family. RASAMAYA DHUR CHOWDHURI *v.* ABUL FATA MAHOMED ISHAK

[I. L. R., 18 Calc., 399

20. ——————— *Wukf, Constitution of—Dedication to pious objects—Sajjadanashin—Mutwalli—Minor, Appointment of, as sajjadanashin.* In order to constitute a wukf, it is not necessary to use the word wukf. So long as it appears that the intention of the donor is to set apart any specific property or the proceeds thereof for the maintenance or support in perpetuity of a specific object or of a series of objects recognized as pious by Mahomedan law, it amounts to a valid and binding dedication. *Jewan Dass Shahu Shah* v. *Kubeeroodeen, 2 Moore's I. A., 390,* referred to. The respective duties of sajjadanashin and mutwalli discussed. The mode of appointment of sajjadanashin referred to. *Semble*—A minor cannot be appointed the sajjadanashin of a durga or shrine. PIRAN *v.* ABDOOL KARIM **I. L. R., 19 Calc., 203**

21. ——————— *Settlement in favour of the settlor's family with the reservation of a life-interest in part or the whole of the income for the settler—"Charitable"—"Religious."*—A wukf in favour of the settlor's children and kindred in perpetuity, with a reservation of a part or the whole of the income thereof in favour of the settlor for his own use during his lifetime, is valid. *Mahamed Ahsanulla Chowdhry* v. *Amarchand Kundu, I. L. R., 17 Calc., 498: L. R., 17 I. A., 28,* referred to. *Rasamaya Dhur Chowdhuri* v. *Abul Fata Mahomed Ishak, I. L. R., 18 Calc., 399,* dissented from. In the construction of a deed of wukf, the words 'charitable' and 'religious' must be taken in the sense in which they are understood in Mahomedan law. MAHOMED ISRAIL KHAN *v.* SASHTI CHURN GHOSE . **I. L. R., 19 Calc., 412**

22. ——————— *Wukf—Conditional and revocable dedication—Conditions of a valid dedication.*—A Mahomedan by an instrument revoking a previous trust deed conveyed her property to her husband on trust as follows:—(1) to maintain the settlor and her children out of the income; (2 to hand over the property to the children on their attaining majority; (3) in the event of the settlor's death without leaving children, with the income of the property to have Kathom recited in a mosque, give food to the mollahs who come there for reciting the same and get the moilu performed. The settlor reserved to herself and her representatives an option of dealing with the property as a special fund for the maintenance of her children, if any. The settlor died leaving no children. In a suit by her half-sister against her husband and others to recover her share of the property,—*Held per* MUTTUSAMI AYYAR and PARKER, *JJ.*, that the plaintiff was entitled to recover her proportionate share of the property, notwithstanding the provisions of the above instrument. *Per* SHEPHARD, *J.*—There had been no complete dedication of the property, and except so far as regards the income required for the three specific objects named by the donor, her property was undisposed of. Conditions of a valid wukf considered. PATHUKUTTI *v.* AVATHALAKUTTI

[I. L. R., 13 Mad., 66

23. ——————— *Wukf—Construction of document.*—Where a Mahomedan of the Shia sect executed a document purporting to come into operation after his death, which document provided in a most complete manner of the devolution of his property, with the intention apparently of preserving the estate in perpetuity intact under the headship of some male member of the family, with provision by way of allowances for the other members, and of maintaining the dignity of the riasat, and in which no express mention of any sort of dedication of the property to charitable purposes was made, though there was some incidental reference to certain religious duties,—*Held* that such a document could not be construed as creating a wukf. Though it was not impossible that a document creating a wukf might contain provision also for the family of the settlor, the dedication to charitable uses being postponed, yet here there was not even an ultimate dedication of property, with the intention apparently of preserving the estate in perpetuity intact under the headship of the property to charitable uses, but the object of the executant was evidently merely the maintenance of the family estates and of the dignity of the riasat. *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu, I. L. R., 17 Calc., 498 : L. R., 17 I. A., 28,* followed. *Khujooroonissa* v. *Roushan Jehan, I. L. R., 2 Calc., 184 : L. R., 3 I. A., 291,* and *Nizamuddin Gulam* v. *Abdul Gafur, I. L. R., 13 Bom., 264,* referred to. MURTAZAI BIBI *v.* JAMUNA BIBI . . . . **I. L. R., 13 All., 261**

24. ———— *Wukf—Wukfnama containing provision for descendants of the grantor.*—The fact that the grantor of a wukf has in the deed constituting the same made some provision for the maintenance of his kindred and descendants will not render the wukf invalid *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu, I. L. R., 17 Calc., 498 : L. R., 8 I. A., 28,* and *Muzhurool Huq* v. *Puhraj Ditarey Mohapattur, 13 W. R., 235,* referred to. DEOKI PRASAD *v.* INAIT-ULLAH . **I. L. R., 14 All., 375**

25. ———— *Wukf—Delivery of possession—Shia sect.*—According to the law applicable to the Shias sect of Mahomedans, a wukf-bil-wasiyat, or testamentary wukf, is not valid unless actual delivery of possession of the appropriated property is made by the wukif (or appropriator) himself to the mutwalli (or superintendent appointed by the wukif). According to the same law, the death of the wukif before actual delivery of possession of the appropriated property by him to the mutwalli or the beneficiaries of the trust renders the wukf null and void *ab initio.* Consequently, where the wukif dies, as mentioned above, before actual delivery of possession of the appropriated property, the consent of his heirs to the testamentary wukf cannot validate such wukf. Distinction between wukf-bil-wasiyat and wasiyat-bil-wukf explained. AGHA ALI KHAN *v.* ALTAF HASAN KHAN . **I. L. R., 14 All., 429**

26. ———— *Wukf—Relinquishment of possession on the part of the wukif essential—Sunnis.*—According to the law of Sunni Mahomedans, it is essential to the validity of a wukf that the wukif should actually divest himself of possession of the wukf property. Hence where a Sunni Mahomedan executed and registered what purported to be a deed of wukf, but never acted upon it and retained possession until his death of the property dealt with by the deed, which property subsequently passed to his two sons by inheritance,—*Held* that no valid wukf of the property mentioned in the said deed was constituted. MUHAMMAD AZIZ-UD-DIN AHMAD KHAN *v.* LEGAL REMEMBRANCER, N.-W. P. AND OUDH

[I. L. R., 15 All., 321

27. ———— *Wukf—Settlement in favour of the settlor's family with ultimate remainder to the poor—Dedication not substantially for religious and charitable purposes—Appropriation not within the principles of wukf—Property settled on the settlor's family with a charge upon it for religious and charitable purposes—Charge, Effect upon, where wukf not valid.*—A settlor by instrument purported to create a wukf in favour of his family and, in the event of a failure of his descendants, in favour of the poor of Dacca. The lower Appellate Court held that the deed created a valid endowment to the extent of R75 per annum only, and that, subject to such charge, the properties were alienable. *Held* by the majority of the Full Bench (PETHERAM, *C.J.*, TREVELYAN and GHOSE, *JJ.*; AMEER ALI, *J.*, dissenting) upon the construction of the deed and upon the authority of *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu, I. L. R., 17 Calc., 498 : L. R., 17 I. A., 28,* that the instrument did not create a valid wukf, there being no substantial dedication to religious and charitable purposes. *Held* by the majority of the Full Bench (PRINSEP, GHOSE, and AMEER ALI, *JJ.*; PETHERAM, *C.J.*, and TREVELYAN, *J.*, dissenting) that the charge of R75 per annum should be allowed. *Held* by PRINSEP, TREVELYAN, and GHOSE, *JJ.*, that the course of the decisions should not be disturbed by reference to texts which may favour the idea that a settlement on the settlor and his descendants in perpetuity is a pious Act. *Held* by PRINSEP and TREVELYAN, *JJ.*, that upon the findings of the lower Courts no second appeal lay, and it was not therefore necessary to express any opinion as to the validity of the instrument. AMEER ALI, *J.*—The disposition in question, viewed according to the Mahomedan law, which supplies ample safeguards against fraud, created a valid endowment. There is a consensus of opinion among Mahomedan lawyers of every school and sect that wukfs on children, kindred, or neighbours in perpetuity are valid. To hold that a wukf, the benefaction of which is bestowed wholly or in part on the wukif's family and descendants, is invalid, would have the effect of abrogating an important branch of the Mahomedan law. A wukf is a permanent benefaction for the good of God's creatures. The wukif may bestow the usufruct, but not the property, upon whomsoever he chooses, and in any manner whatever, only it must endure for ever. If he bestows the usufruct in the first instance upon those whose maintenance is obligatory on him, or if he gives it to his descendants so long as they exist, to prevent their falling into indigence, it is a pious act, even more pious than giving to the general body of the poor. When a wukf is created constituting the family or descendants of the wukif the recipients of the charity so long as they exist, the poor are expressly or impliedly brought in to impart permanency to the endowment. The subsequent conduct

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of the wukif cannot in any way affect the wukf. Bikani Mia *v.* Shuk Lal Poddar

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28. ——— *Wukf—Deed invalid as a wukfnama—Attempted family settlement in perpetuity—Ultimate, but illusory, gift for charitable purposes.*—An instrument, nominally a wukfnama expressly purporting to make property wukf, settled it in perpetuity on the family of the dedicators, with an ultimate gift for the benefit of the poor, only to take effect upon the failure of the descendants of the family. *Held* that a gift to the poor might be illusory from the smallness of the amount, or from its uncertainty or remoteness; and that the period when this gift was to take effect was so uncertain, and probably so remote, that the gift was illusory. Therefore, according to Mahomedan law, it did not establish a wukf. *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu, I. L. R., 17 Calc., 498 : L. R., 17 I. A., 28,* and *Abdul Gafur* v. *Nizamudin, I. L. R., 17 Bom., 1 : L. R., 19 I. A., 170,* referred to and followed as the principle that the charitable purpose, in order to establish a wukf, must be substantial and not illusory. Provision for the dedicator's family, out of the appropriated property, may be consistent with the making a valid wukf, where the appropriation is substantially for a pious or charitable purpose. But, as family settlement in perpetuity is contrary to the Mahomedan law, and as successions of inalienable life-interests are forbidden, such dispositions cannot be rendered legal by the mere addition of the words that they are made as wukf, or for the benefit of the poor, where no substantial benefit is conferred on the latter. The decision of the Full Bench in *Bikani Mia* v. *Shuk Lall Poddar, I. L. R., 20 Calc., 116,* approved. Abul Fata Mahomed Ishak *v.* Rasamaya Dhur Chowdhri

[I. L. R., 22 Calc., 619
L. R., 22 I. A., 76

29. ——— *Wukf—Charitable and religious trusts—Perpetuities, Rule against.*—A Mahomedan, by an instrument in writing, dedicated certain moveable and immoveable properties for the up-keep of her husband's tomb and "for the daily, monthly and annual expenses of the aforesaid mausoleum, such as lighting, frankincense, flowers, and the salaries of repeaters of Koran and readers of benedictions, etc., as well as for the annual fatheha ceremonies of the deceased, and after my death for my annual fatheha ceremony." It was found that a traveller's inn was erected by the endower of the property as an appurtenance to the tomb, and that the performance of the ceremonies necessarily involved the distribution of charity, and that the lights at the tomb were of use to passers-by. *Held* on appeal, reversing the judgment of Davies, *J.,* that the instrument was not a valid wukf, and was void as contravening the rule against perpetuities. Kaleloola Sahib *v.* Nuseerudeen Sahib

[I. L. R., 18 Mad., 201

30. ——— *Wukf—Illusory dedication—Fatheha ceremony—Custom as a guide to interpreting the intention of a wukif.*—In determining whether a disposition of property made by a Mahomedan is or is not a valid wukf, the intention of the wukif may be interpreted by reference to custom prevailing at the time the wukf was made; and if there is found to be a substantial dedication of the property dealt with to charitable uses, that dedication will constitute a valid wukf. *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu, I. L. R., 17 Calc., 498,* and *Abul Fata Mahomed Ishak* v. *Russomaya Dhur Chowdhry, I. L. R., 22 Calc., 619 : I. L. R., 22 I. A., 76,* referred to. Phul Chand *v.* Akbar Yar Khan . . . I. L. R., 19 All., 211

31. ——— *Wukf—Illusory dedication—Settlement for benefit of descendants of the settlors.*—*Held* that a mere charge for some charitable purposes on the profits of an estate strictly settled on the family of the settlors in perpetuity and not dedicated in substance to charitable uses is not sufficient to constitute a good and valid wukf. *Abul Fata Mahomed Ishak* v. *Russomaya Dhur Chowdhry I. L. R., 22 Calc., 619 : L. R., 22 I. A., 76 ; Kalel-ola Sahib* v. *Nasiruddeen Sahib, I. L. R., 18 Mad., 201;* and *Mahomed Ahsanullah Chowdhry* v. *Amarchand Kundu, I. L. R., 17 Calc., 498,* referred to. Muhammad Munawar Ali *v.* Rasulan Bibi

[I. L. R., 21 All., 329

32. ——— **Revocation of endowment** *—Effect of revocation or improper conduct of trustees.*—A valid wukf cannot be affected by revocation or by the bad conduct of those responsible for the carrying out of the appropriator's behests, nor can it be alienated. Doyal Chund Mullick *v.* Keramut Ali . . . 16 W. R., 116

33. ——— *Removal for misconduct.*—According to Shia law, a man who devotes property to charitable or other uses, and transfers the proprietary right therein to a trustee, cannot at his pleasure take it back from the trustee whom he has constituted the owner, and give it to another person, unless on the creation of the trust he has reserved to himself the right to do so in express terms. Hidaitoonnissa *v.* Afzul Hossein

[2 N. W., 420

34. ——— *Grant reverting to donor on misconduct of mutwallis.*—If mutwallis fail to act up to the directions of an endowment, the grant does not necessarily revert to the heirs of the grantee. Reasut Ali *v.* Abbott . 12 W. R., 132

35. ——— **Management of endowment** *—Position of manager—Limitation—Act XX of 1863.*—Since the passing of Act XX of 1863, a mutwalla, or manager of a Mahomedan endowment, cannot be considered to hold the position he was taken to have in the judgment of the Privy Council in *Jewun Doss Sahoo* v. *Kubeeroodeen, 6 W. R., P. C., 3, viz.,* as an officer appointed by the Government; and therefore the ordinary rules of limitation are applicable to such cases. Lall Mahomed *v.* Lalla Brij Kishore . . . 17 W. R., 430

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—*continued.*

36. ——————— *Land granted for purposes of—Right of succession to, and income of.*—Land granted for the endowment of a khalibi, or other religious office, cannot be claimed by right of inheritance. Where such a grant has been made, the members of the grantee's family have no right at his death to a division amongst them of the income derivable from the land. The right to the income of such land is inseparable from the office for the support of which the land was granted. JAAFAR MOHIUDIN SAHIB *v.* AJI MOHIUDIN SAHIB **2 Mad., 19**

37. ——————— *Suit against directors or mushavirs of a mosque—Board of directors not properly constituted under the rules of the mosque—Liability of directors for acts done by board not properly constituted—Appointment of officers—Management of property—Liability of provisional committee assuming authority to act—Trustees—Limitation Act (XV of 1877), art. 120—Kazi—Act II of 1864 and Bombay Act IV of 1864—Nazir of mosque, Liability of—Parties.*—A certain Mahomedan mosque in Bombay, known as the Juma Masjid, was possessed of considerable property. The administration of the mosque and its property was carried on under rules which had been drawn up and approved in the year 1834 at a special general meeting of the jamat convened for the purpose in the course of a suit which had been filed in the Supreme Court against the then mushavirs of the mosque. That suit was referred to the master to make certain inquiries, and in his report these rules were set out in full. His report was confirmed by the Court. The rules provided that the mosque and its property should be managed by the kazi of Bombay and ten mushavirs, and that a nazir should be appointed by them, and be subject to their control. The rules also prescribed the various duties of the kazi, mushavirs, and nazir, and declared that the power of filling up vacancies should be exercised by the kazi and mushavirs collectively or by the kazi and an absolute majority of the mushavirs. In 1834, and for many years subsequently, there was, as there had always been, a "Kazi of Bombay" appointed under a sanad from Government. He held the appointment for life, and the office was not hereditary. In 1866 the then kazi of Bombay died, but in consequence of the provisions of Act II of 1864 and Bombay Act IV of 1864 the Government made no new appointment, and the office lapsed. One *M*, however, assumed the office and was generally accepted by the community as kazi of Bombay. He died in 1878, and upon his death rival claimants sought the office of kazi of Bombay. The mushavirs were then advised that they could not select one of the rival kazis to fill the office of kazi of Bombay under the rules, and they therefore continued to manage the mosque without a kazi in violation of the rules of 1834. Two of the mushavirs (now relators) were of opinion that one of the rival applicants for the position should be appointed kazi, and as their wishes were not acceded to, they ceased to attend the board, and as far as possible while retaining their offices, they thwarted the action of the other mushavirs. Subsequently in 1878 other vacancies occurred in the board. In 1888 the number of mushavirs was reduced to six, and two of them (the relators), as above stated, took no part in the administration, so that the management was left in the hands of the first four defendants. In 1891 four new mushavirs (defendants Nos. 6 to 9) were elected, and in that year the Advocate General at the relation of the two dissatisfied mushavirs filed this suit against the mushavirs. The former nazir of the musjid was also made a defendant (No. 5). He had held the office of nazir from 1879 to 1891, when he resigned. The plaint set forth the irregularities which had taken place in the management in 1878, and prayed for the removal of the defendants (other than defendant No. 5) from the position of directors or mushavirs, and for an account against all the defendants, and for a scheme, etc. The following were the principal charges made against the defendants in the plaint and at the hearing:—(1) The neglect to take steps to supply the place of the kazi and the failure to keep up the proper number of the mushavirs. *Held*, as to this, that subsequently to 1878 the mushavirs had no authority under the rules of 1834 to fill up vacancies as they occurred or to carry on the government of the musjid. Since that year the mushavirs were a provisional committee of management, kept up from time to time by co-optation, tacitly permitted by the jamat to manage the affairs of the musjid until the original constitution could be restored or legally changed, that original constitution being for the time in abeyance. (2) The improper appointment in 1879 of one *C* (defendant No. 5) as nazir. *Held* that the mushavirs incurred no liability and deserved no censure for so doing. (3) The neglect to call for an annual account of the income and expenditure of the mosque under rule 6. *Held* that this charge was not proved. (4) The neglect to purchase properties with the surplus income of the mosque as required by rule 4. Upon this point it was contended that the defendants should be charged with interest on the uninvested funds, so as to make up for the loss of rents which would have been recovered if properties had been purchased. In answer to this claim, it was argued (*a*) that, under the circumstances, the mushavirs had no power to expend the funds of the mosque in purchasing property; and (*b*) that the claim was barred by limitation. *Held* that the claim fell within art. 120 of the schedule to the Limitation Act (XV of 1877), and was barred except as to six years prior to the filing of the suit, but even as to this period the Court refused to order accounts to be taken against the defendants. There had been no dishonesty or improper dealing with the funds of the mosque. The highest at which the case could be put was that there had been error of judgment. In this the community had acquiesced. Moreover, the position of the parties had changed. Some of the mushavirs were dead, others had resigned, and were not defendants to the suit, and it would be difficult to enforce contribution against them. The Court was further of opinion that, in any case, it was very doubtful whether a provisional committee like the mushavirs would have been justified in assuming the power of purchasing property. Had the property fallen in value, the purchase might perhaps have been repudiated. (5) Their neglect in not detecting sums appropriated by the bill-collectors of the mosque and getting in the same. *Held* that, as a provisional committee who had assumed the management of the musjid, the defendants were bound to protect its interests. Of the money which they actually received, or which was paid into their account, they were actual trustees, but in addition to this they were officers of the musjid charged with the specific duty of superintending the nazir and his accounts, and if the musjid had suffered loss by their neglect of duty, they were answerable for it. They neglected to examine the books, a cursory audit of which would have detected the defalcations of the bill-collectors. The Court therefore directed an account against them of the rents actually received, or which, but for their wilful default or neglect, they might have received from the bill-collectors. (6) Their neglect in allowing arrears of rent to accumulate and to be lost to the musjid. *Held* it was not the duty of the mushavirs to look into the account of each individual tenant. Under the rules, the nazir, and not the mushavirs, was entrusted with the collection of rents, and it was his duty to see that the rents were not allowed to fall unduly into arrear. It was not shown that, except at an exceptional time when the nazir was ill, the rents were so much in arrear as to call for the active interference of the mushavirs, or that the musjid had suffered undue loss under this head. The Court therefore refused relief on this charge. (7) The non-payment into the bank of sums in the hands of the nazir when they exceeded R500. *Held* that the spirit of the rules had been complied with, and no loss had been shown. Defendant No. 5, as above stated, had acted as nazir of the musjid from 1879 to July 1891, when he resigned. Under the rules (see rules 2 and 7), he was appointed by the directors and was under their orders, and was removeable at their pleasure. It was contended at the hearing that he was not a proper party to the suit, being merely the agent or servant of the directors, and not a trustee. *Held* that he was properly made a defendant. Both under Mahomedan law and under the rules the nazir was a public officer in charge of the mosque and as such liable to account to the community. ADVOCATE GENERAL OF BOMBAY *v.* ABDUL KADAR JITAKER **[I. L. R., 18 Bom., 401**

38. ———— **Succession to management of endowment**—*Succession to endowed property—Rules of founder—Usage—Primogeniture.*—Where property has been devoted exclusively to religious and charitable purposes, the determination of the question of succession depends upon the rules which the founder of the endowment may have established, whether such rules are defined by writing or are to be inferred from evidence of usage. Where, so far as the will of the founder can be ascertained from the usage of former days, it seemed to authorize a mode of succession originating in an appointment by the incumbent of a successor, the Court would not be authorized to find in favour of any rule of succession by primogeniture solely from the circumstance that the persons appointed were usually the eldest sons. GULAM RAHUMTULLA SAHIB *v.* MOHOMMED AKBAR SAHIB . . **8 Mad., 63**

39. ———— *Wukf property—Founder's right to appoint manager—Right of executors to nominate manager—Akriba.*—Although, according to Mahomedan law, the founder of a wukf has a right to reserve the management of it to himself or to appoint some one else thereto, yet when he has specified the class from amongst which the manager is to be selected (*e.g.*, from amongst his relations), he cannot afterwards name a person as manager not answering the proper description. After the death of the founder, the right to nominate a manager of the wukf vests in the founder's vakils or executors, or the survivor of them for the time being. The term "akriba" (relations), though more properly confined to relations by blood, will, when the context shows that it was intended to be used in a wider sense, be extended so as to include relations by affinity. The wife or widow of the founder is not included amongst his "akriba." ADVOCATE GENERAL *v.* FATIMA SULTANI BEGAM . . **9 Bom., 19**

40. ———— *Misappropriation of funds, Effect of, on nature of trust—Construction of endowment or grant.*—Where the mutwalli of an endowment sought to recover his surburakari right in two villages, of which he had been dispossessed by a person who had obtained a decree against him personally and taken out execution against the endowment; and the said judgment-creditor contended,—first, that the proceeds of the endowment had been appropriated to other purposes than those specified in the firman creating it; second, that as the firman contained no rule of succession by inheritance or otherwise, plaintiff could not claim to be mutwalli simply in virtue of his being a descendant of the original mutwalli; and third, that the use of the term "inam" in the firman showed that the grant was in the nature of a personal endowment: it was found that the nature of the firman removed all doubt of the wukf character of the endowment: and held, firstly, that the misappropriation of wukf funds might form the subject of a suit to compel the mutwalli to do his duty, but could not alter the essential nature of his trust; secondly, that the question of the right of the plaintiff to succession could not, for the first time, be raised in this stage of the case; and, thirdly, that a grant should be construed according to the intention of the founder, and not according to the strict interpretation of any particular word: the word "inam" being indiscriminately applied to personal grants and religious endowments. ASHEEROODDEEN *alias* KALLA MIAH *v.* DROBO MOYEE . . . . . . **25 W. R., 557**

41. ———— *Alienation of endowed lands—Appointment of wife as mutwalli in husband's lifetime—Power to appoint mutwalli.*—Where a plaintiff sued to recover certain lands which had been appropriated to religious and charitable purposes by the father of her deceased husband, and urged that she had been ousted by defendant, who was the son of a half-brother of her husband; but the defendant contended that he had been put in possession as manager by plaintiff herself and other widows of the plaintiff's deceased father-in-law, all which widows had some interests in the land under various deeds by which additions had been made to the original endowment; and defendant further pleaded that, under the original deed of appointment, plaintiff's husband could not alienate the property, and that plaintiff's possession would be a virtual alienation; and also that plaintiff's claim was barred by limitation, and that she could not hold the land without the sanction of the Government under Act XX of 1863,—*Held* that, although plaintiff's original appointment by her late husband during his lifetime was unauthorized, yet, as alienation in such a case would mean alienation of the subject of the endowment rather than its transfer to plaintiff, whose possession was not an adverse possession, plaintiff's possession did not defeat the purposes of the original appropriator, and could not be regarded as an alienation; and that in these circumstances, even though the property were wukf, there could be no defect in plaintiff's title. An appropriator of land to special purposes can, under Mahomedan law, confer the office of superintendent on another at any time. It was found in this case that defendant, as a descendant of the original appropriator, had succeeded to other properties which were quite distinct from the land in suit. ABDOOL KHALEK *v.* PORAN BIBEE [25 W. R., 542

42. ——— *Sajjadanashin, khilafat, and mutwalli, Offices of—Primogeniture, Custom of—Eldest son's right to hold the offices—Wukf, Inheritance to—Predecessor in the office to appoint his successor, Right of.*—About three hundred and fifty years ago one *S*, the ancestor of the parties to the suit, came to Surat and settled there and became the pirmushid (religious preceptor) of the Mahomedan community at that place. During his lifetime, as well as after his death, moveable and immoveable property was from time to time dedicated to the religious office he and, after his decease, one or other of his descendants successively occupied. The plaintiff was the eldest, and the first defendant the second, son of *H*, the last incumbent of the said office. In 1865 *H*, being ill, executed a tauliyatnama appointing the plaintiff his executor and successor. Subsequently *H*, having recovered, cancelled the same and appointed the first defendant his successor by three successive tauliyatnamas, the last being dated 3rd September 1881, a few days before *H*'s death. The first defendant accordingly entered into possession and management of the office of sajjadanashin (or priest) and khilafat (deputy), and assumed the position of mutwalli (or manager) of the wukf property of the family. In 1882 the plaintiff brought the present suit to have it declared that on him, as the eldest son, had devolved the office of sajjadanashin and khilafat held by the family, and not on his younger brother, the defendant, and that he alone was entitled, as mutwalli, to take possession of and manage the wukf property. The plaintiff relied, firstly, on the appointment made by his father in 1865, and, secondly, on the fact of his being the eldest son of the last incumbent, to whom, he maintained, both by law and custom belonged the succession to the offices in question so long, at least, as such eldest son was in other respects a fit and proper person to succeed, which in his own case was not contested. The defendant denied that either by law or custom was the eldest son, as such, entitled to succeed, and relied on the fact of his appointment by his father. *Held* that the plaintiff had made out no case of a right to succeed his father in the offices in question. Not under the deed of appointment, because that was made by his father when he believed he was dying, and was subsequently on recovery cancelled, and was therefore inoperative, on similar principles to those which apply to the case of a *donatio mortis causâ;* nor, secondly, under the general Mahomedan law, because that law is strongly against attaching any right of inheritance to an endowment; nor, thirdly, by reason of any custom, because no such custom as that contended for was established on the evidence. The evidence went to show that the eldest son did not uniformly succeed, and that, even when he succeeded, he did so by right of appointment, and not by right of primogeniture. ABDULA EDRUS *v.* ZAIN SAYAD HASSAN EDRUS . . . . I. L. R., 13 Bom., 555

43. ——— **Appointment as manager**—*How far effectual.*—An appointment as manager by the trustee for the time being of a Mahomedan religious endowment was held not effectual beyond the incumbency of the nominator. MOHEEOODDEEN AHMED *v.* ELAHEE BUKSH . . 6 W. R., 277

44. ——— *Shia—Disqualification.*—The fact of a person being a Shia does not disqualify him for the supervision of a wukf made by a Sunni. DOYAL CHUND MULLICK *v.* KERAMUT ALI . . . . 16 W. R., 116

45. ——— *Hereditary succession.*—In a Mahomedan religious endowment, when it is essential that the superior or manager should have certain qualifications which succession by descent would not always ensure, the theory of hereditary succession is most unlikely and out of place. SYEDUN *v.* ALLAH AHMED [W. R., 1864, 327

46. ——— *Suffada-nasheen, Descent of office of—Female's right of.*—Under the Mahomedan law, offices like that of suffada-nasheen should descend to persons in the male line, and those who are descended from females are regarded as not belonging to the family of the founder, but strangers. Where such an office has been once diverted for sufficient cause (*e.g.*, default of male issue) from a particular line of descent, it is liable to be brought back into the line of a previous holder when the person claiming under that holder is a descendant in the female line. AHMUD HOSSEIN *v.* MOHIOODEEN AHMUD . . . . . 16 W. R., 193

47. ——— *Temporal and spiritual affairs—Performance of duties by female.*—According to Mahomedan law, a woman may manage the temporal affairs of a mosque, but not the spiritual affairs connected with it, the management of the latter requiring peculiar personal qualifications. HUSSAIN BIBEE *v.* HUSSAIN SHERIF . **4 Mad., 23**

48. ——— *Wukf or endowed property—Office of mutwalli, Nature of—Transfer of, or performance of duties of, by agent.*—The office of mutwalli is a trust which a woman, equally with a man, is capable of undertaking, but it is a personal trust, and the office may not be transferred, nor the endowed property conveyed, to any person whom the acting mutwalla may select. The word "deputy," in book 9, Ch. V, page 591 of Baillie's Mahomedan Law, signifies some one who, as an agent, may be employed to perform the duties of the office, as to collect rents and to assist the mutwalli in expending the proceeds of the endowed property for charitable purposes. WAHID ALI *v.* ASHRUFF HOSSAIN

[I. L. R., 8 Calc., 732 : 10 C. L. R., 529

49. ——— *Woman performing duties of manager of endowment.*—A woman is not competent to perform the duties of mujavar of a durga which are not of a secular nature. MUJAVAR IBRAMBIBI *v.* MUJAVAR HUSSAIN SHERIFF

[I. L. R., 3 Mad., 95

50. ——— *Appointment of the religious superior of a Mahomedan institution — Custom as to such appointment— Undue influence how indicated— Object of pleadings—Issue not in terms fixed, but afterwards raised.*—The object of any system of pleading is that each side may be made fully aware of the questions that are about to be argued in order that each may bring forward evidence appropriate to the issues. The claim here made was that the last preceding sajjadanashin, acting according to the custom of the institution of which he was the religious superior and manager, had appointed the plaintiff to succeed him on his decease. The finding of the first Court that he had this power by the custom was affirmed on this appeal. As to the fact of the appointment, it was not apparent at what stage of the suit the question had first been raised, whether the deceased had been of sound and disposing mind at the time of making it. The first Court found that he had been of sound mind at the time; but the Chief Court on appeal reversed this finding, and added that he had been, in their opinion, unduly influenced. As these questions, though not formally stated in the issues, had been sufficiently open upon the proceedings to give to each Court a right to form a judgment upon them, the Judicial Committee decided which was correct; and affirmed the finding of the first Court as to the soundness of mind of the deceased. Upon the question of undue influence, which was an issue different from that of the mental capacity of the deceased in appointing, their Lordships found no evidence of either coercion or fraud, under which such influence must range itself, citing *Boyse* v. *Rossborough, 6 H. L. C., 1.* They found no evidence of the exercise of any influence. The decision of the Chief Court was therefore reversed; and the decree of the first Court, in favour of the plaintiff, was maintained. SAYAD MUHAMMAD *v.* FATTEH MUHAMMAD . **I. L. R., 22 Calc., 324**

[L. R., 22 I. A., 4

51. ——— Alienation of endowed property—*Wukf—Limitation.*—According to Mahomedan law, wukf or endowed property is alienable. Wukf property is not the less wukf property because of the use of the words "inam" and "altamgha" in the grant, provided the grant clearly appears to have been intended for charitable purposes. A mutwalli, or superintendent of an endowment, is not barred by limitation if he sues to recover possession of endowed property within twelve years from the date of his appointment. JEWUN DOSS SAHOO *v.* KUBEEROODDEEN **6 W. R., P. C., 3 : 2 Moore's I. A., 390**

52. ——— *Alienation by mutwalli.*—In dealing with the mutwalli of an endowment, it is not necessary for the purchaser to look further than to the power of the mutwalli under his deed of trust. If the deed gives the mutwalli the power and discretion to make a sale, it is not a matter of concern to the purchaser whether that power or discretion is judiciously exercised or not. GOLAM ALI *v.* SOWLUTOONNISSA BIBEE **W. R., 1864, 242**

53. ——— *Grant of mirasi lease.*—According to Mahomedan law, the trustees of an endowment cannot create a valid mirasi tenure at a fixed rent by granting a lease of any portion of the wukf property. SOOJAT ALI *v.* ZUMEEROODDEEN

[5 W. R., 158

54. ——— *Alienation of land devoted in part to religious purposes.*—Where the whole of the profits of land are not devoted to religious purposes, but the land is a heritable property burdened with a trust,—*e.g.*, the keeping up of a saint's tomb,—it may be alienated subject to the trust. FULTOO BIBEE *v.* BHURRUT LALL BHUKUT

[10 W. R., 299

55. ——— *Alienation of wukf property—Suit to set aside such alienation—Right to sue—Civil Procedure Code (Act XIV of 1882), s. 539—Mahomedan law.*—Plaintiffs sued to recover possession of certain lands, alleging that they had been granted in wukf to their ancestor and his lineal descendants to defray the expenses for, or connected with, the services of a certain mosque; that their father (defendant No. 3) and cousins (defendants Nos. 4 and 5), who were mutwallis in charge of the said property had illegally alienated some of these lands, and had also ceased to render any service to the mosque, whereupon they (the plaintiffs) had been acting as mutwallis in their stead. They therefore claimed to be entitled, as such, to the management and enjoyment of the lands in dispute. It was contended (*inter alia*) that the plaintiffs could not sue in the lifetime of their father (defendant No. 3), he not having transferred his rights to them. *Held* that the plaintiffs were entitled to sue to have the alienation made by their father and cousins set aside and the wukf property restored to the service of the mosque. They were not merely beneficiaries, but members of the family of the

mutwallis and were the persons on whom, on the death of the existing mutwallis, the office of mutwalli would fall by descent, if indeed it had not already fallen upon them, as alleged in the plaint, by abandonment and resignation. Wukf property cannot be alienated, and any person interested in the endowment can sue to have alienations set aside and the property restored to the trust. *Per* RANADE, *J.*—As a suit for possession, the suit was defective in form and could not be maintained. It was a suit for partition of a moiety of the lands, and the owner of the other moiety was not a party. The suit was, however, really a suit for a declaration that the lands were the inam property of the mosque, and, as such, was not liable to alienation for the private debts of defendants Nos. 3, 4, and 5. The plaintiffs were entitled to sue for such a declaration, although they could not obtain actual possession. They were beneficiaries and had a right to sue under s. 42 of the Specific Relief Act (I of 1877). HASSAN *v.* SAGWA BABKRISHNA . . **I. L. R., 24 Bom., 170**

56. ——— *Liability of wukf property in hands of widow to decree against husband.*—Where property is endowed (made wukf) by the proprietor, and as such devolves to his widow as trustee (mutwalli), it cannot be sold in satisfaction of a claim against him. FEGREDO *v.* MAHOMED MUDESSUR . . . . . **15 W. R., 75**

57. ——— *Alienation by trustees without sanction of Judge whether voidable or void.*—A Civil Court of superior jurisdiction in the district is vested, generally speaking, with the powers exercised by the kazi. Before an alienation of trust property can be made by the trustee, the sanction of the kazi, in other words the Judge, is essential. Where the trustees of a certain mosque without obtaining the sanction of the Judge sold the lands in dispute which formed a part of the trust property to the plaintiffs in order to raise money to meet the expenses of litigation and the repair of the mosque,—*Held* that the sale was not merely voidable, but void. *Ismail Ariff* v. *Mahomed Ghouse I. L. R., 20 Calc., 834,* distinguished. *Rajesware Dasya* v. *Mahomed Abdullah, 7 Sel. Rep., 320,* and *Javun Doss Sahoo* v. *Kubeerooddeen, 2 Moore's I. A., 390,* followed. SHAMA CHURN ROY *v.* ABDUL KABEER . . . . . **3 C. W. N., 158**

58. ——— *Mortgage.*—The fact that a mortgage is in existence over property at the time when it is set apart as an endowment does not invalidate the endowment under Mahomedan law. It is an endowment subject to a mortgage. If after a mortgage the mortgagor endows the land and dies leaving sufficient assets, his heirs are bound to apply those assets to the redemption of the mortgage, so that the endowment may take effect freed from the mortgage by the application of other assets of the endower. But, if necessary, the mortgagee may enforce the mortgage by sale of the land, and the endowment will be rendered void as against the purchaser under the mortgage, but not as against the heirs of the endower; as against the latter, the surplus sale-proceeds will be subject to the endowment. HAJRA BEGUM *v.* KHAJA HOSSEIN ALI KHAN

[4 B. L. R., A. C., 86: 12 W. R., 498

Upholding on review, KHAJAH HOSSEIN ALI *v.* HAZARA BEGUM . . . **12 W. R., 344**

59. ——— *Waste committed by mutwalli—Liability to account.*—Where a mutwalli was proved to have been guilty of waste, the High Court ordered him to file in Court every six months a true and complete account of his income, expenditure, and dealings with the property belonging to the endowment. IMDAD HOSSEIN *v.* MAHOMED ALI KHAN . . . . **23 W. R., 150**

60. ——— *Suit for assertion of khadimi rights—Sale of office to which are attached conduct of religious worship and performance of religious duties—Custom.*—The plaintiffs instituted a suit for a declaration that they were the khadims of a certain durga and, as such, entitled to perform the duties attached to that office for 21 days in each month, and during that period to receive the offerings made by worshippers at the durga. They also claimed an injunction restraining the defendants from interfering with them in the exercise of that office. The plaintiffs claimed their khadimi rights partly by inheritance and partly by purchase, a custom of transferability by sale having been long recognized. *Held* that the suit, being a claim to an hereditary office, fell under art. 124 of the Limitation Act, and was not barred by limitation. *Semble*—That a Mahomedan office, to which are attached substantially the conduct of religious worship and the performance of religious duties, is not legally saleable, any custom to the contrary notwithstanding; and that therefore, in so far as the title of the plaintiffs depended upon purchase, the suit failed. *Juggurnath Roy Chowdhury* v. *Kishen Pershad Surmah 7 W. R., 266; Kuppa Gurakal* v. *Dorosami Gurakal, I. L. R., 6 Mad., 76; Mancharam* v. *Pranshankar, I. L. R., 6 Bom., 298;* and *Vurma Valia* v. *Ravi Vurma Kunhi Kutty, I. L. R., 1 Mad., 235: L. R., 4 I. A., 76,* referred to. SARKUM ABU TORAB ABDUL WAHEB *v.* RAHAMAN BUKSH

[I. L. R., 24 Calc., 83

61. ——— **Removal of manager**—*Misconduct.*—If a superintendent of an endowment misconducts himself, the Mahomedan law admits of his removal, and this is sufficient to protect the objects for which the trust was created. HIDAIT-OON-NISSA *v.* AFZUL HOSSEIN . . . **2 N. W., 420**

62. ——— *Mismanagement—Power of donor.*—The rule of Mahomedan law that a mutwalli, or superintendent of an endowment, is removable for mismanagement, does not apply to the case of a trustee who has a hereditary proprietary right vested in him. It is essential, for the exercise by the donor of the power of removing a superintendent, that such power be specially reserved at the time of the endowment. GULAM HUSSAIN SAIB *v.* AJI AJAM TADALLAH SAIB. AJI AJAM TADALLAH SAIB *v.* GULAM HUSSAIN SAIB . . **4 Mad., 44**

MAHOMEDAN LAW—ENDOWMENT —*continued.*

63. ——— *Misconduct.*—Where the plaintiff sued to recover certain property as wakf, on the ground that the mutwalli and his ancestor (a former mutwalli) had misconducted themselves by selling to some of the defendants the property which was the subject of the endowment,—*Held* that, as plaintiff had shown no title, either as heir or otherwise, to partake of the benefit of the endowment, he had no right to recover possession, and that the utmost he could ask for was to have the mutwalli who had misconducted himself removed, and a new mutwalli appointed, provided he showed circumstances which, according to law, would justify the Court in selecting a mutwalli. BHUBRUCK CHUNDRA SAHOO *v.* GOLAM SHURRUF

[10 W. R., 458

64. ——— *Removal of officer for disobedience—Cause of action—Trust.*—In a suit by the superintendent of a Mahomedan religious establishment to eject defendant (*M*) from the office of takheadar and from certain lands thereto appertaining, on the ground that he had by the authority vested in him already discharged *M* from employment in consequence of disobedience, the alleged cause of action being an order passed by the Civil Court decreeing to the defendant a quantity of land belonging to the establishment, notwithstanding the superintendent's objection that *M* was no longer takheadar,—*Held* that the plaintiff's cause of action was correctly stated, for it was by the order in question that his nominee was put aside, and the defendant declared to have a right to the land as takheadar; and that the defendant's claiming to hold independently of the superintendent was an act of the gravest disobedience warranting the plaintiff's interference and the exercise of his authority. *Held* too that the suit was not barred by limitation, as the defendant held his office subject to the general control and authority of the superintendent, both parties executing the same trust. MEHER ALI *v.* GOLAM NUZUFF

[11 W. R., 333

65. ——— *Rule that remuneration of mutwalli should not exceed one-tenth of income of endowment—Sajjadanashin, Position of.*—The rule of Mahomedan law that the remuneration of a mutwalli should not exceed one-tenth of the income relates to such managers or mutwallis as have no beneficial interest in the usufruct of the endowed properties, or are strangers to the endowment. Taking into consideration the nature of the institution, the character of the grant, and the position of the sajjadanashin, the rule was held not to apply to the Sasseram khankah. MOHIUDDIN *v.* SAYIDUDDIN *alias* NAWAB MEAN . **I. L. R., 20 Calc., 810**

66. ——— *Sajjadanashin, Position of and maintenance of—Liability to pay Income-tax.*—The position of the sajjadanashin discussed, and distinguished from that of a mutwalli. *Semble*—The maintenance of the sajjadanashin of the Sasseram khankah is a part of the purpose for which the khankah was established. *Mohiuddin* v. *Sayiduddin, I. L. R., 20 Calc., 810; Piran* v. *Abdul Karim, I. L. R., 19 Calc., 203,* referred to. The sajjadanashin is not liable to income-tax in respect of such moneys as he draws from the khankah properties for the purpose of his own maintenance and that of his family. SECRETARY OF STATE FOR INDIA *v.* MOHIUDDIN AHMED

[I. L. R., 27 Calc., 674

MAHOMEDAN LAW—GIFT.

	Col.
1. LAW APPLICABLE TO	5642
2. CONSTRUCTION	5642
3. VALIDITY	5644
4. REVOCATION	5663

See COMPROMISE — CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE.

[6 Bom., A. C., 77

See DEED—CONSTRUCTION.

[I. L. R., 13 All., 409

See LIMITATION ACT, 1877, ART. 91.

[I. L. R., 11 All., 456

1. LAW APPLICABLE TO.

1. ——— **Law of equity and good conscience**—*Cases of inheritance, marriage, and caste.*—The application to Mahomedans of their own laws in cases other than those coming under the denomination of inheritance, marriage, and caste (*e.g.*, in case of gifts), is the administering of justice according to equity and good conscience. ZOHOOROODEEN SIRDAR *v.* BAHAROOLLA SIRCAR . **W. R., 1864, 185**

2. ——— **Questions as to gift arising in suits**—*Bengal Civil Courts Act, VI of 1871, s. 24.*—Under s. 24 of Act VI of 1871, Mahomedan law is not strictly applicable to questions relating to gift arising in suits, but it is equitable as between Mahomedans to apply that law to such questions. SHUMSHOOLNISSA *v.* ZOHRA BEEBEE . **6 N. W., 2**

[Agra, F. B., Ed. 1874, 283

2. CONSTRUCTION.

3. ——— *Donee from Mahomedan widow—Title.*—*Held* that a donee holding from a Mahomedan widow does not acquire a better title to the property than the donor herself had. MAHOMED NOOR KHAN *v.* HUR DYAL . . . **1 Agra, 67**

4. ——— **Gift for consideration**—*Revocable grant—Construction of instrument of gift.*—One of two brothers, co-sharers in ancestral lands, died leaving a widow, who thereupon became entitled to one-fourth of her husband's share of the family inheritance. Without relinquishing her right to claim her share, in lieu thereof she received an allowance of cash and grain. The surviving brother made an arrangement with her, which was carried into effect by documents. By one instrument he granted two villages to her. By another she accepted the gift, giving up her claim to

MAHOMEDAN LAW—GIFT—*continued.*

2. CONSTRUCTION—*continued.*

any part of the ancestral estate of her husband. The first instrument, *inter aliâ*, stated as follows: "I declare and record that the aforesaid sister-in-law may manage the said villages for herself and apply their income to meet her necessary expenses and to pay the Government revenue." *Held* that these words did not cut down previous words of gift to what in the Mahomedan law is called an ariat; and that the transaction was neither a mere grant of a license to the widow to take the profits of the land revocable by the donor nor a grant of an estate only for the life of the widow. It was a hibbah-bil-iwaz, or gift for consideration, granting the villages absolutely. MAHOMED FAIZ AHMED KHAN *v.* GHULAM AHMED KHAN . . . **I. L. R., 3 All., 490 [L. R., 8 I. A., 25**

5. ——— **Transfer of absolute estate**—*Condition—Sunni law—Shiah law.*—The owner of a house made a gift thereof to certain persons "for their residence, and that of their heirs, generation after generation," declaring that, if the donees sold or mortgaged the house, he and his heirs should have a claim to the house, but not otherwise. *Held* that under Mahomedan law, whether that by which the Shiahs or that by which the Sunnis were governed, the house passed by the gift to the donees absolutely, the declaration by the donor as to the effect of an alienation by the donees being in the nature of a recommendation, and not having the effect of limiting the estate in the house itself. NASIR HUSAIN *v.* SUGHRA BEGUM . . . **I. L. R., 5 All., 505**

6. ——— **Deed of gift**—*Will—Validity of declaration of title.*—*Held* that a document to the following effect was a deed of gift and not a will: "I have no children. Therefore my own brother, Mir Hemdoola *alias* Chotay Saheb, in his lifetime placed in my lap his infant son, Mir Ruhulla, of his own free will and accord. From that day, having taken the said Mir Saheb into my family, I adopted him as my son. Consequently he is being brought up entirely by me, and he alone is also my heir. And I have appointed him the owner of all my goods and property. . . . I have made over the same to the possession of the said Mir Saheb. . . I have a share in the goods and property of my husband, Mir Afzaloodin Khan Saheb, the Nawab of Surat. The owner thereof also is the same Mir Saheb. Therefore in my lifetime should this property come into my hands, I will also deliver the same into the possession of the said Mir Saheb. Because the said Mir Saheb being the heir of all my goods and property, I have constituted him the possessor thereof by virtue of ownership. He is therefore the owner. And after me, should this property be divided, then the said Mir Saheb is the owner and absolutely entitled to receive my portion by the aforesaid right, by the right of ownership of my share, from the Court of His Honour the Agent. No one shall oppose him." *Held* further that, even if the direction in the above document as to making the grantee of the document the owner of the grantor's share in her husband's property be regarded as a declaration of title, such declaration had, according to Mahomedan law, no validity to create a proprietary right in the said share after the grantor's death. KAVARBAI *v.* ALAM KHAN . . **I. L. R., 7 Bom., 170**

MAHOMEDAN LAW—GIFT—*continued.*

2. CONSTRUCTION—*concluded.*

3. VALIDITY.

7. ——— **Death-bed gift**—*Donatio mortis causâ—Deed of gift.*—According to the Mahomedan law, in order to make a gift operate as a *donatio mortis causâ*, the delivery must be upon the condition that it should become effectual as a gift on the death of the donor. Where therefore it was found that a deed of gift was executed in the last illness of the donor, and was in the possession of the donee after her death,—*Held* that this was not enough to make it operate as a *donatio mortis causâ*, but that it was necessary to find the further fact, whether the deed was delivered by the donor before her death and whether such delivery was in contemplation of death, and with the intention that it should become effectual on the death of the donor. NUSSEBUN BIBEE *v.* ASHRUFF ALLY . . **Marsh., 315: 2 Hay, 163**

8. ——— *Legacy.*—According to Mahomedan law, a gift on a death-bed is viewed in the light of a legacy. ASHADOOLLAH *v.* SHAEBA JHASORE . . . . . **2 Hay, 345**

9. ——— **Gift in contemplation of death**—*Will.*—According to the Mahomedan law, a gift made in contemplation of death, though not operative as a gift, operates as a legacy. Ordinarily it conveys to the legatee property not exceeding one-third of the deceased's whole property, the remaining two thirds going to the heirs. In the absence of heirs, a will carries the whole property. EKIN BEBEE *v.* ASHRUF ALI . . . **1 W. R., 152**

10. ——— *Will—Person labouring under sickness of which he dies.*—According to Mahomedan law, if a person executes a gift while labouring under a sickness from which he never recovers, and which ultimately proves fatal to him, effect can be given to the instrument only to the extent of one-third. KUREEMUN *v.* MULLICK ENAET HOSSEIN . . . . . **W. R., 1864, 221**

11. ——— *Will—Consent of heirs.*— A deed of gift, such as a tuluknamah, executed at a time when the grantor was labouring under a sickness from which she never recovered, cannot operate save as a will. If such a death-bed gift or will is made in favour of one who is an heir, the will or gift, so far as it relates to that heir, will be inoperative without the consent of the other heirs. ASHRUFFUNNISSA *v.* AZEEMUN. BARODA KOOERE *v.* ASHRUFFUNNISSA . . . **1 W. R., 17**

12. ——— *Lease granted during illness.*—A mokurari lease, extended where the grantor was dangerously ill and in contemplation of death, was held to be a death-bed gift, and his natural heirs declared incapable of taking anything under it except their shares of the defendant's property according to Mahomedan law. ENAET HOSSEIN *v.* KUREEMOONISSA . . . **3 W. R., 40**

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

13. ——— *Gift by person labouring under disease.*—Under the Mahomedan law, the term "marz-ul-maut" is applicable not only to diseases which actually cause death, but to diseases from which it is probable that death will ensue, so as to engender in the person affected with the disease an apprehension of death. Under the same law, a person labouring under such a disease cannot make a valid gift of the whole of his property until a year has elapsed from the time he was first attacked by it. When a gift is made by a person labouring under such a disease, it is good to the extent of one-third of the subject of the gift, if the donee has been put into possession by the donor. LABBI BEEBEE *v.* BIBBUN BEEBEE . . . . **6 N. W., 159**

14. ——— *Gift during mortal illness—Donatio mortis causâ—Marz-ul-maut.*—The Hanifi rules with regard to the subject of marz-ul-maut gifts are not exhausted by the dictum expressed in the case of *Mahomed Gulshere Khan* v. *Mariam Begam, I. L. R., 3 All., 731,* but in determining whether the donation of a Mahomedan suffering from a mortal illness comes within the dictum applicable to marz-ul-maut gifts, several questions have to be considered, *viz.*, (1) Was the donor suffering at the time of gift from a disease which was the immediate cause of his death? (2) Whether the character and nature of the disease was such as to induce the donor to believe that death would be caused thereby or to engender in him the apprehension of death? (3) Was the illness such as to incapacitate him from the pursuit of his ordinary avocations or standing up for prayers, a circumstance which might create in the mind of the sufferer an apprehension of death? (4) Had the illness continued for such a length of time as to remove or lessen the apprehension of immediate fatality or to accustom the sufferer to the malady? The limit of one year, mentioned in the law books, does not lay down any hard-and-fast rule regarding the character of the illness; it only indicates that a continuance of the malady for that length of time may be regarded as taking it out of the category of a mortal illness. HASSARAT BIBI *v.* GOLAM JAFFAR *alias* FAKHERULLAH . . . . . **3 C. W. N., 57**

15. ——— *Absence of immediate apprehension of death—"Marz-ul-maut."*—According to Mahomedan law, a gift by a sick person is not invalid if at the time of such gift his sickness is of long continuance, *i.e.*, has lasted for a year, and he is in full possession of his senses, and there is no immediate apprehension of his death. *Labbi Bibi* v. *Bibbun Bibi, 6 N. W., 159,* followed. *Held* therefore, where at the time of a gift the donor had suffered from a certain sickness for more than a year and was in full possession of his senses, and there was no immediate apprehension of his death, and he died shortly after making the gift, but whether from such sickness or from some other cause it was not possible to say, that under these circumstances the gift was not invalid according to Mahomedan law. MAHOMED GULSHERE KHAN *v.* MARIAM BEGUM **[I. L. R., 3 All., 731**

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

16. ——— *Absence of immediate apprehension of death.—Semble*—A gift by a sick person is not invalid if at the time he made it he was in full possession of his senses and there was no immediate apprehension of death. IBHRAM *v.* SULEMAN . **I. L. R., 9 Bom., 146**

17. ——— *Gift in lieu of debt for dower—Sale—Dower.*—*Held* that the provisions of the Mahomedan law applicable to gifts made by persons labouring under a fatal disease do not apply to a so-called gift made in lieu of a dower-debt, which is really of the nature of a sale. GHULAM MUSTAFA *v.* HURMAT . **I. L. R., 2 All., 854**

18. ——— *Will—Disposition in favour of heir—Consent of other heirs.*—A Mahomedan executed in favour of his wife an instrument which purported to be a deed of gift of all his property. At the time when he executed this instrument he was suffering from an illness likely to have caused him to apprehend an early death, and he did, in fact, die of such illness upon the same day. There was no evidence that any of his heirs had consented to the execution of the deed. After his death, his brother sued the widow to set aside the deed as invalid. *Held* that the instrument, though purporting to be a deed of gift, constituted, by reason of the time and other circumstances in which it was made, a death-bed gift or will, subject to the conditions prescribed by the Mahomedan law as to the consent of other heirs, and those conditions not having been satisfied, it not only fell to the ground, but the parties stood in the same position as if the document had never existed at all. WAZIR JAN *v.* ALTAF ALI . . . **I. L. R., 9 All., 357**

19. ——— *Death-bed gifts—Consent of heirs—Musha—Delivery of possession—Undue influence.*—A Mahomedan on 27th February executed two deeds of gift, by one of which (attested by all his sons) he conveyed his one-fourth share in a certain mitta to his daughters; and by the other (attested by all his daughters) he conveyed the rest of his landed property to his sons. The donor died on 6th March, and it was found on the evidence that the above dispositions of his property were death-bed gifts. It appeared that the donor had separate possession of the land disposed of by him, though part of it was held under joint pottahs, in which others were interested; and also that on the date of the gift the transfer of ownership of the mitta property was proclaimed by beat of tom-tom, and that the tenants were called upon to attorn to the donees, who subsequently collected rent. The widow took no exception to the gifts, but after two years one of the daughters brought this suit to have them set aside as invalid and to recover her share as an heiress of her father. *Held* (1) on the evidence that the attestation of the heirs was regarded by all the parties concerned as evidence of consent, and that they did consent to the death-bed gifts at the time they were made; (2) that this consent *not* having been revoked on the donor's death, and there having been sufficient delivery of possession, the gifts were complete; (3) that the gifts were not impeachable on the ground of musha. Evidence of undue influence considered. SHARIFA BIBI *v.* GULAM MAHOMED DASTAGIR KHAN . . **I. L. R., 16 Mad., 43**

20. ———— **Deed of sale**—*Joint gift—Without discrimination of shares.*—Where a conveyance between Mahomedans, though in form a deed of sale, is in reality a gift, its validity should be tested by the rules of law applicable to gifts, and not by those applicable to deeds of sale. In determining whether a transaction is one of sale or gift the intention of the parties, rather than the form of the instrument used, should be considered. A deed of gift, in English form, of a house to three persons as joint tenants (without discrimination of shares) is good according to Mahomedan law, as it shows an intention on the part of the donor to give the property in the whole house to each of the donees. A gift by a Mahomedan in Bombay which contravenes the principles of English Courts of equity with regard to gifts to persons standing in a fiduciary relation to the donors will not be upheld. RAJABAI *v.* ISMAIL AHMED . . . . . **7 Bom., O. C., 27**

21. ———— **Deed of gift altering succession of property by law**—*Intention of parties.*—Where a Mahomedan transferred certain property (Company's paper) to his son, reserving the interest to himself for life, the object of the disposition being to give the son a larger share of the father's property than would come to him by succession *ab intestato*, *Held* that the transaction could not be impeached on moral grounds, as a design to alter the disposition of property so as to defeat a succession by an alienation which the law allows, is simply a design to conform to the law while working out an unforbidden object. *Held* also that the intention of the parties did not violate any provision of the Hedaya, and the transfer was complete and the gift valid. UMJAD ALLY KHAN *v.* MOHUMDEE BEGUM

[10 W. R., P. C., 25: 11 Moore's I. A., 517

22. ———— **Hiba-bil-iwaz**—*Effect of, upon heirs.*—A hiba-bil-iwaz differs from an out-and-out sale as well as from a gift, while it partakes of the character of both, and, if supported by sufficient consideration, is binding under the Mahomedan law upon the heirs of the party executing such deed. SOLAH BIBEE *v.* KEERUN BIBEE . **16 W. R., 175**

23. *Condition of good behaviour.*—A gift is not necessarily hiba-bil-iwaz by an allusion in the deed to the good behaviour of the donee, and his supplying a certain amount to the donor to enable the latter to do some act in respect of the property. USSUD ALI KHAN *v.* OLFUT BEEBEE

[3 Agra, 237

24. **Alienation by Mahomedan lady**—*Consent of children.*—A Mahomedan lady can sell or give away her property as she pleases. When a mother makes a gift to her children, and one of them seeks to set it aside as fraudulent so far as it affects the plaintiff's right of inheritance, so long as the mother is alive and admits the execution of the deed of gift, the plaintiff is not in a position to disturb it; and it is quite immaterial in such a case whether the plaintiff's consent was or was not given. MAHOMED ZUHEERUL HUQ *v.* BUTOOLUN

[1 W. R., 79

25. ———— *Gift on death-bed—Will.*—A Mahomedan widow, or any other woman, holding property in her own right, may give it away to whomsoever she pleases, unless she delays the gift till upon her death-bed, when such a gift would be looked upon as a will, and be inoperative beyond a certain limit. LUTEEFOONISSA BIBEE *v.* RAJAOOR RUHMAN . . . . **8 W. R., 84**

26. ———— **Gift to take effect at an indefinite future time**—*Mapillas.*—Gifts to take effect at an indefinite future time are void under Mahomedan law. CHEKKONEKUTTI *v.* AHMED

[I. L. R., 10 Mad., 196

27. ———— **Delivery of possession**—*Possession with mortgagee—Sale—Minors.*—A Mahomedan lady executed a deed of gift in favour of the plaintiff, who was at the date of its execution a minor, of certain lands (including the land in dispute) of which she professed to have obtained possession under a decree against her co-parceners. The plaintiff, on the strength of the deed of gift, sued for a declaration of his right to the land, alleging that the donor had actually recovered possession in execution of her decree. The Original and Appellate Courts found that the defendant was, at the date of the deed of gift, in actual possession under a mortgage executed by the donor's co-parceners, and that she had failed, in executing her decree, to eject the defendant. *Held* (KEMBALL, J., *dissentiente*) that at the date of the deed of gift the donor was simply the owner of property which was in possession of a mortgagee, and could not, under Mahomedan law, make a gift of it, although she could sell the same. See *Adam Khan* v. *Alarakhi, I. L. R., 6 Bom., 645.* When the donee is a minor, possession may be had by a trustee on his behalf. MOHINUDIN *v.* MANCHERSHAH . . **I. L. R., 6 Bom., 650**

28. ———— **Gift of share before partition**—*Co-sharers.*—According to the Mahomedan law, one of two sharers can give over his share to the other even before partition. AMEENA BIBEE *v.* ZEIFA BIBEE . . . . **3 W. R., 37**

29. ———— **Gift without delivery of possession**—*Hiba-bil-iwaz, or gift on stipulation—Possession necessary for such a gift—Registration not equivalent to delivery of possession so as to validate gift.*—By a deed of gift duly executed and registered a Mahomedan woman gave certain property to the plaintiff's father. The deed stated that the plaintiff's father had always protected the donor, and that she gave him the property in full confidence that he would continue to do so. *Held* that the gift, if not a simple gift, was at any rate a "gift on stipulation, and that such a gift, in order to be valid, required that seisin should be given to the donee. The registration of a deed of gift between

Mahomedans does not cure the want of delivery by the donor. MOGULSHA *v.* MAHAMAD SAHEB

[I. L. R., 11 Bom., 517

30. ———— **Gift of undivided property** —*Musha, or confusion—Change of possession.*—Where there is, on the part of a father or other guardian of a minor, a real and *bonâ fide* intention to make a gift to the minor, the Mahomedan law will be satisfied without actual change of possession, and will presume the subsequent holding of the property by the father or guardian to be on behalf of the minor. Where the subjects of a gift are definite shares in certain zamindaris, the nature of the right in which is defined and regulated by the public Acts of the British Government, so that they form for revenue purposes distinct estates, each having a separate number in the Collector's books, and each liable to the Government only for its own assessed revenue, the proprietor collecting a definite share of the rents from the raiyats, and having a right to this definite share and no more, the rule of the Mahomedan law as to musha which makes the gift of undivided property invalid, does not apply. *Quære*—Whether the law relating to musha applies to those cases in which the owner gives all his own interest in undivided property. AMEEROONISSA KHATOON *v.* ABADOONISSA KHATOON

[15 B. L. R., 67 : 23 W. R., 208
L. R., 2 I. A., 87

31. ———— **Gift of property not in possession**—*Gift of zamindaris let out on lease, and malikana rights—Musha as applied to gifts of unpartitioned and undivided lands.*—The rule of Mahomedan law that no gift can be valid unless the subject of it is in the possession of the donor at the time when the gift is made, has relation, so far as it relates to land, to cases where the donor professes to give away the possessory interest in the land itself, and not merely a reversionary right in it. What is usually called possession in this country is not only actual or khas possession, but includes the receipt of the rents and profits. There is nothing in Mahomedan law to make the gift of a zamindari, a part or the whole of which is let out on lease to tenants, invalid. Nor is there any principle by which to distinguish malikana rights from the right to receive rents or dividends upon Government securities, and gifts of such a nature may be legally conferred under the Mahomedan law. The doctrines of Mahomedan law which lay down that a gift of an undivided share in property is invalid because of musha or confusion on the part of the donor, and that a gift of property to two donees without first separating or dividing their shares is bad because of musha on the part of the donees, apply only to those subjects of gift which are capable of partition. MULLICK ABDOOL GUFFOOR *v.* MULEKA . . . **I. L. R., 10 Calc., 1112**

32. ———— *Hiba, or deed of gift—Gift by husband to wife—Possession—Continued receipt of rents by husband—Husband, Manager for wife—Gift of "musha" or undivided part—Subsequent partition.*—In 1871 *H G*, a Mahomedan, executed a formal hiba or deed of gift, to his wife, the defendant, of a house belonging to himself, but let out to tenants, and duly registered the deed. In 1876-77 he caused the house to be transferred into the name of his wife in the municipal and fazandari books. After the execution of the deed of gift, and down to the time of his death in 1884, *H G* continued to collect the rents as before, and they were entered in his books and drawn upon for family purposes in the same manner as they had always been. In 1881-82 *H G* had an account of the rents of the house prepared in his wife's name from 1871-72 up to date. *Held* that the above circumstances afforded sufficient evidence of possession having been given to the defendant, either in 1871 or 1876, to satisfy the requirements of Mahomedan law. *H G*, being the husband of the defendant, would naturally continue to collect the rents as her manager even when he regarded himself as having parted with the ownership to his wife, which the above-mentioned circumstances sufficiently showed that he did. In 1883 *H G* executed a second hiba, duly registered, to the defendant, of an undivided moiety of the house in which he and the defendant resided, and to which *H G* and his brother were entitled in equal shares. No partition had been made between *A G* and his brother when *H G* died. *Held* that the gift was invalid, as being a gift of a "musha," or undivided part, in a thing susceptible of partition. *Quære*—Whether, if there had been partition subsequently to the deed, that would or would not have operated to validate the gift. EMNABAI *v.* HAJIRABAI

[I. L. R., 13 Bom., 352

33. ———— *Pension—Gift of musha—Undivided part—Ascertained share—Transfer of possession—Mutation of names—Delivery of title-deeds—Bengal Civil Courts Act (VI of 1871), s. 24—Pension Act (XXIII of 1871), s. 7, cl. (2).*—A pension of the nature described in Act XXIII of 1871 (Pensions Act), s. 7, cl. (2), was drawn by a Mahomedan, in whose name alone it was recorded in the Government registers, for himself and the other members of his family, who, up to the time of his death, received their shares from him. Shortly before he died, he executed a deed of gift in favour of his wife, which purported to assign to her the whole pension. No mutation of names was effected in the Government registers, but the deed of gift and the sanads, in respect of which the pension had originally been granted, were handed over to the donee. After the death of the donor one of his sisters brought a suit against his widow to establish her right (i) to receive the share in the pension which she had inherited from her father and received up to her brother's death, and (ii) as heir to her brother himself, to the share which he had inherited. It was contended on her behalf that the deed of gift was in any case ineffectual as an assignment of more than the donor's own interest, and further that it was invalid even as an assignment of his own share, inasmuch as, under the Pensions Act, the pension could not be made the subject of gift, and under the Mahomedan law it was "musha" and not transferable, and actual delivery or transfer of possession was, under the same law, essential to the completion of the gift, but no such delivery or transfer had been effected. *Held* that the deed of gift was not a good assignment in law of the interest of the plaintiff, who was not a party thereto, and the defendant could take nothing more than the donor's own interest. *Held* that whatever might be the Mahomedan law apart from the Pensions Act, under s. 7 of the Act, the pension or any interest in it was capable of being alienated by way of gift, the subject of the gift being not the cash, but the right to have the pension paid. *Held* that there was no force in the contention that the gift became void because the right was not divided, inasmuch as in the case of a right to receive a pension the rights of the individuals who are the heirs became at once divided and separate at the death of the sole owner; and in this case the shares were definite and ascertained and required no further separation than was already effected upon the sole owner's death. *Held* that the rule of the Mahomedan law as to the invalidity of gifts purporting to pass more than the donor was entitled to, was based upon the principle of "musha" or undivided part, and had no application to cases where the donor's interest itself was separate; and that even if it were the strict Mahomedan law that where a man having a definite ascertained interest in a pension, and intending at any rate to pass his interest to his wife, purporting to give her more than he was entitled to, he failed to give her any interest at all, s. 24 of the Bengal Civil Courts Act (VI of 1871) did not make it obligatory to apply the strict Mahomedan law as to gifts in transactions of modern times. *Held* that although, according to the Mahomedan law, possession was necessary to perfect a gift where the nature of the transaction was such that possession was possible, possession of a right to receive pension could only be given by handing over the documents of the title connected with the pension or assigning the right to receive the pension; that the gift in this case was perfect as soon as the deed was executed and handed over with the other papers to the donee; and that the mutation of names was merely a thing which would follow on the perfection of the title, and did not in itself go to make or form part of the title. SAHIB-UN-NISSA BIBI *v.* HAFIZA BIBI. HAFIZA BIBI *v.* SAHIB-UN-NISSA BIBI

[I. L. R., 9 All., 13

34. ———————— *Mahomedan law of gift—Possession not delivered at the time, but afterwards obtained—Musha, mixed, or common property, with shares undistinguished.*—A hibanama gave an undivided share in mokurari and zamindari holdings, besides other property not reduced into possession, the whole of which had, as a matter of title, devolved upon the donor as a member of a family of which the donees were also members. *Held* that the hibanama did not infringe the Mahomedan doctrine of musha, as an attempt to make a gift of an undivided share in property capable of division; it having been settled that one of two sharers may give his share to the other before division, whence it followed that one of three sharers might give his share to the other two. *Ameena Bibi* v. *Zeifa Bibi, 3 W. R., 37,* referred to and approved. *Held* also that, as the donor had done all that she could do to perfect the contemplated gift, which was attended with complete publicity, and as the donees had afterwards obtained possession, the fact of the donor's having been out of possession, and therefore not having delivered it, did not of itself invalidate the gift. In regard to the principle and the analogy in other systems of law to be found in the cases relating to voluntary transfers (where, if the donor should not have done all that he could have done to perfect his intended gift, he cannot be compelled to do more), the Hindu case of *Kali Das Mullick* v. *Kanhaya Lal Pundit, L. R., 11 I. A., 218 : I. L. R., 11 Calc., 121,* was referred to. MAHOMED BUKSH KHAN *v.* HOSSEINI BIBI . . . **I. L. R., 15 Calc., 684**

[L. R., 15 I. A., 81

35. ———————— *Claim to possession of property under deed of sale—Consideration—"Musha"—Effect of possession following upon gift to render it valid.*—The law relating to the invalidity of gifts of "musha," *i.e.,* the prohibition of the gift of an undivided part in property capable of partition, ought to be confined within the strictest rules; and the authorities on the Mahomedan law show that possession taken under a gift, even although that gift might with reference to "musha" be invalid without it, transfers effectively the property given, according to the doctrines of both the Shiah and the Sunni schools. Possession once taken under a gift is not invalidated, as regards its effect in supporting the gift, by any subsequent change of possession. The subject of the gift was shares in revenue-paying villages, with land, houses, and moveables. Of the greater portion of this property the donor, a mother giving them to her daughter, had only so far possession that she was in receipt of the rents and profits. In the deed of gift she declared (thereby making an admission whereby her heir and all claiming through him were bound) that she had made the donee, her daughter, possessor of all the properties; and she directed that the gift should be carried into effect by the daughter's husband, who was manager of estates on behalf of both mother and daughter before them. *Held,* in a suit for the possession of the property, on a sale by the heir of the donor, brought by the vendees against him, and joining as defendants the heirs of the daughter then deceased, that sufficient possession had been taken on behalf of the daughter to render the gift effectual, and to defeat the claim as against her heirs. MUHAMMAD MUNTAZ AHMAD *v.* ZUBAIDA JAN

[I. L. R., 11 All., 460
L. R., 16 I. A., 195

36. ———————— *Musha—Gift of an undivided share—Gift of future revenues of villages.*—According to Mahomedan law, a gift cannot be made of anything to be produced *in futuro,* although the means of its production may be in the possession of the donor. The subject of the gift must be actually in existence at the time of its donation. A Mahomedan executed a deed of gift in favour of

MAHOMEDAN LAW—GIFT—*continued.*

3. VALIDITY—*continued.*

his wife, by which he agreed to give her and her heirs in perpetuity a sum of R4,000 per annum out of his undivided share in certain jaghir villages which he had inherited from his father. *Held* that the gift was invalid, as it was a gift in effect of a portion of the future revenues of the villages to the extent of R4,000 per annum. AMTUL NISSA BEGAM *v.* NURUDIN HOSSEIN KHAN . **I. L. R., 22 Bom., 489**

37. ———— **Interest of donees undefined by gift**—*Receipt by donees of rent of land given—Possession.*—A gift of land made by a Mahomedan is invalid if the interest of each of the donees is not defined by the gift. *Semble*—That the continued receipt by the donees of the rents of land, which had been let by them as the managers of the donor, is not a sufficient taking possession to satisfy the requirements of the Mahomedan law. VALIMIA ALIMIA *v.* GULAM KADAR MOHIDIN **[6 Bom., A. C., 25**

38. ———— **Gift in lieu of dower**—*Indefiniteness.*—In a suit upon a hibanama alleged to have been executed by the husband of the plaintiff, giving her twenty-two shares in a village as a gift in lieu of dower, the Civil Judge dismissed the suit upon the ground that the omission of the amount of the dower rendered the instrument of no validity according to Mahomedan law. *Held* (reversing the decree of the Civil Judge) that the suit was maintainable, the instrument expressing plainly the specific shares of the property, and the gift was made in lieu of the whole dower, and there being no room for doubt as to the meaning and intention of the contracting parties in regard to the particular subjects either of the gift or of the consideration. SAHIBA BEGUM *v.* ATCHAMMA . . . . . . **4 Mad., 115**

39. ———— **Gift without defining respective shares of donees**—*Act VI of 1871, s. 24—Law of justice, equity, and good conscience.*—A deed of gift of his estate, executed by a person of somewhat weak mind, in favour of two of his sons, one an adult and the other a minor, without division or detail of their respective shares, whereby a younger son and several daughters were excluded from inheritance, was set aside by the Court under the general rule of Mahomedan law, that anything which is capable of division, when given to two persons, should be divided by the donor at the time of the gift, or immediately subsequent thereto and prior to the delivery to the donees, and the special rule that a gift of undivided property is absolutely invalid where one of the donees is a minor son; justice, equity, and good conscience not requiring, under the circumstances of the case, that the deed should be maintained. *K* devised a certain estate to his son *Z*, but directed that the devise should only take effect on his death in respect of a portion of the property which was rent-free land, and that, with regard to the remainder, his son *A* should hold possession for the purpose of collecting and paying the Government revenue due on both portions without rendition of accounts, until such time as *Z* should have a son competent to manage land paying revenue. *Z* executed a deed of gift of his estate. He never came into possession of the second portion of the property. *Held*, with reference to the question whether the donor had fulfilled the requirements of Mahomedan law by putting the donees into immediate possession, that the deed, having operated in respect of the first portion of the property which *Z* had become possessed of under the will, operated in respect of the second. NIZAM-UD-DIN *v.* ZABEDA BIBI **[6 N. W., 338**

40. ———— **Undefined gift**—*Gift by father to minor son.*—The rule that an undefined gift of joint undivided property, mixed with property capable of division, is invalid by Mahomedan law, does not apply to a gift by a father to a minor son. WAJEED ALI *v.* ABDOOL ALI . **W. R., 1864, 121**

41. ———— **Gift of defined share in land**—*Separate property.*—A defined share in a landed estate is a separate property, to the gift of which the objection which attaches under Mahomedan law to the gift of joint and undivided property is inapplicable. JIWAN BAKHSH *v.* IMTIAZ BEGAM . . . . **I. L. R., 2 All., 93**

42. ———— **Gift of defined share of property**—*Possession—Hanifia Code—Imamia Code.*—A Mahomedan bequeathed his property to his two nephews, Gulam Rasul and Gulam Ali, as joint tenants. Gulam Ali died, leaving a widow and a daughter, who continued to be joint tenants with Gulam Rasul; but the latter continued in exclusive possession of the property, subject to any claim which they might establish to a share in, or a charge upon, it. Gulam Rasul, by a written instrument, made a gift of that property to his younger son, the father of the defendants, disinheriting his elder son, the plaintiff. *Held* that the gift was valid, and that the doctrine of the Hanifia, though not of the Imamia Code, that the gift of a share in undivided property, which admits of partition, is certainly invalid, or at least forbidden, has no application to the gift of property so circumstanced. GOLAM JAFAR *v.* MASLUDIN . . . **I. L. R., 5 Bom., 238**

43. ———— *Reservation of income—Condition against alienation—Undivided property—Indivisible property.*—*B* owned a one-twelfth share of a muafi estate and a dwelling-house. As owner of the dwelling-house, she owned a share in a staircase, privy, and door, which were held by her jointly with the owners of adjoining dwelling-houses. She made a gift of her property, transferring the dominion over it to the donees, but reserving the income of the share of the muafi estate for life, and stipulating against its alienation. *Held* that the gift of the one-twelfth share of the muafi estate, being a gift of a specific share, was not open to objection under Mahomedan law, and such gift was not vitiated by the mere reservation of the income of the share, or by the condition against alienation. *Held* also that the gift was not invalid under Mahomedan law, so far as it related to the staircase, privy, and door, as those things, though undivided property, were incapable of division, and a gift of part of an

indivisible thing was valid under that law. KASIM HUSSEIN *v.* SHARIF-UN-NISSA
[I. L. R., 5 All., 285

44. ———— **Gift with restriction as to alienation**—*Absolute gift.*—Plaintiff, during his son's minority, gave certain property to him, and on the delivery of possession got from him a document stipulating (1) that he would not alienate; (2) that at his death the property should return to the father. This document was deposited with the father, and not heard of until the property was taken in execution for the son's debts, many years after the gift. *Held* that by Mahomedan law, as well as by the general principles of law, such a restriction on alienation, especially after the gift had become complete long before, is absolutely invalid. AMIRUDDAULA MUHAMAD KAKYA HUSSAIN KHAN *v.* NATERI SRINIVASA CHARLU. JAGHIRDAR OF VIRUTHALABATHI *v.* NATERI SRINIVASA CHARLU . . **6 Mad., 356**

45. ———— **Gift coupled with condition** *Absolute gift.*—A testatrix was entitled to Government notes under a gift coupled with the condition that she was to receive only the interest during her life, and that after her death the notes were to be held in trust for all her heirs. *Quære*—Whether, under the Mahomedan law, the gift made to the testatrix was not a gift to her absolutely, the condition being void. SULEMAN KADR *v.* DORAB ALI KHAN . . . **I. L. R., 8 Calc., 1**
[L. R., 8 I. A., 117

46. ———— **Possession, Necessity of**—*Donor out of possession.*—To make a deed of gift valid under the provisions of the Mahomedan law, seisin is necessary; if the donor is not in possession at the time, the gift is void. ABEDOONISSA KHATOON *v.* AMEEROONISSA KHATOON . . **9 W. R., 257**

47. ———— *Possession given and accepted.*—Under the law of the Sherra, gifts are not valid until possession is given by the donor and taken by the donee. OBEDUR REZA *v.* MAHOMED MUNEER . . . . . **16 W. R., 88**

48. ———— *Hibba.*—Possession is under the Mahomedan law absolutely necessary to establish the validity of a hibba. SHAHJAN BIBEE *v.* SHIB CHUNDER SHAHA . . **22 W. R., 314**

49 ———— *Contingent or postponed gift—Possession not immediate.*—Under the Mahomedan law, a gift cannot depend upon a contingency or be postponed, but possession must be immediate. ROSHUN JAHAN *v.* ENAET HOSSEIN
[5 W. R., 4

50. ———— *Donor remaining in possession.*—According to Mahomedan law, a gift is invalid when the donor is to remain in possession during his lifetime. ZOHOOROODEEN SIRDAR *v.* BAHAROOLLAH SIRCAR . . **W. R., 1864, 185**

51. ———— *Donor remaining in possession—Deed of gift—Consideration.*—The policy of the Mahomedan law is to prevent a testator interfering by will with the course of the devolution of property according to law among his heirs. But a holder of property may defeat the policy of the law by giving in his lifetime the whole, or any part, of his property to one of his heirs, provided he complies with certain forms. This may be done by a deed of gift without consideration, or by deed of gift for consideration. A conveyance by deed of gift without consideration is invalid, unless accompanied by delivery of the thing given, so far as it admits of delivery. In the case of a gift for consideration, the delivery of possession is not necessary for its validity, and no question arises as to the adequacy of the consideration; but there must be an actual payment of the consideration by the donee, and a *bonâ fide* intention on the part of the donor to divest himself *in præsenti* of the property, and to confer it on the donee. It is incumbent on those who set up transactions of this nature to show very clearly that the forms of the Mahomedan law, whereby its policy is defeated, have been strictly complied with. KHAJOOROONISSA *v.* ROUSHAN JEHAN
[I. L. R., 2 Calc., 184: 26 W. R., 36
L. R., 3 I. A., 912

affirming the decision of the High Court in ROSHUN JAHAN *v.* ENAET HOSSEIN . **5 W. R., 4**

52. ———— *Gift in futuro.*—Under the Mahomedan law, a gift is not valid unless it is accompanied by possession, nor can it be made to take effect at any future definite period. A document containing the words, "I have executed an ikrar to this effect, that, so long as I live, I shall enjoy and possess the properties, and that I shall not sell or make gift to any one; but, after my death, you will be the owner, and also have a right to sell or to make a gift after my death,"—*Held* to be an ordinary gift of property "*in futuro,*" and as such invalid under Mahomedan law. YUSUF ALI *v.* COLLECTOR OF TIPPERAH . . . **I. L. R., 9 Calc., 138**

53. ———— *Delivery—Donee in physical possession prior to gift—Formal delivery, entry, or departure—Manifest intention of donor to transfer.*—For the purposes of completing a gift of immoveable property by delivery and possession, no formal entry or actual physical departure is necessary; it is sufficient if the donor and donee are present on the premises, and an intention on the part of the donor to transfer has been unequivocally manifested. IBHRAM *v.* SULEMAN
[I. L. R., 9 Bom., 146

54. ———— *Gift made on death-bed—Delivery of possession.*—Where property, the subject-matter of a gift made by a Mahomedan during his death illness (marz-ul-maut), was in the hand of the donee as manager or agent of the donor, it was held that the possession of the donee as such manager or agent was not such possession as would render it necessary to the validity of the gift that there should have been an actual or formal delivery to him of possession of the property. VALAYET HOSSEIN *v.* MANIRAN . **5 C. L. R., 91**

55. ———— *Change of possession—Consideration.*—On an issue whether an oral gift of an estate consisting of certain talukhs and mouzahs had been made by a Mahomedan proprietor in favour of his wife,—*Held* that the possession of the estate, which was the subject of gift, having been changed in conformity with the gift, that change of possession would have been sufficient to support it, even without consideration. *Held* on the evidence that the gift was effectively made. KAMAR-UN-NISSA BIBI *v.* HUSAINI BIBI

[I. L. R., 3 All., 266

56. ———— *Seisin—Surrender and delivery to donee.*—The plaintiff's deceased sister in her lifetime was the owner of three and a half undivided shares in a village, which she mortgaged in 1846, upon the terms that the mortgagee should be put into possession, and that he should credit the produce of two shares on account of the mortgage-debt, and should pay the mortgagor one share and a half for her maintenance. Subsequently, in 1853, she made an absolute gift in writing of three of the shares to the fourth defendant and his mother. The produce of the shares was applied during the lifetime of the donor after the gift just as it had been before the gift. *Held* that there was no such surrender and delivery of the property to the donee as is requisite to make a valid gift according to Mahomedan law. KHADER HUSSAIN *v.* HUSSAIN BEGUM . . . . . 5 Mad., 114

57. ———— *Absence of relinquishment by donor or seisin by donee.*—A deed by a Mahomedan, in which he declared, "I have adopted *A B* to succeed to my property," was held to be neither a deed of gift nor a testamentary gift to take effect after the death of the donor, there being a complete absence of any relinquishment by the donor or of seisin by the donee. JESWUNT SINGHJEE UBBY SINGJEE *v.* JET SINGHEE UBBY SINGJEE

[6 W. R., P. C., 46
3 Moore's I. A., 245

58. ———— *"Tamlik," or assignment of ownership.*—"Tamlik," or assignment of ownership, is a term of general import applying to the various modes of acquisition of property recognized by Mahomedan law, but forms no separate and distinct mode of acquiring property. When applied to gift, it does not avoid the legal requirements of acceptance and seisin. An instrument called a "tamliknama" purported to give *S*, in consideration of her devotion and affection to the executant, the executant's property, and provided that the executant should during her life enjoy the income from the property; that at her death *S* should have the proprietary possession and enjoyment of the property, just like the executant; that the executant should effect mutation of names in respect of the property in *S*'s favour; that the property should not belong to any other person but *S*; and that any transfer by the executant to any other person should be void. After giving *S* the power to transfer the property by sale, mortgage, gift, "tamlik," etc., it proceeded in manner following: "But *S*, or her transferee, shall get possession of the said share only after my death. On my death *S* and her heirs shall become the owners of this share." The deed could only have validity as a will; as a deed of gift, it was wholly invalid. KASUM *v.* SHAISTA BIBI . . 7 N. W., 313

59. ———— *Seisin and acceptance of possession—Residence and receipt of rent by donor.*—A Mahomedan husband executed a "hibba," or deed of gift, without consideration, in favour of his wife, comprising a house in which they were residing at the time, with its furniture, and two other houses. He at the same time delivered the hibba and the keys of the houses to his wife, and quitted the house of residence, leaving her in possession of the same. *Held* that the requirements of the Mahomedan law, with regard to gifts without consideration,—*viz.*, acceptance and seisin on the part of the donee, and relinquishment on the part of the donor,—had been complied with, though the husband shortly afterwards returned to the house, resided there with his wife till his death, and received the rents of other parts of the property comprised in the hibba. The continued occupation or residence and receipt of rents were in such circumstances to be referred to the character which the donor bears of husband, and to the rights and duties connected with that character. AMINA BIBI *v.* KHATIJA BIBI . 1 Bom., 157

60. ———— *Gift by husband to wife—Delivery of possession—Gift, Validity of, as against creditors, or subsequent bonâ fide purchasers.*—The plaintiff, the nika wife of the late Nawab of the Carnatic, sued for a declaration of her absolute title to certain premises (Nos. 1, 2, 3, and 4), for possession of certain other premises (Nos. 5 and 6), for delivery to her by defendant of the title-deeds of all the premises except No. 1, and for cancellation and delivery up of a sheriff's bill of sale of No. 1 in favour of *T A*, of a mortgage of Nos. 2, 5, and 6 to *R & Co.*, of a mortgage of No. 4 to *A A*, and of all assignments by *T A R & Co.*, or *A A*, to defendant. She claimed this relief under an alleged gift to her by the late Nawab on or about the 6th January 185). Defendant said (and it was so found) as to 2, 5, and 6, that he had never had anything to do with the said premises or with the title-deeds thereof. As to the other premises, that the several assignments in his possession were made to him as receiver of the Carnatic property under Act XXX of 1858, but that he had not obtained possession of the said premises nor of any of the title-deeds thereof, except the sheriff's bill of sale of the 29th November 1855. Issues were settled raising the following questions: Whether the gift was made as alleged? Whether, if so, it was valid against creditors of, or subsequent purchasers for valuable consideration from, the donor? Whether the gift was revocable, and revoked? Whether defendant has, or ever had, possession of all or any of the title-deeds of Nos. 2, 5, and 6? *Held* that a complete gift had been made and not revoked; that it was valid against the creditors of the donor, and also (as the donor and donee were both Mahomedans) against subsequent purchasers for valuable consideration from the donor; but that defendant had never had possession of the title-deeds of Nos. 2, 5, and 6, so that the suit could not be maintained as regards them. Under Mahomedan law, "in the instance of a wife who may give a house to her husband, the gift will be good, although she continue to occupy it along with her husband and keep all her property therein, because the wife and her property are both in the legal possession of the husband. So also it has been held by some that, if a father transfer his house to his minor son, himself continuing to occupy it and to keep his property therein, the gift is valid, on the principle that the father in retaining possession is acting as agent for his son, according to which doctrine his possession is equivalent to that of his son." Reason requires that the same principle should be applied to the case of a gift by husband to wife. The wife may, according to Mahomedan law, hold property independent of her husband, and as a husband may make a valid gift to his wife, it can only be necessary that the gift should be accompanied with such a change of possession as the subject is capable of, and as is consistent with the continuance of the relation of husband and wife. AZIMUNNISSA BEGUM *v.* DALE . **6 Mad., 455**

61. ——— *Gift by father to infant child.*—*Held* that it is not necessary by the Mahomedan law that possession should follow to complete a gift by a father to his infant child. GYASOODDEEN HYDER *v.* FATIMA BEGUM . **1 Agra, 238**

62. ——— *Gift by father to minor son.*—According to Mahomedan law, no formal delivery and seisin are necessary to the validity of a gift of property by a father to a minor son. Where a son has divested himself in favour of his father of all interest in property which had been given to him by his parents, before any legal effect can be given to such a transfer, the clearest proof is necessary of good faith and joint dealing between the parties, and also that the father's influence was not unduly exercised for his own advantage. WAJEED ALI *v.* ABDOOL ALI . . **W. R., 1864, 127**

63. ——— *Absence of change of possession—Gift by father to son.*—Gift by father to son held not valid as being followed by no real change in the nature of the enjoyment of the property, and merely nominal. MUNNOO BIBEE *v.* JEHANDAR KHAN . . **1 Agra, 350**

64. ——— *Gift by a father—Gift of undivided share—Delivery of possession.*—A Mahomedan made a gift in writing to his daughter on her marriage of an undivided moiety of his share in certain buildings, which were the property of the donor's wife. On the death of the donee, her husband married her sister, and the donor thereupon similarly made a gift to her of the remaining undivided moiety. The donees were minors at the dates of their respective gifts. The husband now sued to recover the share of his first wife, of which delivery had not been made. *Held* that the gift was no invalid, either for indefiniteness or for want of delivery of possession. HUSSAIN *v.* MIRA

[I. L. R., 13 Mad., 46

65. ——— *Ground for cancellation of deed of gift—Want of delivery of possession to donee.*—*Held*, in the case of a deed of gift between Mahomedans, that it was no ground for cancellation of the deed that possession of the property, the subject of the deed, not having been made over to the donee, the deed might be, according to the Mahomedan law, inoperative. UMRAO BIBI *v.* JAN ALI SHAH

[I. L. R., 20 All., 465

66. ——— *Want of possession—Essentials for valid gift.*—Delivery and seisin are, under the Mahomedan law, the essence of a gift, and therefore no right of any description passes without them. A donor therefore must be in possession. *Mohin-ud-din* v. *Manchershah, I. L. R., 6 Bom., 650,* referred to and followed. Accordingly where the plaintiffs claimed to recover possession under a deed of gift alleged to have been passed to them by a Mahomedan donor for the use of a masjid, but it appeared that neither the donor nor the donees were ever in possession before or after the gift,—*Held* that the gift was invalid, the language of the texts of Mahomedan law distinctly laying down that in a gift seisin is necessary and absolutely indispensable to the establishment of a proprietary right. *Kali Das Mullick* v. *Kanhya Lal Pundit, I. L. R., 11 Calc., 121,* distinguished. MEHERALI *v.* TAJUDIN . . . **I. L. R., 13 Bom., 156**

67. ——— *Gift of life-estate—Want of possession in donee.*—A grant of a life-estate is invalid under the Mahomedan law. The grantee in such a case would take an absolute estate. A Mahomedan executed a deed by which he settled his property in wukf on his two wives and daughters and their descendants in perpetuity. For the management and devolution of this property he laid down the following rules: (1) that if one of the aulad (or daughters) of either wife died, the share of that person should go to the wife and the survivors of her aulad; that after the death of a wife her share should go to her surviving aulad; that if a wife and her aulad ceased to exist, their share should go to the other wife and her aulad; that on the failure of aulad and aflad of both wives, the next of kin of the settlor should receive the property; and he added that in this way the management should go on from generation to generation; (2) that neither of the said two wives nor any one of the aulad of the wives should alienate by sale, gift or mortgage either their shares or any part of the property. *Held* that the settlement was invalid as a deed of gift to the settlor's next of kin after the determination of the life-estates granted to his wives and daughters; first because the donor had not parted with possession of the property till his death, and, secondly, because the grant of a life-estate is quite inconsistent with the Mahomedan law, the grantee in such a case taking an absolute estate. NIZAMUDIN GULAM *v.* ABDUL GAFUR . . . **I. L. R., 13 Bom., 264**

68. ——— *Hiba-bil-iwaz—Gift made in consideration of services rendered—Donor not in possession—Possession not delivered to donee.*—The fundamental conception of hiba-bil-iwaz, or a gift for an exchange as understood in the Mahomedan law, is that it is a transaction made up of two separate acts of donation, *i.e.*, of mutual or reciprocal gifts of specific property between two persons, each of whom is alternately donor and donee. It does not include the case of a gift in consideration only of natural love and affection or of services or favours rendered. Nor does such a gift fall under the category of hiba-bil-iwaz in its improper sense of sale; but it is an ordinary gift subject to all the conditions as to validity which the Mahomedan law provides. A gift of immoveable property not at any time in the possession of the donor, but in that of a trespasser, and consequently never delivered by the donor to the donee, is void under the Mahomedan law. *Kasim Hossein* v. *Sharif-un-nissa, I. L. R., 5 All., 285; Sahib-un-nissa Bibi* v. *Hafiza Bibi, I. L. R., 9 All., 213;* and *Shaikh Ibhram* v. *Shaikh Suleman, I. L. R., 9 Bom., 146,* distinguished. *Mohin-ud-din* v. *Manchershah, I. L. R., 6 Bom., 650; Mullick Abdool Guffoor* v. *Muleka, I.L. R., 10 Calc., 1112;* and *Hazara Begum* v. *Hossein Ali Khan, 12 W. R., 498,* referred to. RAHIM BAKHSH *v.* MUHAMMAD HASAN . . . **I. L. R., 11 All., 1**

69. ——— *Possession—Gift of property attached by Collector for arrears of revenue—N.-W. P. Land Revenue Act (XIX of 1873), s. 154.*—*Held* that it was possible to make a gift, which should be valid under the Mahomedan law, of property which had been attached by the Collector for arrears of revenue under s. 154 of Act No. XIX of 1873. All that was necessary to a valid gift was that the donor should transfer possession of such interest as he had at the time of the gift: it was not necessary that he should transfer possession of the corpus of the property. *Mullick Abdool Guffoor* v. *Muleka, I. L. R., 10 Calc., 1112; Mahomed Buksh Khan* v. *Husseini Bibi, I. L. R., 15 Calc., 684; Rahim Bakhsh* v. *Muhammad Hasan, I. L. R., 11 All., 1;* and *Mohinudin* v. *Manchershah, I. L. R., 6 Bom., 650,* referred to. ANWARI BEGAM *v.* NIZAM-UD-DIN SHAH . . . **I. L. R., 21 All., 165**

70. ——— *Incomplete gift—Absence of relinquishment by donor.*—Where a Mahomedan woman made an oral gift of a house to her nephew on the occasion of his marriage, but subsequent to the gift continued to live with him in the house,—*Held* that the gift was null and void, as there was no entire relinquishment of the house by the donor, and the case did not fall within the exceptions allowed by Mahomedan law. BAVA SAIB *v.* MAHOMED . **I. L. R., 19 Mad., 343**

71. ——— *Validity of gift—Possession—"Musha."*—A deed, which was found in effect to be a deed of gift comprising zamindari and other property, was executed on the 22nd of May 1890. It was registered on the 24th of May, and the donor died on the 26th. The deed recited: "I have placed the aforesaid donees in proprietary possession of the aforesaid property as my representatives." Mutation of names was subsequently obtained by one of the donees in his favour on the basis of the same deed. *Held* that this was a valid and effectual gift under the Mahomedan law. *Mahomed Buksh Khan* v. *Hosseini Bibi, I. L. R., 15 Calc., 684: L. R., 15 I. A., 81,* and *Muhammad Mumtaz Ahmad* v. *Zubaida Jan, I. L. R., 11 All., 460: L. R., 16 I. A., 205,* referred to. SAJJAD AHMAD KHAN *v.* KADRI BEGAM

[**I. L. R., 18 All., 1**

72. ——— *Alleged gift by a Mahomedan father to his son—Benami transaction—Evidence of transfer of ownership.*—Government securities were indorsed and delivered by a Mahomedan father to his son in the presence of the local Treasury Officer. On the question, raised after the father's death, whether this was intended to transfer the ownership, or was a benami transaction, leaving the true ownership in the father, the Courts below had drawn different inferences from the proved facts. The first Court decided that the ownership had been changed, the notes having been given with only a reservation of the temporary use of the interest. The High Court found that the ownership remained in the father. On a review of the possession of the parties at the time, and of their subsequent conduct down to the father's death, the Judicial Committee affirmed the judgment of the High Court on the evidence, pointing out that the first Court's theory of the reservation differed from the case alleged by the defendant and from that actually made out by the plaintiff at the hearing. IBRAHIM ALI KHAN *v.* UMMAT-UL-ZOHRA

[**I. L. R., 19 All., 267**
L. R., 24 I. A., 1

73. ——— *Gift not perfected by possession—Necessity of delivery of possession—Registration.*—Under the Mahomedan law, a registered deed of gift is not valid if it is never perfected by possession. The Mahomedan law requires that the donor should be in actual or at least constructive possession, and that he should give actual or at least constructive possession to the donee. Registration is not equivalent to possession. ISMAL *v.* RAMJI SAMBHAJI

[**I. L. R., 23 Bom., 682**

74. ——— *Hiba-bil-iwaz—Settlement in lieu of dower—Possession not transferred—Validity on passing of consideration.*—A Mahomedan executed a deed of settlement of certain land in lieu of dower on his wife, who left him shortly thereafter without ever acquiring possession. On his contending that the settlement was invalid,—*Held* that a *bonâ fide* transaction by way of 'Hiba-bil-iwaz' (as this was found to be) is supported by proof of the actual passing of the consideration agreed to be given; that the consideration in this case was the release by the wife of her right to dower from her husband, and that such release was completed by her acceptance

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of the transfer under the settlement. Muhammad Esuph Ravutan *v.* Pattamsa Ammal [I. L. R., 23 Mad., 70

4. REVOCATION.

75. ———— **Power of revocation**—*Irrevocable gift—Delivery of possession.*—In a suit for arrears of rent due on defendant's patni talukh, though the rate was admitted, it was pleaded that, in consequence of a dacoity having taken place in the defendant's house, she had been allowed by the plaintiff (her brother-in-law) a remission of rent annually for a certain number of years, and defendant professed her readiness to pay if the remission were allowed. Plaintiff's agreement set forth that, in consequence of defendant's house having been plundered, she was entitled to assistance to enable her to replace what he had lost, and that the rajah (zamindar), not being able to make good the amount, at once took this method of assisting his connexion. *Held* that the gift (or remission of rent for the years in suit) was complete at the termination of each year; in other words, delivery had been made to the donee, and it could not be recalled under the Mahomedan law, which is precise as to the impossibility of revoking a gift after delivery without the decree of a Judge or the consent of the donee. Enaet Hossein *v.* Khoobunnissa . . . . 11 W. R., 320

76. ———— **Power of revoking gift**—*Revocable gifts.*—Certain lands, choultries, and moveable property had been, by instrument in writing, given to the brother of the donor and his heirs for the purpose, in perpetuity, of keeping in repair the choultries and affording strangers the charities of shelter, and, if circumstances permitted, food also, as well as for supplying the wants of the donees, with clauses restraining alienation by them. *Held* that the instrument effected a transfer of the property to the donees subject to the trust of applying the profits of the lands, etc., in perpetuity to certain charitable purposes, and was not revocable, whether the transaction be viewed as a pure trust or as a gift. The power of revoking gifts is given under the Mahomedan law only in the case of private gifts for the donee's own use, no relationship existing between the donor and the donee. Gulam Hussain Saib *v.* Agi Ajam Tadallah Saib. Agi Ajam Tadallah Saib *v.* Gulam Hussain Saib . . . . . 4 Mad., 44

77. ———— **Power of revocation**—*Alienation by donee—Gift by father to son.*—By Mahomedan law there can be no revocation of a gift by a father to a son when the donee has alienated the thing given. Wajeed Ali *v.* Abdool Ali . . . . . W. R., 1864, 121

78. ———— *Deed of gift made in contemplation of marriage.*—A hiba-bil-iwaz, or deed of gift made in contemplation of marriage is not a revocable instrument. Kulsoon *v.* Ameerunnessa . . . 1 Hyde, 150

MAHOMEDAN LAW—GUARDIAN.

See Mahomedan Law—Marriage. [1 Bom., 236

1. ———— **Right of guardianship**—*Mother—Father—Infant under seven years.*—According to Mahomedan law, the mother is entitled, in preference to the father, to the custody of an infant under seven years of age. Futteh Ali Shah *v.* Mahomed Mukeem Oodeen. Futteh Ali Shah *v.* Fuzeeluttunnissa Bebee [W. R., 1864, 131

Raj Begum *v.* Reza Hossein . 2 W. R., 76

2. ———— *Mother—Custody of child—Male child—Female child.*—According to Mahomedan law, a mother is entitled to the custody of her child, if such child be a male, till it shall have attained the age of seven years; if such child be a female, till it shall have reached the age of puberty. In the matter of Tayheb Ally [2 Hyde, 63

3. ———— *Hizanut—The custody of female minors before puberty—Mother's right.*—By the Mahomedan law the mother is entitled to the custody of a female minor who has not attained her puberty, in preference to the husband. Nur Kadir *v.* Zuleikha Bibi [I. L. R., 11 Calc., 649

4. ———— *Minors, Custody of—Mother.*—According to the Shiah school of the Mahomedan law, a mother is entitled to the custody of her female children unless she has been guilty of unchastity. In the matter of Hosseini Begum [I. L. R., 7 Calc., 434

5. ———— *Mother—Paternal uncle—Minors, Custody of.*—According to Mahomedan law, a mother has a preferential right over the paternal uncle to the guardianship of minors and to the custody of their persons. Alimodeen Moallem *v.* Syfoora Bibee . . 6 W. R., Mis., 125

6. ———— *Mother, Re-marriage of.*—Under the Mahomedan law, the mother is of all persons best entitled to the custody of infant children up to the age of puberty; but her right is made void by marriage with a stranger. Beedhun Bibee *v.* Fuzuloollah . . 20 W. R., 411

7. ———— *Custody of minor son—Mother, Right of.*—According to the Mahomedan law, a mother has the right of custody of the person of her minor son up to seven years of age. *Quære*—Where she does not maintain him, has she, as against a relation on the father's side, the right of custody and control after that age? In the matter of Ameeroonissa . 11 W. R., 297

8. ———— *Girl not having attained puberty—Grandmother—Maternal grandmother as guardian—Act IX of 1861, s. 3.*—Under the Mahomedan law, the grandmother is entitled to the guardianship of a minor female child in preference to the child's paternal uncle, where such child, although married to a minor, has not attained puberty. Bhoocha *v.* Elahi Bux . I. L. R., 11 Calc., 574

MAHOMEDAN LAW—GUARDIAN —*continued.*

9. ——— *Custody of children —Act IX of 1861, s. 5—Appeal.*—The Mahomedans law takes a more liberal view of the mother's right with regard to the custody of her children than does the English law, under which the father's title to the custody of his children subsists from the moment of their birth, while under the Mahomedan law a mother's title to such custody remains till the children attain the age of seven years. An application was made by a Mahomedan father under s. 1 of Act IX of 1861 that his two minor children, aged respectively twelve and nine years, should be taken out of the custody of their mother and handed over to his own custody. The application having been rejected by the District Judge, an appeal was preferred to the High Court as an appeal from an order. It was objected to the hearing of the appeal that, in view of s. 5 of Act IX of 1881, the appeal should have been as from a decree, and should have been made under the rules applicable to a regular appeal. *Held* that, looking to the peculiar nature of the proceedings, the objection was a highly technical one, and as all the evidence in the case was upon the record and was all taken down in English, it would only be delaying the hearing of the appeal upon very inadequate grounds if the objection were allowed. *Held* also that, according to the principles of the Mahomedan law, the appellant was by law entitled to have the children in his custody, subject always to the principle, which must govern a case of this kind, that there was no reason to apprehend that by being in such custody they would run the risk of bodily injury, and that (without saying that this exhausted the considerations that might arise, warranting the Court in refusing an application for the custody of minors) there was nothing in the record in this case which disclosed any proper ground to justify the refusal of the application. IDU *v.* AMIRAN . **I. L. R., 8 All., 322**

10. ——— *Guardianship of female minor—Female minor, Right to custody of—Mahomedan law, Shiah sect—Act IX of 1861—Act XL of 1858, s. 27.*—A Mahomedan father of the Shiah sect is entitled to the custody of a daughter above the age of 7 years as against the mother. The decision in *Fuseehun* v. *Kajo, I. L. R., 10 Calc., 15,* has no application to a case where the father is seeking to get the custody of his daughter. IN THE MATTER OF THE PETITION OF MAHOMED AMIR KHAN. LARDLI BEGUM *v.* MAHOMED AMIR KHAN **[I. L. R., 14 Calc., 615**

11. ——— *Minor—Guardian of property—Certificate of guardianship*—Under the Mahomedan law, the brother of the mother of a female minor, whose parents are dead, is entitled, in preference to a mere stranger, to the guardianship of the property of the minor, unless it be shown that he is in some way unfit to take charge of such property. IN THE MATTER OF THE PETITION OF IMAM BUKSH. IMAM BUKSH *v.* THACKO BIBEE **[I. L. R., 9 Calc., 599**

12. ——— *Sister—Minor, Custody of—Prostitute.*—*Held* where the plaintiff sued for the custody of her minor sister, as her legal guardian under Mahomedan law, that the fact of the plaintiff being a prostitute was, although she was legally entitled to the custody of such minor, a sufficient reason for dismissing the suit in the interests of such minor. ABASI *v.* DUNNE **[I. L. R., 1 All., 598**

13. ——— *Uncle—Nephew—Next friend.*—The rule of Mahomedan law that an uncle cannot be the guardian of a minor nephew's property does not prevent an uncle representing his infant nephew under the Code of Civil Procedure as next friend in a suit. ABDUL BARI *v.* RASH BEHARI PAL . . . . . **6 C. L. R., 413**

14. ——— *Suit for restitution of minor wife in custody of her mother.*—The plaintiff sued to recover *M,* who was ten years of age, alleging that he had been married to her, that she had remained at his house, and that her mother and other persons had taken her away, and would not allow her to return. The lower Appellate Court dismissed the suit on the ground that *M* was a minor, and also on the ground that she was only ten years of age. *Held* that the plaintiff's suit was properly dismissed. WAZEER ALI *v.* KAIM ALI **[5 N. W., 196**

15. ——— *Sale by guardian of property of minor—Purchaser, Right of.*—Under the Mahomedan law, a sale by a guardian of property belonging to a minor is not permitted otherwise than in case of urgent necessity or clear advantage to the infant. A purchaser from such guardian cannot defend his title on the ground of the *bonâ fides* of the transaction. An elder brother is not in the position of a guardian having any power as such over the property of his minor sisters BUKSHAN *v.* MALDAI KOOERI . . **3 B. L. R., A. C., 423**

S. C. BUKSHUN *v.* DOOLBUN . **12 W. R., 337**

16. ——— *Brothers.*—Under the Mahomedan law, remote guardians, among whom are brothers, can under no circumstances aliene the property of a minor; their guardianship only extends to matters connected with the education of their wards, and the near guardians alone have limited power over the immoveable property. RUTTON *v.* DOOMEE KHAN . . . . **3 Agra, 21**

17. ——— *Legal necessity—Sale.*—The question of legal necessity does not necessarily arise in cases of sale under the Mahomedan law, though it may properly be an element for consideration when the conduct of a guardian is called in question. The Mahomedan law looks to the benefit of the minor, and permits the guardian to dispose of moveable property if it be for the benefit of the minor. In this case a sale made to carry on important litigation was held *bonâ fide* and for the benefit of the minor, the decision in *Grose's case, 4 B. L. R., O. C., 1 (12 W. R., O. C., 13),* not being applicable. SYEDUN *v.* VELAYET ALI KHAN . **17 W. R., 239**

18. ——— *Sale of minor's property—Validity of such sale—Sanction of sale*

MAHOMEDAN LAW—GUARDIAN
—continued.

by ruling authority.—The plaintiff sued to recover her husband's share in certain property at S, to which he and other persons became entitled as heirs of *M.* That property had been sold to the defendants by the heirs of *M* during the minority of the plaintiff's husband, his elder brother acting for him in the transaction. It was proved that the sale of the property to the defendants had been approved of by *H*, who was the agent of the Governor of Bombay at S, and the representative of the ruling authority in the management of *M's* estate. The plaintiff contended that, according to Mahomedan law, it was not competent for the elder brother of a minor, as guardian, to alienate a minor's property. *Held* that the sanction of the ruling power constituted a sufficient authority for the act of the guardian, provided that the transaction was one which, according to Mahomedan law, a duly constituted guardian might have entered into on behalf of his ward. That law permits a guardian to sell the immoveable property of his ward, when the late incumbent died in debt, or when the sale of such property is necessary for the maintenance of the minor. The evidence in the present case showed that the indebtedness of *M* and the distressed condition of his heirs existed in a sufficient degree to justify the sale of the whole property of the heirs. HUSAIN BEGAM *v.* ZIA-UL-NISA BEGAM . . . **I. L. R., 6 Bom., 467**

19. ——— *Minor—Infant—Guardian of property—Mortgage—Co-heirs—Infants' liability.*—In May 1881 certain co-heirs of a deceased Mahomedan mortgaged a portion of the property which had descended to them in common with others, then infants, as heirs of the deceased. The mortgage was raised for the purpose of paying off arrears of rent of a patni talukh which was a part of the property inherited from the deceased. There was no evidence to show that there were any other necessary expenses connected with the deceased's estate which had to be met, nor what that estate consisted of, nor whether the arrears of rent could or could not have been paid without having recourse to the mortgage. According to the Mahomedan law, the mortgagors were not the guardians of the property of the infants. *Held* that the shares taken by the infants as heirs of the deceased were not bound by the mortgage. BHUTNATH DEY *v.* AHMED HOSAIN . **I. L. R., 11 Calc., 417**

20. ——— *Alienation by guardian to pay ancestral debts—Minor, Sale binding on.*—*H*, being in possession of certain real property on her account, and on account of her nephew and niece, minors, of whose persons and property she had assumed charge in the capacity of guardian, sold the property, in good faith and for valuable consideration, in order to liquidate ancestral debts and for other necessary purposes and wants of herself and the minors. *Held* that under Mahomedan law, and according to justice, equity, and good conscience, the sale was binding on the minors. HASAN ALI *v.* MEHDI HUSAIN . **I. L. R., 1 All., 533**

21. ——— *Alienation by widow—Rights of other heirs—Minor—Mother—Mortgage—First and second mortgagees—Suit by first mortgagee for sale of mortgaged property—Second mortgagee not made a party—Transfer of property—Act IV of 1882, ss. 78, 85—Res judicata.*—Upon the death of *G*, a Mahomedan, his estate was divisible into eight shares, two of which devolved upon his son, *A*, one upon each of his five daughters, and one upon his widow, *B*. The name of *B* only was recorded in the revenue registers in respect of the zamindari property left by *G*. In 1876 *A* and *B* gave to *X* a deed of simple mortgage of 2½ biswas out of a 5 biswas share of a village included in the said property. In 1878 *A* and *B* gave to *S* a deed of simple mortgage of the 5 biswas, which were described in the deed as the widow's "own" property. In 1882 *X* obtained a decree upon his mortgage for the sale of the mortgaged property, and it was put up for sale and purchased by *X* himself in January 1884. In February and November 1884 the daughters of *G* obtained *ex-parte* decrees against *A* and *B* in suits brought by them to recover their shares by inheritance in the 5 biswas. In 1885 *S* brought a suit upon his mortgage of 1878, claiming the amount due thereon and the sale of the whole 5 biswas. To this suit he made defendants *A* and *B*, *G's* daughters, and *X*, alleging that the decrees of February and November 1884 were fraudulently and collusively obtained; and as to the auction sale of January 1884, that the 2½ biswas were sold subject to his mortgage, he not having been made a party to the suit brought by *X* upon the deed of 1876, and therefore not being bound by any of the proceedings taken therein or consequent thereto. It was contended that *B's* position as head of the family entitled her to deal with the property so as to bind all the members of the family, though using her name only; and it was suggested that, at the time of the mortgage of 1878, some of the daughters were minors. On behalf of the daughters it was contended (*inter alia*) that the decrees obtained by them against *A* and *B* in February 1884 were conclusive, by way of *res judicata*, against the plaintiff, who, as mortgagee from *A* and *B*, claimed under a title derived from them. *Held per* MAHMOOD, *J.*—According to the Mahomedan law, the surviving widow, though held in respect by the members of the family, would not be entitled to deal with the property so as to bind them, and the entry of her name in the revenue registers in the place of her deceased husband would probably be a mere mark of respect and sympathy. Her position in respect of her husband's estate is ordinarily nothing more or less than that of any other heir, and even where her children are minors, she cannot exercise any power of disposition with reference to their property, because although she may, under certain limitations, act as guardian of their persons till they reach the age of discretion, she cannot exercise control or act as their guardian in respect of their property without special appointment by the ruling authority, in default of other relations who are entitled to such guardianship. Even, therefore, if some of the daughters in the present case were minors at the time of the plaintiff's mortgage, their shares could not be

MAHOMEDAN LAW—GUARDIAN —*continued.*

affected thereby. They could only be so affected if circumstances existed which would furnish grounds for applying against them the rule of estoppel contained in s. 115 of the Evidence Act, or the doctrine of equity formulated in s. 41 of the Transfer of Property Act, but here no such circumstances existed. SITARAM *v.* AMIR BEGUM

[I. L. R., 8 All., 324

22. ———— *Power of guardians—Sale by guardian of property to which ward's title was in dispute, and for the benefit of the latter.*—By the Mahomedan law, guardians are not at liberty to sell the immoveable property of their wards, the title to which property is not disputed, except under certain circumstances specified in Macnaghten's Principles of Mahomedan Law, Ch. VIII, cl. 14. But where disputes, existing as to the title to revenue-paying land, of which part formed the ward's shares, sold by their guardian, were thereby ended, and it was rendered practicable for the Collector to effect a settlement of a large part of the land, a fair price moreover having been obtained, the validity of the sale was maintained in favour of the purchaser as against the wards for whose benefit the transaction was. Although the sale-deed incorrectly stated the purpose of the sale to have been to liquidate debts, a statement repeated in a petition to the Collector, asking that settlement of the shares sold should be made with the purchaser, yet, on the transaction being afterwards impeached by the wards,—*Held* that it was open to the guardian to prove the real nature of the sale, and to show that it was one beneficial to them. KALI DUTT JHA *v.* ABDUL ALI

[I. L. R., 16 Calc., 627
L. R., 16 I. A., 96

23. ———— *Mother of minor—Power to sell property of minor.*—According to Mahomedan law, a mother, not being the legal guardian of her minor child, cannot do any act relating to the property of the minor so as to bind him. BABA *v.* SHIVAPPA . . I. L. R., 20 Bom., 199

24. ———— *Uncle of minor—Liability of minor for act of person without authority purporting to act as the guardian of the minor.*—The uncle of a minor Mahomedan purporting, though without authority to act as the minor's guardian, made a mortgage of certain property belonging to the minor, and subsequently took a lease of the mortgaged property in favour of the minor. The minor having made default in payment, the mortgagee sued to recover rent. *Held* that the mortgagee was not entitled to recover, although, had the minor sued the mortgagee to avoid the mortgage, he might not have been able to succeed without paying compensation to the mortgagee to the extent to which he or his property had benefited by the money advanced on the security of the mortgage. *Ruttun* v. *Dhoomee Khan, 3 Agra, 21; Bhutnath Dey* v. *Ahmed Hosain, I. L. R., 10 Calc., 417; Anapurnabai* v. *Durgapa Mahalapa, I. L. R., 20 Bom., 150; Babu* v. *Shivappa, I. L. R., 20 Bom., 199; Bukshun* v. *Doolhin, 12 W. R., 337: 3 B. L. R., A. C., 423;* and *Girraj Bakhsh* v. *arnid Ali, I. L. R., 9 All., 340,* referred to. NIZAM-UD-DIN SHAH *v.* ANANDI PRASAD

[I. L. R., 18 All., 373

MAHOMEDAN LAW—INHERITANCE.

See CONVERTS . 1 Agra, F. B., 39
[2 Agra, 61
3 Agra, 82
I. L. R., 10 Bom., 1
I. L. R., 20 Bom., 53
I. L. R., 21 Bom., 181

See LUNATIC . I. L. R., 15 All., 29

See MAHOMEDAN LAW—CUSTOM.
[I. L. R., 21 Calc., 149
L. R., 20 I. A., 193

See MAHOMEDAN LAW—PRESUMPTION OF DEATH . I. L. R., 2 All., 625

See SLAVERY . I. L. R., 3 Bom., 422
L. R., 6 I. A., 137
12 Bom., 156

1. ———— **Enumeration of heirs by Mahomedan law**—*Return.*—Three different kinds of heirs are recognized by Mahomedan law,—(1) sharers, (2) residuaries, and (3) distant kindred. Where there are no residuaries, the principle of return provides that the surplus of the shares of the sharers shall revert to them in proportion to their shares, except in the cases of husband and wife. Next are the distant kindred. GUJADHUR PERSHAD *v.* ABDOOLLAH

[11 W. R., 220

2. ———— **Kindred related in equal degrees**—*Males.*—Where surviving kindred are related in like degree to a deceased party, the males are entitled under Mahomedan law to a double share of the inheritance. RAM BEHAREE SINGH *v.* SITARA KHATOON . . . . 10 W. R., 315

3. ———— **Heirs of missing person**—*Division of estate to be held by heirs on trust.*—The plaintiff sued to be put in possession of a share of the estate of a missing person, alleging that by Mahomedan law and custom they were entitled to hold in trust for him a share equal to that which would devolve on them after his death by right of inheritance. *Held* that under the Mahomedan law the heirs of a missing person are not, as such, entitled to divide his estate among themselves, either as a trust or otherwise, before his death, natural or legal. KALEE KHAN *v.* JADEE . . . 5 N. W., 62

4. ———— **Heirs of husband on death of wife, whose heir he was.**—Whatever may be the position and rights of a husband, being the only surviving heir of his wife, according to the Mahomedan law, there is no representation in matters of succession, and therefore those rights do not descend to the heirs of a husband who has predeceased the wife, and who are themselves no relation of the wife. In fact, under the Mahomedan system, after the dissolution of a marriage contract by death or otherwise, the parties or their heirs bear no more relation to one another

MAHOMEDAN LAW—INHERITANCE *—continued.*

than the heirs of quondam partners in the same mercantile house. EKIN BEBEE *v.* ASHRUF ALI

[1 W. R., 152

5. ———— **Heirs of girl not validly married** —*Paternal grandmother—Mother—Half brothers or sisters.*—A marriage performed between minors in the fazolee (nominal) form, the girl's father being dead and the marriage being contracted by her paternal grandmother, was held to be invalid on the death of the girl without afterwards meeting or communicating with her husband because after arriving at puberty she had never expressed in any way assent to or dissent from the marriage. *Held* that under such circumstances the paternal grandmother of the girl was not entitled to inherit her estate; that the mother as her surviving parent was entitled to a third share thereof; and that her half brothers and sisters were entitled without prejudice to any claims by third parties to the residue. MULKA JEHAN SAHIBA *v.* MAHOMED USHKURREE KHAN

[L. R., I. A., Sup. Vol., 192 : 26 W. R., 26

6. ———— **Estate limited to take effect in favour of a person after another's death.** —It is not consistent with Mahomedan law to limit an estate to take effect after the determination, on the death of the owner, of a prior estate by way of what is known to English law as a vested remainder so as to create an interest which can pass to a third person before the determination of the prior estate. ABDUL WAHID KHAN *v.* MURAN BIBEE

[I. L. R., 11 Calc., 597 : L. R., 12 I. A., 91

7. ———— **Primogeniture, Custom of**— *Exclusion of females from inheritance.*—Observations on the law laid down by the Privy Council regarding the custom of primogeniture and the exclusion of females and other heirs from inheritance. MUHAMMAD ISMAIL KHAN *v.* FIDAYAT-UN-NISSA

[I. L. R., 3 All., 723

8. ———— *Proof of custom.*— Where a suit was brought by two younger brothers, in accordance with Mahomedan law, for their shares in a property which was held by an elder brother and which had been held by a succession of elder brothers for a long course of years, two of the members having in former trials had their rights to exclusive inheritance upheld by formal decisions,—*Held* by the High Court that, in the absence of any sanads declaring the contrary, the practice of succession by primogeniture must be accepted as prevailing on the estate. MAHOMED AKUL BEG *v.* MAHOMED KOYUM BEG . . . . . . 25 W. R., 193

9. ———— **Adopted son.**—An adopted son cannot inherit among Mahomedans. OHEED KHAN *v.* COLLECTOR OF SHAHABAD . 9 W. R., 502

10. ———— **Daughters of deceased brother**—*Brother—Sister.*—Under Mahomedan law, the daughters of a deceased brother of a person who demises cannot take any share of such person's property so long as a brother and sister, or only a brother, survives. AZEEGUNNISSA *v.* RUHMANOOLLAH . . . . . 10 W. R., 306

MAHOMEDAN LAW—INHERITANCE *—continued.*

11. ———— **Daughter**—*Hindu embracing Mahomedan religion.*—*Held* that a Hindu family, having embraced the Mahomedan religion, is bound by the laws of that religion as regards succession, and that the appellant, the daughter, was entitled under that law to inherit from her father. SOJAN *v.* ROOP RAM . . . . . 2 Agra, 61

12. ———— **Illegitimate sons**—*Succession to father's property.*—According to Mahomedan law, illegitimate sons can claim no relationship with their father's family. BOODHUN *v.* JAN KHAN

[14 W. R., 265

13. ———— *Brothers—Consanguinity - Nasab.*—The children of fornication or adultery (wahid-uz-zina) have no nasab or consanguinity; hence, the right of inheritance being founded on nasab, one illegitimate brother cannot succeed to the estate of another. SHAHEBZADI BEGUM *v.* HIMMUT BAHADUR

[4 B. L. R., A. C., 103 : 12 W. R., 512

S. C. affirmed on review. HIMMUT BAHADUR *v.* SHAHEBZADI BEGUM . . . 14 W. R., 125

14. ———— **Illegitimate children**— *Succession to property of illegitimate child—Convert to Christianity.*—The State (and not the mother of an illegitimate Christian child) is entitled to succeed to the property of that child dying intestate after he has attained to man's estate, and having neither wife nor legitimate child. The Mahomedan law is not applicable to the illegitimate child of a Mahomedan woman brought up and dying a Christian. NANCY *alias* ZUHOORUN *v.* BURGESS

[1 W. R., 272

15. ———— **Residuaries**—*Descendants in main line of paternal great-grandfather.*—By Mahomedan law, descendants in the male line of the paternal great-grandfather of an intestate are within the class of "residuary" heirs, and entitled to take, to the exclusion of the children of the intestate's sisters of the whole blood. MOHIDIN AHMID KHAN *v.* MUHAMMAD . . . . . 1 Mad., 92

S. C. MOHEDEEN AHMED KHAN *v.* MAHOMED

[1 Ind. Jur., O. S., 132

16. ———— *Descendants of paternal grandfather's brother.*—According to the Mahomedan law, descendants of a paternal grandfather's brother are entitled to rank among residuaries, and as such are preferable heirs to granddaughters. SHOWKUT ALI *v.* AHMUD ALI. MEHER ALI *v.* SHOWKUT ALI . . . 8 W. R., 39

17. ———— *Step-sister.*—A step-sister of a deceased proprietor is, according to Mahomedan law, one of his heirs, and in the category of his residuaries. AMEERUN *v.* RUHEEMUN

[2 Agra, Pt. II, 162

18. ———— *Collateral line.* —Under the Mahomedan law, the succession of residuaries in their own right is as unlimited in the collateral as in the direct line, where it is expressly said to be how low and how high soever. MAHOMED HANEEF *v.* MAHOMED MASOOM . 21 W. R., 371

MAHOMEDAN LAW—INHERITANCE
—continued.

19. ———— *Suit by legal sharer—Simultaneous suit by residuaries.*—A suit by a Mahomedan widow (legal sharer) against her sons (residuaries) for her share of the property left by her deceased husband is no bar to a suit being brought by some of the sons against the others for their shares. IMAM SAHEB *v.* KASIM SAHEB [11 Bom., 104

20. ———— *Hereditary Offices Act Amendment Act (Bom. Act V of 1886), s. 2—Succession to vatan becoming the property of widow and daughter—Construction of statute.*—S. 2 of Bombay Act V of 1886 is not retrospective. A vatan having devolved on the widow and daughter of a deceased Mahomedan as his heirs, and each having become owner of her share in it, in so far as a vatan can be held in ownership,—*Held* that on the death of the widow in 1890, leaving no qualified male heirs, the daughter was entitled to succeed as her heir. RAHIMKHAN *v.* FATU BIBI BINTESAHEB KHAN . I. L. R., 21 Bom., 118

21. ———— **Widow's rights to "return"** *—Absence of distant kindred.*—By the Mahomedan law of inheritance, in default of other sharers and in the absence of distant kindred, the widow is entitled to the "return" to the exclusion of the fisc. MAHOMED ARSHAD CHOWDHRY *v.* SAJIDA BANOO [I. L. R., 3 Calc., 702: 2 C. L. R., 46

22. ———— **Distant kindred**—*"Return"—Widow of the deceased—Heirs.*—Under the Mahomedan law, a widow has no claim to share in the "return" or residue of her deceased husband's estate as against other heirs. KOONARI BIBI *v.* DALIM BIBI [I. L. R., 11 Calc., 14

23. ———— **Widow—Right to "return."** —As a general rule, a widow takes no share in "the return," *i.e.*, on failure of residuaries; but some authorities seem to hold that, if there are no heirs by blood alive, the widow would take the whole estate to the exclusion of the fisc. HURMUT-OOL-NISSA BEGUM *v.* ALLAH DIA KHAN . 17 W. R., P. C., 108

24. ———— **Sister a residuary with daughters**—*Son of father's paternal uncle.*—A Mahomedan lady died, leaving a husband, two daughters, a sister, and the son of her father's paternal uncle. *Held* that the sister was entitled, in preference to the paternal kinsman to the residue of the deceased's estate after the husband and daughters had taken their shares. MEHERJAN BEGAM *v.* SHAJADI BEGAM. NURUDIN *v.* AMTULNISSA [I. L. R., 24 Bom., 112

25. ———— **Sister.**—Under the Mahomedan law, a sister is entitled to obtain a share of the estate left by her deceased brother. BOOLINISHAREE BIBEE *v.* BUKAOOLLAH . . 17 W. R., 140

26. ———— **Sister's son**—*Widow.*—According to Mahomedan law, when a man dies leaving no children, a sister's son can claim his inheritance after the widow has obtained her one-fourth share. MAHOMED NOOR BUKSH *v.* MAHOMED HAMEEDOOL HUQ . . . . . . 5 W. R., 23

MAHOMEDAN LAW—INHERITANCE
—continued.

27. ———— **Childless widow**—*Shiah law.*—According to the law of the Shiah sect, a childless widow is not entitled to share in the immoveable property left by her husband, but only in the value of the materials of the houses and buildings upon the land. TOONANJAN *v.* MEHNDEE BEGUM [3 Agra, 13

28. ———— *Immoveable property.*—Under the Mahomedan law, which governs members of the Shiah sect, a widow having no child alive by her deceased husband inherits nothing of the land which he leaves. ASLOO *v.* UMDUTOONISSA. UMDUTOONISSA *v.* ASLOO . 20 W. R., 297

29. ———— *Inheritance by childless widows, Shiah sect.*—The childless widow of a Mahomedan of the Shiah school is not entitled to any share in the land left by her husband. ALI HUSSAIN *v.* SAJUDA BEGUM [I. L. R., 21 Mad., 27

30. ———— *Land—Buildings.*—*Held,* following *Toonanjan* v. *Mehndee Begum, 3 Agra, 13,* that the childless widow of a Shiah Mahomedan, though she takes nothing out of her deceased husband's land, inherits a share of the buildings left by him. UMARDARAZ ALI KHAN *v.* WILAYAT ALI KHAN . . I. L. R., 19 All., 169

See AGA MAHOMED JAFFER BINDANIM *v.* KOOLSOM BIBEE. KOOLSOM BIBEE *v.* AGA MAHOMED JAFFER BINDANIM . . I. L. R., 25 Calc., 9
[L. R., 24 I. A., 196
1 C. W. N., 449

31. ———— **Widow and daughters.**—According to Mahomedan law, a widow and two daughters are entitled between them to nineteen twenty-fourths of the property of their deceased husband and father in the proportion of one-eighth and two-thirds. MAHOMED RUHWAN KHAN *v.* KHAJAH BUKSH . . 5 W. R., 221

32. ———— **Khoja Mahomedans, Custom of** *Succession to property of widow dying intestate.*—By the custom of the Khoja Mahomedans, when a widow dies intestate and without issue, property acquired by her from her deceased husband does not descend to her own blood-relations, but to the relations of her deceased husband. If no blood-relations of the deceased husband are forthcoming, the property left by the widow belongs to the Jamat. *Quære*—As to the degree of ownership which will entitle members of the deceased husband's family to succeed. IN THE GOODS OF MULBAI. KARIM KHATAV *v.* PARDHAN MANJI [2 Bom., 292: 2nd Ed., 276

33. ———— **Exclusion from inheritance** *—Insanity.*—Mental derangement is no impediment to succession under the Mahomedan law. MAHAR ALI *v.* AMANI . 2 B. L. R., A. C., 306

S. C. KHYRATUN *v.* AMANEE . 11 W. R., 212

34. ———— *Daughter.*—*Semble*—According to the Mahomedan law, want of chastity in a daughter, before or after the death

of her father, whether before or after her marriage, is no impediment to her inheritance. NOBONARAIN ROY *v.* NEEMAEECHAND NEOGY . **6 W. R., 303**

35. ——— *Co-sharers—Suit for possession of a share in the property of a Mahomedan family—Right of suit.*—In a suit in 1822 between the members of a family following the Mahomedan law of inheritance, in which the plaintiffs sued as sharers for the recovery of their share in certain property, one of the defendants pleaded that a paramba, part of the property in dispute, was not subject to division, but this plea was unsuccessful, and a decree was passed for the plaintiffs. The present suit was brought by a mortgagee from one of the defendants in the former suit (who had not appeared in that suit, and against whom therefore the decision had been *ex-parte*) to recover his share of the above-mentioned paramba, the subject-matter of his mortgage; the mortgagor was joined as defendant, among others, including the defendant who had raised the plea above stated. This plea was repeated by the same person. *Held*, distinguishing *Venkatarama* v. *Labai Meera, I. L. R., 13 Mad., 275*, on the ground that the parties in the present case were governed by the Mahomedan law of inheritance, that the suit was maintainable. A co-sharer by Mahomedan law has a right to a specific share in each item of property left by the person from whom he inherits, and can sue to recover that share from any person in possession of the property. CHANDU *v.* KUNHAMED

[I. L. R., 14 Mad., 324

36. ——— *Joint property—Partition—Suit for share of such property—Share allotted to defendant in same suit on payment of Court-fees.*—In the Presidency of Bombay a suit for partition of an inheritance by Mahomedans is hardly distinguishable from a partition suit by Hindus. In such a suit, if a defendant asks at the proper time to have his share divided off and allotted to him, such relief should be granted to him on payment of the necessary Court-fees. ABDUL KADAR *v.* BAPUBHAI . . **I. L. R., 23 Bom., 188**

37. ——— *Sunni and Shiah sects—Rules of descent—Evidence as to deceased having been a Sunni.*—A Mahomedan widow, who by birth was a Sunni, but whose deceased husband had been a Shiah, had during her married life conformed outwardly to his religion. The Sunni and Shiah rules of inheritance differing, her true heirs could only be ascertained by determining to which of these sects the deceased belonged at the time of her death. The evidence relating to the period after her husband's death led to the conclusion that throughout her widowhood she was a Sunni, having returned to the religion of her youth when freed from the necessities of her position as the wife of a Shiah. HAYAT-UN-NISSA *v.* MUHAMMED ALI KHAN

[I. L. R., 12 All., 290
L. R., 17 I. A., 73

38. ——— *Renunciation of right to inherit—Presumption of relinquishment from acts of parties—Widow.*—In a suit in the nature of ejectment, by principal respondent as residuary heir according to the Mahomedan law of a deceased person, to recover from his widow, the appellant, three-fourths of her deceased husband's estate, of the whole of which she had for upwards of eleven years been in possession, the plaintiff's title as residuary heir was put in issue, as well as other issues touching the widow's dower, etc. The Privy Council, thinking it of the utmost importance that those who had thus sanctioned a long possession should not be allowed lightly to disturb it, or to escape from these legitimate inferences and presumptions which on a conflict of evidence arose from their own acts and conduct, decided in favour of the widow, holding that the respondent had failed to establish the title upon which he sued. According to the Mahomedan law, there may be a renunciation of the right to inherit, and such a renunciation need not be expressed, but may be implied from the ceasing or desisting from prosecuting a claim maintainable against another. HURMUT OOL-NISSA BEGUM *v.* ALLAHDIA KHAN

[17 W. R., P. C., 108

39. ——— *Relinquishment of rights of inheritance—Relinquishment executed before ancestor's death.*—A Mahomedan sued to recover his share of the property of his mother, deceased. It appeared that before her death he had by a registered deed in consideration of R150 renounced all his claims on her estate. *Held* that the renunciation was binding on the plaintiff. KUNHI MAMOD *v.* KUNHI MOIDIN

[I. L. R., 19 Mad., 176

MAHOMEDAN LAW—JOINT FAMILY.

See LIMITATION ACT, 1877, ART. 127.

[5 W. R., 238
24 W. R., 1
I. L. R., 12 Mad., 380
I. L. R., 10 All., 109
I. L. R., 14 Bom., 70
I. L. R., 15 Mad., 57, 60
I. L. R., 16 Bom., 191
I. L. R., 13 All., 282
I. L. R., 22 Calc., 954

1. ——— **Inference of joint possession.**—Where a Mahomedan lady with her daughters was found to be living with her brother, and to be supported by him from the proceeds of the patrimonial estate, it was held to be a proper and correct inference that the lady and her daughters were in possession along with the brother, who was the manager of the property. ACHINA BIBEE *v.* AJEEJCONISSA BIBEE . . . . . . **11 W. R., 45**

2. ——— **Evidence of separation**—*Separate registration of names.*—The separate registry of the names of shares in the zamindar's serishta is not proof of separation of their shares. GUREEBOOLLAH KHAN *v.* KEBUL LALL MITTER

[13 W. R., 124

MAHOMEDAN LAW—JOINT FAMILY
—continued.

3. ———— *Onus probandi—Registration of land in one name.*—In a dispute between two grandsons as to proprietary right in a village which had been registered in the name of a member of the elder branch of the family, the Privy Council held that the *ratio decidendi*, according to which the legal presumption was in favour of one grandson claiming against another, and the *onus probandi* placed on the one claiming to be sole possessor, was more consistent with equity and common sense than a hard-and-fast rule requiring the party who claims a joint interest to prove that the registered proprietor has duly accounted to him for his proportionate share of the profits. Registration of landed property in the name of one member of a family is not conclusive against the claim of those who might contend that they had nevertheless continued to retain a joint interest in the property. HYDER HOSSEIN *v.* MAHOMED HOSSEIN
[17 W. R., 185: 14 Moore's I. A., 401

4. ———— **Acquisition by managing member**—*Presumption.*—Additions made to the joint estate by the managing member of a Mahomedan family will be presumed, in the absence of proof, to have been made from the joint estate, and will be for the benefit of all the members of the family entitled to share. VELLAI MIRA RAVUTTAN *v.* MIRA MOIDIN RAVUTTAN. VELLAI MIRA RAVUTTAN *v.* VARISAI MIRA RAVUTTAN . **2 Mad., 414**

5. ———— **Acquisition by the members severally**—*Joint acquisition—Presumption.*—When the members of a Mahomedan family live in commensality, they do not form a "joint family" in the sense in which that expression is used with regard to Hindus; and in Mahomedan law there is not, as there is in Hindu law, any presumption that the acquisitions of the several members are made for the benefit of the family jointly. *Abraham* v. *Abraham, 9 Moore's I. A., 195,* and *Jowala Buksh* v. *Dharum Sing, 10 Moore's I. A., 511,* cited. *Rupchand Chowdhry* v. *Latu Chowdhry, 3 C. L. R., 96,* doubted. HAKIM KHAN *v.* GOOL KHAN . **I. L. R., 8 Calc., 823: 10 C. L. R., 603**
See JAKER ALI CHOWDHRY *v.* RAJCHUNDER SEN
[I. L. R., 8 Calc., 831 note

6. ———— **Purchase by father in son's name**—*Onus probandi.—Semble*—Among Mahomedans where a purchase is made during a father's lifetime in the name of his son while living in the father's house, there is no such presumption as arises in the case of a similar purchase made in the lifetime of the father of a joint Hindu family; and the onus is not on the son to prove that the purchase was not made really for and by the father, but by the son for himself and with his own funds. GOLAM MACKDOOM *v.* HAFEEZOONNISSA
[7 W. R., 489

7. ———— **Joint or separate acquisition**—*Onus probandi—Presumption as to joint possession.*—In a suit by a member of a Mahomedan family to recover possession of a share in landed property alleged to be ancestral, where defendant claimed the same as his separately acquired property,—*Held* that it was not necessary for defendant to show that he had funds sufficient to enable him to obtain the property, and that the burden of proving that the property was acquired for, and enjoyed by, the whole family jointly was upon the plaintiff. MAHOMED AFAK *v.* EKRAM ALI . . . . . . **14 W. R., 374**

8. ———— **Onus probandi**—*Hindu customs amongst Mahomedans—Presumption when no allegation of custom made.*—*A* and *B* were two brothers, Mahomedans, who lived together in commensality. *A*, whilst so living with his brother, purchased certain lands under a conveyance executed by the vendor and *A*. In a suit by the heirs of *B* against the heirs of *A* to obtain possession of such lands, in which they alleged they had been dispossessed by the heirs of *A*, the Court found the land to be joint family property and to have been purchased with joint funds. On appeal, the onus of proving that the land was purchased by *A* alone was put upon *A*. *Held* that, there being no allegation that the parties had adopted the Hindu law of property, the Judge, by applying to Mahomedans the presumption of Hindu law, had cast the onus on the wrong party. ABDOOL ADOOD *v.* MAHOMED MAKMIL
[I. L. R., 10 Calc., 562

9. ———— **Liability of family for necessaries**—*Marriage expenses.*—*A* and *B*, who were Mahomedans living joint in food and estate, separated in Kartick 1279, and at the time of the separation entered into an agreement that, "if claims relating to the joint estate are brought on the ground that they are debts due on account of the time, we were joint and living in commensality, then I, *A*, and I, *B*, will pay such claims according to what is just in equal shares. If either of us do not pay and one of us shall pay the share of the other, then the person who has paid shall recover from the other the amount he has paid for the other." After the separation, a decree was obtained against *A* for the price of certain clothes supplied to him for his marriage, which took place while *A* and *B* were joint, and *A*, having paid the amount of this decree, sued *B* for one half of the amount so paid. *Held* that the debt was not incurred in a matter necessary to the existence of the family, but for the individual benefit of *A*, and that, as in a Mahomedan family the individual benefited, and not the family, is liable for expenses incurred for the benefit of any particular member, *A* alone was liable for the debt. *Held* also that the agreement had reference only to such claims as the family were jointly liable for. ALIMUNESSA KHATUN *v.* HASSAN ALI . . . . . . **8 C. L. R., 378**

MAHOMEDAN LAW—KAZI.

1. ———— **Appointment of Kazi**—*Hereditary office—Bom. Reg. XXVI of 1827—Act XI of 1864.*—The enactment of Bombay Regulation XXVI of 1827 was adverse to any supposition that

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the office of kazi could be hereditary. The repeal of that Regulation by Act XI of 1864 left the Mahomedan law as it stood before the passing of that Regulation; and that law sanctioned no grant of such an office to a man and his heirs. The appointment of kazi lies exclusively with the sovereign, or other chief executive officer of the State, and ought to be made with the greatest circumspection with regard to the fitness of the individual appointed; and though the sovereign may have full power to make the watan attached to the office of kazi hereditary, yet he has, under the Mahomedan law, no power to make the office itself so. JAMAL WALLAD AHMED *v.* JAMAL WALLAD JALLAL **I. L. R., 1 Bom., 633**

2. ——————— *Bom. Reg. XXVI of 1827—Act XI of 1864.*—Where a sanad granted by the Emperor Aurangzib in A.D. 1693 did not purport to confer a hereditary kaziship, but was a grant of the office of kazi personally to an ancestor of the plaintiff,—*Held* that the subsequent recognitions or appointments of members of his family as kazis by native governments did not prove that the office was or could be made hereditary. Regulation XXVI of 1827, relating to the appointment of kazis, was repealed by Act XI of 1864, whereby it is recited that it is inexpedient that the appointment of kazis should be made by Government. The continuance therefore by the Collector of an allowance to the plaintiff in 1867 could not be regarded as a constructive appointment of him to be kazi. DAUDSHA *v.* ISMAISHA . . . **I. L. R., 3 Bom., 72**

3. ——————— *Hereditary office —Custom—Hereditary Offices Act (Bom. Act III of 1874), s. 9.*—The office of kazi is not an hereditary office, unless perhaps by special custom of the locality Where such a custom is not established, property attached to the office is not vatan property, and the Collector has no power to make an order with respect to it under s. 9 of the Hereditary Offices Act (Bombay Act III of 1874). *Jamal valad Ahmed* v. *Jamal valad Jallal, I. L. R., 1 Bom., 633,* and *Daudsha* v. *Ismalsha, I. L. R., 3 Bom., 72,* followed. BABA KAKAJI SHET SHIMPI *v.* NASSARUDDIN VALAD AMINUDDIN KAZI **[I. L. R., 18 Bom., 103**

See DHARAMDAS SAMBHUDAS *v.* HAFASJI **[I. L. R., 19 Bom., 250**

4. ——————— *Power to appoint kazi of Bombay—Disturbance of office—Right of suit—Fees received by kazi.*—*Semble*—The power to appoint a person to the office of kazi of Bombay is vested in the Governor of Bombay, and not in the Governor in Council. According to Mahomedan law, the appointment of kazi has always been vested in the chief executive officer of the State, and the right to make such appointment has never rested with the Mahomedan community at large. When it was shown that the plaintiff had acted as kazi of Bombay for more than twenty years, and the defendant, in an action brought against him for disturbing the plaintiff in his office of kazi, was unable to show that the plaintiff had been illegally appointed, it was held that the plaintiff so acting as kazi could maintain an

action against the defendant who so disturbed him in his office, without proving that he, the plaintiff, had been legally appointed. The sums received by the kazi of Bombay in respect of his office of kazi are not mere gratuities, but are fixed and certain payments annexed to the discharge of official duties, and are therefore sums in respect of the privation whereof by a wrongful intruder an action either for money had and received or for disturbance in the office will lie. MUHAHMAD YUSSAB *v.* AHMED **[1 Bom., Ap., 18**

5. ——————— *Court vested with powers of kazi—District Court, Jurisdiction of.*—A Civil Court of superior jurisdiction in a district is vested, generally speaking, with the powers exercised by the kazi. SHAMA CHURN ROY *v.* ABDUL KABEER . . . . . **3 C. W. N., 158**

MAHOMEDAN LAW—MAINTENANCE.

1. ——— **Husband's liability for maintenance**—*Wife not arrived at puberty living with parents.*—*Quære*—In the case of Mahomedans, where a wife, although legally married, has not attained the age of puberty, is there a liability on the part of the husband to support her as long as she remains under the roof of her father? KOLASHUN BIBBE *v.* DIDAR BUKSH **[24 W. R., Cr., 44**

2. ——————— *Husband and wife—Decree for past maintenance.*—In a suit for maintenance by a Mahomedan wife against her husband, where there was no decree or agreement for maintenance before suit,—*Held,* reversing the decision of the Court below, that the decree should not have awarded past maintenance, but that maintenance should have been made payable only from the date of the decree. *Held* also that future maintenance should have been given only during the continuance of the marriage, and not during the term of the plaintiff's natural life. ABDOOL FUTTEH MOULVIE *v.* ZABUNNESSA KHATUN **[I. L. R., 6 Calc., 631: 8 C. L. R., 242**

3. ——— **Wife's right to maintenance** —*Ascertainment of rate—Right of suit.*—According to Mahomedan law, until there has been an ascertainment of the rate at which maintenance is payable, no right to maintenance accrues to a wife on which she can found a suit. MAHOMED MUSEEHOOD-DEEN KHAN *v.* MUSEEHOODDEEN **[2 N. W., 173**

4. ——— **Agreement for maintenance** —*Re-conveyance by wife (on consideration of maintenance) of her property received for dower.* —Where a Mahomedan wife, in re-conveying to her husband the property received from him in lieu of dower, took from him a written agreement in which he covenanted to pay her a certain sum of money annually without objection or demur,—*Held* that the husband could not avoid payment on any of the pleas on which a Mahomedan husband could avoid the payment of maintenance to a

MAHOMEDAN LAW—MAINTENANCE —*concluded.*

wife. Yusoof Ali Chowdhry *v.* Fyzoonissa Khatoon Chowdrain . . **15 W. R., 296**

5. ——— **Mutta wife**—*Mutta form of marriage—Criminal Procedure Code (Act X of 1872), s. 536—Shiah sect.*—Under the law of the Shiah sect of Mahomedans, a mutta wife is not entitled to maintenance, but such a provision of the law does not interfere with the statutory right to maintenance given by s. 536 of the Code of Criminal Procedure. In the matter of the petition of Luddun Sahiba. Luddun Sahiba *v.* Kamar Kudar . **I. L. R., 8 Calc., 736 : 11 C. L. R., 237**

MAHOMEDAN LAW—MARRIAGE.

See Bigamy. . **I. L. R., 18 Calc., 264**
[I. L. R., 19 Calc., 79

See Cases under Mahomedan Law—Acknowledgment.

See Mahomedan Law—Dower.
[I. L. R., 8 All., 149
I. L. R., 1 All., 483, 506
I. L. R., 4 All., 205
I. L. R., 2 All., 831
I. L. R., 23 Mad., 371

See Marriage . **I. L. R., 25 Calc., 537**

1. ——— **Validity of marriage**—*Requisites for valid marriage.*—Under the Shiah as well as the Sunni law, any connection between the sexes which is not sanctioned by some relation founded upon contract or upon slavery is denounced as "zina," or fornication. Both schools prohibit sexual intercourse between a Mooslnah, *i e.*, a Mahomedan woman and a man who is not of her religion. According to the Shiah law, marriage must in all cases be lawful, except when there is error on the part of both or either of the parents. Himmut Bahadoor *v.* Shahebzadi Begum . . **14 W. R., 125**

Affirming on review S. C. Shahebzadi Begum *v.* Himmut Bahadoor
[12 W. R., 512 : 4 B. L. R., A. C., 103

2. ——— *Valid marriage, Essentials of—Sufficiency of evidence.*—In a criminal prosecution under s. 498, Indian Penal Code, strict proof of marriage is necessary. It is essential for a valid marriage according to the Mahomedan law that the husband should be capable of giving a valid consent, or should be represented by some one who can lawfully consent on his behalf, and that the girl also, when a minor, should be represented by a duly authorized person for the purpose of binding her. Sobrati *v.* Jungli . . **2 C. W. N., 245**

3. ——— *Nikah marriage.*—The nikah form of marriage is well known and established among Mahomedans. The issue of such a marriage is legitimate by Mahomedan law. Moneeroodden *v.* Ramdhun Bajeekur
[18 W. R., Cr., 28

4. ——— *Woman's right to choose husband—Guardian—Marriage without consent of father.*—According to the doctrine of the Mussulman teacher, Abu Hanifa, a Mussulman female, after arriving at the age of puberty without having been married by her father or guardian, becomes legally emancipated from all guardianship, and can select a husband without reference to the wishes of the father or guardian; but according to the doctrine of Shafi, a virgin, whether before or after puberty, cannot give herself in marriage without the consent of her father. After attaining puberty, a female of any one of the four sects can elect to belong to whichever of the other three sects she pleases, and the legality of her subsequent acts will be governed by the tenets of the Imam whose follower she may have become. A girl whose parents and family are followers of the school of Shafi, and who has arrived at puberty, and has not been married or betrothed by her father or guardian, can change her sect from that of Shafi to that of Hanifa, so as to render valid a marriage subsequently entered into by her without the consent of her father. Muhammad Ibrahim *v.* Gulam Ahmed . **1 Bom., 236**

MAHOMEDAN LAW—MARRIAGE —*continued.*

5. ——— *Marriage of minor—Assent of wife after puberty.*—A ceremony of marriage was performed between Mahomedan minors in the fazolee (nominal) form; the girl's father being dead, and the marriage being contracted by her paternal grandmother. Thereafter the girl died, having attained the age of puberty without ever meeting or communicating with her husband, and without ever expressing in any way assent to or dissent from the marriage. *Held* that, by the law of the Shiah sect which governed the case, the marriage, since the assent of the girl after attaining puberty was not shown, was imperfect from the want of the necessary ratification, and could not create any rights or obligations. Though by the law of the Sunnis the option of dissent must be declared by the girl as soon as puberty is developed, yet by the doctrine of the Shiahs the matter ought to be propounded to her, so that she may advisedly give or withhold her assent. Mulka Jehan Sahiba *v.* Mahomed Ushkurree Khan
[L. R., I. A., Sup. Vol., 192 : 26 W. R., 26

6. ——— *Consent of parents—Inequality of parties.*—*Held* that under Mahomedan law the bride's father can set aside the marriage on the ground of inequality between the parties to the marriage if it had taken place without his consent, the consent of the bride's mother and brother notwithstanding; and that the bride herself is legally competent to refuse herself to her husband so long as her dowry remains unpaid. Mohumdee Begum *v.* Bairam Khan . . **1 Agra, 130**

7. ——— *Infant—Consent—Apostate father.*—The consent of the father was held not necessary to the marriage of a Mahomedan infant girl, he being an apostate from the Mahomedan faith; this being so, the consent of the mother was sufficient. In the matter of Mahin Bibi
[13 B. L. R., 160

8. ——— *Consent of mother.*—Where the nearest guardian of a minor was precluded from giving his consent to the marriage of the minor, the marriage contracted by consent of the mother of the minor was held to be valid by Mahomedan law. KALOO *v.* GUBIBOLLAH
[13 B. L. R., 163 note: 10 W. R., 12

9. ——— *Marriage with living wife's sister—Legitimacy of children of such marriage—Acknowledgment, Effect of, on illegitimate children.*—Under the Mahomedan law, marriage with the sister of a wife who is legally married is void. The children of such marriage are illegitimate and cannot inherit. *Shureefoonisa* v. *Khizuroonisa Khanum, 3 S. D. A. Sel. Rep., 210,* referred to. The doctrine of acknowledgment is not applicable to a case in which the paternity of the child is known, and it cannot therefore be called in to legitimatize a child which is illegitimate by reason of the unlawfulness of the marriage of its parents. *Muhammed Allahdad Khan* v. *Muhammad Ismail Khan, I. L. R., 10 All., 289,* followed. AIZUNNISSA KHATOON *v.* KARIMUNNISSA KHATOON
[I. L. R., 23 Calc., 130

10. ——— *Shiahs—Marriage between a Mahomedan and a Christian.*—A Mahomedan woman of the Shiah sect cannot contract a valid marriage according to Mahomedan rites with a Christian. BAKHSHI KISHEN PRASAD *v.* THAKUR DAS . . . . **I. L. R., 19 All., 375**

11. ——— *Mutta form of marriage—Repudiation—Divorce.*—The mutta form of marriage does not admit of repudiation under the law of the Shiah sect of Mahomedans. *Quære*—Whether the form of divorce called zihar may be exercised in the mutta form of marriage. IN THE MATTER OF THE PETITION OF LUDDUN SAHIBA. LUDDUN SAHIBA *v.* KAMAR KUDAR
[I. L. R., 8 Calc., 736: 11 C. L. R., 237

12. ——— **Presumption of marriage**—*Cohabitation—Presumption of legitimacy of offspring.*—By the Mahomedan law continual cohabitation and acknowledgment of parentage is presumptive evidence of marriage and legitimacy. HIDAYUTOOLLAH *v.* RAI JAN KHANUM
[3 Moore's I. A., 295

S. C. SHUMS-OON-NISSA KHANUM *v.* RAI JAN KHANUM . . . . **6 W. R., P. C., 52**

13. ——— *Cohabitation—Acknowledgment of wife and of legitimacy of children.*—According to Mahomedan law, continued open cohabitation, accompanied by a declaration that the woman is the man's wife, and that the children, the issue of the cohabitation, are his children, or by conduct showing that he considers them to be so, is sufficient evidence from which to infer marriage. Even where the cohabitation has been casual only, and there has been no acknowledgment of the woman as his wife, or the issue as his children, the fact of such cohabitation raises a presumption of marriage, and that the children are legitimate; but in such a case the presumption may be rebutted. NAWABUNNISSA *v.* FUZOOLOONISSA. NAWABUN *v.* JUMEERUN
[Marsh., 428

S. C. FUZLOONNISSA *v.* NAWABUNNISSA
[2 Hay, 479

14. ——— *Cohabitation.*—According to Mahomedan law, cohabitation as husband and wife will raise a presumption of a marriage if the parties are Mahomedans, or persons between whom a valid marriage can be celebrated. MONOWAR KHAN *v.* ABDOOLLAH KHAN . **3 N. W., 177**

15. ——— *Legitimacy, Proof of—Cohabitation.*—The mere residence of a woman in the house of a Mahomedan as a menial servant, and the circumstance that she had a son, do not raise the presumption of marriage or legitimacy of the son. Cohabitation means something more than mere residence in the same house. It should be shown that cohabitation continued, that children were born, and that the woman was treated as a wife, and lived as such, and not as a servant. KUREEMOONISSA *v.* ATTAOOLLAH . . . . **2 Agra, 211**

16. ——— *Legitimacy—Cohabitation.*—If a child has been born to a father of a mother where there has been not a more casual concubinage, but a more permanent connection, and where there is no insurmountable obstacle to a marriage, according to the Mahomedan law, the presumption is in favour of such marriage having taken place, and the mother and child are entitled to inherit. SHUMS-OON-NISSA KHANUM *v.* RAI JAN KHANUM . . . . . **6 W. R., P. C., 52**

S. C. HIDAYUTOOLLAH *v.* RAI JAN KHANUM
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17. ——— *Cohabitation—Legitimacy.*—Though there is no evidence of the celebration of any marriage ceremony, still the fact of a woman having constantly lived as a married woman with her husband, and the fact of her children having lived as legitimate children with their parents, make the case fall within the rule as to the presumption of marriage and legitimacy laid down by the Privy Council in *Mahomed Bauker Hossein Khan* v. *Shurfoonissa Begum, 8 Moore's I. A., 136,* and by the High Court in *Nawabunnissa* v. *Fuzooloonissa, Marsh, 428.* ASHRUFFUNNISSA *v.* AZEEMUN BARODA KOOERY *v.* ASHRUFFUNNISSA
[1 W. R., 17

18. ——— *Acknowledgment of wife.*—The acknowledgment of a wife which the Mahomedan law requires as proof of marriage should be specific and definite. The mere fact of a man keeping a woman within the purdah and treating her to outward semblance as a wife, does not necessarily, in the absence of express declaration and acknowledgment, constitute the factum of marriage. KADARNATH CHUCKERBUTTY *v.* DONZELLE **20 W. R., 352**

19. ——— In a suit by *A* for possession of property which belonged to her uncle *B*, the defendants *C* and *D* each alleged herself to be the wife of *B*, and each said that the

MAHOMEDAN LAW—MARRIAGE
—concluded.

other was his concubine. *C* also set up a will in her favour by *B*. *C* admitted that she had been once *B*'s concubine, but alleged that she had been subsequently married to *B*. The evidence was conflicting, and the Courts below pronounced against both the marriages and also against the will. *C* alone appealed to the Privy Council, who held that lapse of time and propriety of conduct, and the enjoyment of confidence, with powers of management reposed in her, are not sufficient to raise the presumption that *A* was a lawful wife. JABIUTOOL BUTOOL *v.* HOSSEINEE BEGUM . . **10 W. R., P. C., 10** **[11 Moore's I. A., 194**

20. ———————— *Celebration of pregnancy and of birth of son.*—The celebration of the seventh month of pregnancy, and the celebration of the birth of the son, are sufficient to prove the marriage and legitimacy of the son. WISE *v.* SUNDULOONISSA CHOWDHRANEE . **7 W. R., P. C., 13** **[11 Moore's I. A., 177**

21. ———————— *Acknowledgment of wife.*—An equivocal expression in a document executed by a Mahomedan which might be applicable to the ladies in respect to whom it is used, whether they were wives or not, cannot be considered such an express recognition of their being wives as to establish their claims as such to a share in the estate on his decease. Where a lady has cohabited with a Mahomedan for years and has had a child by him who has been openly acknowledged and treated by him as his lawful son, although there may be no evidence of the actual fact of marriage, the Court is justified in presuming a marriage. MAHATALA BIBEE *v.* AHMED HALEEMOOZOOMAN. CURREEMUNNISSA BEGUM *v.* AHMED HALEEMOOZOOMAN **[10 C. L. R., 293**

22. ———————— *Re-marriage, Presumption of legality of.*—In a suit by a Mahomedan to compel the defendant to rejoin him as his wife, a mere declaration by the defendant in a mortgage-deed executed by her, that she was the wife of the plaintiff, would not be evidence of the removal of the legal impediment to the re-marriage created by the divorce; neither can a presumption be drawn from the fact of the re-marriage that the impediment had been removed, and that the defendant had again become lawful wife to the plaintiff after re-marriage. AKHTAROONNISSA *v.* SHARIUTOOLLAH CHOWDHRY . . . . **7 W. R., 268**

MAHOMEDAN LAW—MORTGAGE.

———— **Mortgage by widow**—*Power to mortgage shares of minors—Mahomedan law of sale.*—In 1884 *I*, a Mahomedan, died intestate, leaving a widow, two sons, and two daughters. At the time of his death he was the owner of a certain house in Bombay. After his death his widow and his eldest son *E* (without the consent of the other children, who were minors) mortgaged the said house to the defendant. In 1894 a younger son and one of the daughters of *I* filed this suit, praying that their

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shares in the house might be ascertained and declared; that the house should be sold, and their shares in the proceeds handed over to them. The defendant pleaded that the plaintiffs' mother and adult brother *E* had mortgaged the house to him in 1891 as a security for a loan of R3,500 which they wanted to pay off debts incurred in rebuilding the house and to defray the marriage expenses of *E*. He contended that the mortgage was binding on the plaintiffs, having been made for the benefit of the family, and that, if not, the plaintiffs were bound to pay him the money due to him before claiming any share in the house. *Held* that the plaintiffs were entitled to their shares in the said house free and discharged of the mortgage executed to the defendant. The Mahomedan law makes no provision with regard to mortgages, as such transactions are, strictly speaking, unlawful, as they involve the payment of interest. As, however, mortgages do now exist among Mahomedans, they must be governed by the rules applicable to sales. To authorize a sale by the guardian of a Mahomedan minor, there must be an absolute necessity for the sale, or else it must be for the benefit of the minor. The money raised by the mortgage in question was not raised for any purpose specially authorized by Mahomedan law, and the purpose for which it was raised was not for the benefit of the minor. Consequently, the widow had no authority to mortgage their shares. HURBAI *v.* HIRAJI BYRAMJI SHANJA **[I. L. R., 20 Bom., 116**

MAHOMEDAN LAW—MOSQUE.

1. ———— **Constitution of musjid.**—Two essential conditions to the constitution of a musjid are requisite: first, that the site must be publicly appropriated to the purpose of a musjid; secondly, that public prayer should be performed in it. *Held*, in a suit to establish a right to repair and endow a mosque, that under the circumstances the condition had not been fulfilled, and therefore the suit should fail. YAKOOB ALI *v.* LUCHMUN DASS **[6 N. W., 80**

2. ———— **Endowment or dedication of mosque**—*Muhammadi or Wahabi sect—Disturbing a religious assembly—Right to say "amin" loudly during worship.*—According to the Mahomedan law, a mosque cannot be dedicated or appropriated exclusively to any particular school or sect of Sunni Mahomedans. It is a place where all Mahomedans are entitled to go and perform their devotions as of right, according to their conscience. No one sect or portion of the Mahomedan community can restrain any other from the exercise of this right. Members of the Muhammadi or Wahabi sect are Mahomedans, and as such entitled to perform their devotions in a mosque, though they may differ from the majority of Sunni Mahomedans on particular points. But any Mahomedan would commit a criminal offence who, not in the *boná fide* performance of his duties, but *malâ fide*, for the purpose of disturbing others engaged in their devotions, made any demonstration, oral or otherwise, in a mosque, and disturbance was the result. So *held* by the Full

MAHOMEDAN LAW—MOSQUE —*concluded.*

Bench. *Queen-Empress* v. *Ramzan, I. L. R., 7 All., 461,* referred to. *Per* MAHMOOD, *J.*—According to the Mahomedan ecclesiastical law, the word "amin" must be said and should be pronounced at the end of the prayer ending with Sura-i-Fateha; but there is no authority for holding that it should be pronounced in a loud or in a low tone of voice; and (provided no disturbance of the public peace is caused) a Mahomedan pronouncing the word loudly, in the honest exercise of conscience, commits no offence or civil wrong. ATA-ULLAH *v.* AZIM-ULLAH **[I. L. R., 12 All., 494**

3. ———— **Public mosque**—*Right of Mahomedans without distinction of sect to use such mosque for the purposes of worship—Right to say "amin" loudly during worship.*—Where a mosque is a public mosque open to the use of all Mahomedans without distinction of sect, a Mahomedan who, in the *bonâ fide* exercise of his religious duties in such mosque, pronounces the word "amin" in a loud tone of voice, according to the tenets of his sect, does nothing which is contrary to the Mahomedan ecclesiastical law or which is either an offence or civil wrong, though he may by such conduct cause annoyance to his fellow-worshippers in the mosque. But any person, Mahomedan or otherwise, who goes into a mosque not *bonâ fide* for religious purpose, but *malâ fide* to create a disturbance there and interfere with the devotion of the ordinary frequenters of the mosque, will render himself criminally liable. JANGU *v.* AHMAD-ULLAH **[I. L. R., 13 All., 419**

4. ———— **Dedication of mosque to public worship**—*Right to worship in mosque.*—A mosque becomes consecrated for public worship either by delivering to a mutwalli or on the declaration of the wukif that he has constituted it into a musjid, or on the performance of prayers therein. The prayers of one individual alone are sufficient to constitute a public mosque so long as it is accompanied by the azan (call to prayer). Any Mahomedan, to whatever sect he may belong, is entitled to offer his prayers according to his own ritual in any mosque so long as he does not wilfully disturb or annoy the other members of the congregation. Non-conformity on matters of ritual does not affect his right to do so. *Fazl Karim* v. *Maula Baksh, I. L. R., 18 Calc., 448 : L. R., 18 I. A., 59; Ataullah* v. *Azanullah, I. L. R., 12 All., 494;* and *Queen-Empress* v. *Ramzan, I. L. R., 7 All., 461,* referred to. ADAM SHEIK *v.* ISHA SHEIK . **1 C. W. N., 76**

MAHOMEDAN LAW—PRE-EMPTION.

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1. RIGHT OF PRE-EMPTION 5688
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1. RIGHT OF PRE-EMPTION.

(*a*) GENERALLY.

1. ———— **Origin of right**—*Law or custom—Cessation of right.*—The right of pre-emption arises from a rule of law by which the owner of the land is bound; and it exists no longer if there ceases to be an owner who is bound by the law either as a Mahomedan or by custom. BYJNATH PERSHAD *v.* KOPILMON SINGH . . . **24 W. R., 95**

2. ———— **Requisites for right**—*Extinguishment of vendor's right—Incomplete sale—Right of pre-emption.*—In a suit claiming a right to pre-emption, where it was found as a fact that the sale had not been completed, and that there had not been cessation of the vendor's right, it was held that, whether under the ordinary principles which relate to contracts of sale, or under the principles of Mahomedan law, no right could arise in favour of the pre-emptor. The privilege of shuffa refers to cases in which the sale has been actually completed by the extinction of the rights of the vendor. LADUN *v.* BHYRO RAM . . . . **8 W. R., 255**

3. ———— *Extinguishment of vendor's right.*—Under Mahomedan law, the right of pre-emption does not arise until the seller's right of property has been completely extinguished. SOONDUR KOOER *v.* LALLA RUGHOOBUR DYAL **[10 W. R., 246**

BUKSHA ALI *v.* TOFEE ALI . **20 W. R., 216**

4. ———— *Sales—Leases in perpetuity.*—Under the Mahomedan law, the right of pre-emption applies to sales only, and cannot be enforced with reference to leases in perpetuity like a mokurari, which (however small the reserved rent) are not sales and in which there is no "milkyut" or ownership on the part of the shuffa or pre-emption. RAM GOLAM SINGH *v.* NURSING SAHOY **[25 W. R., 43**

5. ———— *Perpetual lease—Sale.*—Where a co-proprietor does not part with his entire interest in land by an absolute sale, but merely grants a lease of it, even though it be a mourasi lease, the doctrine of pre-emption will not apply. *Moorooly Ram* v. *Huree Ram, 8 W. R., 106,* and *Ram Golam Singh* v. *Nursing Sahoy, 25 W. R., 43,* followed. DEWANUTULLA *v.* KAZEM MOLLA . . . **I. L. R., 15 Calc., 184**

6. ———— *Bonâ fide sale.*—There is no right of pre-emption where there has not been a real *bonâ fide* sale according to the Mahomedan law. MOHNO BIBEE *v.* JUGGURNATH CHOWDHRY . . . . . . **2 W. R., 78**

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

1. RIGHT OF PRE-EMPTION—*continued.*

7. ——— *Sale—Transfer in nature of gift.*—A transfer without money or other consideration, and which is in fact a gift, is held not to be a sale to which the right of pre-emption attaches. AMEER ALI *v.* PEARUN **W. R., 1864, 239**

8. ——— *Gift of land without consideration—Shankalp.*—No right of pre-emption arises where land is assigned without consideration as shankalp. HAR NARAIN PANDE *v.* RAM PRASAD MISR . . **I. L. R., 14 All., 333**

9. ——— *Proof of right on private sale—Auction-sale.*—*Held* that in a case of private sale the right of pre-emption must be based on usage or contract, and that an instance of pre-emption in an auction-sale is not sufficient. BHAE KOONWAR *v.* ZAHOOR ALI . . **1 Agra, 258**

10. ——— *Heir of pre-emptor—Non-survival of right.*—According to the Mahomedan law applicable to the Sunni sect, if a plaintiff in a suit for pre-emption has not obtained his decree for pre-emption in his lifetime, the right to sue does not survive to his heirs. MUHAMMAD HUSAIN *v.* NIAMAT-UN-NISSA **I. L. R., 20 All., 88**

11. ——— *Claim for pre-emption based upon a transaction which was a good sale under the Mahomedan law, but not under the Transfer of Property Act (IV of 1882), s. 54—Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), s. 37.*—Where a Sunni Mahomedan transferred certain immoveable property exceeding in value R100, under such circumstances that the price was paid and possession of the property delivered to the transferee, but no sale-deed was executed; on a suit for pre-emption based upon such transfer being brought, it was *held* by the Full Bench (BANERJI, J., dissenting) that the Mahomedan law was to be applied in considering whether or not a right of pre-emption arose, and that, inasmuch as the transaction in question was a complete sale under that law, a right of pre-emption did arise. Case law prior and subsequent to Act IV of 1882 considered. *Per* BANERJI, J., *contra*—"In the absence of fraud, no claim for pre-emption under the Mahomedan law applicable to persons of the Hanifa sect can arise in respect of the sale of immoveable property of the value of one hundred rupees and upwards, unless such sale has been effected according to the provision of s. 54 of Act IV of 1882." BEGAM *v.* MUHAMMAD YAKUB . . . . **I. L. R., 16 All., 344**

12. ——— *Rights of third persons having a claim to pre-emption where the vendee is also a person who would have a similar claim were the sale to a stranger.*—Under the Mahomedan law, even when the buyer is himself a pre-emptor, that is, a person who would have the right of pre-emption against an outsider, other persons having a similar right of pre-emption are entitled to claim pre-emption against the buyer; and, in such a case, the rights of the claimants to pre-emption should be determined in the same way in which they would have been determined had the buyer acquired the property by enforcing his right of pre-emption against a stranger, in the absence of the other pre-emptors, and the absentee pre-emptors had appeared subsequently and claimed pre-emption. *Moheshee Lal* v. *Christian, 6 W. R., 250; Teeka Dharee Singh* v. *Mohur Singh, 7 W. R., 260; Lalla Nowbut Lall* v. *Lalla Jewan Lal, I. L. R., 4 Calc., 831,* dissented from. In cases of pre-emption to which the Mahomedan law applies the rules of that law are to be administered in their entirety where they are not inconsistent with the principles of justice, equity and good conscience. *Chundo* v. *Hakeem Alimooddeen, 6 N. W., 28,* and *Gobind Dayal* v. *Inayatullah, I. L. R., 7 All., 775,* referred to. A person entitled to a right of pre-emption is not bound to claim pre-emption in respect of all the sales which may be executed in regard to the property, although every suit for pre-emption must include the whole of the property subject to pre-emption conveyed by one transfer. *Kahsi Nath* v. *Mukkta Prasad, I. L. R., 6 All., 370,* referred to. AMIR HASAN *v.* RAHIM BAKHSH . . **I. L. R., 19 All., 466**

13. ——— *Invalid sale—Time when right of pre-emption arises.*—No right of pre-emption arises upon a sale which, according to Mahomedan law, is invalid, as, for instance, by reason of uncertainty in the price or the time for delivery of the thing sold; but if such sale become complete, as by the purchaser getting possession of the thing sold, then the ownership of the purchaser becomes complete, and a right of pre-emption arises, but neither ownership nor the pre-emptive right relates back to the date of the contract of sale. *Begam* v. *Muhammad Yaqub, I. L. R., 16 All., 344,* referred to. NAJM-UN-NISSA *v.* AJAIB ALI KHAN **[I. L. R., 22 All., 343**

14. ——— **Exercise of right**—*Re-sale—Claim after waiver upon incompleted sale.*—The right of pre-emption, according to the Mahomedan law, may be exercised upon a re-sale of the property, after a previous sale which has fallen through, and with respect to which no claim of pre-emption was made. BUSUNT KOOMAREE *v.* KALI PERSAD SINGH **[Marsh., 11: 1 Hay, 32**

15. ——— *Property sold in execution of decree—Right of judgment-debtor.*—The right of pre-emption cannot be exercised by a judgment-creditor in respect of the sale of property in execution of his decree. NUZMOODEEN *v.* KANYE JHA . . . **Marsh., 555: 2 Hay, 651**

16. ——— *Sale by public auction—Opportunity to bid.*—When property is sold by public auction at a sale in execution of a decree, and the neighbour or partner has the same opportunity to bid for the property as other parties present in Court, the law of pre-emption does not apply. ABDUL JABEL *v.* KHELAT CHANDRA GHOSE **[1 B. L. R., A. C., 105: 10 W. R., 165**

1. RIGHT OF PRE-EMPTION—*continued.*

17. ——— *Repudiation of sale by seller or buyer.*—As, according to Mahomedan law, when either the seller or buyer repudiates the sale, there can be no sale, so neither can there be any right of pre-emption in such a case. Ojheoonissa Begum *v.* Rustom Ali . **W. R., 1864, 219**

18. ——— **Exercise of pre-emption**—*Effect of allowing pre-emption—Conditions of pre-emption.*—*Held* that the right of pre-emption, when once allowed and exercised by the pre-emptor, cannot be disputed at subsequent occasions of sale, and that neither manhood, puberty, justice, or respectability of character, are conditions of pre-emption under the Mahomedan law. Punna *v.* Juggur Nath **[1 Agra, 236**

Nor is indebtedness of the pre-emptor. Ram Khelawan Rai *v.* Shiva Dass . **2 Agra, 76**

19. ——— **Evidence of right**—*Suit to enforce right.*—In a suit to enforce a right of pre-emption, where there is other evidence, and the Court can come to a distinct finding upon it, it is not incumbent on the Court to put the purchaser upon his oath. Hunsraj Singh *v.* Rash Peharee Singh **[7 W. R., 211**

Hunsraj Singh *v.* Choka Singh **7 W. R., 486**

20. ——— *Decision on evidence.*—Where evidence is gone into, the Court must decide according to the view it takes of the evidence, any preference which may be given to the evidence for the person claiming the right of pre-emption being given only in the event of the evidence being very evenly balanced. Hunsraj Singh *v.* Rash Beharee Singh . . . **7 W. R., 211**

21. ——— *Nature of pre-emption—Ground for allowing right.*—The right of pre-emption is not matter of title to property, but is rather a right to the benefit of a contract; and when a claim is advanced on such a right, it must be shown that defendant is bound to concede the claim either by law or by some custom to which the class of which he is a member is subject on grounds of justice, equity, and good conscience. Mohesh Lall *v.* Christian . . . . **8 W. R., 446**

22. ——— *Nature of right—Onus probandi.*—The right of pre-emption is not one which attaches to property, and the obligation it implies may be limited to the residents of a district or to a family, or to any particular class of persons, it being for the claimant in each case to show that it attaches to the defendant. Akhoy Ram Shahajee *v.* Ram Kant Roy . . . **15 W. R., 223**

23. ——— **Applicability of right**—*Nature and extension of right.*—The right to pre-emption is very special in its character, and is founded on the supposed necessities of a Mahomedan family arising out of their minute subdivision of ancestral property; and as the result of its exercise is generally adverse to public interest, it will not be recognized by the High Court beyond the limits to which those necessities have been judicially decided to extend. Nusrut Reza *v.* Umbul Khyr Bibee **[8 W. R., 309**

24. ——— *Proof of existence of custom of pre-emption.*—*Held* that a solitary case or two is not sufficient to prove the custom of pre-emption in a locality where the privilege is not binding upon the parties by positive law. Benarsee Doss *v.* Phool Chund . . . **1 Agra, 243**

25. ——— *Decisions as to prevalence of custom.*—In *Inder Narain Chowdhry* v. *Mahomed Nazirooddeen, 1 W. R., 234,* the Court only meant to say that it could not be held upon decisions that were in conflict with other decisions of the same district that the custom of pre-emption prevailed there; it did not say that when there were decisions tending the same way, that that would not be satisfactory proof of the fact. Kodrutoollah *v.* Mohuree Shaha . . . **9 W. R., 537**

26. ——— *Shiahs and Sunnis—Pre-emption claimed on ground of vicinage—Vendors and vendee Sunnis, pre-emptor a Shiah.*—*Held* that a Mahomedan of the Shiah sect could not maintain a claim for pre-emption based on the ground of vicinage under the Mahomedan law when both the vendors and the vendee were Sunnis. *Gobind Dayal* v. *Inayat-ullah, I. L. R., 7 All., 775,* and *Pir Bakhsh* v. *Sughra Bibi, Weekly Notes, All., 1892, 34,* referred to. Qurban Husain *v.* Chote **[I. L. R., 22 All., 102**

27. ——— *Hindus—Local custom—Sale to a stranger.*—The right of pre-emption, when it exists among Hindus, is a matter of contract or custom agreed to by the members of a village or community. Such a custom is not properly described as attached to the land, and as soon as any members of a Hindu community, who have agreed to be governed by it, sell to any one who is a stranger to the agreement, the land is no longer subject to pre-emption. Hira *v.* Kallu **[I. L. R., 7 All., 916**

28. ——— *Hindus—Usage and custom.* Unless a prescriptive usage and local custom be clearly established, a Hindu defendant is not bound by the Mahomedan law in a case in which a Mahomedan seeks to enforce his right of pre-emption. Sheraj Ali Chowdhry *v.* Ramjan Bibee **8 W. R., 204 : 2 Ind. Jur., N. S., 249**

Hubeerul Hossein *v.* Lalla Dewkee Nundun **[W. R., 1864, 75**

29. ——— *Hindu purchaser.*—A claim for pre-emption under the Mahomedan law cannot be maintained against a Hindu purchaser. Moti Chand *v.* Mahomed Hossein Khan . . **7 N. W., 147**

Chundo *v.* Alimooddeen . . **6 N. W., 28**
[S. C. Agra, F. B., Ed. 1874, 305

30. ———— *Hindu purchaser—Mahomedan vendor and co-sharer.—Per* PEACOCK, *C.J.*, and KEMP and MITTER, *JJ.*—A Hindu purchaser is not bound by the Mahomedan law of pre-emption in favour of a Mahomedan co-partner, although he purchased from one of several Mahomedan co-parceners; nor is he bound by the Mahomedan law of pre-emption on the ground of viciniage. A right of pre-emption in a Mahomedan does not depend on any defect of title on the part of his Mahomedan co-partner to sell except subject to the right of pre-emption, but upon a rule of Mahomedan law, which is not binding on the Court, nor on any purchaser other than a Mahomedan. *Per* NORMAN and MACPHERSON, *JJ.* (*dissentientes*).—Wherever a Mahomedan co-sharer or neighbour has a right of pre-emption and his property is sold by his neighbour or co-sharer, also a Mussulman, his right is not defeated by the mere fact that the purchaser is a Hindu. KUDRATULLA *v.* MAHINI MOHUN SHAHA. SAYAMA KUMAR ROY *v.* JAN MAHOMED. FARMAN KHAN *v.* BHARAT CHANDRA SHAHA CHOWDHRY

[4 B. L. R., F. B., 134 : 13 W. R., F. B., 21

31. ———— *Hindu vendor—Right to enforce pre-emption.—Held* (STUART, *C.J.*, and PEARSON, *J.*, dissenting) that where the vendor is a Hindu, a suit to enforce a right of pre-emption founded upon Mahomedan law is not maintainable. *Chundo* v. *Alim-ood-deen, 6 N. W., 28,* overruled. *Purno Singh* v. *Hurry Churn Surmah, 10 B. L. R., 117,* followed. DWARKA DOSS *v.* HUSAIN BAKSH

[I. L. R., 1 All., 564

32. ———— *Hindu purchaser—Mahomedan vendor and pre-emptor—Act VI of 1871 (Bengal Civil Courts Act), s. 24—"Religious usage or institution"—"Parties."—Held* by the Full Bench that in a case of pre-emption, where the pre-emptor and the vendor are Mahomedans and the vendee a non-Mahomedan, the Mahomedan law is to be applied to the matter, in advertence to the terms of s. 24 of the Bengal Civil Courts Act (VI of 1871). *Kudratulla* v. *Mahini Mohan Shaha, 4 B. L. R., F. B., 134,* dissented from. *Per* PETHERAM, *C.J.*, and OLDFIELD, *J.*, that, by the provisions of s. 24 of the Bengal Civil Courts Act, the Court was not bound to administer the Mahomedan law in claims for pre-emption; but that, on grounds of equity, that law had always been administered in respect of such claims as between Mahomedans, and it would not be equitable that persons who were not Mahomedans, but who had dealt with Mahomedans in respect of property, knowing the conditions and obligations under which the property was held, should, merely by reason that they were not themselves subject to the Mahomedan law, be permitted to evade those conditions and obligations. *Per* MAHMOOD, *J.*, that by a liberal construction, the rule of the Mahomedan law as to pre-emption is a "religious usage or institution" within the meaning of s. 24 of the Bengal Civil Courts Act, and, as such, is binding on the Courts. Also *Per* MAHMOOD, *J.*, that the word "parties," as used in s. 24 of the Bengal Civil Courts Act, does not mean the parties to an action, but must be interpreted with reference to the inception of the right to be adjudicated upon. Also *per* MAHMOOD, *J.*—The right of pre-emption is not a right of "re-purchase" either from the vendor or from the vendee, involving any new contract of sale; but it is simply a right of substitution, entitling the pre-emptor, by reason of a legal incident to which the sale itself was subject, to stand in the shoes of the vendee in respect of all the rights and obligations arising from the sale under which he has derived his title. The history and nature of the right of pre-emption discussed by MAHMOOD, *J. Shumsh-ool-nissa* v. *Zohra Bibi, 6 N. W., 2* ; *Chundo* v. *Alim-ood-deen, 6 N. W., 28* ; *Ibrahim Saib* v. *Muni Mir Uddin, 6 Mad., 26* ; *Moti Chand* v. *Mahomed Hussein Khan, 7 N. W., 147* ; and *Dwarka Das* v. *Husain Bakhsh, I. L. R., 1 All., 564,* referred to. GOBIND DAYAL *v.* INAYATULLAH. BRIJ MOHAN LAL *v.* ABUL HASAN KHAN . . . **I. L. R., 7 All., 775**

33. ———— *Hindus—Custom prevailing among Hindu—Obligation to fulfil conditions.*—Where the custom of pre-emption prevails among Hindus, it does not necessarily follow that the person claiming pre-emption must fulfil all the conditions of the Mahomedan law regarding pre-emption. It should be determined whether the custom is a custom under which it is incumbent upon him to fulfil those conditions. JAI KUAR *v.* HEERA LAL

[7 N. W., 1

34. ———— *Hindu vendor and purchaser—Mahomedan pre-emptor—"Talab-i-ishtihad"—Invocation of witnesses.*—A Mahomedan sued to enforce a right of pre-emption in respect of a sale between Hindus, founding such right on local custom. The formality of "ishtihad," or express invocation of witnesses, required by the Mahomedan law of pre-emption, was not one of the incidents of such custom. *Held* that the circumstance that the plaintiff was a Mahomedan did not preclude him from claiming to enforce such right against the defendants, who were Hindus; and that the formality of "ishtihad" not being one of the incidents of such custom, it was not necessary that the plaintiff should have observed that formality as a condition precedent to the enforcement of such right. *Fakir Rawot* v. *Emam Baksh, B. L. R., Sup. Vol., 35* ; *Bhodo Mahomed* v. *Radha Churn Bolia, 13 W. R., 332,* referred to. *Kudratulla* v. *Mahini Mohan Shaha, 4 B. L. R., F. B., 134* ; and *Dwarka Das* v. *Husain Bakhsh, I. L. R., 1 All., 564,* distinguished. *Chowdree Brij Lal* v. *Goor Sahai, F. B. Rul. June-Dec. 1867, p. 129,* and *Jai Kuar* v. *Heera Lal, 7 N. W., 1,* followed. ZAMIR HUSAIN *v.* DAULAT RAM . **I. L. R., 5 All., 110**

35. ———— *Hindus — Province of Behar.*—The custom of pre-emption has been recognized among Hindus in the province of Behar. JOY KOER *v.* SUROOP NARAIN THAKOOR

[W. R., 1864, 259

36. ——— *Hindus — Province of Behar.*—A native of Lower Bengal seeking his fortune in Behar would not be bound by the rule of Mahomedan law of pre-emption if nothing were shown to the contrary. BEJNATH PERSHAD *v.* KOPILMON SINGH . . . . **24 W. R., 95**

37. ——— *Hindus — Province of Behar.*—There is no judicial finding to the effect that the custom of pre-emption is recognized among the Hindus of the province of Behar. It is doubtful whether, even under Mahomedan law, the owners of two adjacent lakhiraj estates, wholly unconnected with one another, could either of them claim a right of pre-emption on the ground of vicinage. No such right of pre-emption on the ground of the mere vicinage has been known to exist among Hindus. KANTIRAM *v.* WOLI SAHU

[2 B. L. R., A. C., 330: 11 W. R., 251

38. ——— *Hindus — Province of Behar—Custom.*—A right or custom of pre-emption is recognized as prevailing among Hindus in Behar and some other provinces of Western India. In districts where its existence has not been judicially noticed, the custom will be matter to be proved; such custom, when it exists, must be presumed to be founded on and co-extensive with the Mahomedan law upon that subject, unless the contrary be shown. The Court may, as between Hindus, administer a modification of that law as to the circumstances under which the right may be claimed, where it is shown that the custom in that respect does not go the whole length of the Mahomedan law of pre-emption; but the assertion of the right by suit must always be preceded by an observance of the preliminary forms prescribed in Mahomedan law. FAKIR RAWOT *v.* EMAMBAKSH

[B. L. R., Sup. Vol., 35: W. R., F. B., 143

RAMDULAL MISSER *v.* JHUMACK LAL MISSER

[8 B. L. R., 455: 17 W. R., 265

RAMGUTTY SURMA *v.* KASI CHUNDER SURMA

[W. R., 1864, 317

SHEOJUTTUN ROY *v.* ANWAR ALI . **13 W. R., 189**

39. ——— *Christians in Bhaugulpore.*—The custom of pre-emption, as applicable to Christians in Bhaugulpore, must be proved on the same principle as has been applied to Hindus in Behar. MOHESHEE LALL *v.* CHRISTIAN

[6 W. R., 250

40. ——— *Europeans — District of Cachar.*—The right of pre-emption arises from a rule of law by which the owner of the land is bound. It is essential that the vendor should be subject to the rule of law. Therefore, where the vendor of certain land situate in Cachar was a European, the Court held that there was no right of pre-emption. POORNO SINGH *v.* HURRYCHURN SURMAH . **10 B. L. R., 117: 18 W. R., 440**

41. ——— *Hindus—Chittagong.*—Conflicting decisions of the subordinate Courts held not to prove that the custom of the right of pre-emption under the Mahomedan law prevails among the Hindus of Chittagong. INDER NARAIN CHOWDHRY *v.* MAHOMED NAZIROODDEEN

[1 W. R., 234

S. C. on review, where the Judges differed. NAZIROODDEEN KHAN *v.* INDER NARAIN CHOWDHRY . . . . . **5 W. R., 237**

42. ——— *Hindus of Gujarat.*—The existence of a local custom as to the right of pre-emption among the Hindus of Gujarat recognized. Such a custom, where it exists, is regulated by the rules and restrictions of the Mahomedan law. GORDHANDAS GIRDHARBHAI *v.* PRANKOR

[6 Bom., A. C., 263

43. ——— *Hindus—Law in Jessore.*—*Quære*—Whether the law of pre-emption extends to transactions as between Hindus in Jessore. MADHUB CHUNDER NATH BISWAS *v.* TAMEE BEWAH . . . . **5 W. R., 279**

44. ——— *Presidency of Madras.*—The Mahomedan doctrine of pre-emption is not law in the Madras Presidency. IBRAHIM SAIB *v.* MUNI MIR UDIN SAIB . . . **6 Mad., 26**

Nor in Sylhet. JAMEELAH KHATOON *v.* PAGUL RAM . . . . . . **1 W. R., 251**

Quære—Whether in Tipperah. DEWAN MUNAR ALI *v.* ASHUROODDEEN MAHOMED . **15 W. R., 270**

(*b*) CO-SHARERS.

45. ——— **Shafi-i-khalit** — *Nature of pre-emptive right arising by common enjoyment of rights appended to property.*—In order that two persons may become shafi-i-khalits or persons having a right of pre-emption in virtue of the common enjoyment of, *e.g.*, a road, it is necessary that such road should be a private road and not a thoroughfare. Among persons who are shafi-i-khalits by reason of being sharers in a right of way, all those who are sharers in such right of way have equal rights of pre-emption, although one of them may be a contiguous neighbour. KARIM BAKHSH *v.* KHUDA BAKHSH

[I. L. R., 16 All., 247

46. ——— **Right of tenant.**—The Mahomedan law nowhere recognizes the right of pre-emption in favour of a mere tenant upon the land. GOOMAN SINGH *v.* TRIPOOL SINGH . **8 W. R., 437**

47. ——— **Right of shareholder** — *Effect of private partition on right of pre-emption.*—According to Mahomedan law, a shareholder in the property sold has the first or strongest right of pre-emption. A private partition, though not sanctioned by official authority, if full and final as among the parties to it, will have the same effect as the most formal partition on the right of pre-emption. GOPAL SAHI *v.* OJOODHEA PERSHAD . . **2 W. R., 47**

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

1. RIGHT OF PRE-EMPTION—*continued.*

48. ———— *Conditional sale—Right of pre-emption among coparceners—Private partition of pattidari estate.*—*A* and *B* had certain proprietary rights in an eight annas patti of a certain mehal. *C* and *D* had no rights in that patti, but *D* had a small share in the remaining eight annas patti. A private partition between the pattis having taken place, *C* and *D*'s brother lent to *B* two sums of R200 and R199 by deeds of bai-bil-wufa, dated the 12th and 21st June 1876. *C* and *D* subsequently instituted foreclosure proceedings, and on the 5th May 1884 were put into possession of *B*'s share in the first-mentioned patti in execution of a decree which they had obtained. On the 18th April 1885, *A* sued *C* and *D* to enforce his right of pre-emption. *Held* that, though the coparcenary could not be said to have ceased to exist, or those who were coparceners be said to have become strangers to one another, yet there being a finding that the pattis were separate, it was not necessary, in order to establish *A*'s preferential right, that a partition by metes and bounds should be shown to have taken place; but that a private partition, if full and final between the parties, would have the same effect as the most formal partition on the right of pre-emption, and that *A*'s claim must therefore succeed. DIGAMBUR MISSER *v.* RAM LAL ROY **[I. L. R., 14 Calc., 761**

49. ———— *Right of support, "appendages of property"—Easement—"Participator in appendages of property."*—The right of shaffa (or pre-emption) belongs first to a partner in the property sold; secondly, to a participator in its appendages; and thirdly, to a neighbour. The right of support is not an appendage to property; it is merely included in the incident of neighbourhood. *A*'s house adjoined the house in dispute towards the east. *B*'s house adjoined the house in dispute towards the south, and was separated from it only by a wall. *B*'s house was subject to the easement of support in favour of the house in dispute. *A*'s house was subject to the easement of receiving and carrying off the rain-water falling from the roof of the disputed house. *Held* that *A* as owner of the servient tenement was a "participator in the appendages" of the house in dispute, and, as such, had a preferential right to purchase the house in dispute over *B*, who was a mere neighbour. RANCHODDAS *v.* JUGALDAS . **I. L. R., 24 Bom., 414**

50. ———— *Right of co-sharer in part of estate sold.*—When part of an estate is sold in execution of a decree, a co-sharer in the estate is a partner in the thing actually sold, and according to Mahomedan law is entitled to the right of pre-emption. IMAMOODDEEN SOWDAGUR *v.* ABDOOL SOBHAN . . . . **5 N. W., 170**

51. ———— *Shiah law—Case in which more than two partners.*—Under Shiah law, the authorities leave the point doubtful whether there can be any right of pre-emption in respect of property where there are more than two partners, but the Court held in accordance with the practice of the Courts in which no claim for pre-emption had ever been defeated on that ground. DAMI *v.* ASHOOHA BEBEE . . **2 N. W., 360**

52. ———— *Property owned by more than two co-sharers—Shiahs.*—The prevalent doctrine of the Mahomedan law governing the Shiah sect is that no right of pre-emption exists in the case of property owned by more than two co-sharers. *Daim* v. *Asooha Beebee, 2 N. W., 360,* and *Tafazzul Husain* v. *Hadi Hasan, Weekly Notes, 1886, p. 139,* dissented from. ABBAS ALI *v.* MAYA RAM . . . **I. L. R., 12 All., 229**

53. ———— *Equality of rights.*—Where there is a plurality of persons entitled to the privilege of pre-emption, the right of all is equal without reference to the extent of their shares in the property. MOHARAJ SINGH *v.* LALLA BHEECHUK LALL . . . **3 W. R., 71**

54. ———— *Claim by one sharer.*—Under the Sunni law, the right of pre-emption may be exercised by one or more of a plurality of co-sharers. NUNDO PERSHAD THAKUR *v.* GOPAL THAKUR . . . **I. L. R., 10 Calc., 1008**

55. ———— *Owner of separated share of estate—Shafee khalit.*—The proprietor of a divided one-anna share in a four-annas share of an estate is not entitled to a right of pre-emption as a shafee khalit in the remaining three-anna share. *Quære*—Whether, if there remained any adjoining ground in which the community of interest still continued since the separation, he would be entitled in right of vicinage to pre-emption, the point not being allowed to be taken. MAHADEO SINGH *v.* ZITANNISSA **[7 B. L. R., 45 note: 11 W. R., 169**

56. ———— *Sharers in appendages, and in body of estate.*—A sharer in the appendages has not an equal right to pre-emption with a sharer in the body of the estate. GOLAM ALI KHAN *v.* AGURJEET ROY . **17 W. R., 343**

57. ———— *Undefined share*—In order to establish a right of pre-emption on the part of a sharer, it is not necessary that the property sold should be actually separated or defined. GOBIND CHUNDER GOOPTO *v.* RAJ KISHORE SEIN **[14 W. R., 365**

58. ———— *Khalit—Sharik—Partition, Effect of, as to pre-emption.*—The word "khalit" is not improperly used in a plaint in a pre-emption suit to designate a sharik or partner in the substance of a thing; and if it is not clear whether the plaintiff claimed pre-emption as khalit or sharik, it may be shown by express words or it may be inferred from the written statement whether the plaintiff claimed on the one or on the other ground. Where the intention of the co-proprietors of an estate is to make a complete batwara of the whole, but an inconsiderable part is by oversight or accident left out of the division, that will not have

1. RIGHT OF PRE-EMPTION—*continued.*

the effect of giving one co-proprietor a claim of pre-emption on the sale to a stranger by another co-proprietor of his share or division of the estate. *Semble*—Where an integral portion of property, as a wall, is left purposely joint and undivided, the community of interest continues. LALA PRAG DUTT *v.* BANDI HOSSEIN . . . . **7 B. L. R., 42**

S. C. LALLA PURIAG DUTT *v.* BUNDEH HOSSEIN [**15 W. R., 225**

and on review, BUNDEY HOSSEIN *v.* LALLA PURIAG DUTT . . . . . **16 W. R., 110**

59. ——— *Co-partners—Partners between whom there has been separation.*—In a suit to recover by right of pre-emption, on the ground that plaintiff was in the position of a co-partner in the property to be sold, notwithstanding a private separation having taken place between the shareholders, inasmuch as he was still liable for arrears of Government revenue, and might still apply for a public batwara,—*Held* that, as plaintiff had divided off his own share by regular metes and bounds, and made himself in every respect independent of his co-partners so far as lay in his power to do so, he had by his own act deprived himself of any advantage which the law might have given him under different circumstances. BYJ NATH SINGH *v.* DOOLY MAHTOON . . . **11 W. R., 215**

60. ——— The term "sharik" cannot be restricted to cases in which the parties enjoy the properties jointly. In the contemplation of Mahomedan law those who occupy other houses in the same mansion are regarded as partners together with the person the sale of whose share in a house gives rise to the question of pre-emption. GUREEBOOLLAH KHAN *v.* KEBUL LALL MITTER [**13 W. R., 124**

61. ——— *Right against co-parcener.*—No right of pre-emption can exist as against a co-parcener. MOHESHEE LALL *v.* CHRISTIAN . . . . . **6 W. R., 250**

62. ——— *Co-parceners.*—There is no rule of Mahomedan law giving one co-parcener any right of pre-emption where another co-parcener is the purchaser. LALLA NOWBUT LALL *v.* LALLA JEWAN LALL [**I. L. R., 4 Calc., 831 : 2 C. L. R., 319**

63. ——— *Joint purchase by co-sharers and stranger—Pre-emptor not compelled to pre-empt share purchased by co-sharers.*—If a co-sharer associates a stranger with him in the purchase of a share, another co-sharer is entitled to pre-empt the whole of the property sold, but it is not obligatory upon him to impeach the sale, so far as the co-sharer vendee is concerned. HARJAS *v.* KANHYA . . . . **I. L. R., 7 All., 118**

64. ——— *Joint purchase by co-sharer and stranger, Effect of—Specification of share in a deed of sale, Effect of.*—Under the rule of Mahomedan law, if a sharer in an estate alienates his interest to a co-sharer and stranger, the purchasing sharer, by joining an outsider in the purchase, forfeits his right as a sharer, and another co-sharer has the right of pre-emption. *Lalla Nowbut Lall* v. *Lalla Jewan Lall, I. L. R., 4 Calc., 831*, distinguished. *Held* also that, in the case of a joint-purchase made by two persons of shares in two villages in one of which one of the purchasers was already a sharer, at one entire consideration, the specification in the deed of sale of their respective shares in the aggregate purchase would not affect the rule. *Manna Singh* v. *Ramadhin Singh, I. L. R., 4 All., 252.* SALIGRAM SINGH *v.* RAGHUBARDYAL **I. L. R., 15 Calc., 224**

65. ——— *Recorded co-sharers—Benami purchase of shares—Sale by co-sharer—Claim for pre-emption resisted by person claiming to be co-sharer by virtue of benami transaction—Equitable estoppel.*—A secret purchase benami of shares in a village does not constitute the purchaser a co-sharer for the purposes of pre-emption either under the Mahomedan law or under the provisions of a wajib-ul-urz, so as to enable him upon the strength of the interest so acquired to defeat an otherwise unquestionable pre-emptive right preferred by a duly recorded shareholder who had no notice, direct or constructive, of his title, and asserted immediately upon his purchase of a share, for the first time, in his true character. *Ramcoomar Koondoo* v. *Macqueen, L. R., I. A., Sup. Vol., 49*, referred to. BENI SHANKAR SHELHAT *v.* MAHPAL BAHADUR SINGH . . . . **I. L. R., 9 All., 480**

66. ——— *Wajib-ul-urz—Pre-emptor out of possession of his share—His own share lost by him pending appeal.*—The plaintiff instituted this suit to enforce her right of pre-emption in respect of a share in a village of which she alleged herself to be a co-sharer with the vendors. The defendants to the suit were the vendors, the vendees, and others who were rival claimants for pre-emption, in the share sold. The rival pre-emptors alone defended the action on the ground, among others, that the plaintiff was not in possession of her own share in the village out of which she alleged that her right to claim pre-emption arose. The Court of first instance dismissed her suit. On appeal the District Judge in effect dismissed her claim as against the defendants who were the rival pre-emptors, but gave the plaintiff a right to obtain the share if the other pre-emptors did not avail themselves of the decree which they had obtained in their action. On the 12th of January 1887 plaintiff's second appeal was admitted, and on the 20th January plaintiff's share, in the village out of which her claim to pre-emption in respect of the share sold arose, was sold in execution of a decree in another suit. The respondent contended that, as since the appeal the share out of which plaintiff alleged that her right arose was sold, she could not get any decree now in her favour. *Held* that this Court as a Court of Appeal have only got to see what was the decree which the Court of first instance should have passed, and if the

Court of first instance had wrongly dismissed the claim, the plaintiff cannot be prejudiced by her share having been subsequently sold in execution in another suit; such a sale could not have affected her right to maintain the decree, if she had obtained a decree in her favour in the Court of first instance, either on review or on appeal, nor could it have been made the ground of appeal. Further, plaintiff being out of possession of her share at the time she instituted the suit for pre-emption was immaterial: the Court should have ascertained whether the plaintiff was at the date of suit entitled in law to the share out of which her right of pre-emption was alleged to have arisen. *Held* by MAHMOOD, *J.*, that the passage from Hamilton's Hedaya by Grady, p. 562, means that in the pre-emptive tenement the pre-emptor should have a vested ownership and not a mere expectancy of inheritance or a reversionary or any kind of contingent right, or any interest falling short of full ownership. SAKINA BIBI *v.* AMIRAN

[I. L. R., 10 All., 472

67. ———— *Shareholder or neighbour.*—The Mahomedan law of pre-emption was never intended to apply to a case in which the purchaser is not a stranger, but one who is already either a shareholder or a neighbour. TEEKA DHAREE SINGH *v.* MOHUR SINGH . . **7 W. R., 260**

68. ———— *Sale of share in zamindari—Vicinage.*—A right of pre-emption attaches to the sale of the share of the zamindari in the case of a co-sharer, though it may not attach on the ground of vicinage. AKHOY RAM SHAHAJEE *v.* RAM KANT ROY . . . **15 W. R., 223**

69. ———— *Co-parcener or neighbour.*—A co-parcener has a higher right of pre-emption than a neighbour, and there is nothing in the Mahomedan law to prevent his enforcing his right when the purchaser happens to be a neighbour. HUR DYAL SINGH *v.* HEERA LALL . **16 W. R., 107**

70. ———— *Preferential right —Extent of shares.*—One of two joint sharers has no preferential title to the right of pre-emption in his capacity of neighbour, but is equally entitled with his co-sharer to the privilege of pre-emption, without regard to the extent of their shares. ROSHUN MAHOMED *v.* MAHOMED KULEEM . **7 W. R., 150**

71. ———— **Vicinage**—*Right of partner to pre-emption on sale of villages or large estates.*—According to the Mahomedan law, a partner has a right of pre-emption in villages or large estates. But a neighbour cannot claim such a right on the ground of vicinage. IN THE MATTER OF THE PETITION OF CHATTERNATH JHA *alias* JHINGHA JHA. MAHOMED HOSSEIN *v.* MOHSIN ALI

[6 B. L. R., 41: 14 W. R., F. B., 1

MAHOMED HOSSEIN *v.* MOHSUN ALI

[14 W. R., 266

72. ———— *Adjacent plots of land.*—*Quære*—Whether, as between owners of adjacent plots of land, pre-emption can exist by right of vicinage. NIRPUT MUHTOON *v.* DEEP KOONWAR

[8 W. R., 2

73. ———— *Separate mehals.* —Where an estate, originally one, has been divided into two separate mehals, no right of pre-emption under the Mahomedan law will subsist on behalf of one of such mehals in respect of the other merely by reason of vicinage: nor will any right of pre-emption arise from the fact that certain appurtenances to the original mehal are still enjoyed in common by the owners of the separated mehals. ABDUL RAHIM KHAN *v.* KHARAG SINGH . **I. L. R., 15 All., 104**

74. ———— *Equal right of pre-emption in two persons.*—Where two persons have by vicinage an equal right of pre-emption, the property is to be decreed to them in halves, on payment of their respective moieties of the purchase-money. KHEM KURUN *v.* SEETA RAM

[2 N. W., 257

75. ———— *Ownership.*—Mere possession gives no "huk shuffa" according to Mahomedan law: there must be ownership (mileck) in the contiguous land, the onus being on the plaintiff to prove ownership. BEHAREE RAM *v.* SHOOBHUDRA

[9 W. R., 455

76. ———— *House on land—Separate ownership.*—The owner of land is not entitled by Mahomedan law to pre-emption of a house standing thereon where his property in the land is wholly separate and distinct from the property in the house which belongs to another person with whom the owner has nothing in common. PERSHADI LAL *v.* IRSHAD ALI . . . . **2 N. W., 100**

77. ———— *Large estates—Small holdings—Mutual convenience.*—A claim to rights of pre-emption on the ground of vicinage alone will not lie in the case of large estates, but only when either houses or small holdings of land make parties such near neighbours as to give a claim on the ground of convenience and mutual service. EJNASH KOOER *v.* AMJUD ALLY . . **2 W. R., 261**

78. ———— *Large estates—Partners.*—The Mahomedan law of pre-emption on the score of vicinage applies only to houses or small plots of land, and not to large estates, or to a claim based on partnership when it is in proof that a separation of the estate has been effected. CHOWDHRY JOOGUL KISHORE SINGH *v.* POOCHA SINGH

[8 W. R., 413

79. ———— *Parcels of land —Entire estate.*—The right of pre-emption on the ground of vicinage is limited to parcels of land and houses, and does not extend to the purchase of an entire estate, even though it be entirely surrounded by the lands of the would-be pre-emptor. ABDUL AZIM *v.* KHONDKAR HAMED ALI

[2 B. L. R., A. C., 63: 10 W. R., 356

80. ———— **Large or small estates.**—The right of a shareholder to pre-emption exists whether the parcel of land sold, and in respect of which the claim is made, be large or small. Jehangir Baksh *v.* Lala Bhikari Lall
[6 B. L. R., 42 note

Jahangeer Buksh *v.* Bhickaree Lall
[11 W. R., 71

S. C. affirmed on review. In the matter of the petition of Jehangir Baksh
[7 B. L. R., 24: 11 W. R., 480

Mahatab Singh *v.* Ramtahal Misser
[6 B. L. R., 43 note: 10 W. R., 314

81. ———— **Agricultural estates**—*Partners.*—Pre-emption extends to agricultural estates, and is not merely confined to urban properties or small plots. Where there are several properties to which a common appurtenance in the shape of an undivided plot of land, a few trees and tanks is attached, partners in the appurtenance can claim pre-emption in respect of the properties. Karim Buksh *v.* Kamr-ud-deen Ahmad . 6 N. W., 377

(*c*) Pre-emption in Towns.

82. ———— **Owners of upper and lower floors of house**—*Pre-emption among Hindus.*—Wherever the custom of pre-emption exists in towns or amongst Hindus, the presumption is, until the contrary be shown, that the custom is based upon the Mahomedan law of pre-emption. Therefore, where a person owns the lower floor of a house, and another person owns the upper floor, with a right of way to it through the house of a third party, and sells the upper floor with its right of way, the owner of the house in which the way lies has under such custom a right of pre-emption of the upper floor, preferable to the right of the owner of the lower floor. Ganeshi Lall *v.* Luchman Dass . . 5 N. W., 31

83. ———— **Dwelling-house**—*Separate ownership of site of house.*—Where a dwelling-house was sold as a house to be inhabited as it stood with the same right of occupation as the vendor had enjoyed, but without the ownership of the site,—*Held* that a right of pre-emption under Mahomedan law attached to such house. Zahur *v.* Nur Ali
[I. L. R., 2 All., 99

84. ———— **Land from which irrigation is received**—*Owner of such land—Preferential right.*—Under the Mahomedan law, the owner of the land, through which the land in respect of which a right of pre-emption is claimed receives irrigation, has a preferential right to purchase rather than a mere neighbour. Chand Khan *v.* Naimat Khan
[3 B. L. R., A. C., 296: 12 W. R., 162

(*d*) Mortgages.

85. ———— **Accrual of right**—*Foreclosure of equity of redemption.*—In the case of a mortgage, the right of pre-emption does not arise until the equity of redemption is finally foreclosed. (Bayley, *J.*, dissenting.) Gurdial Mundar *v.* Teknarayan Singh . B. L. R., Sup. Vol., 166: 2 W. R., 215

86. ———— *Right of suit to enforce right of pre-emption—Foreclosure—Possession by mortgagee.*—On the foreclosure of a mortgage, after the expiry of the year of grace, but before a decree for possession had been obtained by the mortgagee, a suit to enforce the right of pre-emption in respect of the property mortgaged is maintainable. Tara Kunwar *v.* Mangri Meeah
[6 B. L. R., Ap., 114

87. ———— *Mortgage without actual transfer of possession.*—In a suit for a declaration of plaintiff's right of pre-emption in a property which had been originally mortgaged, but which, owing to a subsequent arrangement, had not passed from the mortgagor to the mortgagee,—*Held* that, as the ownership was still with the mortgagor, who could redeem his property within a stipulated period, no right of pre-emption had arisen from the Mahomedan law. Bhowanee Pershad *v.* Purshunno Singh . . . 11 W. R., 282

(*e*) Waiver of Right or Refusal to Purchase.

88. ———— **Subsequent re-conveyance by purchaser to vendor**—*Effect of, as against right of pre-emptor.*—Where one of two neighbours has sold his land to a stranger, and the other neighbour has thereupon claimed a right of pre-emption, no subsequent dissolution of the contract affects the right of the pre-emptor which has once accrued and been duly asserted. Bhadu Mahomed *v.* Radha Churn Bolia . . 4 B. L. R., A. C., 219

S. C. Bhodo Mahomed *v.* Radha Churn Bolia
[13 W. R., 332

89. ———— **Surrender of right of pre-emption before sale.**—Where an offer of sale was made to a pre-emptor, and he refused to avail himself of it, and consented to a sale to a stranger,—*Held* that after a sale to a stranger he could not set up his right of pre-emption. Braja Kishor Surma *v.* Kirti Chandra Surma
[7 B. L. R., 19: 15 W. R., 247

But *see* In the matter of the petition of Jehangir Baksh . . 7 B. L. R., 24 note

S. C. Jahangeer Buksh *v.* Lalla Bhikharee Lall . . . . . . 11 W. R., 480

where, however, the point was not directly decided, there being no sufficient proof of the refusal to purchase, and no evidence of consent to sell to another.

90. ———— **Refusal to purchase when property offered for sale**—*Subsequent suit to enforce right—Estoppel.*—A Mahomedan offered to sell his share of certain property to a partner, and, on the refusal of the latter to purchase the same, sold it to a stranger. *Held* the partner could not sue to enforce his right after the sale. Toral Komhar *v.* Auchhi . 9 B. L. R., 253: 18 W. R., 401

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

1. RIGHT OF PRE-EMPTION—*continued.*

SHEO TUHUL SINGH *v.* RAM KOOER [W. R., 1864., 311

KOOLDEEP SINGH *v.* RAM DEEN SINGH [24 W. R., 198

91. ———— Right of refusal on sale to stranger—*Co-sharers paying rent separately.*—*A* and *B*, Mahomedan co-sharers of a talukh, made separate agreements to pay rent to the zamindar, each shareholder being liable for his own share of the rent merely. Subject to this arrangement, the lands continued ijmali. *Held* that on a sale by *A* of part of his share to a stranger, who was also a Mahomedan, *B* was entitled to pre-emption. KOROMALI *v.* AMIR ALI . . . . 3 C. L. R., 166

92. ———— Right of refusal—*Conditional right—Co-sharers—Minor.*—Where a condition for pre-emption contained in a record-of-rights was intended to take effect at the time of a sale, and its language implied that the co-sharers in whose favour it was made were to be persons who were competent at that time to make a binding contract to accept or refuse an offer, no right of pre-emption accrued under the condition to a co-sharer who was a minor at the time of a sale and unrepresented by any person competent to conclude a binding contract on his behalf, whether it was assumed that the condition arose out of special contract or general usage. RAJA RAM *v.* BANSI . . . I. L. R., 1 All., 207

93. ———— *"Stranger"—"Sale"—Assignment by way of dower—Assignment in lieu of dower—Debt.*—The heirs of a Mahomedan have no legal interest or share in his property so long as he is alive, and cannot therefore be regarded as in any sense co-sharers or co-parceners in his property, so as to be entitled to claim the right of pre-emption in case of a sale by him of his property. *Held* therefore where a husband sold his share of an undivided estate to his wife, that although one of his heirs, she had not on that account a right of pre-emption in respect of such sale. A husband transferred certain property to his wife in consideration of a certain sum which was due by him to her as dower. *Held* that such transfer was a "sale" within the meaning of the Mahomedan law of pre-emption, and gave rise to the right of pre-emption. *Pearee Begum* v. *Hushmut Ali, 1 N. W., S. D. A., 1864, p. 475,* followed. The meaning of "stranger" and "sale," as used in the Mahomedan law of pre-emption, explained. FIDA ALI *v.* MUZAFFAR ALI [I. L. R., 5 All., 65

94. ———— Refusal to purchase without absolute relinquishment or surrender.—The right of pre-emption may be claimed after a sale notwithstanding there has been a refusal to purchase before the sale, where there has been no absolute surrender or relinquishment of the right, and such refusal has been made simply in consequence of a dispute as to the actual price of the property. ABADI BEGAM *v.* INAM BEGAM [I. L. R., 1 All., 521

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

1. RIGHT OF PRE-EMPTION—*continued.*

95. ———— Acquiescence in sale—*Notice to pre-emptor of projected sale—Purchase-money—Inaction of pre-emptor.*—The plaintiff in a suit to enforce the right of pre-emption alleged that the true consideration for the sale was less than the amount stated in the sale-deed. It was found that he made no communication to the vendor after he became aware that a sale was being negotiated, nor did he make it known to him that, while he stood upon his pre-emptive right, he declined to pay the price stated in the deed, because it was not the consideration agreed on between the vendor and the vendee. *Held* that the plaintiff was bound, instead of remaining silent, to communicate to the vendor that he was prepared to purchase at the price within a reasonable time, and that not having done so, he must be taken to have countenanced the completion of the bargain with the vendee, and to have waived his right of pre-emption. BAHAIRON SINGH *v.* LANMAN [I. L. R., 7 All., 23

96. ———— *Relinquishment of right.*—According to the Mahomedan law, if a pre-emptor enters into a compromise with the vendee, or allows himself to take any benefit from him in respect of the property which is the subject of pre-emption, he by so doing is taken to have acquiesced in the sale and to have relinquished his pre-emptive right. In a suit to enforce the right of pre-emption founded on the Mahomedan law, it appeared that the purchasers, by an agreement made with the plaintiffs on the same date as the sale in respect of which the suit was brought, agreed to sell the property to the plaintiffs any time within a year, and if the latter paid the price and purchased the property for themselves. *Held* that by the very fact of their taking the agreement, the plaintiffs had relinquished their right of pre-emption, and were precluded from enforcing it. HABIB-UN-NISSA *v.* BARKAT ALI [I. L. R., 8 All., 275

97. ———— *Omission to give notice of demand within reasonable time, Effect of —Co-sharers, Pre-emption between.*—The wajib-ul-urz of a village provided that a co-sharer wishing to sell his share must give notice to the other co-sharers, and that first a nearer co-sharer and next a more distant co-sharer should have a right of pre-emption. Where, such notice having been given, the co-sharer receiving notice took no action thereon within a reasonable time,—*Held* that, as his inaction would lead the vendor to conclude that he would not interfere or become a purchaser, it was equivalent to declining to purchase. MUHAMMAD WILAYAT ALI KHAN *v.* ABDUL RAB . I. L. R., 11 All., 108

98. ———— *Effect of offer by pre-emptor to purchase from vendee.*—*Held* that where a pre-emptor continues to assert his pre-emptive right, and on the strength of that right and in his character of pre-emptor offers to take the property from the purchaser by paying him the sale price, without resorting to, and with a view to avoid litigation, he cannot be said to have acquiesced in the sale

1. RIGHT OF PRE-EMPTION—*concluded.*

and waived his right of pre-emption. *Muhammad Nasiruddin* v. *Abul Hasan, I. L. R., 16 All., 300,* followed. *Habibunnissa* v. *Abdul Rahim, I. L. R., 8 All., 275,* referred to. MUHAMMAD YUNUS KHAN *v.* MUHAMMAD YUSUF . **I. L. R., 19 All., 334**

MUHAMMAD NASIRUDDIN *v.* ABUL HASAN **[I. L. R., 16 All., 300**

2. PRE-EMPTION AS TO PORTION OF PROPERTY.

99. ——— **Assertion of right as to portion of property**—*Ground for refusing whole.*—In the absence of sufficient ground for refusing to take the whole of the lands to be sold, the right of pre-emption cannot be asserted as to a portion only. CAZEE ALI *v.* MUSSEEUTOOLLAH . **2 W. R., 285**

100. ——— *Circumstances disentitling party to enforce the right.*—The right of pre-emption cannot ordinarily be claimed in respect of only a portion of any property conveyed away in a single sale; but this rule holds good only when the property sold is one entire property. Where a single sale embraces two distinct properties, in respect of one of which a right of pre-emption resides in any person who has not a similar right in regard to the other,—*Held* that it would be equally unreasonable to rule that he could claim both, and that he could claim neither—the only reasonable rule being that he could claim as much as he could take by a decree if it were separately sold. SURDHAREE LALL *v.* LABOO MOODEE . . . **25 W. R., 500**

101. ——— *Suit to enforce the right in respect of a part of the property sold.*—Every suit for pre-emption must include the whole of the property subject to the plaintiff's pre-emption, conveyed by one bargain of sale to one stranger; and a suit by a plaintiff pre-emptor, which does not include within its scope the whole of such pre-emptional property, is unmaintainable as being inconsistent with the nature and essence of the pre-emptive right. *Izzatulla* v. *Bhikari Mollah, 6 B. L. R., 386 : 14 W. R., 469,* and *Baisun Thakooranee* v. *Ram Singh, N. W., S. D. A., 1863, p. 394,* followed. *Oomur Khan* v. *Moorad Khan, N. W., S. D. A., 1865, p. 173,* and *Salig Ram* v. *Debi Prasad, 7 N. W., 38,* distinguished. *Cazee Ali* v. *Musseeutoollah, 2 W. R., 285 ; Abdool Gufoor* v. *Nur Banu, 1 B. L. R., A. C., 78 : 10 W. R., 111 ; Sheodyal Ram* v. *Bhyroo Ram, N. W., S. D. A., 1860, p. 53; Guneshee Lal* v. *Zaraut Ali, 2 N. W., 343;* and *Bhawani Prasad* v. *Damru, I. L. R., 5 All., 197,* referred to. DURGA PRASAD *v.* MUNSI **[I. L. R., 6 All., 423**

102. ——— *Suit by pre-emptor not entitled to claim the whole of the property sold—Frame of suit.*—*Held* that, where a pre-emptor by reason of the claim of other persons entitled equally with himself to claim pre-emption is only entitled to a certain portion of the property in respect of which he claims pre-emption, and not to the whole of it, he is not bound to frame his suit as a suit for the whole of the property sold, but only for so much as he would be entitled to having regard to the claims of the other pre-emptors. *Amir Hasan* v. *Rahim Bakhsh, I. L. R., 19 All., 466,* and *Durga Prasad* v. *Munsi, I. L. R., 6 All., 423,* referred to, *Kashi Nath* v. *Mukhta Prasad, I. L. R., 6 All., 370,* and *Hulasi* v. *Sheo Prasad, I. L. R., 6 All., 455,* distinguished. ABDULLAH *v.* AMANAT-ULLAH **[I. L. R., 21 All., 292**

103. ——— *Suit to enforce pre-emption to portion of property sold.*—Under a deed of sale, the vendor conveyed to the purchaser five lots of land. In a suit by a third party to enforce a right of pre-emption in respect of one out of the five plots,—*Held* that he could divide the bargain and sue on the ground of pre-emption for a portion only of the property covered by the deed of sale. IZZATULLA *v.* BHIKARI MOLLA **[6 B. L. R., 386 : 14 W. R., 469**

RAGHUNUNDAN SINGH *v.* MAJBUTH SINGH **[6 B. L. R., 387 note : 10 W. R., 379**

104. ——— *Sale of property of which shares belonged to minors.*—The property of several co-sharers, some of whom were minors, was sold to a single purchaser under a deed of sale, which contained a covenant by the vendors who professed to act on behalf of themselves and the minors that they would compensate the vendee for any loss he might incur should the minors, when they came of age, not ratify the sale. *A* sued to enforce her right of pre-emption in respect of the lands sold. The lower Appellate Court was of opinion that *A* could not enforce her claim of pre-emption in respect of the share of the minors; and on the Court's suggestion the plaint was amended, so as to ask for enforcement of her claim in respect only of the shares of the vendors of full age. *Held* that *A* was bound to claim her right against all the shares, and could not enforce it in respect of some only. ABDOOL GUFOOR *v.* NURBANU **[1 B. L. R., A. C., 78 : 10 W. R., 111**

105. ——— *Co-sharer—Mouzahs distinct from one another.*—The plaintiffs, who were shareholders in a particular mouzah, sued to enforce a claim to a right of pre-emption upon a sale under a kobala for a particular sum of money by another shareholder of a share in the mouzah, along with other properties with which the plaintiffs had no concern, to a third person who was not a shareholder. *Held* that, as the plaintiffs were entitled to claim a right of pre-emption in respect of the mouzah only and that mouzah was distinct from the other properties sold, the suit was maintainable. ROWSHUN KOER *v.* RAM DIHAL ROY **[13 C. L. R., 45**

106. ——— *Rival suits—Suit to enforce the right in respect of a part of the property sold.*—The prior institution of a suit by

MAHOMEDAN LAW—PRE-EMPTION —*continued.*

2. PRE-EMPTION AS TO PORTION OF PROPERTY—*continued.*

rival pre-emptors in no way entitles a pre-emptor to depart from the general rule of pre-emption by suing for a portion only of the property sold. *Kashi Nath* v. *Mukta Prasad, I. L. R., 6 All., 370,* referred to. HULASI *v.* SHEO PRASAD . **I. L. R., 6 All., 455**

107. ——————— *Wajib-ul urz—Rival suits—Decree not to allow either claimant to pre-empt part only of the property over which he has a pre-emptive right.*—Where two rival pre-emptors, each having an equal right to claim pre-emption under a wajib-ul-urz, bring suits to enforce their rights, in the absence of anything in the wajib-ul-urz to the contrary, the rule of Mahomedan law must be observed, and however the property may be divided by the decree of the Court between the successful pre-emptors, the Court must take care that the whole share must be purchased by both pre-emptors, or on the default of one by the other, or that neither of them should obtain any interest in the property in respect of which the suits were brought. In two rival suits for pre-emption the Court gave one claimant a decree in respect of a three-annas share, and the other a decree in respect of a two-annas six pies share of certain property, each decree being conditional on payment of the price within thirty days. The Court further directed that in case of either pre-emptor making default of payment within the thirty days, the other should be entitled to pre-empt his share on payment of the price thereof within fifteen days, of such default. Both pre-emptors made default of payment within the thirty days. One of them, within the further period of fifteen days, paid into Court the price of the share decreed in favour of the other and claimed to pre-empt such share. *Held* (affirming the judgment of MAHMOOD, *J.*) that the claim was inadmissible, since to allow it would have the effect of defeating the rule of law that a pre-emptor must buy the whole, and not part only, of the property which he is entitled to pre-empt. ARJUN SINGH *v.* SARFARAZ SINGH . . . **I. L. R., 10 All., 182**

108. ——————— *Pre-emptor disentitled by laches from claiming portion of property—Disqualification in claim for whole property.*—The principle of the rule that a pre-emptor must claim the whole of the property included in the sale-transaction, and for which one price was paid, if he is entitled to claim it, and cannot obtain a decree for part only of such property, applies to the case of a pre-emptor who claims the whole, but who is at the time disentitled by his own act or laches to maintain the claim as to a part. Such a disqualification prevents the pre-emptor from maintaining his suit for any portion of the property included in the sale. Where therefore a pre-emptor was disqualified from claiming a portion of the property sold, by not having made a prompt demand in accordance with the Mahomedan law in respect of such portion,—*Held* that he was thereby prevented from maintaining his suit for another portion claimed under the provisions of the wajib-ul-urz of a village, though he was willing to pay the full purchase-money and to leave in the vendee's hands the portion as to which he was disqualified. MUHAMMAD WILAYAT ALI KHAN *v.* ABDUL RAB . **I. L. R., 11 All., 108**

109. ——————— *Wajib-ul-urz—Pre-emptor disentitled by his own conduct to pre-empt part of the property sold—Pre-emptor not entitled to pre-empt any portion thereof.*—Where a pre-emptor sued for possession by right of pre-emption of certain property sold by one and the same sale-deed, claiming as to one portion of the property sold under the Mahomedan law and as to another under the wajib-ul-urz, and it was found that he had by his own acts or omissions disentitled himself from claiming that portion of the property to which the Mahomedan law applied, it was *held* that the pre-emptor was not entitled to pre-emption in respect of any portion of the property covered by the said sale-deed. *Muhammad Wilayat Ali Khan* v. *Abdul Rab, I. L. R., 11 All., 108,* followed. MUJIB-ULLAH *v.* UMED BIBI . . **I. L. R., 21 All., 119**

3. CEREMONIES.

110. ——————— **Necessity of proof of performance of preliminary ceremonies.**—In the case of pre-emption, strict proof is necessary of the performance of the preliminaries. HOSSEINEE KHANUM *v.* LALLUN . . . **W. R., 1864, 117**

JADU SINGH *v.* RAJKUMAR
[4 B. L. R., A. C., 171

ISSUR CHUNDER SHAHA *v.* NISAR HOSSEIN
[W. R., 1864, 351

PROKAS SINGH *v.* JOGESWAR SINGH
[2 B. L. R., A. C., 12

111. ——————— The right of pre-emption being a right weak in its nature, where such right is claimed under Mahomedan law, it should not be enforced except upon strict compliance with all the formal ties which are prescribed by that law. ALI MUHAMMAD *v.* TAJ MUHAMMAD
[I. L. R., 1 All., 283

112. ——————— *Omission to perform ceremonies—Evidence of relinquishment of right—Negligence.*—There are certain ceremonies to be performed in order to lay a foundation for the establishment in a Court of law of a right of this kind, when it is menaced; and though, on the one hand, the effect of the omission to prove performance of these ceremonies is not cancelled by pleas advanced in later petitions put in during the progress of a case, just as, on the other, that omission is not of necessity evidence of a relinquishment of the right, yet, in this case, in which defendant had exhibited strange haste in some stages of the negotiations, with the apparent purpose of forestalling plaintiff in his rights; but plaintiff's proceedings had been characterized with great negligence, if nothing worse; it was held that the plaintiff was not entitled to a decree. SURDHAREE LALL *v.* LABOO MOODEE . . . . . **25 W. R., 500**

113. ——— Acts or omissions by pre-emptor's authorized agent, Effect of.—It is a general rule of pre-emption that any act or omission on the part of a duly authorized agent or manager of the pre-emptor has the same effect upon pre-emption as if such act or omission had been made by the pre-emptor himself. HARIHAR DAT *v.* SHEO PRASAD **[I. L. R., 7 All., 41**

114. ——— Performance of ceremonies by agent or manager.—Under Mahomedan law, the legal forms to be observed under that law by a person claiming a right of pre-emption may be observed on behalf of such person by an agent or manager of such person. ABADI BEGAM *v.* INAM BEGAM . . . . **I. L. R., 1 All., 521**

115. ——— Performance of ceremonies by agent—*Affirmation by witnesses—Repudiation of sale.*—According to Mahomedan law, the affirmation by witnesses need not be made by the claimant of the right of pre-emption in person, but may be made by a duly constituted agent. OJHEOONISSA BEGUM *v.* RUSTUM ALI . . . **W. R., 1864, 219**

116. ——— Talab-i-mawasabat—*Intention to assert right—Talab-i-ishtahad—Demand in presence of witnesses.*—To entitle a person, otherwise favourably situated, to the right of pre-emption, two conditions must be fulfilled: first (talab-i-mawasabat), on receiving information of the sale he must immediately declare his intention to assert his right; and, secondly (talab-i-ishtahad), he must, as soon after as possible, make the demand of the vendor or purchaser, or upon the premises, and in the presence of witnesses. JHOTEE SINGH *v.* KOMUL ROY **[10 W. R., 119**

117. ——— In order to sustain a claim for pre-emption in Mahomedan law, it is essential that the ceremony of talab-i-mawasabat should be properly performed. JARFAN KHAN *v.* JABBAR MEAH . . **I. L. R., 10 Calc., 383**

118. ——— *Necessity of immediate claim.*—Under Mahomedan law, the "talab-i-mawasabat," or immediate claim to the right of pre-emption, should be made as soon as the fact of the sale is known to the claimant, otherwise the right is lost; and it was consequently held that the plaintiff, having failed to make the "talab-i-mawasabat" until twelve hours after the fact of the sale became known to him, had lost his right of pre-emption. ALI MUHAMMAD *v.* TAJ MUHAMMAD **[I. L. R., 1 All., 283**

119. ——— *Delay in making claim.*—On hearing of a sale, the pre-emptor must immediately make his demand called talab-i-mawasabat. Where a pre-emptor, on hearing of the sale of a property to which he had a right of pre-emption, went to the property in dispute and there declared his right as pre-emptor,—*Held* that such delay was fatal to his claim. RAM CHARUN *v.* NARBIR MAHTON **[4 B. L. R., A. C., 216 : 13 W. R., 259**

120. ——— *Omission to give notice of claim until after lapse of long time—Long deferred demand.*—A sale of property, to which the Mahomedan law of pre-emption was applicable, took place in October 1884. The plaintiff pre-emptor and his agent became aware of the sale shortly after it took place, and many months prior to July 1885. He did not allege that he had given notice that he claimed to exercise his right of pre-emption before July 1885. It was found as a fact that no such notice was given. *Held* that, even if such notice was given, it was too late, and was not a prompt demand in accordance with the Mahomedan law. MUHAMMAD WILAYAT ALI KHAN *v.* ABDUL RAB . . . . . **I. L. R., 11 All., 108**

121. ——— *Want of proof of required ceremonies—Wajib-ul-urz—Custom—Immediate and confirmatory demands.*—The wajib-ul-urz of a village gave a right of pre-emption "according to the usage of the country." In a suit for pre-emption there was no evidence to show what, in fact, was the usage prevailing in the district in regard to pre-emption. There was no evidence that the plaintiff had satisfied the requirements of the Mahomedan law as to immediate and confirmatory demands, or that there was any custom which absolved him from compliance with those requirements, or that he was at any time willing to pay the actual contract price. *Held* that in the absence of evidence of any special custom different from, or not co-extensive with, the Mahomedan law of pre-emption, that law must be applied to the case, and that, under the circumstances above stated, the suit failed and must be dismissed. *Fakir Rawot* v. *Emambakhsh, B. L. R., Sup. Vol., 35; Choudhry Brij Lall* v. *Gour Sahai, Agra, F. B., 128;* and *Jai Kuar* v. *Hira Lal, 7 N. W., 1,* referred to. RAM PRASAD *v.* ABDUL KARIM . . . . **I. L. R., 9 All., 513**

122. ——— *Time taken to ascertain if information of sale is correct.*—According to the Mahomedan law, the mere fact of the pre-emptor taking a short time before performance of the talab-i-mawasabat for ascertaining whether the information conveyed to him was correct or not, does not invalidate his right. The Mahomedan law allows a short time for reflection before performance of the first demand. AMJAD HOSSEIN *v.* KHARAG SEN SAHU . **4 B. L. R., A. C., 203 : 13 W. R., 299**

123. ——— *Making claim standing or sitting.*—The act of a claimant rising from his seat to claim his right of pre-emption, instead of claiming it as he sat, is not a delay sufficient to entail a forfeiture of his right. MAHARAJ SINGH *v.* LALLAH BRUCHOOK LALL . **W. R., 1864, 294**

124. ——— *Witnesses, Necessity of.*—Although, according to Mahomedan law books, it is not necessary, in respect to the talab-i-mawasabat, or first preliminary required to establish a right of pre-emption, that witnesses should hear the exclamation it involves, yet it does not follow that, as matter of evidence, Courts of law are bound to decree a suit to establish such a right simply on the deposition of the plaintiff. ABDOOL HOSSEIN KHAN *v.* GOBIND CHANDRA SHAHA **11 W. R., 404**

125. ———— **Talab-i-ishtahad**—*Necessity of proof of performance.*—To establish a claim to pre-emption under the Mahomedan law, it is not enough to prove that the ceremony of talab-i-mawasabat was performed; it is also necessary to prove the talab-i-ishtahad. NARBHASE SINGH *v.* LUCHMEE NARAIN POOREE . . . . . **11 W. R., 307**

126. ———— *Necessity of finding as to performance.*—The "talab-i-ishtahad" is a preliminary act as essential as the "talab-i-mawasabat" to secure to the claimant the right of enforcing pre-emption. There should always therefore be a distinct finding as to whether it was properly made or not. RAZEEODDEEN *v.* ZEENUT BIBEE **[8 W. R., 463**

127. ———— *Necessity of proof of performance.*—Under the Mahomedan law it is essential to the right of pre-emption to prove the performance of the talab-i-ishtahad. BHOWANEE DUTT *v.* LOKHOO SINGH . **W. R., 1864, 60**

128. ———— *Mode or form of ceremony—Performance—Hindus.*—To the due peformance of the ceremony of talab-i-ishtahad, it is not necessary that any particular form of words should be employed. RAMDULAR MISSER *v.* JHUMACK LAL MISSER **[8 B. L. R., 455: 17 W. R., 265**

129. ———— *Mode or form of ceremony—Talab-i-mawasabat.*—To establish a right of pre-emption, it is necessary to show that the ceremony of talab-i-ishtahad has been observed, which requires the pre-emptor to make an affirmation, not necessarily in the precise words of the form given in the Hedaya, but in substance to the effect of declaring, before witnesses, that the earlier preliminary—*viz.*, talab-i-mawasabat—has already been performed. GIRDHAREE SINGH *v.* ROJUN SINGH **[24 W. R., 462**

130. ———— *Requisites for ceremony—Invocation of witnesses.*—To the ceremony of ishtahad or talab-i-istahad, it is essential that there should be an express invocation of witnesses. PROKAS SINGH *v.* GUGESWAR SINGH **[2 B. L. R., A. C., 12**

131. ———— *Requisites for ceremony—Declaration and invocation of witnesses.*—According to the Mahomedan law, strict adherence to the rules for the performance of the talab-i-ishtahad is specially necessary. In performing the talab-i-ishtahad, the pre-emptor must clearly declare his right and invoke witnesses. He must declare that "he has a right of pre-emption to which he has laid claim and that he still claims it," and invokes witnesses "to bear witness therefore to the fact." JADU SINGH *v* RAJKUMAR **[4 B. L. R., A. C., 171: 13 W. R., 177**
DAYAMOOLLAH *v.* KIRTEE CHUNDER SURMAH **[18 W. R., 530**

132. ———— *Requisites for ceremony—Invocation of witnesses to demand.*—According to the Mahomedan law, it is essential to the performance of the talab-i-ishtahad that third persons should be formally called upon, either in the presence of the purchaser or on the land; or, if the vendor is in possession, in the presence of the vendor, to bear witness to the demand. GOLAKRAM DEB *v.* BRINDABAN DEB **[6 B. L. R., 165 : 14 W. R., 265**

133. ———— *Performance in presence of purchaser.*—The ceremony of talab-i-ishtahad, or affirmation before witnesses, may, at the option of the pre-emptor, be performed in the presence of the purchaser only, though he has not yet obtained possession. JANGER MAHOMED *v.* MAHOMED ARJAD **[I. L. R., 5 Calc., 509 : 5 C. L. R., 370**

134. ———— *Performance in presence of person in possession, vendor or purchaser.*—To establish the right of pre-emption, the talab-i-ishtahad, or affirmation before witnesses, must be performed in the presence of the person in possession of the lands, whether it be the vendor or the purchaser. CHAMROO PASBAN *v.* PUHLWAN ROY **[16 W. R., 3**

135. ———— *Omission to invoke witnesses—Talab-i-mawasabat—Ceremonies of "immediate demand," and "demand with invocation."*—A person claiming a right of pre-emption made the talab-i-mawasabat in the presence of witnesses, but when doing so was neither at the place, the subject of the right of pre-emption, nor was he in the presence of the vendor or vendee. *Held,* on second appeal, that the lower Appellate Court having found that the talab-i-ishtahad was invalid on the ground that there was no evidence of a demand with invocation of witnesses having been made, the right of pre-emption could not be claimed. JADUNUNDUN SINGH *v.* DULPUT SINGH **I. L. R., 10 Calc., 581**

136. ———— *Mode of invocation of witnesses.*—In a suit to establish the right of pre-emption, where the witnesses said that on the refusal of the vendor the pre-emptor had nominated them witnesses, the lower Courts were held to have been justified in their inference that he had complied with the exigency of the Mahomedan law. SHAM LALL SAHOO *v.* AFSUROONISSA . **22 W. R., 184**

137. ———— *Invocation of witnesses where talab-i-mawasabat is made in presence of witnesses—Performance of talab-i-mawasabat and ishtahad—Witnesses.*—Where the first talab (talab-i-mawasabat) is made in the presence of witnesses, and the witnesses are then called to bear testimony to the fact, it is not necessary to invoke witnesses on

the occasion of the second talab (talab-i-ishtahad). *Wazid Ali Khan* v. *Hunuman Prosad, 4 B. L. R., A. C., 139,* and *Gureeboolah Khan* v. *Kebul Lall Mitter, 13 W. R., 125,* cited. KOROMALI *v.* AMIR ALI

[3 C. L. R., 166

138. ——— *Invocation of witnesses—Claim where there are several co-sharers—Tender of price for the land claimed—One out of several co-sharers claiming a right to pre-emption.*—A person seeking pre-emption declared his right thereto when he first heard of the sale, in the presence of witnesses; and as soon as was possible on the same day, in the presence of the same witnesses, demanded his right from the vendors and the purchasers. *Held* that it was unnecessary that he should again state, when making his demand, or that his witnesses should testify to the fact that he had declared his right as soon as he heard of the sale. The principle of the law of pre-emption is, that the pre-emptor should assert his right as soon as he has heard of the sale; that he should demand his right from the vendor or purchaser, or on the ground, in the presence of witnesses; and this assertion and demand may be simultaneous; but if they are not, the pre-emptor, when he makes the demand, is required to make a declaration before witnesses that he asserted his right when first he heard of the sale. NUNDO PERSHAD THAKUR *v.* GOPAL THAKUR

[I. L. R., 10 Calc., 1008

139. ——— *Ceremonies of "immediate demand" and "demand with invocation."*—When a person claiming a right of pre-emption has performed the talab-i-mawasabat in the presence of witnesses, but not in the presence either of the seller or of the purchaser, or on the premises, it is necessary that when performing the talab-i-ishtahad, he should declare that he has made the talab-i-mawasabat, and at the same time should invoke witnesses to attest it. *Jadunandun Singh* v. *Dulput Singh, I. L. R., 10 Calc., 581,* affirmed. *Nundo Pershad Thakur* v. *Gopal Thakur, I. L. R., 10 Calc., 1008,* overruled. RUJJUB ALI CHOPEDAR *v.* CHANDI CHURN BHADRA

[I. L. R, 17 Calc., 543

140. ——— *Talab-i-mawasabat.*—In making talab-i-ishtahad under the Mahomedan law it is essential to the validity of that proceeding that the person making the demand should in some form or another distinctly state that he had prior thereto made what is known as the immediate demand (talab-i-mawasabat). *Rujjab Ali Chopedar* v. *Chundi Churn Badra, I. L. R., 17 Calc., 543,* referred to. AKBAR HUSAIN *v.* ABDUL JALIL

[I. L. R., 16 All., 383

141. ——— *Demand made "on the premises"—Demand made within an undivided village a share in which was the subject of sale.*—Where certain persons claimed pre-emption in respect of a share in an undivided village and proved that they made an immediate assertion of their intention to pre-empt in the presence of witnesses within the area of the zamindari to which the share sold belonged, it was *held* that, in the absence of any indication that the demand was not made *bonâ fide*, the demand of pre-emption was a good demand made "on the premises" within the meaning of the Mahomedan law. KULSUM BIBI *v.* FAQIR MUHAMMAD KHAN I. L. R., 18 All., 298

142. ——— *Demand made to vendee not in possession—Demand made by agent of pre-emptor.*—*Held* that, if the talab-i-ishtahad is made in the presence of the vendee, it is not necessary that such vendee should, at the time the demand is made, be actually in possession of the property in respect of which pre-emption is claimed. *Chamroo Pasban* v. *Puhlwan Roy, 16 W. R., 3,* explained. *Jhotee Singh* v. *Komul Roy, 10 W. R., 119*; *Janger Mahomed* v. *Mohamed Arjad, I. L. R., 5 Calc., 509; Gola Ram Deb* v. *Brindabun Deb, 6 B. L. R., 165 : 14 W. R, 265*; and *Dayemoollah* v. *Kirtee Chunder Surmah, 18 W. R., 530,* referred to. *Held* also that the ceremony of talab-i-ishtahad need not necessarily be performed by the claimant for pre-emption in person, but may be performed by a duly constituted agent on his behalf. *Wajid Ali Khan* v. *Lalla Hanuman Prasad, 4 B. L. R., A. C., 139,* and *Ojheoonissa Begum* v. *Rustum Ali, W. R. (1864), 219,* referred to. ALI MUHAMMAD KHAN *v.* MUHAMMAD SAID HUSAIN

[I. L. R., 18 All., 309

143. ——— *Witnesses—Servants of pre-emptor.*—In the making of the talab-i-ishtahad the servants of the pre-emptor are competent witnesses. The disability in this respect imposed by the Mahomedan law is limited to minors and persons convicted of slander. MUHAMMAD YUNUS KHAN *v.* MUHAMMAD YUSUF I. L. R., 19 All., 334

144. ——— *Reference to talab-i-mawasabat necessary.*—A pre-emptor claiming pre-emption under the Mahomedan law is bound, at the time when he makes his tatab-i-ishtahad, to state distinctly that he has already made talab-i-mawasabat. *Rujjub Ali Chopedar* v. *Chandi Churn Bhadra, I. L. R., 17 Calc., 543,* followed. ABBASI BEGAM *v.* AFZAL HUSEN I. L. R., 20 All., 457

145. ——— *Reference necessary to the previous talab i-mawasabat.*—When in asserting a claim for pre-emption the making of the talab-i-ishtahad is required, it is absolutely necessary that the time of making this demand reference should be made to the fact of the talab-i-mawasabat having been previously made, and this necessity is not removed by the fact that the witnesses to both demands are the same. *Rujjub Ali Chopedar* v. *Chundi Churn Bhadra, I. L. R., 17 Calc., 543*; *Akbar Husain* v. *Abdul Jalil, I. L. R., 16 All., 383*; and *Abasi Begam* v. *Afzal Husen, I. L. R., 20 All., 457,* followed. *Nundo Pershad Thakur* v. *Gopal Thakur, I. L. R., 10 Calc., 1008,* dissented from. ABID HUSEN *v.* BASHIR AHMED

[I. L. R., 20 All., 499

3. CEREMONIES—*concluded.*

146. ——— *Necessity of immediate demand.*—To entitle a person to a right of pre-emption under Mahomedan law, it must be shown that the talab-i-ishtahad was made as soon as possible. NURADDIN MAHOMED *v.* ASGAR ALI [12 C. L. R., 312

147. ——— *Necessity of immediate demand.*—It is not a binding rule of law that the talab-i-ishtahad by a pre-emptor, if made within a day after the receipt of intelligence of the purchase, is necessarily in time for the preservation of the right of pre-emption. The due and sufficient observance of the formality of talab-i-ishtahad as to time is a question to be decided in each case by the Court which has to deal with the facts. JAMILAN *v.* LATIF HOSSEIN [8 B. L. R., 160 : 16 W. R., F. B., 13

148. ——— *Mode of performance.*· The personal performance of the talab-i-ishtahad, or demand for pre-emption by the pre-emptor, depends on his ability to perform it. He may do it by means of a letter or messenger, or may depute an agent, if he is at a distance and cannot afford personal attendance. WAZID ALI KHAN *v.* LALA HANUMAN PRASAD [4 B. L. R., A. C., 139 : 12 W. R., 484

IMAMUDDIN *v.* SHAH JAN BIBI [6 B. L. R., 167 note

149. ——— *Delay in making demand—Ceremonies of affirmation.*—A delay of one day is not such a delay as to interfere with the right of pre-emption under the Mahomedan law. The demand by affirmation should be made with the least practicable delay. The ceremony of affirmation should be carried out before either the vendor or the purchaser, or be performed on the premises. MAHOMED WARIS *v.* HAZEE EMAMOODDEEN [6 W. R., 173

150. ——— *Delay in making demand.*—A claim to pre-emption should be made as soon as the claimant becomes aware of the completion of the sale. AJOODHYA POOREE *v.* SOHUN LALL [7 W. R., 428

ELAHEE BUKSH *v.* MOHAN . . 25 W. R., 9

151. ——— **Performance of preliminary ceremonies** *Expression of readiness to purchase.* Under the Mahomedan law, when a person claims a right of pre-emption, it is necessary to the validity of his claim that he should promptly assert, after the completion of the sale, his willingness to become a purchaser. GHOLAM HOSSEIN *v.* ABDOOL KADIR . . . . . 5 N. W., 11

152. ——— *Delay in making preliminary declaration.*—According to the Mahomedan law of pre-emption, the first thing to be done by the claimant of pre-emption is to make the preliminary declarations. First going to his house to get the money is not a compliance with the law. MONA SINGH *v.* MOSRAD SINGH . 5 W. R., 203

4. MISCELLANEOUS CASES.

153. ——— **Enforcement of right**—*Delivery or registration of bill of sale.*—A contract having been entered into for sale and purchase of certain property, the plaintiff, pre-emptor, was not bound to defer the enforcement of his right of purchase till the bill of sale had been delivered or registered, or payment made. LUCHMEE NARAIN *v.* BHEEMUL DOSS . . . . 8 W. R., 500

See GIRDHAREE LALL *v.* DEANUT ALI [21 W. R., 311

154. ——— **Offer to purchase at time of registration**—*Sufficiency of claim.*—*Held* that the parties to pre-emption, being Mahomedans, must be bound by the strict conditions of law of pre-emption, and that the offer to purchase before the registrar at the time of registration of the sale-deed was not a sufficient compliance with the provisions of that law. KAREEMOODDEEN *v.* MOEIZOODDEEN KHAN [1 Agra, 184

155. ——— **Tender of price**—*Necessity of tender.*—It is not incumbent on a pre-emptor to tender the price at the time of making his claim. KHOFFEH JAN BEBEE *v.* MOHOMED MEHDEE [10 W. R., 211

HEERA LALL *v.* MOORUT LALL . 11 W. R., 275

156. ——— *Statement of readiness and willingness to pay.*—In a suit for pre-emption it is unnecessary to prove a tender of the actual price paid for the property claimed, it being sufficient if the person claiming the right to pre-emption states that he is ready to pay for the land such sum as the Court may assess as the proper price for the property. NUNDO PERSHAD THAKUR *v.* GOPAL THAKUR . I. L. R., 10 Calc., 1008

157. ——— *Lien of vendor.*—The right of the first purchaser is simply a vendor's lien,—*i.e.*, to retain the property until he has the money from the party claiming pre-emption. It is no part of the Mahomedan law that the claimant of a right of pre-emption must carry the money in his hands and tender it to the first purchaser. A right of pre-emption may be decreed in respect of land within the patti of the party claiming such right. BULBOOD SINGH *v.* MAHADEO DUTT . 2 W. R., 10

158. ——— *Conclusion of contract of sale.*—As soon as a contract is ratified by acceptance and the vendor has gone so far that he cannot legally draw back, it is time for the pre-emptor to step in. A pre-emptor is not required to tender the purchaser's price, or any price, at the time of making his demand; and so long as a party claiming a right of shuffa pays the amount which the Court considers to be the proper price, he brings himself in Court within a reasonable time. On the question of pre-emption the Court must act in strict accordance with the provisions of the Mahomedan law rather than on what it thinks just and equitable. NUBEE BUKSH *alias* GOLAM NUBEE *v.* KALOO LUSHKER [22 W. R., 4

MAHOMEDAN LAW—PRE-EMPTION —*concluded.*

4. MISCELLANEOUS CASES—*concluded.*

159. ——— **Loss-of right**—*Claim disproved to specific land at specific price.*—The right of pre-emption is lost where there is a dispute as to the purchase-money, if the plaintiff (instead of offering by his plaint to pay the real amount, whatever it may be) claims to purchase a specific quantity of land at a specific price, and that right is shown to have no existence. ACHURBUR PANDAY *v.* BUCKSHEE RAM [2 W. R., 38

160. ——— **Rights of purchaser on allowance of claim**—*Profits between time of purchase and transfer to pre-emptor.*—*Held* that a purchaser is entitled to the profits of the property purchased by him accruing between the time of purchase and subsequent transfer to a pre-emptor. BULDEO PERSHAD *v.* MOHUN . 1 Agra, Rev., 30

161. ——— **Decree for pre-emption**—*Profits of property accruing between sale and decree becoming final—Pre-emption for Hindus—Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), s. 37—Pre-emption on basis of contract or custom.*—In a suit for pre-emption based on the wajib-ul-urz of a village, the plaintiff pre-emptor did not ask for a declaration that he was entitled to be treated as a purchaser from the date of the sale to the vendees-defendants, nor that he was entitled to the rents and profits as from the date of the sale, nor did he ask for mesne profits. The decree in his favour did not grant him any such relief. The wajib-ul-urz was silent as to whether the purchaser or the pre-emptor was entitled to the profits accruing subsequently to the date of the sale being avoided. *Held* by the Full Bench that the decree merely avoided the sale and divested the original owners of all interest in the property as from the date when the decree became final by the payment, in accordance with its terms, by the pre-emptor of the pre-emptive price decreed, and vested in the pre-emptor the rights of ownership from that date, and his rights were not postponed until he had obtained possession of the property. *Held* that the profits of the property which accrued between the date of the sale and the date when the pre-emptor, in accordance with the decree, paid the decreed pre-emptive price, belonged not to the pre-emptor, nor to the original vendor, but to the original vendees. *Held* by MAHMOOD, *J.*, that the vendees-defendants were entitled to the profits accruing up to the date when the pre-emptor acquired possession of the property in accordance with the terms of the decree. Observations by MAHMOOD, *J.*, upon the texts of the Mahomedan law applicable to the case by way of analogy; upon the contention that there is a Hindu law of pre-emption applicable to Hindus, under s. 37 of the Bengal Civil Courts Act (XII of 1887); and upon the relation of the Mahomedan law to cases in which pre-emption is claimed on the basis of contract or custom embodied in the wajib-ul-urz of a village. DEOKINANDAN *v.* SRI RAM . . . . I. L. R., 12 All., 234

MAHOMEDAN LAW—PRESUMPTION OF DEATH.

1. ——— **Missing person**—*Evidence Act, I of 1872, s. 108—Act VI of 1871, s. 24.*—The rule contained in s. 108 of the Evidence Act governs the case of a Mahomedan who has been missing for more than seven years, when the question of his death arises in cases to which, under the provisions of s. 24 of Act VI of 1871 (Bengal Civil Courts Act), the Mahomedan law is applicable. *Per* MAHMOOD, *J.*—The rule of the Mahomedan law that a missing person is to be regarded as alive till the lapse of ninety years from the date of his birth, is, according to the most authoritative texts of the Mahomedan law itself, a rule of evidence and not of "succession, inheritance, marriage, or caste, or any religious usage or institution," within the meaning of s. 24 of Act VI of 1871. MAZHAR ALI *v.* BUDH SINGH [I. L. R., 7 All., 297

2. ——— *Right of inheritance.*—*Held* that, as under the Mahomedan law a missing person is considered "defunct" as regards others' property, and cannot inherit from others during the period allowed for his reappearance, the plaintiff, his son, and nearest relative of the widow, was entitled to get the money claimed, it being compensation for land which had been found to belong to her exclusively, and not as having descended from her husband. IMAM ALI KHAN *v.* ABDUL ALI KHAN [2 Agra, 28

3. ——— *Position of, as to inheritance during absence—Person in unlawful possession—Legal heir.*—*Held* that, assuming the Mahomedan law to provide that the share of a missing person, which has devolved on him during his absence, is to be reserved or held in suspense until the expiration of the term after which he is to be regarded as dead, a claimant who had no title whatsoever to possession could not benefit by such provision of Mahomedan law in face of the person who would be the legal heir failing the missing person, and the possession of such unlawful holder can be disturbed by such legal heir. DOWLUT KHATOON *v.* ALI JAN [2 Agra, 59

4. ——— *Alienation by heirs of—Right of alienee.*—In a suit to recover possession of a share of landed property, where plaintiff claimed on the ground of purchase from the heirs of the proprietor, who had been missing for many years, and in which the defendant set up a mokurari, and pleaded that as ninety years had not elapsed since the disappearance of the proprietor the property could not, under Mahomedan law, be inherited by his heirs, and the alienation by them was therefore invalid,—*Held* that, as plaintiff had been found in possession under the conveyance from the heirs, who did not dispute his title, the defendant, a stranger, who had failed to prove either title or possession under the mokurari which he set up, was not in a position to advance the plea in question. *Held* that ninety years is the least period within which, according to Mahomedan law, the estate of a missing person can be alienated by his heirs. HOSSEINEE KHANUM *v.* TIJUN LALL . . . . 14 W. R., 293

MAHOMEDAN LAW—PRESUMPTION OF DEATH—*concluded.*

5. ———— *Alienation of property by his heirs—Claim of other heirs.*—A claim by the wife and daughters of a missing person to obtain possession of the shares to which the missing person would have been entitled in the estate of two brothers and a sister on surviving them, was rightly dismissed, under Mahomedan law, on the ground that the death of the missing person was not proved, and ninety years had not elapsed from his birth. A sale of the shares by *R*, the brother of the missing person, who was in possession, was properly declared null and void. As *R* would have excluded the wife and daughters of the missing person from inheritance, it was held that he should be allowed to retain the shares in his hands, subject to their surrender on the reappearance of the missing person. RAKHI BIBI *v.* RAHAT BIBI . . . . **7 N. W., 191**

6. ———— *Act I of 1872, s. 108—Act VI of 1871, s. 24.*—*F*, one of the heirs to the property of his parents (the family being Mahomedans) was "missing" when they died, and subsequently, when the other heirs to such property sued his daughter *M* for the possession of a portion of such property, *M* set up as a defence to the suit that her father was alive, and that during his lifetime the plaintiffs could not claim his share in such portion,—*Held* by STUART, *C.J.*, and SPANKIE, *J.*, that the suit, being one to enforce a right of inheritance, must be governed by the Mahomedan law relating to a "missing" person. *Parmeshar Rai* v. *Bisheshar Singh, I. L. R., 1 All., 53*, distinguished. *Held* by STUART, *C.J.*, that, according to Mahomedan law, ninety years not having elapsed from *F*'s birth, his share could not be claimed by the plaintiffs, but must remain in abeyance until the expiry of that period or his death was proved. *Held* by PEARSON, *J.*, and SPANKIE, *J.*, that *F* being a "missing" person when his parents died, his daughter, according to that law, was not entitled to hold his share either as heir or trustee. HASAN ALI *v.* MAHERBAN **[I. L. R., 2 All., 625**

MAHOMEDAN LAW—SALE.

See MAHOMEDAN LAW—MORTGAGE. **[I. L. R., 20 Bom., 116**

MAHOMEDAN LAW—SLAVERY.

See SLAVERY . **I. L. R., 3 Bom., 422**
[12 Bom., 156

MAHOMEDAN LAW—SOVEREIGNTY.

———— **Sovereign's rights as to property.**—By Mahomedan law, *semble*, the dominion of the sovereign is equally absolute and uncontrolled over all his possessions of every kind; but *quære* whether all his possessions are necessarily subject to the ordinary rules of inheritance and partition among descendants. A reigning Mahomedan prince may possess property held *jure coronæ*, as well as property acquired by some other title. GHULAM MUHAMMAD NAIAMUT KHAN *v.* DALE **[1 Mad., 281**

MAHOMEDAN LAW—USURPED PROPERTY.

———— **Conversion of usurped property**—*Right of suit for damages by party injured.*—Under Mahomedan law, where there has been a change in usurped property, the injured party has a claim to recover damages in respect of the property usurped, but cannot claim to share in the property into which it has been converted. An heir cannot therefore claim estates purchased with moneys belonging to the ancestral estate of the deceased which have been misappropriated by a co-heir, but must claim to recover his share in money. NOOR-OOL HOSSEIN *v.* MOONEERAM . . **4 N. W., 103**

MAHOMEDAN LAW—USURY.

1. ———— **Interest**—*Act XXVIII of 1855.*—The custom of taking interest as between Mahomedans is recognized by the Courts. *Semble*—*Per* PHEAR, *J.* (dissenting from *Ram Lall Mookerjee* v. *Haran Chunder Dhur, 3 B. L. R., 308, O. C., 130*) — Act XXVIII of 1855 repealed the Mahomedan laws relating to usury. By "laws relating to usury" the Legislature meant laws affecting the rate of interest. MIA KHAN *v.* BIBI BIBIJAN . **5 B. L. R., 500: 14 W. R., 308**

2. ———— *Interest on dower.*—With respect to the awarding of interest on a claim of dower by a Moslem widow, the principle of Mahomedan law will not apply. SOORMA KHATOON *v.* ATTAFFOONNISSA KHATOON . **2 Hay, 210**

MAHOMEDAN LAW—WIFE.

1. ———— **Power of alienation**—*Power of wife as one of several tenants in-common to grant lease.*—The District Judge's decision that a Mahomedan married woman cannot execute a valid lease which may endure beyond her lifetime, of property of which she is one of several tenants-in-common, held bad in law. NICHHABHAI PRAGJI *v.* ISSEKHAN HAJI ABDULA KHAN **[2 Bom., 313: 2nd Ed., 297**

2. ———— **Husband and wife**—*Presumption of ownership of property.*—Where rights of ownership had been exercised for a series of years by the husband, and never by the wife, over property which had descended from his wife's father (his own uncle), the husband having mortgaged the property and dealt with it in all respects as if he were the owner, and the wife possessing none of the documents which she would have been able to produce if she had acted as the owner, it was held that she had no such interest in the property as entitled her to maintain a suit to recover possession of it after it was sold in satisfaction of the husband's debts. OZEEROONISSA BIBEE *v.* RAMDHUN ROY . **11 W. R., 17**

MAHOMEDAN LAW—WILL.

See Mahomedan Law—Gift—Validity.
[W. R., 1864, 221
1 W. R., 17, 152
8 W. R., 84
7 N. W., 313
I. L. R., 9 All., 357

See Parties—Parties to Suit-Executors . . I. L. R., 19 Bom., 83

See Receiver . I. L. R., 19 Bom., 83

1. ——— **Gift operating as will**—*Gift in contemplation of death—Legacy.*—According to the Mahomedan law, a gift made in contemplation of death, though not operative as a gift, operates as a legacy. Ordinarily it conveys to the legatee property not exceeding one-third of the deceased's whole property, the remaining two-thirds going to the heirs. In the absence of heirs, a will carries the whole property. Ekin Bibee *v.* Ashruf Ali
[1 W. R., 152

2. ——— **Invalid will**—*Will disinheriting heirs.*—A wasi-ut-namah, or will, divesting all the property from the next heirs, is illegal under Mahomedan law. Jumunooddeen Ahmed *v.* Hossein Ali . . . . 2 W. R., Mis., 49

3. ——— *Will made without consent of heirs.*—A will which has never received the assent of the heirs of the testator is inoperative to alter their rights to succeed according to the Mahomedan law of inheritance. Kadir Ali Khan *v.* Nowsha Begum . . 2 Agra, 154

4. ——— *Will devising more than half estate to daughter.*—Under the Mahomedan law, a person cannot devise more than one half of his estate to his daughter, and a will devising more to her is invalid. Mahomed Mudun *v.* Khodezunnissa *alias* Khookee Bebee
[2 W. R., 181

5. ——— *Bequest by married woman—Consent of husband.*—*Held* that the bequest by a married woman of the whole of her estate to her brother, without the assent of her husband, was invalid according to the Mahomedan law. Muhammad *v.* Imamuddin
[2 Bom., 53: 2nd Ed., 50

6. ——— *Legacy to one of several heirs—Want of consent of others.*—A legacy cannot be left to one of a number of heirs without the consent of the rest. Abedoonissa Khatoon *v.* Ameeroonissa Khatoon
[9 W. R., 257

7. ——— *Power of testator to interfere with devolution of property.*—By the Mahomedan law, a testator may bequeath one-third of his estate to a stranger, but cannot leave a legacy to one of his heirs without the consent of the rest. A will purporting to give one-third of the testator's property to one of his sons as his executor, to be expended at the son's discretion in undefined pious uses, and conferring on such son a beneficial interest in the surplus of such third share,—*Held* to be an attempt to give, under colour of a religious bequest, a legacy to one of the testator's heirs, and to be invalid without the confirmation of the other heirs. Khajooroonnissa *v.* Roushan Jehan
[I. L. R., 2 Calc., 184: 26 W. R., 36
L. R., 3 I. A., 291

8. ——— *Will made without consent of heirs.*—Plaintiffs claimed as purchasers from the daughters (as heirs) of a Mahomedan. The son, intervening, was made a party to the suit, and set up a will executed by his father, under which a large portion of the estate was endowed for charitable purposes, and the rest divided among the heirs. The lower Appellate Court found the will to be *bonâ fide*, and dismissed the suit. *Held* that, the will having been put in issue, the lower Appellate Court should have found whether the heirs were consenting parties; for the bequest by a Mahomedan of more than one-third of his estate without the consent of his heirs is invalid. Baboojan *v.* Mahomed Nurool Huq . . . 10 W. R., 375

9. ——— *Suit for share of property against persons in possession under will—Onus probandi.*—In a suit for an undivided share of property claimed by the plaintiffs as heirs of the deceased owner, where the defendants pleaded possession under a wasi-ut-namah, or will,—*Held* that the Court could not tell how far the will was valid or invalid under the Mahomedan law, which allows a testator to give away from his heirs only one-third of his property, and therefore the onus was on the defendant to furnish a complete statement of the testator's property at the time of his death; failing which the plaintiff's claim must prevail. Sukoomut Bibee *v.* Warris Ali . . 22 W. R., 400

10. ——— *Consent of heirs—Consent before testator's death.*—By Mahomedan law the consent given by heirs to a testator's will before his death is no assent at all; to be valid, it must be given after the testator's death. Nusrut Ali *v.* Zeinunnissa . . 15 W. R., 146

11. ——— *Assent given after testator's death.*—According to Mahomedan law, the consent of the heirs can validate a testamentary disposition of property in excess of one-third of the property of the testator, if the consent be given after the death of the testator. But if the consent be given during the lifetime of the testator, it will not render valid the alienation, for it is an assent given before the establishment of their own rights. Cherachom Vittil Ayisha Kutti Umah *v.* Valia Pudiake Biathu Umah . 2 Mad., 350

12. ——— *Consent of heiress to will—Evidence of consent.*—To establish the consent of a Mahomedan heiress to a will, evidence of some act done at the time of its execution, or some act done subsequently, amounting to a ratification of it, is necessary. The Court will not presume the consent of a Mahomedan heiress to a will, even although she continues to reside in a dwelling-house assigned to her by the will in question. Ramcoomer Chunder Roy *v.* Faqueeroonissa Begum. Faqueeroonissa Begum *v.* Sufdar Ali
[1 Ind. Jur., O. S., 119

13. ———— *Consent of heir —Evidence of consent.*—According to Mahomedan law, a will is valid as against an heir if he affixed his signature to it as a consenting party thereto without undue influence. KHADEJAH BIBEE *v.* SUFFUR ALI . . . . **4 W. R., 36**

14. ———— *Construction of a letter containing a bequest—Suicide of testator.* —A letter, written shortly before the testator's death, contained directions as to his property, conferring the proprietary right therein in equal shares on certain persons, to take effect on his death. Accordingly, the letter acted as a wil under Mahomedan law. The testator died, within a few hours after, from poison administered by himself with the intention of suicide. The letter stated that he had taken poison, but this was construed as a representation of the state of things as they would present themselves at the time when the letter arrived. Title under the will having been disputed in this suit, on the ground that the will having been made by a person who had taken poison for the above purpose, was invalid by Mahomedan law. *Held* that the burden of proving that the will was written after the taking the poison was on the party impugning the will; that the letter was consistent with its having been written before the taking the poison; that the other evidence tended strongly to show that it was written before; and that therefore the reason alleged against the validity of the will was not applicable to the case. MAZHAR HUSEN *v.* BODHA BIBI

[I. L. R., 21 All., 91
L. R., 25 I. A., 219

15. ———— **Form of will**—*Nuncupative will—Evidence of will.*—The rule that by Mahomedan law a will does not require to be in writing is universal. The omission to write the wish, where there was ample time for that purpose, may throw doubt on the fact of the words being used as the expression of the testator's last will. But if the Court finds that the testator expressed his will, and that this was his last will, the omission to render it into writing will not deprive it of legal effect. TAMEEZ BEGUM *v.* FURHUT HOSSEIN

[2 N. W., 55

16. ———— *Nuncupative will —Law of Shiah sect.*—A nuncupative will by a Mahomedan of the Shiah sect bequeathing property less in amount than one-third of his estate held valid by the Mahomedan law, and effect was given to the bequests. *Semble*—Such verbal bequests would have been valid even if beyond a third of the testator's estate, provided the heirs concurred in the bequests. AMINOODDOWLAH *v.* ROSHUN ALI KHAN

[5 Moore's I. A., 193

17. ———— *Proof of intention where purpose not completed.*—Where a testatrix devises a certain disposition of her whole property in the course of a wajib-ul-urz relating to only a portion of it, and independent testimony of her intention to make this disposition was produced,—*Held* that the dispositon was valid against a claim of possession set up by a rival claimant. MAHOMED ALTAF ALI KHAN *v.* AHMED BUKSH . . **25 W. R., 121**

18. ———— *Assignment to take effect on death—Sale.*—An assignment of his property made by a Mahomedan in favour of his widow and his two sons, reserving to himself full power over it during his life and restricting the son's right to alienate during their mother's life, as she was to enjoy it in lieu of her dower, held to be a disposition of a testamentary nature, and void of the requisites of a sale under the Mahomedan law. MOGUL BEGUM *v.* FUKERUN BEBEE **3 Agra, 288**

19. ———— **Construction of will.**—A Mahomedan lady made a will disinheriting her nearest relations and leaving her whole estate to her nephew "Nuslun bad nuslun battun bad battun" (from generation to generation). *Held* that the devise to the nephew was absolute to him, and did not extend to his sons in case of his death before his aunt. OOMUTOONNISSA BEEBEE *v.* OOREEFOONISSA BEEBEE

[4 W. R., 63

20. ———— *Disposition of estate among sharers—Words of duration of estate not denoting more than interest for life—Construction—Restriction upon alienation.*—Words such as "always" and "for ever," used in an instrument disposing of property, do not in themselves denote an extension of interest beyond the life of the perso named as taking, their meaning being satisfied by the interest being for life. An instrument in the nature of a will made by a Mahomedan, gave shares in his property to his surviving widow, son, and grandchildren, and devoted a share to charitable purposes. It directed that his son should continue in possession and occupancy of the full sixteen annas of all the estates..... All the matters of management in connection with this estate should necessarily and obligatorily rest 'always' and 'for ever' in his hands." It also, with the express object of keeping the property in the family, attempted to restrict alienation by the sharers. There were other provisions to the same effect in regard to the management by his son, who retained it till his death. The defendant, who was a son of that son, having claimed to retain possession of the property in order to carry out the provisions of the will,—*Held* that, on its true construction the plaintiff, a sharer under it, was entitled to the full proprietary right in, and to the possession of, her share, notwithstanding the above expressions in the will, and the attempt to control alienation by the sharers. MUHAMMAD ABDUL MAJID *v.* FATIMA BIBI . . . . . **I L. R., 8 All., 39**
[L. R., 12 I. A., 159

21. ———— *Bequest to persons not in existence at testator's death.*—A Mahomedan testator who died in 86 by his will left his property in equal four shares to his second and third sons *V* and *E*, to the lawful son (if any) of his eldest son *M* and to his (the testator's) brother *A*. His eldest son *M*, he disinherited. He directed that the property was not to be divided until *V* and *E* had attained the age of twenty, and as to the share of the lawful son of *M*, it was to be held in trust until such son should reach the age of twenty. At the time of the testator's death no son of *M* was living. Shortly after his death, a son was born to *M*, but he lived

only for a few months. The testator's brother *A* was appointed executor of the will. In 1878 *V* and *E* sued the executor *A* and his son *S* for an account and division of the property, and by a consent-decree passed in 1881 three-fifths of the property were given to *V* and *E*, and the remaining two-fifths to *A* and *S*. The estate was duly divided in accordance with the decree, and the parties got possession of their respective shares. In February 1884 another son was born to *M*, and in May 1884 the infant brought this suit by his father and next friend, claiming to be entitled, on his attaining the age of twenty, to one-third of the property received by *V* and *E*, under the consent-decree. *Held* that the plaintiff could not recover, not having been in existence at the date of the testator's death. According to Mahomedan law as well as Hindu law, persons not in existence at the death of a testator are incapable of taking any bequest under his will. ABDUL CADUR HAJI MAHOMED *v.* TURNER (OFFICIAL ASSIGNEE)
[I. L. R., 9 Bom., 158

22. ———— *Charitable bequest—Stat. 43 Eliz., c. 4—"Dharm," Meaning of.*—In the will of a Khoja Mahomedan, written in the English language and form, a gift of a fund "to be disposed of in charity as my executor shall think right" is a valid charitable bequest, and it will be referred to the proper officer of the Court to settle a scheme for the application of the fund to charitable objects by analogy to Act 43 Eliz., c. 4. Where, however, the will is in the native language, and the word "dharm" or "daram" is used, the word is held too vague and uncertain for the gift to be carried into effect by the Court, the Court dharm or daram including many objects not comprehended in the word "charity" as understood in English law. GANGBHAI *v.* THAVAR MULLA . . 1 Bom., 71

23. ———— *Invalid gift for want of assent of heirs.*—A Mahomedan by his will bequeathed the rents of a certain house in trust for his children, and directed that, after the death of the last surviving child, such rents should be paid to the Committee of the District Charitable Society. *Held* that, as the gift to the children being a gift to the heirs of the testator to which there was no assent was invalid, the gift to the District Charitable Society also failed. FATIMA BIBEE *v.* ARIFF ISMAILJEE BHAM
[9 C. L. R., 66

24. ———— *Prohibition of alienation or partition.*—A Mahomedan testator by will decreed that his moveable estate should not be divided or alienated by any of his heirs, and directed his executor to appropriate the net income, according to a schedule annexed to his will, among certain specific persons divided into two classes, *viz.*, those who took and those who did not take by inheritance. *Held* that the intention of the testator was to endeavour to prevent any partition of the estate, and not to convert his heirs-at-law into mere annuitants taking grants from him. The executor held the estate in trust to pay the profits in certain defined shares to the heirs, and their representatives could not plead adverse possession against them so as to bar their claims by lapse of time. KHAJOORUNISSA *v.* ROHEEMUNNISSA . . . . . 17 W. R., 190

25. ———— *Administration of the estate of a Shiah Mahomedan under his will—Alleged gift—Claims as between his childless widow and the estate—Right of childless widow to maintenance—Legacies chargeable on one-third only of the estate—Commission to executor.*—A Mahomedan of the Shiah sect, dying without issue, left a widow. She as his childless widow was entitled to one-fourth of his estate other than land. In the administration of his estate the following matters arose and were decided. The handing over, with formal words of gift by the testator to the widow, of deposit receipts, with intent afterwards to transfer the money into her name at the bank, which transfer was not effected, would not constitute a gift. A commission of three per cent. on the proceeds of the sale of the testator's property, directed by his will, was bequeathed to the executor. This was by way of remuneration, but was in no sense a debt. As a legacy, it was payable only out of one-third of the estate which passed by the will. A Mahomedan widow is not entitled to maintenance out of the estate of her late husband, in addition to what she is entitled to by inheritance or under his will. *Hedaya, Book IV, Ch. 15, s. 3, Mahomedan law, Imamia, by N. E. Baillie, p. 170,* referred to. No contract could be implied that this widow should pay an occupation rent on account of her having continued to occupy a house belonging to the testator's estate, for eleven months after his death. Her occupation was referable to her position, and no notice was given to her that rent would be charged. A Mahomedan childless widow is not by Shiah law entitled to share in the value of land forming the site of buildings that belonged to her husband's estate. Her one-fourth includes, as was admitted, a share in the proceeds of sale of the buildings. The text quoted in Book VII, C. IV, p. 293, of Baillie's Mahomedan Law, Imamia, is not to be construed as referring only to agricultural land. AGA MAHOMED JAFFER BINDANIM *v.* KOOLSOM BIBEE. KOOLSOM BIBEE *v.* AGA MAHOMED JAFFER BINDANIM . . . I. L. R., 25 Calc., 9
[L. R., 24 I. A., 196
1 C. W. N., 449

26. ———— *Construction of the will of a talukhdar—Quantity of estate devised—Unlimited gift of share of profits in a talukhdari estate under Oude Estates' Act I of 1869.*—The will of a talukhdar, who left daughters, declared that in respect of his estate, in its entirety and without division, the engagement for the revenue should be in the name of his eldest daughter's son and so continue. Besides this grandson, another, the son of his second daughter, as well as two other daughters of the testator, were to be equal sharers entitled to the profits of the estate. Of this estate the will said, "The profits may be divided equally among all the four persons." The talukh had been included in the first and third of the lists prepared in conformity with the Oude Estates' Act, 1869. On a question whether under the will the son of the second daughter took a heritable interest, or only a life-estate, to which

MAHOMEDAN LAW—WILL—*concluded.*

it was argued, the gift was confined by reason of its being only of the profits. *Held* that, in order to show that an unlimited gift of the profits was less than a gift of the corpus, some evidence should be found in the context, or in the circumstances affecting the property, tending to show restriction of the interest given. No such evidence having been found here, the interest given by the will was declared to be heritable in the case of the testator's grandson, who was the son of his second daughter. This grandson, dying soon after the testator, had bequeathed his interest to the present appellant, his father. Faiz Muhammad Khan *v.* Muhammad Said Khan

[I. L. R., 25 Calc., 816
L. R., 25 I. A., 77
2 C. W. N., 385

27. ———— **Executor**—*Right to nominate successor.*—Under Mahomedan law, an executor is entitled to nominate a successor to carry out the purposes of the will under which he was made an executor. Hafeez-oor-rahman *v.* Khadim Hossein . . . . . . **4 N. W., 106**

28. ———— *Khoja Mahomedan administrator with the will annexed—Executor, Powers of.*—The powers of a Khoja Mahomedan executor or administrator, like those of a Cutchi Mahomedan executor or administrator, seem to be generally limited to recovering debts and securing debtors paying such debts. Where a will gave the executor full powers with regard to the payment of the testator's debts,—*Held* that an administrator with the will annexed, who was a Khoja Mahomedan, succeeded to those powers, and, in a suit brought against him as such administrator by an alleged creditor of the testator's estate, represented all the persons interested in the estate. Ahmedbhoy Huribhoy *v.* Vulleebhoy Cassumbhoy

[I. L. R., 6 Bom., 703

29. ———— *Infidel executor.*—The appointment by the will of a Mahomedan of an infidel executor does not invalidate the will. All the acts of such an executor and his dealings with the property under the will, until he is removed and superseded by the Civil Court, are good and valid. *Quære*—Whether, if an application were made by a person interested in the will to have the infidel executor removed, and a proper person appointed in his place, the application would be granted. Jehan Khan *v.* Mandy

[1 B. L. R., S. N., 16 : 10 W. R., 185

MAINPRIZE.

———— **Power of High Court to issue writ of.**—A writ of mainprize could only be issued where the party applying for it was bailable, and had offered security, but bail had been refused ; it could not be issued to a prisoner confined under Bengal Regulation III of 1818, which authorizes his detention absolutely and unconditionally, and gives him no right to demand to be released on bail. The writ is one which could be issued only on the Common Law side of the Court of Chancery in England. The power of the Common Law side of the Court of Chancery to issue such writ was not conferred on the Supreme Court, nor is there anything in the Charter of the High Court to give that Court power to issue it. In the matter of Ameer Khan

[6 B. L. R., 456

MAINTENANCE.

See Cases under Champerty.

See Cases under Decree—Form of Decree—Maintenance.

See Cases under Execution of Decree—Mode of Execution—Maintenance.

See Hindu Law—Inheritance—Illegitimate Children.

[I. L. R., 1 Bom., 97
4 W. R., P. C., 132 : 7 Moore's I. A., 18
I. L. R., 23 Bom., 257
I. L. R., 22 All., 191

See Cases under Hindu Law—Maintenance.

See Cases under Limitation Act, 1877 art. 128.

See Cases under Mahomedan Law—Maintenance.

See Malabar Law—Maintenance.

See Parties—Parties to Suits—Maintenance, Suits for.

See Cases under Small Cause Court Mofussil—Jurisdiction—Maintenance.

See Small Cause Court, Presidency Towns—Jurisdiction—Maintenance.

————**future, Attachment of—**

See Cases under Attachment—Subjects of Attachment—Maintenance.

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—

See Appeal in Criminal Cases—Criminal Procedure Codes.

[7 W. R., Cr., 10
2 Ind. Jur., N. S., 88

See Magistrate, Jurisdiction of—Retrial of Cases . . **1 C. L. R., 89**

See Res Judicata—Adjudications.

[I. L. R., 5 All., 224

See Revision — Criminal Cases — Miscellaneous Cases . **5 Bom., Cr., 81**

See Witness — Criminal Cases — Persons Competent or not to be Witnesses . . **I. L. R., 18 All., 107**

[I. L. R., 16 Calc., 781

1. ———— **Jurisdiction**—*Criminal Procedure Code (Act X of 1882), s. 488—"The District Magistrate," Meaning of the expression—*

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

Complaint by a wife against her husband for maintenance.—A complaint under s. 488 of the Criminal Procedure Code (Act X of 1882) falls within the cognizance of the Magistrate competent to entertain such complaint, and within the local limits of whose jurisdiction the husband or the father is actually residing at the date of such complaint. The expression "The District Magistrate, a Presidency Magistrate, a Subdivisional Magistrate, and a Magistrate of the first class" in s. 488 means the Magistrate of the particular district in which the person resides against whom such a complaint is made. IN RE THE PETITION OF FAKRUDIN . . **I. L. R., 9 Bom., 40**

2. ——— *Criminal Procedure Code (1882), ss. 488 and 177—Complaint by a wife against her husband for maintenance—Issue of summons—Jurisdiction of Presidency Magistrate.*—If a person neglects or refuses to maintain his wife, the proper Court to take cognizance of the complaint of the wife is the Court within the jurisdiction of which the husband resides. BENBOW *v.* BENBOW **[I. L. R., 24 Calc., 638**

IN THE MATTER OF THE PETITION OF BENBOW **[1 C. W. N., 577**

3. ——— *Criminal Procedure Code, s. 488—Maintenance order passed on report of Subordinate Magistrate.*—Under s. 488 of the Code of Criminal Procedure, a Magistrate of the first class may, upon proof of neglect or refusal by a person having sufficient means to support his wife, order such person to make a monthly allowance for the maintenance of his wife: a first class Magistrate, having referred a complaint by a wife for maintenance to a Subordinate Magistrate to take evidence and report upon the facts stated in the petition of complainant, passed an order upon such report in the absence of the husband for payment of maintenance. *Held* that the order was illegal. VENKATA *v.* PARAMMA . . . **I. L. R., 11 Mad., 199**

4. ——— *Criminal Procedure Code, s. 488—Liability of a Hindu not divided from his father to maintain his wife.*—A Hindu not divided from his father can be ordered to maintain his wife under s. 488 of the Code of Criminal Procedure. QUEEN-EMPRESS *v.* RAMASAMI **[I. L. R., 13 Mad., 17**

5. ——— *Criminal Procedure Code (1882), s. 488—Illegitimate children—Right of a married woman to claim maintenance for her illegitimate children.*—A married woman is entitled, under s. 488 of the Code of Criminal Procedure (Act X of 1882), to claim maintenance for her illegitimate children from the putative father. ROZARIO *v.* INGLES . . **I. L. R., 18 Bom., 468**

6. ——— *Criminal Procedure Code (1882), s. 488—Maintenance and custody of children—Moplahs—Personal law.*—The right of children to be maintained by their actual father is a statutory right, and the duty is created by express enactment independent of the personal law of the parties. If the children are illegitimate, the refusal of the mother to surrender them to the father is no ground for refusing maintenance. If the children are legitimate, the question of the mother's right to their custody would depend on the question whether the parties are governed by Mahomedan or Marumakkatayam law; because (1) if they are governed by Mahomedan law, the mother may have the right to custody until the children attain the age of seven years; (2) if by the Marumakkatayam law, it is doubtful if the father could be held to have neglected his duty to maintain his children if they were actually maintained by the karnavan of their mother's tarwad who is bound by law to maintain them. KARIYADAN POKKAR *v.* KAYAT BEERAN KUTTI **[I. L. R., 19 Mad., 461**

7. ——— *Criminal Procedure Code (Act V of 1898), s. 488—Usage in Malabar—Order for maintenance of child of Sambandam marriage—Marumakkatayam law as observed by Nayar community.*—The father of a child born during the continuance of the form of marriage known as sambandam, under the Marumakkatayam law as observed by the Nayar community in Malabar, is liable to have an order made against him for its maintenance under s. 488 of the Code of Criminal Procedure. VENKATAKRISHNA PATTER *v.* CHIMMUKUTTI **[I. L. R., 22 Mad., 246**

AYYA PATTER *v.* KALIANI AMMAL **[I. L. R., 22 Mad., 247**

8. ——— *Criminal Procedure Code, s. 488—Failure to pay process-fees.*—An application for maintenance under Criminal Procedure Code, s. 488, should not be dismissed on the failure on the part of the applicant to comply with an order for payment of process-fees. IN RE PONNAMMAL **[I. L. R., 16 Mad., 234**

9. ——— *Criminal Procedure Code, 1872, s. 536—Former application refused at another place.*—A Magistrate of the first class has, as such, power to pass an order under the provisions of s. 536 of the Code of Criminal Procedure, notwithstanding he may not be empowered to take cognizance of offences without complaint. The petitioner, a resident of Cawnpore, was summoned to Allahabad to answer an application for the maintenance of his children. He was ordered to make them a monthly allowance. A somewhat similar application had been made at Cawnpore, which was rejected on the ground of jurisdiction. *Held* that the jurisdiction of the Magistrate who disposed of the case was not barred by the circumstance of the petitioner being resident at Cawnpore, or of the former application having been rejected. IN THE MATTER OF THE PETITION OF TODD **[5 N. W., 237**

10. ——— *Criminal Procedure Code, s. 488—Order for maintenance of wife—Wife living apart from her husband for good cause—Jurisdiction.*—Where a wife, after a temporary absence from her husband on a visit, found on her return that he was living with another woman, and thereupon left him and went to live in a different district, and in that district applied for an order for maintenance against her husband,—*Held* that the wife

being justified in refusing to live with her husband and in choosing her own place of residence, the neglect of her husband to maintain her was an offence within the jurisdiction of the appropriate Court at the place where the wife resided. *In re the petition of Fakrudin, I. L. R., 9 Bom., 40,* distinguished. *In the matter of the petition of Todd, 5 N. W., 237,* followed. IN THE MATTER OF THE PETITION OF DECASTRO . . . . **I. L. R., 13 All., 348**

11. ———— **Procedure in maintenance cases**—*Criminal Procedure Code, 1872, s. 536—Mode of recording evidence.*—Cases under Act X of 1872, s. 536, are not in the nature of summary trials, but require the usual procedure laid down for summons cases, and that the evidence be recorded in full as required by s. 335. HURKISHORE MALO *v.* BHAROTI JELYANI . . . . **24 W. R., Cr., 61**

12. ———————— *Proceedings on application for maintenance—Evidence, Record of—Summary trial—Criminal Procedure Code (Act X of 1882), ss. 355 and 488—Procedure.*—Proceedings under Ch. XXXVI of the Code of Criminal Procedure cannot be conducted as in a summary trial under Ch. XXII, but the evidence taken must be recorded as provided by s. 355. KALI DASSI *v.* DURGA CHARAN NAIK . **I. L. R., 20 Calc., 351**

13. ———— **Proof of charge**—*"Due proof"—Criminal Procedure Code, 1861, s. 316, Order under.*—Before an order under s. 316 of the Code of Criminal Procedure for the maintenance of a wife or child can be passed against a person, the charge must be legally proved against him, the words "due proof" in that section meaning legal proof on oath. GONDA *v.* PYARI DOSS GOSSAIN . . **13 W. R., Cr., 19**

14. ———————— *Nature of evidence—Ground for making order.*—An order made by a Magistrate under s. 316 of the Code of Criminal Procedure must be founded upon proof in the same proceedings, and not upon knowledge acquired by him in some other case. LOPOTEE DOMNEE *v.* TIKHA MOODAI . . . . . **8 W. R., Cr., 67**

15. ———————— *Criminal Procedure Code, 1872, s. 488—Evidence Act (I of 1872), s. 120—Bastardy proceedings—Order of affiliation—Evidence—Competent witness.*—Bastardy proceedings under the provisions of s. 488 of the Criminal Procedure Code are in the nature of civil proceedings, within the meaning of s. 120 of the Evidence Act, and the person sought to be charged is a competent witness on his own behalf. Upon a summons, charging that the defendant, having sufficient means, had refused to maintain his child by his nika wife, whom he had subsequently divorced, the Magistrate found that the marriage had not been proved, but that upon the other evidence adduced including the similarity of the features and the name of the child with those of the defendant, who did not appear before him during the proceedings, but with whom he stated that he was well acquainted, the child was the illegitimate child of the defendant. He accordingly made an order for maintenance under the section. *Held* that, under the circumstances, he was wrong in taking into account the similarity of the names and the features of the child and the defendant, but as there was ample evidence of the paternity, he was justified in making the order he did, as it was immaterial for the purpose of determining the liability of the defendant to maintain the child, whether the mother had been married to the defendant or not. NUR MAHOMED *v.* BISMULLA JAN . . **I. L. R., 16 Calc., 781**

16. ———— **Application for maintenance**—*Application by wife of Christian who had reverted to Hinduism and married again.*—The rejection of an application for maintenance made by the wife of a Christain who had reverted to Hinduism and married a second wife is not warranted by the decision in *Anonymous Case, 3 Mad., Ap., 7.* ANONYMOUS CASE . . . . . **4 Mad., Ap., 3**

17. ———— **Marriage, Proof of**—*Karao marriage, Validity of—Legitimacy of offspring of—Right to maintenance.*—A woman of the Jat caste applied under s. 316 of the Code of Criminal Procedure for an order of maintenance. As she had only gone through the ceremony of "Karao" with her alleged husband, the Joint Magistrate rejected her application. His order was set aside on reference, a "Karao" marriage among the Jats being held valid, and the offspring of such unions being entitled to inherit. QUEEN *v* BAHADUR SINGH . . **4 N. W., 128**

18. ———— **Ground for allowing maintenance**—*Inability to live together.*—The inability of a husband and wife to agree to live together is no ground for decreeing a separate maintenance to the wife. JESMUT *v.* SHOOJAUT ALI **6 W. R., Cr., 59**

19. ———————— *Criminal Procedure Code, 1872, s. 536—Separate maintenance on ground of ill-treatment.*—The proviso to s. 536 of Act X of 1872 does not authorize a Magistrate to entertain an application for separate maintenance, on the ground of ill-treatment, from a wife whose husband has not neglected or refused to maintain her, but who has of her own accord left her husband's house and protection, and to order an allowance to be paid to such wife on evidence of ill-treatment. IN THE MATTER OF THE PETITION OF THOMSON **[6 N. W., 205**

20. ———————— *Criminal Procedure Code, s. 488—"Cruelty."*—The word "cruelty" in s. 488 of the Criminal Procedure Code is not necessarily limited to personal violence. *Kelly* v. *Kelly, L. R., 2 P. D., 59,* and *Tomkins* v *Tomkins, 1 S. & T., 168,* referred to. RUKMIN *v.* PEARE LAL **[I. L. R., 11 All., 480**

21. ———— **Offer to maintain wife**—*Criminal Procedure Code, 1872, s. 536—Refusal to cohabit.*—An offer by a Hindu, having two wives, to maintain his first wife by allowing her to live in his house and by supplying her with grain to be cooked and eaten separately, coupled with a refusal to live with her as husband and wife, does not come within the meaning of a proviso to s. 536 of the Code of Criminal Procedure, 1872. MARAKKAL *v.* KANDAPPA GOUNDAN . **I. L. R., 6 Mad., 373**

22. ———— *Criminal Procedure Code, s. 488—Question to be determined under that section—Maintenance of wife—Wife's right to separate maintenance.*—Before a Magistrate makes an order under s. 488 of the Code of Criminal Procedure (Act X of 1882), he must find that the complainant is the wife of the person from whom she claims maintenance, and that he has either neglected or refused to maintain her. The complainant claimed maintenance from her husband, *G*, under s. 488 of the Code of Criminal Procedure. In the course of the proceedings, *G* pleaded that his marriage with the complainant was not valid according to Hindu law, but offered to maintain her in his house, as he had hitherto done. This offer was not accepted. The Magistrate held that the offer was not one within the meaning of s. 488 of the Code of Criminal Procedure, because *G* denied the validity of his marriage with the complainant, and refused to keep her with him as his wife. *Held* that there is no authority for the proposition that the words "as his wife" should be read into s. 488 of the Code of Criminal Procedure. *Marakkal* v. *Kandappa Goundan, I. L. R., 6 Mad., 371,* dissented from. IN RE GULABDAS BHAIDAS

[I. L. R., 16 Bom., 269

23. ———— *Criminal Procedure Code (1882), s. 488—"Adultery"—Penal Code (Act XLV of 1860), s. 497—Refusal of wife to live with husband—Criminal Procedure Code, s. 4.*—A wife petitioned for maintenance for herself and child against her husband under s. 488 of the Criminal Procedure Code. The husband did not refuse to maintain his wife, but the petitioner refused to live with him, as he kept a concubine. *Held* that the word "adultery" in s. 488 of the Criminal Procedure Code must, by virtue of s. 4 of the Code, be construed with reference to the definition of the term in s. 497 of the Penal Code. Consequently a husband's immorality, which does not amount to "adultery" or involve the degradation of a married woman being brought into the society of a concubine, is not sufficient ground for a wife's refusal to live with her husband. An offer to maintain a wife must be an offer to maintain with the consideration due to her position as a wife. *Marakkal* v. *Kandappa, I. L. R., 6 Mad., 371,* cited. *Per* BEST, *J.*—It is very doubtful if the framers of s. 488 of the Code of Criminal Procedure intended the word "adultery" as used therein to have the limited meaning given to it in the Penal Code. The wrong done to the wife is in no way affected by the circumstance of her husband's concubine being married or unmarried, or, in case of her being married, whether it is with or without her husband's consent or collusion that she is living in such concubinage. In face, however, of s. 4 of the Criminal Procedure Code, no other interpretation of the term "adultery" is possible than the limited interpretation contained in the Penal Code. QUEEN-EMPRESS *v.* MANNATHA ACHARI

[I. L. R., 17 Mad., 260

24. ———— *Criminal Procedure Code (1882), s. 488 and s. 4—Adultery.* Adultery on the part of the husband, not being such adultery as would be punishable under the Penal Code, may nevertheless constitute sufficient cause for the wife separating from her husband, and enable her to claim maintenance under the Criminal Procedure Code, s. 488. *Queen-Empress* v. *Mametta Achari, I. L. R., 7 Mad., 260,* dissented from. GANTAPALLI APPALAMMA *v.* GANTAPALLI YELLAYYA. PERIANAYAGAM *v.* KRISHNA CHETTI **I. L. R., 20 Mad., 470**

25. ———— **Refusal by Hindu wife to live with husband for sufficient reason**—*Criminal Procedure Code, 1882, s. 488—Second marriage by husband.*—A Hindu wife having applied for an order for maintenance against her husband, the husband offered to maintain her in his house, but the offer was refused on the ground that the husband had, without cause, married a second wife. The Magistrate ordered the husband to pay a monthly sum by way of maintenance. *Held* that the fact that the husband had married a second wife was not a sufficient reason, within the meaning of s. 488 of the Code of Criminal Procedure, to justify the order. ARUMUGAM *v.* TULUKANAM . . . **I. L. R., 7 Mad., 187**

26. ———— **Wife not permitted to live with husband**—*Criminal Procedure Code, 1872, s. 536.*—In a case in which a Magistrate made an order under s. 536, Criminal Procedure Code, 1872, directing the husband to pay a monthly sum for the maintenance of his wife, the High Court set aside the order on the ground that it appeared that the husband had not been called upon to maintain the wife, who had up to that time lived with her father, and that the father had refused to let the wife live with her husband without receiving money from him. An order under s. 536 cannot be made by a Magistrate of the second class. SOMREE *v.* JITUN SONAR . . . . **22 W. R., Cr., 30**

27. ———— **Ground for cancelling order**—*Proof of adultery.*—It is open to a husband upon whom an order to make an allowance for the maintenance of his wife has been made under s. 316, Criminal Procedure Code, 1869, after such order has been made to prove that his wife is living in adultery; and upon such proof a Magistrate is justified in cancelling such order for maintenance. CHAKU *v.* ISHVAR BHUDAR . . . . . . **8 Bom., Cr., 124**

23 ———— *Criminal Procedure Code, ss. 488, 490—Order for maintenance of wife—Application by wife to enforce order—Plea that applicant had been divorced—Duty of Court to which application for enforcement is made.*—Where a person in whose favour an order under s. 488 of the Code of Criminal Procedure has been made takes that order before a Magistrate, and the Magistrate finds that he has jurisdiction owing to the residence of the person affected by the order, and is satisfied as to the identity of the parties and the non-payment of the allowance due, it is his duty to enforce the order for maintenance. It is no part of the duty of a Magistrate on such an application as above-mentioned, *viz.*, an application under s. 490 of the Code of Criminal Procedure, to entertain a plea by the party against whom the order is sought to be enforced to the effect that he has divorced the applicant, and is therefore no longer liable to pay maintenance. *Zeb-un-nissa* v. *Mendu Khan, Weekly Notes, All., 1885, p. 25,* dissented from. MAHBUBAN v. FAKIR BAKHSH

[I. L. R., 15 All., 143

29. ——— **Alteration or withdrawal of order**—*Divorce—Criminal Procedure Code (Act X of 1872), s. 536.*—An order for maintenance had been made under s. 536, Act X of 1872, against a Mahomedan, and came before the Magistrate on petition from the wife for the purpose of being enforced. The Magistrate called on the husband to show cause why the order should not be enforced, and the husband appeared, and in the Magistrate's presence divorced his wife by words sufficient by Mahomedan law for that purpose. *Held* the Magistrate should have enforced the order until application was made by the husband under s. 537 for alteration of the order owing to the "change of circumstances" which had occurred. The husband was bound to pay maintenance up to the time of divorce. *Quære*—Whether what occurred was such a change of circumstances within s. 537 as would justify an alteration or withdrawal of the order. NEPOOR AURUT v. JURAI

[10 B. L. R., Ap., 33 : 19 W. R., Cr., 73

30. ——— *Presidency Magistrate's Act (IV of 1877), ss. 234, 235—Effect of divorce on maintenance order.*—A Presidency Magistrate is competent to stay an order for maintenance granted under s. 234 of Act IV of 1877, and to refuse to issue his warrant under the 3rd clause of that section, and to try all questions raised before him which affect the right of a woman to receive maintenance. There can be no distinction raised between a dissolution of marriage obtained under the Indian Divorce Act and a dissolution obtained under the Mahomedan law. It is only on proof of the existence of the relationship of husband and wife that a Magistrate can make an order under s. 234 granting maintenance to a wife; but where proof has been given that such relationship has ceased to exist, he may stay an order already made under that section. ABDUR ROHOMAN v. SAKHINA. SOBHAN v. SHUBRATON. OSSUFF v. SHAMA . **I. L. R., 5 Calc., 558 : 5 C. L. R., 21**

31. ——— **Effect of maintenance order on right of divorce**—*Presidency Magistrates' Act (IV of 1877), s. 234—Borah Mahomedan sect—Husband and wife.*—An order made under s. 234 of Act IV of 1877 by the Presidency Magistrate directing a Borah Mahomedan husband of the Imami sect to pay a sum monthly for the maintenance of his wife belonging to the Hanafi sect does not deprive the husband of his right to divorce his wife, and after such divorce the Magistrate's order can no longer be enforced. IN RE ABDUL ALI ISHMAILJI

[I. L. R., 7 Bom., 180

Also so held with regard to an order under s. 10 of the Police Amendment Act, XLVIII of 1860. IN RE KASAM PIRBHAI . . . . **8 Bom., Cr., 95**

32. ——— *Act X of 1872 (Criminal Procedure Code), s. 536—Mahomedan law—Divorce—"Iddat."*—An order for the maintenance of a wife, passed under Ch. XLI of Act X of 1872, becomes inoperative, in the case of a Mahomedan, by reason of his lawfully divorcing his wife, and thus putting an end to the conjugal relation, but it does not become so before the expiration of the divorced wife's "iddat." *Abdur Rohoman* v. *Sakhina, I. L. R., 5 Calc., 558; In re Kasam Pirbhai, 8 Bom., Cr., 95;* and *Luddun Sahiba* v. *Kamar Kadar, I. L. R., 8 Calc., 736; Madras High Court Proceedings, 2nd December 1879,* referred to and followed. IN THE MATTER OF THE PETITION OF DIN MUHAMMAD . . **I. L. R., 5 All., 226**

See LARAITI v. RAM DIAL **I. L. R., 5 All., 224**

33. ——— *Mahomedan law—Shiah school—Mutta marriage—Gift of term—Divorce.*—In a suit brought by a Mahomedan of the Shiah sect against his wife, belonging to the same persuasion, for a declaration that the relationship of husband and wife had terminated, and that he was not liable to pay maintenance to her which he had been directed to do by an order passed under the provisions of the Code of Criminal Procedure, on the allegation that the marriage was of a mutta form, and that he, on the 22nd February 1882, had made hiba-i-muddat (gift of the term) of whatever period there then might remain unexpired, the wife pleaded *inter alià* that her husband was not competent to dissolve the marriage tie within the contracted period without her consent, and that, if under the Mahomedan law the consent was unnecessary, the Court was bound, in administering justice, equity and good conscience, to modify the strict law in this respect. *Held* that, although the Court could not grant an injunction restraining the Magistrate from enforcing the order for maintenance, the plaintiff was entitled to ask the Magistrate to abstain from giving further effect to his order after the Civil Court had found that the relationship of husband and wife had ceased to exist. MAHOMED ABID ALI KUMAR KADAR v. LUDDEN SAHIBA

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34. ——— *Criminal Procedure Code (1882), ss. 488, 489, and 490—Plea of divorce in answer to an application for enforcement of an order for maintenance of a wife.*— Where in answer to an application for enforcement of an order under s. 488 of the Code of Criminal Procedure for the maintenance of a wife, the party against whom such order is subsisting pleads that he has lawfully divorced his wife, and therefore the order can no longer be enforced, it is the duty of the Court hearing the application to entertain and consider such plea, and if it find the plea established, to decline to enforce the order for any period subsequent to the date when the marriage ceased to subsist between the parties. In such case, where the parties are Mahomedans, the marriage will be deemed to subsist until the expiration of the iddat. In s. 489 of the Code the "change in circumstance" referred to is a change in the pecuniary or other circumstances of the party paying or receiving the allowance which would justify an increase or decrease of the amount of the monthly payment originally fixed, and not a change in the status of the parties which would entail a stoppage of the allowance. So *held* by AIKMAN and BLENNERHASETT, *JJ.* (*dissentiente* KNOX, *J.*) *In the matter of the petition of*

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Din Muhammad, I. L. R., 5 All., 226 ; Abdur Rohoman v. *Sakhina, I. L. R., 5 Calc., 558 ; Zeb-un-nissa* v. *Mendu Khan, Weekly Notes, All. (1885), 29 ; In re Kasam Pirbhai, 8 Bom., 95 ; In re Abdul Ali Ismailji, I. L. R., 7 Bom., 180 ; Mahomed Abid Ali Kumar Kadur* v. *Ludden Sahiba, I. L. R., 14 Calc., 276 ;* and *Baji* v *Nawab Khan, 29 Panj. Rec. 69,* referred to. *Nepoor Aurut* v. *Jurai, 10 B. L. R., Ap., 33,* dissented from. *Mahbuban* v. *Fakir Bakhsh, I. L. R., 15 All., 143,* overruled. ABU ILYAS *v.* ULFAT BIBI . . . . . **I. L. R., 18 All., 50**

35. ———— Effect of decree of Civil Court on order for maintenance—*Decree in suit for restitution of conjugal rights.*—An order for maintenance ceases to have any effect after the order of a Civil Court in a suit for restitution of conjugal rights by the husband giving him a decree. LUTFOTEE DOOMONY *v.* TIKHA MOODOI **[13 W. R., Cr., 52**

36. ———— *Criminal Procedure Code (Act X of 1882), s. 488*—*Maintenance order obtained by a wife against husband—Subsequent decree for restitution of conjugal rights obtained by husband—Effect of such decree on previous order of maintenance.*—A decree of a Civil Court for restitution of conjugal rights supersedes any previous order of a Magistrate for maintenance, if the wife should persist in refusing to live with her husband. A Magistrate ought to cancel a previous order of maintenance made by him, or rather treat it as determined, if the wife failing to comply with the decree for restitution refuses to live with her husband. IN RE BULAKIDAS . . **I. L. R., 23 Bom., 484**

37. ———— *Order as to paternity of child.*—The order of a Civil Court as to the paternity of a child was held to have no effect on a contrary order of the Criminal Court making the putative father, whom the order of the Civil Court had exonerated, liable for maintenance. SUBAD DOMNI *v.* KATIRAM DOME . **20 W. R., Cr., 58**

38. ———— Effect of decree of Civil Court on right to apply for maintenance—*Decree of Civil Court refusing to enforce agreement for maintenance.*—A decision of the Civil Court, refusing to enforce a contract or agreement against a man for the maintenance of a woman, cannot conclude either the woman from applying, or a Magistrate from making an order, under s. 316 of the Code of Criminal Procedure, 1861, for the maintenance of their illegitimate daughter. IN THE MATTER OF THE PETITION OF MEISLEBACH . **17 W. R., Cr., 49**

39. ———— *Criminal Procedure Code (1882), s. 488*—*Order for maintenance of wife, Effect on, of declaratory decree of Civil Court.*—An order for the maintenance of a wife duly made under s. 488 of the Code of Criminal Procedure cannot be superseded by a declaratory decree of a Civil Court to the effect that the wife in whose favour such order has been made has no right to maintenance. *Subad Domni* v. *Katiram Dome, 20 W. R., Cr.,* referred to. SUBHUDRA *v.* BASDEO DUBE . . . . **I. L. R., 18 All., 29**

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

40. ———— Grounds for releasing person from obligation to support illegitimate child.—The circumstance that the father of an illegitimate child is sixteen years old only, and still studying at school, is not by itself a sufficient reason for holding him excused from the necessity of providing for his illegitimate offspring. The law requires that the person on whom the order of maintenance is issued must have sufficient means to support the child. QUEEN *v.* ROSHUN LALL . **4 N. W., 123**

41. ———— Willingness of husband to take charge of children on conditions—*Criminal Procedure Code (Act XXV of 1861), s. 316.*—On an application by a wife for maintenance under s. 316, Act XXV of 1861, the Magistrate held she had failed to establish her right of maintenance under that section, but he awarded maintenance to her for her two infant children, though the husband stated he was willing to take charge of them, provided they lived with him. *Held* the order was illegal. PANCHUDAS *v.* SHUDHAMAYI **[8 B. L. R., Ap., 19 : 16 W. R., Cr., 72**

42. ———— Order for maintenance of unborn child—*Criminal Procedure Code, 1861, s. 316.*—No order can be passed under s. 316 of the Criminal Procedure Code, 1861, for the maintenance of an unborn child. LARLEE *v.* BUNSEE DITCHIT **[3 N. W., 70**

43. ———— Order with reference to husband's means—*Criminal Procedure Code, 1861, s. 317.*—The proceedings of a Magistrate awarding the payment of a certain sum of money per mensem for maintenance with reference to the means of the husband were held to be legal. If the husband is aggrieved, he ought to apply to the Magistrate under s. 317, Code of Criminal Procedure. GOYAMONEY SURINEE *v.* MOHESH CHUNDER SHAHA **[9 W. R., Cr., 1**

44. ———— Prospective order for increased maintenance as child gets older—*Criminal Procedure Code, 1861, s. 316.*—An order made under s 316 of the Criminal Procedure Code, fixing a sum for the maintenance of a child, containing a prospective order for an increase of the amount awarded as the child grows older, is unauthorized by the law. MUNGLO *v.* JUMNA DASS **2 N. W., 454**

45. ———— Order at progressively increasing rate—*Criminal Procedure Code (Act X of 1882), ss. 488. 489.* A Magistrate has no power, under s. 488 of the Code of Criminal Procedure, to make an order for maintenance at a progressively increasing rate. He may, however, under s. 489, from time to time alter the rate of the monthly allowance granted as maintenance under s. 488. UPENDRA NATH DHAL *v.* SOUDAMINI DASI **[I. L. R., 12 Calc., 535**

46. ———— *Criminal Procedure Code s. 489—Maintenance, Variation in rate of.*—A Magistrate has no power under Criminal Procedure Code, s. 489, to make an order for maintenance at progressively increasing rate, but the

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

fact that the child has grown older might constitute a change in the circumstances calling for a variation in the rate. IN RE RAMAYEE

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47. ———— **Security for performance of order**—*Criminal Procedure Code, 1872, s. 536—Power to take security for prevention of default.*—In making an order for maintenance under the Code of Criminal Procedure, s. 536, a Magistrate has no power to take security for possible default. KANOO SOUDAGUR *v.* ALABUNDEE BEWA

[24 W. R., Cr., 72

48. ———— **Agreement by husband to maintain wife**—*Criminal Procedure Code, 1872, s. 536.*—An agreement by a husband to maintain his wife by giving her a house and jewels, and by delivering to her annually a certain quantity of grain and money, cannot be made the subject of an order under s. 536 of the Code of Criminal Procedure, 1872, nor enforced under the provisions of that section. VIRAMMA *v.* NARAYYA

[I. L. R., 6 Mad., 283

49. ———— **Question as to right of guardianship**—*Criminal Procedure Code, 1872, ss. 536, 538—Custody of child.*—In determining questions under Ch. XLI of Act X of 1872, as to the maintenance of wives and families in certain cases, a Magistrate has no power to enter into any question as to the lawful guardianship of a child. LAL DAS *v.* NEKUNJO BHAISHIANI . I. L. R., 4 Calc., 374

50. ———— **Effect of order for maintenance**—*Suit for maintenance.*—S. 316 of Act XXV of 1861 is no bar to a suit by a wife against her husband for maintenance. LALLAH GOPEENATH *v.* JEETUN KOER . . . 6 W. R., 57

51. ———————— *Criminal Procedure Code, s. 488 — Release of claim for maintenance.*—Where an application is made to a Magistrate to enforce an order for maintenance, passed under s. 488 of the Code of Criminal Procedure, such Magistrate is not bound to enforce the order if the defendant proves that the claim for maintenance has been released. RENGAMMA *v.* MAHAMMAD ALI

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52. ———— **Mode of enforcing order for accumulated arrears of maintenance**—*Criminal Procedure Code, 1872, s. 536.*—There is nothing in s 536 of the Criminal Procedure Code, 1872, to render the levy of accumulated arrears of maintenance by a single warrant illegal. ANONYMOUS

[7 Mad., Ap., 37

53. ———— **Warrant for collection of arrears of maintenance**—*Criminal Procedure Code, 1872, ss. 536, 538.*—Notwithstanding the provisions of s. 538 of the Code of Criminal Procedure, the Magistrate who has made an order for maintenance under s. 536 may issue a warrant for collection of arrears of maintenance when the husband is out of his jurisdiction. QUEEN *v.* KARRI PAPAYAMMA

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MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*continued.*

54. ———— **Mode of enforcing order**—*Criminal Procedure Code, 1869, s. 316.*—The issue of a warrant under s. 316 of the Code of Criminal Procedure is permissible for every breach of an order of maintenance made under that section, but there seems no ground for saying that a defendant can get out of his liability for any payment by the failure to issue a warrant for the levy of that payment. The result of issuing it for an aggregate of payments is that one month's imprisonment would alone be awardable in default. ANONYMOUS 6 Mad., Ap., 23

55. ———— **Imprisonment for default of payment**—*Criminal Procedure Code, s. 488 — Subsequent offer to pay—Sentence absolute.*—A sentence of imprisonment awarded under s. 488 of the Code of Criminal Procedure for wilful neglect to comply with an order to pay maintenance is absolute, and the defaulter is not entitled to release upon payment of the arrears due. BIYACHA *v.* MOIDIN KUTTI . . . I. L. R., 8 Mad., 70

56. ———————— *Criminal Procedure Code (1882), s. 488—Breach of order for monthly allowance—Sentence absolute—Husband and wife.*—A wife, who had obtained an order for maintenance against her husband on the 1st August, applied to have it enforced with respect to three months then in arrears. A distress warrant having issued without anything being realized, the husband was brought up under a warrant for his arrest. The husband, previous to his arrest, petitioned the Court to be allowed to prove his altered circumstances and his inability to pay. On that petition an order was passed that he could produce the evidence after the amount due was paid. On being brought up, and not paying the amount due, an order was made committing him for one month under s. 488 of the Code of Criminal Procedure. The day following his commitment his brother tendered the money and asked for his release. The Magistrate took the money, but refused to order the release, holding that under the section the punishment of imprisonment was absolute and not dependent on payment of the maintenance allowance. The husband moved the High Court, contending (1) that the order of imprisonment should not have been passed without an opportunity being given him of proving the change in his circumstances which would show that the order to pay required modification; (2) that the section did not authorize imprisonment unless wilful neglect to comply with the order be proved; and (3) that the imprisonment authorized by the section being only a mode of enforcing payment, he should have been released on the amount being paid. *Held* that the first ground was untenable, inasmuch as the order for maintenance carries with it all its proper consequences as long as it remains in force. *Held* also that, before an order for imprisonment under the section can be passed, it must be proved that the non-payment of the maintenance is the result of wilful negligence, and that, there being no evidence of that in the case, the order was bad. *Held* further that the imprisonment which can be awarded under the section is not a punishment for contempt of the Court's order, but merely a means

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of enforcing payment of the amount due, and that, upon the payment of that amount being made, the husband was entitled to be released. *Biyacha* v. *Moidin Kutti, I. L. R., 8 Mad., 70,* dissented from. SIDHESWAR TEOR *v.* GYANADA DASI **[I. L. R., 22 Calc., 291**

57. ———— *Criminal Procedure Code (1882), s. 488.*—The imprisonment provided by s. 488, Criminal Procedure Code, in default of payment of maintenance awarded, is not limited to one month. The maximum imprisonment that can be imposed is one month for each month's arrear, and if there is a balance representing the arrear for a portion of a month, a further term of a month's imprisonment may be imposed for such arrear. *Biyacha* v. *Moiden Kutti, I. L. R., 8 Mad., 70,* approved of. ALLAPICHAI RAVUTHAR *v.* MOHIDIN BIBI . . . . **I. L. R., 20 Mad., 3**

58. ———— *Criminal Procedure Code (Act X of 1882), s. 488—Warrant of commitment—Procedure.*—An order of commitment to prison for default in payment of a wife's maintenance allowance cannot be made without proof that the non-payment was due to wilful neglect of the person ordered to pay. *Sidheswar Teor* v. *Gyanada Dasi, I. L. R., 22 Calc., 291,* followed. The law contemplates a single warrant of commitment in respect of the arrears due at the time of its issue. Where six months' arrears were due, an order for separate warrants of commitment awarding a separate sentence of imprisonment of one month on each warrant was therefore held to be bad in law. As to the mode of computing the term of imprisonment, the case of *Allapichai Ravuthar* v. *Mohidin Bibi, I. L. R., 20 Mad., 3,* followed. BHIKU KHAN *v.* ZAHURAN . . . **I. L. R., 25 Calc., 291**

59. ———— *Criminal Procedure Code, s. 488—Wife—Breach of order for monthly allowance—Warrant for leaving arrears for several months—Imprisonment for allowance remaining unpaid after execution of warrant—General Clauses Consolidation Act (I of 1868), s. 2, cl. 18—"Imprisonment."*—Where a claim for accumulated arrears of maintenance for several months arising under several breaches of an order for maintenance is dealt with in one proceeding, and arrears levied under a single warrant, the Magistrate acting under s. 488 of the Criminal Procedure Code has no power to pass a heavier sentence in default than one month's imprisonment, as if the warrant only related to a single breach of the order. *Per* EDGE, *C.J.*—S. 488 contemplates that a separate warrant should issue for each separate monthly breach of the order. *Per* STRAIGHT, *J.*—The third paragraph of s. 488 ought to be strictly construed, and, as far as possible, construed in favour of the subject. Under the section, a condition precedent to the infliction of a term of imprisonment is the issue of a warrant in respect of each breach of the order directing maintenance, and where, after distress has been issued, *nulla bona* is the return. The section contemplates one warrant, one punishment, and not a cumulative warrant and cumulative punishment. Also *per* STRAIGHT, *J.*—With reference to s. 2, cl. 18, of the General Clauses Act (I of 1868), "imprisonment" in s. 488 of the Criminal Procedure Code may be either simple or rigorous. *Per* OLDFIELD, *J.*—A claim for accumulated arrears of maintenance arising under several breaches of order may be dealt with in one proceeding, and arrears levied under a single warrant. QUEEN-EMPRESS *v.* NARAIN . . **I. L. R., 9 All., 240**

MAJORITY ACT (IX OF 1875).

See MAJORITY, AGE OF.
[I. L. R., 7 All., 490

———— **s. 2.**

See MAJORITY, AGE OF.
[I. L. R., 7 All., 763

1. ———— *Minor—Mahomedan law—Capacity to contract—Capacity to sue—Civil Procedure Code, 1877, Ch. XXXI, ss. 440-464.*—S. 2 of Act IX of 1875 refers only to the capacity to contract, which is limited by s. 11 of the Contract Act, and not to the capacity to sue, which is purely a question of procedure and regulated by the Civil Procedure Code, Ch. XXXI. PUYIKUTH ITHAYI UMAH *v.* KAIRHIRAPOKIL MAMOD **[I. L. R., 3 Mad., 248**

2. ———— **cl. (b)**—*Minor, Custody of—Guardian—Change of religion.*—A Brahman boy, sixteen years of age, having left his father's house, went to and resided in the house of a missionary, where he embraced Christianity and was baptised. In a suit by the father to recover possession of his son from the missionary,—*Held* that the question whether the boy was a minor was to be decided, not according to Hindu law, but by Act IX of 1875; (2) that the claim was not affected by s. 2, cl. (*b*), of that Act; (3) and that the father was entitled to a decree that his son should be delivered into his custody. READE *v.* KRISHNA . **I. L. R., 9 Mad., 391**

———— **ss. 2 and 3.**

See PARSIS . **I. L. R., 22 Bom., 430**

———— **s. 3.**

See ACT XL OF 1858, s. 3.
[I. L. R., 9 Calc., 901
I. L. R., 8 Calc., 714

See LETTERS OF ADMINISTRATION.
[I. L. R., 21 Calc., 911

See MAJORITY, AGE OF.
[I. L. R., 3 All., 598

See MINOR—CUSTODY OF MINORS.
[I. L. R., 12 All., 213

1. ———— *Testamentary guardian obtaining probate—"Guardian appointed by Court.*—Where a person who by his father's will is made guardian of his minor brother applies for and obtains probate of the will, the grant of probate only establishes the authority of his appointment. Such a guardian is not one "appointed by a Court of Justice" within the meaning of cl. 1, s. 3, Act IX of

1875, and the minor attains majority on his completing the age of eighteen years. JOGESH CHUNDER CHUCKERBUTTY *v.* UMATARA DEBYA

[2 C. L. R., 577

2. ——————— *Age of majority—Order of Court under Act XL of 1858 appointing guardian, Effect of.*—In a suit in Calcutta against one of the makers of a joint promissory note executed in Calcutta on the 9th June 1877, the defendant, who was a Mahomedan, pleaded infancy. It appeared that the defendant was born on the 22nd July 1857; that, by an order of a competent Court, dated 6th November 1865, the father of the defendant was, under Act XL of 1858, appointed guardian of his property, portion of which was situated in the mofussil. *Held* that the effect of the order under Act XL of 1858 was to extend the minority of the defendant to the age of eighteen years, and that consequently he was a minor on the 22nd June 1875, when the Majority Act IX of 1875 came in force; and therefore, under s. 3 of the latter Act, his minority was further extended to the age of twenty-one years, so that on the date of the execution of the note the defendant was still a minor. RAJ COOMAR RAY *v.* ALFUZUDIN AHMED . . . . 8 C. L. R., 419

3. ——————— *Minor—Guardian ad litem.*—The appointment of a guardian *ad litem* is sufficient to make the minor party subject to s. 3, Act IX of 1875, and to constitute his period of majority at twenty-one, at any rate so far as relates to the property in suit, notwithstanding that such minor would but for such appointment have attained majority at eighteen. SUTTYA GHOSAL *v.* SUTTYANUND GHOSAL

[I. L. R., 1 Calc., 388

4. ——————— *Guardian—Minor—Disability of infancy; its continuance—Period of minority, how affected by Act XL of 1858.*—When a guardian has once been appointed to a minor under the provisions of Act XL of 1858, the disability of infancy will last till the age of twenty-one, whether the original guardian continue to act or not. RUDRA PROKASH MISSER *v.* BHOLA NATH MUKHERJEE

[I. L. R., 12 Calc., 612

5. ——————— *Minor under Court of Wards.*—A "minor under the jurisdiction of the Court of Wards" means a person of whose estate the Court of Wards has actually assumed the management, not a person of whose estate the Court of Wards might with the sanction of Government take charge. PERIYASAMI *v.* SESHADRI AYYANGAR

[I. L. R., 3 Mad., 11

6. ——————— *Minor—Guardian—Guardian of property—Guardian of person—Necessity for issue of certificate of administration in order to complete appointment of guardian of property—Appointment of guardian of person—Age of majority—Limitation.*—The Bombay Minors' Act XX of 1864 does not, in terms, provide for the appointment of a guardian of the property of a minor, but only for the grant of a certificate of administration, so that, until the certificate is issued, there is no such appointment of the guardian of the property as will extend the age of minority from eighteen to twenty-one. But it is different as regards the appointment of the guardian of the person. The Act provides, in terms, for such an appointment being made, and no certificate of appointment is contemplated by the Act on the language of which it is plain that the appointment of a guardian of the person is complete on the order of the Court being made appointing him. The plaintiff's mother *G* died in 1866 possessed of property which she had inherited from her husband. The plaintiff, who was born in 1858, was then a minor of the age of eight years. In 1867 the plaintiff's maternal grandfather obtained a certificate of administration. On his death an order of Court was made on the 21st March 1873, appointing the nazir of the Court administrator of the property and the plaintiff's mother-in-law the guardian of the person of the plaintiff, but no fresh certificate of administration was granted. In 1880 the plaintiff brought the present suit against the defendants to recover from them the property left by her mother. The defendants contended (*inter alia*) that the plaintiff had attained her majority in 1874, when she arrived at the age of sixteen, and that the suit was therefore barred by limitation. The plaintiff, on the other hand, contended that the Indian Majority Act (IX of 1875) was applicable, and that under its provisions she did not attain majority until she was twenty-one, *i.e.*, until the year 1879, and that the present suit was therefore in time. *Held* that the suit was not barred by limitation. The Indian Majority Act (IX of 1875) was applicable (except so far as its operation was excluded by s. 2), inasmuch as there was a guardian of the person of the plaintiff in existence both when she arrived at the age of sixteen and also when she was eighteen, and therefore the period of minority for her was extended to twenty-one years of age. *Quære*—Whether the fact that a guardian has been at one time appointed is sufficient to bring the case within s. 3 of the Indian Majority Act (IX of 1875) so as to extend the period of minority to the age of twenty-one. The intention of the Legislature to be gathered from s. 3 would appear to be to extend minority to twenty-one years of age in cases where, at the time the minor reaches the age of eighteen, his person or property is in the hands of a guardian. YEKNATH *v.* WARUBAI

[I. L. R., 13 Bom., 285

7. ——————— *Minor—Age of majority—Guardian and Manager—Act XL of 1858, ss. 4, 7, 12—Collector—Court—Court of Wards Act (Beng. Act IX of 1879), ss. 7-11, 20, 65.*—In a suit to recover money due upon certain promissory notes executed between the 14th December 1885 and the 16th March 1886, the defendant pleaded (*inter alia*) minority, and alleged that by an order of the Civil Court the Collector had been appointed his guardian and manager of his estate under Act XL of 1858; that on the 6th December, when he was nineteen years of age, his estate had been released by the Court of Wards and was made over to his father on the 17th December; that on the 30th December the District Judge held that he was still a minor, and appointed a manager

MAJORITY ACT (IX OF 1875)—*concluded.*

of his estate; and that the District Judge's order had been upheld on appeal by the High Court. *Held* that there was no evidence that a guardian of the person or property of the defendant had ever been appointed within the meaning of s. 3 of the Indian Majority Act (IX of 1875), and as the defendant was not under the jurisdiction of the Court of Wards at the time of the execution of the promissory notes, he was then no longer a minor, but *sui juris* and competent to enter into a binding contract. *Held* that the Collector is not a Court of Justice within the meaning of s. 3 of the Majority Act. A Collector appointed under s. 12 of Act XL of 1858 cannot properly be styled the guardian of a minor's property. *Held* that under s. 3 of the Majority Act the disability of minority only continues so long as the Court of Wards retains charge of a minor's property and no longer. *Rudra Prokash Misser* v. *Bhola Nath Mookerjee, I. L. R., 12 Calc., 612,* referred to and commented on. BIRJMOHUN LALL *v.* RUDRA PERKASH MISSER . . . **I. L. R., 17 Calc., 944**

8. ———— *Minority, Period of, where guardian has once been appointed, although no longer in existence—Guardians and Wards Act (VIII of 1890), s. 52—Suit on promissory note executed by minor.*—The defendant was sued upon a promissory note executed by him on the 24th August 1892, he being at that time nineteen years of age. Eight years previously, *viz.,* on the 4th March 1884, a guardian of his person and property had been appointed by an order of the *High* Court, but the guardian had been discharged on the 25th June 1892, and at the time of the execution of the note sued on there was no guardian in existence either of his person or property. *Held* that, having regard to the provisions of s. 3 of the Indian Majority Act (IX of 1875), the defendant was still a minor at the date of the note. GORDHANDAS JADOWJI *v.* HARIVALUBHDAS BHAIDAS **I. L. R., 21 Bom., 281**

MAJORITY, AGE OF—

See GUARDIAN—APPOINTMENT.
[I. L. R., 18 Bom., 366

See LIMITATION ACT, 1877, s. 7.
[5 C. L. R., 543

See PARSIS . **I. L. R., 22 Bom., 430**

1. ———— **Hindu, resident and domiciled in Calcutta, Majority of.**—The age of majority of a Hindu resident and domiciled in the town of Calcutta, and not possessed of any property in the mofussil, is the end of fifteen years. CALLY CHURN MULLICK *v.* BHUGGOBUTTY CHURN MULLICK. IN THE MATTER OF BENUD BEHARY MULLICK
[10 B. L. R., F. B., 231: 19 W. R., 110

DEOBO MOYEE DOSSEE *v.* JUGGESSUR HATI
[1 W. R., 75

Contra, IN THE MATTER OF HEMNATH BOSE
[1 Hyde, 111

PURMESHUR OJHA v. GOOLBEE . **11 W. R., 446**

MAJORITY, AGE OF—*continued.*

TARINEE PERSHAD SEIN *v.* DWARKANATH RUKHEET . . . . . **15 W. R., 451**

2. ———— *Hindu law—Act XL of 1858.*—A Hindu, resident and domiciled in Calcutta and possessed of lands in the mofussil, borrowed in Calcutta a sum of money from the plaintiff, a professional money-lender, and agreed by his bond to repay the principal with interest at 36 per cent. per annum in Calcutta. The defendant's age, at the time he executed the bond, was sixteen years and one or two months; but neither his person nor his property had been taken charge of by the Court of Wards or by any Civil Court. The defendant having made default in payment, the plaintiff brought the present suit. The defendant pleaded his minority. *Held* by the Full Bench that the law as to the age of minority governing the case was not Act XL of 1858, but the Hindu law, under which the defendant was not a minor at the time he executed the bond, and that therefore he was liable on it. MOTHOORMOHUN ROY *v.* SOORENDRO NARAIN DEB . **I. L. R., 1 Calc., 108: 24 W. R., 464**

3. ———— **Construction of will**—*Executor—Grant of probate, Refusal of, to minor.*—A Hindu domiciled with his family at Serampore, in the zillah of Hooghly, died, leaving a will, in which was the following direction: "In order to look after the affairs, to conduct suits and manage the debts and dues relative to my real and personal estates, my eldest son, *H C G*, who has attained the age of majority, remains executor, for my younger son, *G C G*, is an infant; but as my eldest sister, *S H D*, is prudent and sensible, all the affairs of the estates shall be under her superintendence; and my eldest son shall do all the acts according to her advice and direction. But when my younger son, *G C G*, will come of age, then both the brothers shall be competent personally to manage the affairs; at that time the advice and superintendence of my said sister shall not remain." *G C G*, after attaining the age of sixteen, but before he had reached the age of eighteen, applied for grant of probate of his father's will to himself, jointly with his brother *H C G*, in respect of property in Calcutta. The Court below refused to grant probate of the will to the son of the testator, on the ground that he was under the age of eighteen years. *Held* on appeal that he had not attained the age contemplated in his father's will at which he was to be joined in the executorship with his brother. IN THE GOODS OF GANGA PRASAD GOSAIN . . . . **4 B. L. R., Ap., 43**

S. C. on appeal . . . **5 B. L. R., 80**

4. ———— **Mahomedan not subject to Court of Wards.**—In the case of Mahomedans not subject to the Court of Wards, the limit of minority was held to be at least sixteen years. ABDOOL OAHAB CHOWDHRY *v.* ELIAS BANOO
[8 W. R., 301

5. ———— **Proprietors paying revenue to Government**—*Beng. Reg. XXVI of 1793, s. 3.*—The holder of an estate paying revenue direct to Government, whether the settlement of that estate be temporary or permanent, was a proprietor within

MAJORITY, AGE OF—*continued.*

the meaning of s. 3, Regulation XXVI of 1793; and the minority of such a proprietor extended to the end of the eighteenth year. Huro Monee Debia *v.* Tumeezoodeen Chowdhry . . **7 W. R., 181**

Beer Kishore Suhye Singh *v.* Hur Bullub Narain Singh . . . . **7 W. R., 502**

6. ———— *Beng. Reg. XXVI of 1793, s. 2—Contracts as to real estate and personal contracts.*—S. 2, Regulation XXVI of 1793, extended the term of minority of proprietors of estates paying revenue to Government from the end of the fifteenth to the end of the eighteenth year, in respect of all acts done by such proprietors, both as to matters connected with real estate and matters of personal contract. Bykuntnath Roy Chowdhry *v.* Pogose [**5 W. R., 2**

7. ———— *Proprietors out of possession—Beng. Reg. XXVI of 1793.*—Regulation XXVI of 1793 applied to proprietors out of possession as well as to those in possession, and was not overridden by the Mahomedan law with reference to majority. Enaet Hossein *v.* Roshan Jahan. Roshan Jahan *v.* Enaet Hossein . **5 W. R., 4**

8. ———— *Sale of estate by Mahomedan proprietor—Beng. Reg. XXVI of 1793, s. 2.—Semble*—In respect of a transaction in which a Mahomedan, the proprietor of an estate paying revenue to Government, disposes of that estate, the period of minority was that of eighteen years, as fixed by s. 2, Regulation XXVI of 1793. Ameeroonnissa Khatoon *v.* Abadoonnissa Khatoon [**15 B. L. R., 67 : 23 W. R., 208**
L. R., 2 I. A., 87

9. ———— *Co-sharer—Beng. Reg. XXVI of 1793.*—Regulation XXVI of 1793 (fixing eighteen years as the legal age for the exercise of the powers of a proprietor of an estate paying revenue to Government) applied to a co-sharer, as well as to the proprietor of an entire estate. Roushun Jahan *v.* Enaet Hossein . **W. R., 1864, 83**

10. ———— **Hindu**—*Bom. Reg. V of 1827, s. 7—Minor—Application for execution of decree.*—*Held* that a Hindu of the age of seventeen years was competent to apply for the execution of a decree obtained by a deceased person of whom he was the representative. Reg. V of 1827, s. 7, cl. 3, did not prevent a Hindu less than eighteen years of age from suing, but restricted him to a particular period, after which he was no longer a minor. Gangadhar Raghunath *v.* Chimnaji Keshav Damle [**5 Bom., A. C., 95**

11. ———— **Person not European British subject**—*Act XL of 1858—Majority of Hindus.*—Every person not being a European British subject, who has not attained the age of eighteen years, is a minor for the purposes of Act XL of 1858; and unless he is a proprietor of an estate paying revenue to Government, who has been taken under the jurisdiction of the Court of Wards, the care of his person and the charge of his property are subject to the jurisdiction of the Civil Court; and he is a minor, whether proceedings have been taken for the protection of his property or the appointment of a guardian or not. Madhusudan Manji *v.* Debigobinda Newgi . . . **1 B. L. R., F. B., 49**

S. C. Modhoo Soodun Manjee *v.* Dabee Gobind Newgee . . . **10 W. R., F. B., 36**

Abdool Hossein *v.* Luteefoonnissa [**11 W. R., 235**

12. ———— **Person subject to Act XL of 1858**—*Act XL of 1858, Certificate under.*—When a certificate of guardianship has been granted under Act XL of 1858, it is by the terms of that Act, and not by reference to Mahomedan or Hindu law, that the period at which the ward is to be considered of full age must be determined. Mahomed Arsud Chowdhry *v.* Oosun Bebee [**2 W. R., 217**

13. ———— *Limit of minority.*—Discussion as to the limit of minority of Hindus (who are not proprietors paying revenue to Government), and as to the proper construction of s. 26 of Act XL of 1858. Monsoor Ali *v.* Ramdyal [**3 W. R., 50**

14. ———— *Revenue-paying proprietors.*—The age of majority fixed by Act XL of 1858 is not only for proprietors of land paying revenue to Government, but for all persons not being British subjects. Lakhikant Dutt *v.* Jagabandhu Chuckerbutty . **3 B. L. R., Ap., 79**

S. C. Luckhee Kant Dutt *v.* Jugobundhoo Chuckerbutty . . . **11 W. R., 561**

15. ———— *Jurisdiction—High Court, Original Jurisdiction.*—The period of minority among Hindus, by the operation of Act XL of 1858, extends to eighteen years, as well within the original civil jurisdiction of the High Court as within the jurisdiction of the Civil Courts in the mofussil, and that whether the father is alive and of full age or not. Jadunath Mitter *v.* Bolychand Dutt . . . . . . **7 B. L. R., 607**

16. ———— *Power to sue—Act XL of 1858, s. 3.*—Where a person (a native of this country) has not attained the age of eighteen years, he is not competent to institute and maintain a suit without the intervention of a guardian appointed under s. 3 of Act XL of 1858. Noor Ahmed *v.* Lulta Pershad . . **2 N. W., 189**

17. ———— *European British subject.*—The defendant was, at the time of making a promissory note, of the age of nineteen years. The evidence showed that her father was born at sea, and lived the greater part of his life at Calcutta. It was not shown of what country his parents were, or whether the ship in which he was born was a British ship. The defendant pleaded minority at the time of making the note. *Held* the defendant was not a European British subject, and not exempted from the operation of Act XL of 1858. She therefore attained her majority at eighteen years. Archer *v.* Watkins . . . **8 B. L. R., 372**

18. ——— *Act IX of 1875 (Majority Act), s. 3—Minor.*—A minor, of whose person or property a guardian has been appointed under Act XL of 1858, does not attain his majority when he completes the age of eighteen years, but when he completes the age of twenty-one years. KHWAHISH ALI *v.* SURJU PRASAD SINGH

[I. L. R., 3 All., 598

19. ——— **European British subject not domiciled in India**—*Capacity to contract—Minor, Suit against — Civil Procedure Code, s. 443—Majority Act, IX of 1875—Lex loci—Contract Act, IX of 1872, s. 11—Cheque—Liability of indorser—Act XXVI of 1881, ss. 35, 43.*—A cheque was indorsed in blank by a European British subject who at that time was under twenty years of age and was temporarily residing, and not domiciled, in British India. It was subsequently dishonoured, and a suit was then brought by the bank which had cashed the cheque, to recover the amount from the indorser and drawer. The former alleged that the drawer had requested him to sign his name to the cheque, saying that it was a mere matter of form, and he would not be liable for the amount, and that the bank would only cash the cheque when indorsed by him; and in consequence he consented to indorse it, but that he did so without any intention of incurring liability as indorser; that he received no consideration, and that his indorsement was in blank, and not in favour of the bank, and was converted into a special indorsement without his knowledge and consent. The Court held that, at the time of indorsement, the indorser was a minor under English law, and dismissed the suit on the ground of minority. *Held* that, if the Court was satisfied of the fact of the defendant's minority, it should have complied with the provisions of s. 443 of the Civil Procedure Code. *Held* that, assuming the indorser to have been *sui juris*, the indorsement, taken in conjunction with the facts proved, established a contract by which the indorser was bound to pay the cheque. *Per* STRAIGHT, *Offg. C.J.*, and DUTHOIT, *J.*, that it was by no means clear or certain that there was any rule of international law recognizing the *lex loci contractus* as governing the capacity of the person to contract, but that, assuming such a rule to be established, the specific limitation of the Majority Act (IX of 1875) to "domiciled persons" necessarily excluded its application to European British subjects not domiciled in British India; that s. 11 of the Contract Act must be interpreted as declaring that the capacity of a person in point of age to enter into a binding contract was to be determined by his own personal law, wherever such law was to be found; that this rule was not affected by the Majority Act, so far as concerned persons temporarily residing, but not domiciled in British India, whose contractual capacity was still left to be governed by the personal law of their personal domicile; and that such law in the case of European British subjects was the common law of England, which recognized twenty-one as the age of majority. *Per* OLDFIELD, *J.*, that by the rule of the *jus gentium*, as hitherto understood and recognized in England, the *lex loci* would govern in respect to the capacity to contract, but that in framing the Indian Majority Act, which was the *lex loci* on the subject in India, the Legislature would appear not to have adopted that rule, but, by limiting the operation of the Act to persons domiciled in British India, to have intentionally excluded from its operation persons not domiciled there, and to have left such persons to be governed by the law of their domicile. *Per* BRODHURST, *J.*, that Act IX of 1875 was intended by the Legislature to be applicable, and in fact was applicable, only to European British subjects domiciled in those parts of India referred to in s. 1, and that to any other European British subject whose domicile was in England, but who was temporarily residing in any part of India above alluded to, the privileges and disabilities of minority attached until he had attained the age of twenty-one years. ROHILKHAND AND KUMAON BANK *v.* ROW . . . **I. L. R., 7 All., 490**

20. ——— **Mahomedan over sixteen years of age before Act IX of 1875 came into force**—*Capacity to contract—Mahomedan law—Act IX of 1872 (Contract Act), s. 11—Act XL of 1858 (Bengal Minors Act), s. 26—Act IX of 1875 (Majority Act), s. 2 (c).*—In a suit upon a bond executed on the 5th June 1875 by a Mahomedan who at that date was sixteen years and nine months old, the defendant pleaded that at the time when the bond was executed he was a minor, and that the agreement was therefore not enforceable as against him. *Held* that the defendant, having at the date of the execution of the bond reached the full age of sixteen years, and so attained majority under the Mahomedan law, which, and not the rule contained in s. 26 of the Bengal Minors Act (XL of 1858), was the law applicable to him under s. 2 (*c*) of the Majority Act (IX of 1875) before the latter Act came into force, was competent in respect of age to make a contract in the sense of s. 11 of the Contract Act (IX of 1872), and the agreement was therefore enforceable as against him. The rule contained in s. 26 of the Bengal Minors Act is limited by its terms to "the purposes of that Act," which provides exclusively for the care of the persons and property of minors possessed of property which has not been taken under the protection of the Court of Wards; and it is to such persons only, when they have been brought under the operation of the Act as in it provided, that the prolongation of nonage under s. 26 applies. DAMODAR DASS *v.* WILAYET HUSAIN

[I. L. R., 7 All., 763

21. ——— **European British subject**—*Law governing capacity to contract.* — The *lex loci contractus* determines the capacity of a person to contract, and reference ought not to be made to the law of his domicile of origin. The privileges and disabilities of minority, so far as they are not removed by express enactment, attach to European British subjects in this country until they have attained the age of twenty-one years. The same rule ought, on principles of justice, equity, and good conscience, to be observed in the Non-Regulation as in the Regulation Provinces. HEARSEY *v.* GIRDHAREE LAL . . . . . . **3 N. W., 338**

MAJORITY, AGE OF—*continued.*

22. ———— *A* stated that he was born in 1848; that his great-grandfather was, according to the tradition of the family, a European (but of what country in Europe he did not know) residing at Madras, and his grandmother a native, Hindu or Mahomedan; that he did not know whether his great-grandfather and great-grandmother were married, or who his grandmother was, or whether his grandfather was married; that his father married a lady bearing an English name; that he himself and all his relations were Christians; that he was born in Calcutta, and knew of no relatives in Europe. *Held* that he was the legitimate descendant of a European British subject, and therefore his age of majority was twenty-one years. ROLLO *v.* SMITH [1 B. L. R., O. C., 10

23. ———— **Bombay Minors Act (XX of 1864)**—*Minor.*—A Hindu to whom Act XX of 1864 (Bombay Minors Act) is not applied, and who is not governed by the Majority Act, 1875, attains his majority when he attains the age of sixteen years. SHID DESHRAV *v.* RAMCHANDRARAV [I. L. R., 6 Bom., 463

24. ———— *Charge of property of minor—Act XL of 1858, s. 2.*—Under Act XX of 1864, s. 1, it is the charge of a minor's property, and not the property itself, which shall vest in the Civil Court a distinction which has been overlooked in *Bai Kesar* v. *Bai Ganga, 8 Bom., A. C., 33.* The meaning of the 1st section of Act XX of 1864, when regarded in connection with the sequel thereof (which provides, for the information of the Civil Court, no such means, regarding the deaths of persons leaving infant children, as would enable the Court to act *ex mero motu* in every such case), is that the care of the persons of all minors (not being European British subjects) and the charge of their property shall be, as expressly provided in the Bengal Minors Act, XL of 1858, "subject to the jurisdiction of the Court;" and there is nothing in the subsequent sections of the Bombay Minors Act which would lead to the conclusion that, until the Court is moved to exercise its jurisdiction, the care of the minors themselves or the charge of their property is vested in the Court, or that more was intended than that, like the Court of Chancery in England, the principal Civil Courts of districts should have the right, if moved so to do, and if they so think proper, to take care of the persons of minors and charge of their property; and that, until the Court does so, the minors cannot be regarded as wards of the Court, or their property as in its charge. It is only for the purposes of Act XX of 1864 that eighteen is laid down as the age of majority (s. 30). The Legislature has not, by that Act, intended to prescribe eighteen as the age of majority for all persons of all castes and creeds and for all purposes. That limit is not applicable to any person until the Act be brought into play by the exercise of the Civil Court's jurisdiction. One member (although an infant) of an undivided family, governed by the Mitakshara law, has not such an interest in the joint property as is capable of being taken charge of and managed by the Civil Court or a guardian appointed under Act XX of 1864. *Quære*—Whether, under Act XX of 1864, the principal Civil Court of original jurisdiction in the district can take charge of the property of a person who has completed his sixteenth year, but is under eighteen. SHIVJI HASAM *v.* DATU MAVJI KHOJA . . . . **12 Bom., 281**

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENT ACT (MADRAS ACT I OF 1887).

See CASES UNDER LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS.

MALABAR LAW—ADOPTION.

1. ———— **Adoption by the last member of a Nambudri illom.**—In a suit for a declaration that the members of the Nambudri illom to which the plaintiffs belonged were the sole heirs and successors of an illom known as Kiluvapura, of which the natural line had become extinct, and for possession of certain land which had formed part of its property, the defendants were the karnavan and manager of the plaintiffs' illom and the members of another illom. It was found on the evidence that the plaintiffs' karnavan had been adopted unto the Kiluvapura illom, and that subsequently that illom and the plaintiffs' had been amalgamated under a karar executed by, among others, the wife of the last male member of the Kiluvapura illom, and that she had died before this suit. *Held* that the adoption of the plaintiffs' karnavan was valid even assuming that no datta homam was performed, and the last male member of the Kiluvapura illom had died after merely indicating him as his heir, and that the widow adopted him in the Dwayamushyayana form; and that the plaintiffs were entitled to a decree as prayed. SHANKARAN *v.* KESAVAN . **I. L. R., 15 Mad., 6**

2. ———— **Adoption by the karnavan of a Marumakkatayam tarwad** — *Want of consent by the rest of the tarwad.*—A tarwad in Malabar subject to Marumakkatayam law was reduced in number to two persons, *viz.*, the karnavan and his younger brother, the plaintiff. They quarrelled, and the former without the consent of the latter adopted as members of the tarwad his son and daughter and her children. On his death the plaintiff sued for possession of the tarwad property and for a declaration that the adoptions were invalid. *Held* that the plaintiff was entitled to the relief asked for. PAYYATH NANU MENON *v.* THIRUTHIPALLI RAMAN MENON . . **I. L. R., 20 Mad., 51**

MALABAR LAW—CUSTODY OF CHILD.

———— **Nephews**—*Guardianship,—Right of—Ground for exercise of jurisdiction of Civil Court.*—The Civil Judge removed two children, governed by the rule of Marumakkatayam, from the custody of their karnavan, and placed them under the

MALABAR LAW—CUSTODY OF CHILD—*concluded.*

guardianship of their father. *Held* by the High Court on appeal that the order should be reversed on the grounds that no case had arisen for the exercise of the Civil Judge's power, and that the order was wholly opposed to the very principle upon which Marumakkatayam depends. THATHU BAPUTTY *v.* CHAKAYATH CHATHU . . 7 Mad., 179

MALABAR LAW—CUSTOM.

See MALABAR LAW—INHERITANCE.
[I. L. R., 15 Mad., 281

1. ———— **Nambudri Brahmans**—*Proof—Adoption of sister's son.*—A Division Bench of the High Court having directed an issue to be tried by the Subordinate Judge of North Malabar as to whether, by the custom of Malabar, the adoption of a sister's son among Nambudri Brahmans was valid, the Subordinate Judge examined eleven witnesses selected by the parties to the suit all of whom were described as Nambudris of note in both districts of North and South Malabar. These witnesses (with the exception of one whose testimony was self-contradictory) agreed that the adoption of a daughter's or sister's son is recognized by the customary law of Malabar, and supported their opinion by giving instances of such adoption which had taken place within their knowledge, and named the persons alleged to have been adopted in pursuance of the custom as holding estates by virtue of the title thereby acquired. The Division Bench referrd to a Full Bench the question whether the evidence sufficiently established the custom alleged. *Held* by the Full Bench (TURNER, *C.J.*, INNES, KINDERSLEY, and MUTTUSAMI AYYAR, *JJ.*) that the evidence was sufficient to establish that the adoption of a sister's son by Nambudri Brahmans is sanctioned by the customary law of Malabar. (*Per* TURNER, *C.J.*, and KINDERSLEY, *J.*) *Semble*—The ruling in *Gopalayyan* v. *Ragupathi Ayyan, 7 Mad., 250,* as to that constitutes sufficient proof of custom, has been too strongly expressed. ERANJOLI ILLATH VISHNU NAMBUDRI *v.* ERANJOLI ILLATH KRISHNAN NAMBUDRI . . . I. L. R., 7 Mad., 3

2. ———— **Nambudris**—*Introduction of stranger to perpetuate existence of illam.*—According to the custom prevailing amongst Nambudris in Malabar, a person may be introduced into an illam (family) to perpetuate its existence. Such person thereupon becomes a member of the illam, and is *primâ facie* entitled to exercise the uraima, rights of the illam (*i.e.*, to act as trustee of temples, the hereditary trusteeship of which is vested in the illam), as well as to enjoy the properties belonging to the illam. KESHAVAN *v.* VASUDEVAN
[I. L. R., 7 Mad., 297

3. ———— **Custom in family of the Zamorin Rajas of Calicut**—*Presumption as to property in possession of member of family.*—According to the custom obtaining in the family of the Zamorin Rajas of Calicut, property acquired by a stanom-holder and not merged by him in the property of his stanom, or otherwise disposed of by him in his lifetime, becomes, on his death, the property of the kovilagom in which he was born, and, if found in the possession of a member of the kovilagom, belongs presumedly to the kovilagom as common property. VIRA RAYEN *v.* VALIA RANI
[I. L. R., 3 Mad., 141

4. ———— **Qualification of yajaman or manager of the family**—*Leprosy—Adoption of another person without consent of son who was a leper.*—The last female member of an Aliyasantana family made an adoption without the consent of her son, who was suffering from the ulcerous leprosy, which was not congenital. *Held* that there was no custom excluding lepers either from management of the family or from inheritance, and that the son was entitled to have the adoption set aside. CHANDU *v.* SUBBA . I. L. R., 13 Mad., 209

5. ———— **Custom of Mapillas**—*Co-parcenary.*—There is no authority for saying that the custom of holding property in co-parcenary is a recognized custom among Mapillas in Malabar. KASMI *v.* AYISHAMMA . . . I. L. R., 15 Mad., 60

MALABAR LAW—DEBTS.

———— **Hindu Law how far applicable**—*Brahmans—Nambudris—Mussads—Liability of sons for father's debt in Hindu law not applicable.*—The principle of Hindu law, which imposes a duty on a son to pay his father's debt, contracted for purposes neither illegal nor immoral, is not applicable to the Malabar Brahmans called Nambudris and Mussads. NILAKANDAN *v.* MADHAVAN
[I. L. R., 10 Mad., 9

MALABAR LAW—ENDOWMENT.

See PARTIES—ADDING PARTIES TO SUITS —PLAINTIFFS I. L. R., 10 Mad., 322
[I. L. R., 14 Mad., 489

1. ———— **Uralans**—*Agreement to increase number of uralans (trustees)—Binding effect of, on minority.*—An agreement by the majority of the uralans (trustees) of a Malabar devaswam (temple), to increase the number of uralans is not binding on a dissentient minority. NARAYANAN *v.* SRIDHARAN
[I. L. R., 5 Mad., 165

2. ———— *Trust management—Power of majority.*—Where the majority of the uralans of a Malabar devaswam agreed to renew a kanam on terms beneficial to the devaswam after the question of the renewal had been fairly considered by all the uralans,—*Held* that the decision of the majority was binding upon a dissentient minority. CHARAVUR TERAMATH *v.* URATH LAKSHMI
[I. L. R., 6 Mad., 270

3. ———— *Uraiama or rights of uralan—Melkoima—Effect of compromise by uralers of the right to manage a devaswam—Claim of certain uralers to exclude others from management—Limitation.*—The uraiama right in a Malabar devaswam was vested in the illim, of which

plaintiff No. 1, a Nambudri Brahman, was a member; the defendants represented the family which formerly ruled over the tract of country where the devaswam was situated. The plaintiffs sued for a declaration that their families were entitled to the exclusive management of the affairs of the devaswam. It appeared that the plaintiffs' and defendants' families had been in joint management since 1845 in accordance with the provisions of a deed of compromise. *Held,* (1) on its appearing that the compromise had been entered into by the karnavan of the plaintiffs' illom, and that the compromise was not vitiated by fraud or the like, that the compromise was binding on the plaintiff; (2) that the claim to exclusive management was barred by limitation. A legal origin to which the joint enjoyment of the rights of management may be referred may be found in the continuance of what was melkoima in ancient times as a co-trusteeship subsequent to the British rule with the tacit sanction of the British Government, or in the status of the Nambidi family as patrons of the institution. NILAKANDAN *v.* PADMANABHA
[I. L. R., 14 Mad., 153

Held on appeal to the Privy Council affirming the above decision that the compromise so agreed to was binding upon the appellants; that the usage, which had been followed since 1845, was the best exponent of the melkoima right; and that the compromise could not be re-opened. NILAKANDHEN NAMBUDIRAPAD *v.* PADMANABHA REVI VARMA
[I. L. R., 18 Mad., 1
L. R., 21 I. A., 128

4. ——— **Alienation of endowed property**—*Sale of joint property—Uralans of devaswam—Sale by one tarwad without consent of others.*—When the uralans of a devaswam were four tarwads,—*Held* that a sale of the uraiama right by one tarwad, without the consent of the others, was altogether invalid, and that the vendee could not redeem a kanam mortgage of the devaswam land, though the mortgagor was karnavan of the tarwad which assumed to sell the uraiama right. UKANDA VARRIYAR *v.* RAMEN NAMBUDIRI . **1 Mad., 262**

5. ——— **Transfer of right to manage temple**—*Lease.*—A transfer of the right to manage a Malabar temple and its lands by way of lease for a sum of money is illegal. RAMA VARMA TAMBARAN *v.* RAMAN NAYAR **I. L. R., 5 Mad., 89**

6. ——— *Alienation—Custom.*—The founder of a Hindu temple who provides that the uralans (trustees or managers) thereof for the time being shall be the karnavans (chiefs) of four distinct families, may be supposed to have established this species of corporation with the object of securing the due performance of the worship and the due administration of the property of the temple by the instrumentality of a class of persons whom he has selected on grounds of special fitness; and it cannot be supposed that he intended to empower such trustees at their mere will to transfer their office and its duties, with all the trust property, to a person unconnected with the families from which the trustees were to be taken, to be used according to his discretion. There is no authority under the general principles of Hindu law for holding that such trustees have power to make such a transfer. Where a custom relied on as sanctioning such a transfer implies the right to sell the trusteeship for the pecuniary advantage of the trustees, that circumstance alone may justify a decision that the custom relied on is bad in law. Where, from the absence of direct evidence of the nature of a Hindu religious foundation, and the rights, duties, and powers of the trustees, it becomes necessary to refer to usage, the custom to be proved must be one which regulates the particular institution. The cases of *Greedharee Doss* v. *Nundo Kishore Doss, 11 Moore's I. A., 405,* and *Rajah Muttu Ramalinga Setupati* v. *Perianayagam Pillai, L. R., 1 I. A., 209,* referred to and approved. VURMAH VALIA *v.* RAVI VURMAH . . **I. L. R., 1 Mad., 235**
[L. R., 4 I. A., 76

Affirming decision of High Court in VARMA VALIA (RAJAH OF CHERAKOT KOVILAGOM) *v.* KOTTAYATH KIYAKI KOVILAGATH REVI VARMA MOOTHA RAJAH . . . . **7 Mad., 210**

See GNANASAMBANDA PANDARA SANNADHI *v.* VELU PANDARAM . . **I. L. R., 23 Mad., 271**

7. ——— **Rights of Sthanamdars.**—Rights of members of a sthanam, *inter se,* considered. MAHOMED *v.* KRISHNAN . **I. L. R., 11 Mad., 106**

8. ——— **Alienability of "sthanam" lands**—*Payment of debt.*—Lands attached to the "sthanam" of sthanamdars in Malabar are, unless the contrary be specifically proved in any particular case, liable to alienation and charge, at all events for the payment of debts incurred for the conservation of the sthanam. CHEMMINIKARA MUPPIL NAIR *v.* KILIYANAT UKONA MENON . **I. L. R., 1 Mad., 88**

See VENKATESWARA IYAN *v.* SHEKHARI VARMA
[I. L. R., 3 Mad., 384: L. R., 8 I. A., 143

9. ——— *Grant of perpetual lease.*—The grant of a perpetual lease at a fixed rent is not necessarily beyond the powers of a sthanam-holder in a Malabar royal family. MANA VIKRAMAN *v.* SUNDARAN PATTAR
[I. L. R., 4 Mad., 148

10. ——— *Powers of stani—Lease by stani of forest land attached to the stanam.*—A stani in Malabar is not a tenant for life impeachable for waste. He is a person who represents the estate for the time being, and it is open to him to make a lease of forest land for a term of years, and the mere fact that the alienation is intended to hold good after his lifetime will not invalidate it. ITTIRARICHAN UNNI *v.* KUNJUNNI
[I. L. R., 21 Mad., 144

MALABAR LAW—GIFT.

1. ——— **Validity of gift**—*Delivery of possession.*—Plaintiff sued to recover certain land in virtue of an alleged gift from her deceased husband. The parties were subject to the Marumakkatayam

MALABAR LAW—GIFT—*concluded.*

law. The facts were that, the land being in the hands of tenants, a deed of gift with the counterpart lease was delivered by the donor to the plaintiff. It did not appear that there were any title-deeds belonging to the property. *Held*, reversing the decision of the Principal Sudder Ameen, that the rule of law applicable is that a gift is perfectly valid if such delivery is made as the nature of the object permits, and that this had been done in the present case. WANNATHAN KANDILE CHIRUTHAI *v.* KEYAKADATH PYDEL KURUP . . . . . . **6 Mad., 194**

2. ———— **Restriction on enjoyment**—*Attempt to create estate subject to incidents of Malabar tarwad property—Sale of interest of donee by judgment-creditor.*—The owner of certain land in Malabar made a gift thereof to his two sons and daughter, with the intention that it should be enjoyed by them subject to the incidents of tarwad property—*i.e.*, that the estate should be impartible and held by the donees as joint family estate descendible to the heirs in the female line. *Held* that the interest of one of the donees in the land was liable to be attached and sold in execution of a decree against him. NARAYANAN *v.* KANNAN

[I. L. R., 7 Mad., 315

3. ———— **Gift of land to a wife and her children**—*Incidents of tarwad property—Liability to attachment in execution of decree.*—Land, which originally belonged to one *T*, was given after his death to one of his wives and her children in accordance with a wish orally expressed by him. He had not expressed any intention as to how it should be held by the donees. It appeared that they were subject to the Marumakkatayam law. *Held* by the Full Bench that they took the land with the incidents of property held by a tarwad. *Narayanan* v. *Kannan, I. L. R., 7 Mad., 315,* dissented from. *Held* by the Division Court accordingly that a decree against the assets of one of the sons could not be executed against the land as a whole or against his share in it. KUNHACHA UMMA *v.* KUTTI MAMMI HAJEE . . **I. L. R., 16 Mad., 201**

MOIDIN *v.* AMBU

[I. L. R., 16 Mad., 203 note

Contra, PARVATHI *v.* KORAN

[I. L. R., 16 Mad., 202

MALABAR LAW—INHERITANCE.

1. ———— **Issue of parents governed by different systems of law.**—Where a woman belonging to a Malabar tarwad governed by the Marumakkatayam law (succession by nephews) has issue by a man who is governed by the Makkatayam law (succession by sons), such issue are *primâ facie* entitled to their father's property in accordance with the Makkatayam law, and to the property of their mother's tarwad in accordance with the Marumakkatayam law. CHATHUNNI *v.* SANKARAN

[I. L. R., 8 Mad., 238

2. ———— *Devolution of property—Marumakkatayam law—Mahomedan law.*—A deceased as well as his paternal ancestors had

MALABAR LAW—INHERITANCE —*continued.*

followed the Mahomedan law; but his mother had been a member of a tarwad which held property subject to Marumakkatayam law. On its being contended that in such a case the property of the deceased, whether derived from his father or mother, passed according to the rule of Marumakkatayam law to his mother's tarwad, and not to his heirs according to the Mahomedan law,—*Held* that the law governing the devolution of the property of the deceased, derived from either parent but not held by him as a member of a tarwad subject to Marumakkatayam law, is the Mahomedan law. ASSAN *v.* PATHUMMA

[I. L. R., 22 Mad., 494

3. ———— **Nambudris**—*Inheritance—Sarvasvadhanam marriage—Rights of son.*—Among Nambudris in Malabar, the son of a daughter given in the Sarvasvadhanam form of marriage does not inherit in the family of his father so long as other heirs exist. KUMARAN *v.* NARAYANAN

[I. L. R., 9 Mad., 260

4. ———— *Appointment of heir—Nambudris, their personal law—Power of disposing of tarwad property by an antharjanam —Sarvasvadhanam marriage.*—Suit by the Secretary of State to declare a right of escheat of the property of a Nambudri illom. The last male member of the illom died about 1859, leaving defendant No. 1 and her mother the sole surviving members of the illom. Defendant No. 1 had previously been married to a member of another illom by a sarvasvadhanam marriage, but her husband died without issue. In 1872 defendant No. 1 and her mother—there being no attaladakkam heirs—appointed defendant No. 2, an adult member of a third illom, to be manager and heir of their illom and to marry and raise up issue for it. The mother and father of defendants Nos. 1 and 2, respectively, were brother and sister. *Held* (1) that Nambudri Brahmans are governed by Hindu law, as modified by special customs adopted by them since their settlement in Malabar; (2) that defendant No. 2 had no right to the property of the illom independently of the appointment of 1872; (3) that the property of the illom was not the soudayika of defendant No. 1, and as such at her absolute disposal; (4) that a Nambudri widow, who is the sole surviving member of her illom, is not at liberty to alienate the property of the illom at her pleasure; (5) that there was sufficient evidence of a custom that a Nambudri widow can adopt or appoint an heir in order to perpetuate her illom in the absence of dayadies with ten or three days' pollution; and the appointment of defendant No. 2 was valid against the Crown. *Quære*—Whether in such appointment of an heir it is necessary to direct that he should marry for the illom to which he is appointed as heir. VASUDEVAN *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 11 Mad., 157

5. ———— **Mode of succession to polliam**—*Private property left by poligar.*—The mode of succession in a polliam is not such as to render the holder responsible for the debts of his predecessor. There is not a continuance of the previous estate in each successive holder, but a fresh

MALABAR LAW—INHERITANCE —*concluded.*

estate created by the gift. However, as respects private property left by a deceased poligar, liability to the extent of the assets taken will attach upon the takers, if there was an obligation upon the owner of property so taken to pay the debt. SUBBA CHETTY *v.* MASTI IMMADI . . **I. L. R., 3 Mad., 303**

6. ——— **Exclusion from inheritance**—*Aliyasantana law—Uncongenital insanity.*—A Jain, who was subject to the Aliyasantana law, made a will, whereby he disposed of the property of his family in favour of certain persons, and died. The plaintiff, a female, was the sole surviving member of the testator's family, but it was admitted that she was, and for more than fifty years had been, a lunatic, though she had not been declared to be so under Act XXXV of 1858; it appeared that her lunacy was not congenital. She sued, by the Collector of South Canara, the Agent for the Court of Wards. *Held* that the plaintiff was not excluded from inheritance by reason of lunacy under Aliyasantana law, and the will in favour of the defendants was invalid. SANKU *v.* PUTTAMMA

[I. L. R., 14 Mad., 289

7. ——— **Makkatayam rule of inheritance**—*Custom of Tiyars in South Malabar.*—A community, following the Makkatayam rule, must not be taken to be necessarily governed by the Hindu law of inheritance with all its incidents. Accordingly, when a member of the Tiyar community in Calicut, following that rule, alleged and proved a custom that brothers succeeded to self-acquired property in preference to widows, it was held that the Court should give effect to it. RARICHAN *v.* PERACHI

[I. L. R., 15 Mad., 281

8. ——— *Tiyans of South Malabar.*—On the death of a Tiyan of South Malabar, following the Makkatayam rule of inheritance, his mother, widow, and daughter are entitled to succeed to his property (acquired by himself and his father) in preference to his father's divided brothers. IMBICHI KANDAN *v.* IMBICHI PENNU

[I. L. R., 19 Mad., 1

9. ——— *Thiyyas of Calicut—Widow—Mother.*—Among the Thiyyas of Calicut governed by the Makkatayam law, the widow of the deceased owner is a preferential heir to his mother. KUNHI PENNU *v.* CHIRUDA

[I. L. R., 19 Mad., 440

MALABAR LAW—JOINT FAMILY.

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . **I. L. R., 11 Mad., 106**

1. ——— **Taverai**—*Succession—Tarwad*—In Malabar the word "taverai" has several distinct meanings. In the families of the princes all the houses have separate property, and the senior in age of all the houses succeeds to the royalty with the property specially devoted to it. This mode of succession may be regarded as rather due to public than to private law. Private families have sometimes adopted the same customs, but there is the strongest presumption against the truth of this in the case of the private family. Families becoming very numerous have often split into various branches. In the language of the people, there is community of purity and impurity between them, but no community of property. In the only sense of the word with which Courts of Justice are concerned, people so related are not of the same tarwad. Where there are several houses bearing the same original tarwad name, but with an addition, and there is no evidence of the passing of a member of one house to another, there is the strongest ground for concluding that this separation has taken place. ERAMBAPALLI KORAPEN NAYAR *v.* ERAMBAPALLI CHENEN NAYAR

[6 Mad. 411

2. ——— **Joint property**—*Acquisitions not disposed of in lifetime—Family property—Presumption from position of karnavan.*—By the law of Malabar all acquisitions of any member of a family which he has not disposed of in his lifetime form part of the family property. The acquirer, however, may during his lifetime hold, alienate at once, and encumber, his self-acquisitions. A karnavan, in possession of the family funds, is presumed to have made all acquisitions with them and for the benefit of the corporate body. But such presumption is not irrebuttable, and his alienation or charge of such acquisitions made during his lifetime may be valid. KALLATI KUNJU MENON *v.* PALAT ERRACHA MENON . . . . . **2 Mad., 162**

3. ——— **Self-acquired property**—*Assets for payment of debts of deceased acquirer in hands of tarwad.*—The self-acquired property of a member of a Malabar tarwad, which, not being disposed of at the death of the acquirer, lapses into the property of the tarwad, enures as assets of the deceased for the payment of his debts in the hands of the members of the tarwad. RYRAPPAN NAMBIAR *v.* KELU KURUP . . **I. L. R., 4 Mad., 150**

4. ——— **Property assigned for support of females**—*Liability of, to attachment in execution of decree against karnavan.*—Property assigned by the males of a Nayar family for the support of their females is still family property, and liable as such to be taken in execution of a judgment against the karnavan. PARRAKEL KONDI MENON *v.* VADAKENTIL KUNNI PENNA . . **2 Mad., 41**

5. ——— **Sale of tarwad property**—*Powers of karnavan—Assent of members of tarwad, how far necessary.*—There is no rule of Malabar law that the assent of every member of a tarwad is necessary to render valid the alienation of tarwad property. KALLIYANI *v.* NARAYANA

[I. L. R., 9 Mad., 266

6. ——— **Claim for improvements effected by anandravan in tarwad property.**—An anandravan has no right to the value of the improvements effected by him on tarwad property upon surrender to the karnavan, when such improvements are not made with private funds. URAMKUMARATH KANNAN NAYAR *v.* URAMKUMARATH TENJU NAYAR . . **I. L. R., 5 Mad., 1**

MALABAR LAW—JOINT FAMILY *—continued.*

7. ——— **Right of member of tarwad to an account**—*Right to succeed to management of family property.*—An individual member of a tarwad governed by the Marumakkatayam rule has no right to an account from the karnavan. Each member of a tarwad has a right to succeed by seniority to the management of the family property. KUNIGARATU *v.* ARRANGADEN . . 2 Mad., 12

8. ——— **Right to manage illom**—*Nambudri family.*—The right of the eldest member of a Nambudri family to manage the illom is absolute; and where a junior member has in fact managed it, then this is presumed to have been with the permission of the former, who may at any time take up the actual control. NAMBIATAN NAMBUDRI *v.* NAMBIATAN NAMBUDRI . . 2 Mad., 110

9. ——— **Right to manage tarwad**—*Right to revoke agency.*—A karnavan who appoints a junior anandravan as his agent to manage part of the tarwad property can, on behalf of the tarwad family, revoke the authority at any time and take the management into his own hands. GOVINDAN *v.* KANNARAN . . . I. L. R., 1 Mad., 351

10. ——— **Power of karnavan to renounce privileges and duties of office.**—*Semble*—A karnavan cannot part by contract so as to be unable to resume them, with the privileges and duties which attach to his position as karnavan. CHERUKOMEN *alias* GOVINDEN NAIRV *v.* ISMALA [6 Mad., 145

11. ——— **Powers of karnavan**—*Delegation of powers of karnavan to his son.*—The karnavan of a Malabar tarwad, having been sentenced to a term of imprisonment, delegated to his son all his powers as karnavan pending the expiry of his sentence. *Held* that the delegation was *ultra vires* and void. CHAPPAN NAYAR *v.* ASSEN KUTTI. [I. L. R., 12 Mad., 129

12. ——— **Alienation of joint family property**—*Signature of karnavan as indicating consent.*—According to Malabar law, a sale of family property is valid when made with the assent, express or implied, of all the members of the tarwad, and when the deed of sale is signed by the karnavan and the senior anandravan if *sui juris.* Such signature is *primâ facie* evidence of the assent of the family, and the burden of proving their dissent lies on those who allege it. KONDI MENON *v.* SRANGINREAGATTA AHAMMADA . . 1 Mad., 248

13. ——— *Power of karnavan—Anandravan.*—The assent of the anandravans is necessary to a sale of tarwad land by a karnavan. The chief anandravan's signature to the instrument of sale is sufficient, but not indispensable, evidence of such assent. KAIPRETA RAMEN *v.* MAKKHAYIL MUTOREN . . . . . . 1 Mad., 359

14. ——— *Purchaser, Duty of—Notice.*—It is the unquestionable law of Malabar that tarwad property is inalienable, except in cases of adequate family necessity. In such cases alienations will be upheld; but it lies upon the purchaser to make out with abundant clearness that the purpose was a proper one. The assent of the senior anandravan is some (but rebuttable) evidence that the purpose was proper. *Semble*—That, considering the state of Hindu families, a purchaser would be affected with notice by much slighter evidence than a purchaser in other countries. KOYILOTHPUTEN PURAYIL MANOKI KORAN NAYAR *v.* PUTHENPURAYIL MANOKI CHANDA NAYAR . 3 Mad., 294

15. ——— *Otti mortgage—Karnavan, Power of.*—A karnavan singly may make an otti mortgage. EDALHIL ITTI *v.* KOPASHON NAYAR . . . . . 1 Mad., 122

16. ——— *Authority of karnavan of tarwad to alienate endowed property.*—The authority of a karnavan to make alienations of the immoveable property of the tarwad stands on a different footing from his power to pledge the credit of the tarwad. The karnavan is not the agent of the family to make alienations, but must have special authority in each case. KOMBI ACHEN *v.* LAKSHMI AHMA . I. L. R., 5 Mad., 201

17. ——— *Karnavan, Powers of—Perpetual lease.*—The karnavan of a Malabar kovillagom executed a kuikanom lease of certain land, the jenm of the kovillagom, in 1846, and in 1861 his successor demised the same land to the same tenants in perpetuity. The present karnavan sued in 1889 to recover possession of the land. *Held* that the perpetual lease, as being of an improvident character, was *ultra vires* and void; and (2) that the original lease was not surrendered by the acceptance of the subsequent lease. RAMUNNI *v.* KERALA VARMA VALIA RAJA [I. L. R., 15 Mad., 166

18. ——— **Position of karnavan**—*Trustee—Parties.*—A karnavan is not a mere trustee, nor do the rules of Courts of Equity as to the necessity of making *cestui que* trusts parties to suits against trustees by strangers apply to the case of a karnavan and the members of the tarwad. Status of a karnavan discussed. VARANAKOT NARAYANAN NAMBURI *v.* VARANAKOT NARAYANAN NAMBURI [I. L. R., 2 Mad., 328

19. ——— The position of a karnavan is not analogous to that of a mere trustee, officer of a corporation, or the like. The person to whom the karnavan bears the closest resemblance is the father of a Hindu family. He should not be removed from his situation except on the most cogent grounds. The solution of the difficulties which the state of families and property in Malabar will always create will not be assisted by bringing in the anarchy and insecurity which will always follow upon any attempt to weaken the natural authority of the karnavan. ERAVANNI REVIVARMAN *v.* ITTAPU REVIVARMAN . . . I. L. R., 1 Mad., 153

20. ——— **Power of karnavan.**—Incidents of property held by tarwad and by joint Hindu family distinguished. A Court has no power

to confer on karnavans larger powers than such as are sanctioned by usage. If such powers are insufficient to secure to tarwads the full enjoyment of their estates, or if they are so limited as to interpose obstacles to the establishment of new industries, the extension of such powers must be sought from the Legislature. Ponambilath Parapravan Kunhamod Hajee *v.* Ponambilath Parapravan Kuttiath Hajee. Tod *v.* Ponambilath Parapravan Kunhamod Hajee . . **I. L. R., 3 Mad., 169**

21. ——— *Powers restricted by family arrangement.*—The ordinary powers of the karnavan of a Malabar tarwad can be restricted by a family agreement to which he is a party, and if, in breach of such agreement, the karnavan makes an alienation to a stranger who has notice of the agreement, the tarwad is not bound by the alienation. Kanna Pisharodi *v.* Kombi Achen
[I. L. R., 8 Mad., 381

22. ——— *Power to set aside family arrangements.*—A karnavan is not entitled of his own authority to set aside a family arrangement made on behalf of all the members of the tarwad. Komu *v.* Krishna **I. L. R., 11 Mad., 134**

23. ——— *Compromise of doubtful claims by adult members of a tarwad—Minors, Effect of compromise on.*—*Semble*—That a compromise of a doubtful claim made by the adult members of a tarwad *bonâ fide* and in the interest of the tarwad is binding on the minor members. Moidin Kutti *v.* Beevi Kutti Ummah
[I. L. R., 18 Mad., 38

24. ——— **Position and powers of karnavan**—*Powers of alienation of property and adoption of females—Power to adopt strangers into tarwad—Custom.*—The litigation between Nayars in South Malabar was decided according to their laws and usages, some of which, relating to the descent of property through females, are so established as to be judicially noticed without proof, while others require proof. The large powers of the karnavan of a tarwad are essentially for the management of his property. His power to alienate is limited. He is empowered to adopt so as to make persons and their heirs members of the tarwad only with the consent of the other members thereof. Where the members had been reduced in number to the karnavan himself and one anandravan,—*Held* that the karnavan could not adopt at his own discretion without the consent of the latter, in the absence of a proved custom authorizing adoption by the karnavan alone. In the time of the last possible karnavan such a power to him alone might be essential to preserve the tarwad. But in the present case the last karnavan had not been reached; and the adoption by the actual one acting alone without the consent of the surviving anandravan was therefore invalid. Thiruthipalli Raman Menon *v.* Vanangattil Palisseri Raman Menon
[I. L. R., 24 Mad., 73
L. R., 27 I. A., 231
4 C. W. N., 810

25. ——— **Karnavan, Decree against**—*Execution against tarwad property—Sale—Right of purchaser—Res judicata—Right of junior member of tarwad not impleaded to contest sales of tarwad property in execution of decree against karnavan sued as such.*—When the karnavan of a Malabar tarwad has not been impleaded as such in a suit, and there is nothing on the face of the proceedings to show that it was intended to implead him in his representative character, tarwad property cannot be attached and sold in execution of the decree, even though it is proved that the decree was obtained for a debt binding on the tarwad. Although the property of a tarwad may be attached and sold in execution of a decree when the karnavan is sued as representative of the tarwad, members of the tarwad who are not parties to the proceedings, and have not been represented in the manner prescribed by the Code of Civil Procedure, are not estopped from showing that the debt for which the decree was passed was not binding on the tarwad. Ittiachan *v.* Velappan. Krishna *v.* Nanu
[I. L. R., 8 Mad., 484

26. ——— *Karnavan's authority—Tarwad bound by bonâ fide acts of—Procedure—Suit against tarwad—Civil Procedure Code, s. 30.*—A landlord having obtained a decree against the karnavan and senior anandravans of a Malabar tarwad for the recovery of certain lands demised on perpetual lease to the tarwad, on the ground that the tenure was forfeited by the denial of the landlord's title by the karnavan, the junior members of the tarwad sued the parties to that decree to set aside the decree and also the forfeiture of the tenure, on the ground that the karnavan had acted improperly in denying the title of the landlord. It was found that the karnavan acted *bonâ fide* in denying his landlord's title and in defending the suit. *Held* that the plaintiffs could not succeed. Nuringa Mangalath Gopalan Nayar *v.* Valia Tamburatti . . . **I. L. R., 7 Mad., 87**

27. ——— *Binding effect on tarwad.*—The karnavan of a Malabar tarwad, having sued to redeem certain land belonging to the tarwad, which had been demised on kanam, consented to abide by the oath of the mortgagee as to the genuineness of the kanam. The mortgagee having taken the prescribed oath, the suit was dismissed. *Held* that the junior members of the tarwad were not estopped by the decree in such suit from redeeming the land. Where fraud or breach of duty by a karnavan is proved, his act must be treated as a fraud upon his power, and will not bind the tarwad. Thenju *v.* Chimmu **I. L. R., 7 Mad., 413**

28. ——— *The Valiya Rajah of a kovilagom sued as such—Liability of kovilagom properties.*—*Semble*—That a decree passed against the Valiya Rajah of a kovilagom is *primâ facie* binding upon his successor and his kovilagom. Kerala Varma Valiya Rajah *v.* Shangaram . . . **I. L. R., 16 Mad., 452**

29. ——— *Suit by anandravans to set aside a sale in execution of decree against their karnavan, when maintainable.*—The lands sued for being the jenm of a devasam were sold in execution of a decree obtained by defendant No. 1 against the uralans. Plaintiffs, being the anandravans of the uralans, sued to set aside the sale, alleging that the debt was not contracted for devasam purposes, and that the decree was collusive. *Held* that the decree was binding on the plaintiffs unless it had been obtained by fraud and collusion. KELU *v.* PAIDEL . . . **I. L. R., 9 Mad., 473**

30. ——— *Suit to set aside decree and recover lands sold under it.*—In suits by a branch karnavan of a Malabar tarwad to recover certain lands belonging to his branch tarwad, which had been mortgaged by a former branch karnavan, the plea was that the plaintiff had no right to sue without the authority of the senior member of the family, the velia kaimal. Upon an issue sent down (in special appeal) by the High Court, it was found by the Civil Judge that there was no binding and peculiar custom in the family depriving the senior member of all management of the property, and vesting it in the branch karnavans. Upon the final hearing it was contended that the contrary had been so irrevocably fixed by judicial decision as to prevent the matter from being open to question, and that this finding was bad in law, as being opposed to binding decrees of competent Courts. *Held* by HOLLOWAY, *J.*, (1) that there was nothing compelling the Court to decide, contrary to the plain rules of law, that this delegation was irrevocable; that perhaps it was not so even by the delegator, and still less was it so by his successors; (2) that the fact of the setting apart of santam property, if it was set apart, can make no difference, and as little can the circumstance of the income reserved; (3) that there was nothing to prevent the Court from deciding that the Civil Judge was right in saying that this was an ordinary Malabar tarwad; and (4) that the renunciation before the Sudder Court was not even irrevocable as against him who made it, and certainly could not have the effect of depriving the senior member, for all future time, of the rights which the law of the country conferred upon him, with the correlative duties upon his becoming senior. By SCOTLAND, *C.J.*—That the Court was not constrained to hold that the irrevocability of the arrangement effected in 966 by the former head of the family, as to the apportionment of the family property between two taverais, and the management of each taverai's allotment by its senior member, was a matter conclusively adjudicated in the course of the litigation, of which there was proof in the records; that such arrangement operated only as a personal renunciation and delegation of the rights of management possessed by the then head of the tarwad; and that, assuming it to have been irrevocable by him, it was not binding on the third defendant, admittedly the head of the family, by right of seniority. APPUNI *alias* AYAMPALLI RAMAN KUMARAN *v.* AYANEPALLI EKANATHA THAVAI VARIKARNAVAN **6 Mad., 401**

31. ——— *Suit against karnavan and senior female member of a tarwad—Evidence of intention to sue defendants as representatives of the tarwad.*—The karnavan and senior female member of a Malabar tarwad executed a hypothecation-bond, on which a suit was brought against them asking for the sale of the tarwad property. The defendants had represented the tarwad in other suits, but were not in this case expressly sued in a representative capacity. The plaintiff obtained a decree. *Held* that the decree was binding on the tarwad. SUBRAMANYAN *v.* KALI **[I. L. R., 10 Mad., 355**

32. ——— A sued for possession of certain shops belonging to a Malabar tarwad which had been attached in execution of a personal decree passed against a karnavan in a suit on a private debt. In the execution-proceedings an objection petition was put in, stating that the shops were stridhanam, and was rejected; and the order of rejection was not appealed against for one year. Respondents Nos. 1 to 4, the husbands of the persons who put in the objection petition, were in possession and were now sued for possession. The plaintiff was assignee of the purchaser at the execution-sale. *Held* that upon the facts found the plaintiff acquired nothing under the Court-sale. ACHUTA *v.* MAMMAVU **[I. L. R., 10 Mad., 357**

33. ——— *Representative of tarwad.*—The karnavan and an anandravan of a Malabar tarwad were authorized by a karar to manage the affairs of the tarwad. A decree was obtained against them, and land belonging to the tarwad was attached and sold in execution. The plaint did not describe the defendants otherwise than by their individual names; but the plaintiff's claim was, *inter alia*, in respect of the breach of a contract by the defendants to put him into possession of certain land which was expressed to be "the jenm of the defendants' tarwad." It was found in the present suit that the amount decreed in the prior suit constituted a debt due by the tarwad. *Held* that the decree and the execution-sale did not bind the tarwad. *Daulat Ram* v. *Mehr Chand, I. L. R., 15 Calc., 70*, distinguished. SANKARAN *v.* PARVATHI **[I. L. R., 12 Mad., 434**

34. ——— *Nambudri—Sale in execution of decree.*—A junior member of a Nambudri illom, of which he was held out as the manager and *de facto* karnavan, contracted a debt for the purposes of the illom. The creditor sued him on the debt, but did not implead him as karnavan, and, having obtained a personal decree, attached and brought to sale in execution property belonging to the illom. A son of the judgment-debtor now sued to set aside the sale. *Held* that the sale should be set aside. GOVINDA *v.* KRISHNAN **[I. L. R., 15 Mad., 333**

35. ——— *Decree for maintenance against karnavan—Execution against tarwad property.*—A member of a Malabar tarwad, having

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—continued.

obtained a decree for maintenance against her karnavan, assigned the decree to the plaintiff, who proceeded to execute it against the tarwad property. The then karnavan objected, and his claim was allowed. In a suit by plaintiff to have it declared that he was entitled to execute the decree against tarwad property,—*Held* that the plaintiff was entitled to execute the decree against the tarwad property. CHANDU *v.* RAMAN . **I. L. R., 11 Mad., 378**

36. ——— *Decree against karnavan and senior anandravan not binding on junior members—Civil Procedure Code, s. 13, expl. 5, s. 30.*—A decree having been obtained against the karnavan and senior anandravan of a Malabar tarwad whereby the tarwad was dispossessed of certain land, the junior members of the tarwad who had not been impleaded in the suit sued to recover the land. *Held* that the plaintiffs were entitled to recover upon proof that the decree in the former suit was not substantially correct, and that they were bound to prove *mala fides* on the part of their karnavan in defending the former suit as a condition precedent to recover. SRIDEVI *v.* KELU ERADI . **I. L. R., 10 Mad., 79**

37. ——— *Female managing the affairs of a tarwad—Res judicata.*—The senior female member of a Malabar tarwad, who managed its affairs, instituted a suit on behalf of the tarwad and in the capacity of karnavan. *Held* (1) that a female is not precluded from managing the affairs of her tarwad when there is no male member in her family capable of performing the duties of a karnavan; and (2) that the junior members of the tarwad were, in the absence of fraud shown, constructively parties to the suit, and were accordingly bound by the decree. SUBRAMANYAN *v.* GOPALA **[I. L. R., 10 Mad., 223**

38. ——— *Res judicata—Cancellation of deeds—Declaratory suit—Withdrawal of part of claim.*—*A* and *B*, junior members of a Malabar tarwad, sued to cancel certain mortgages executed by their karnavan and senior anandravan, on the ground that the secured debt was not binding on the tarwad, and to appoint *A* to the office of karnavan. The last part of the prayer was withdrawn. The mortgages were executed to secure a decree-debt, the decree having been passed *ex-parte* against the late karnavan of the tarwad. No fraud was alleged, but the lower Courts found that the karnavan had been guilty of fraud in allowing the decree to be passed *ex-parte*. The plaintiffs had not been parties to the decree, and the other junior members of the tarwad who had been joined were exempted from liability. *Held* that the nature of the debt was not *res judicata*, and that the plaintiffs were entitled to a declaration that the mortgages in question were invalid as against them. MOIDIN KUTTI *v.* KRISHNAN . **I. L. R., 10 Mad., 322**

39. ——— *Suit by junior members of a tarwad—Suit to restrain execution of a decree obtained in a suit against plaintiffs' karnavan Right of suit.*—In a suit brought in a subordinate Court by the junior members of a Malabar tarwad against their karnavan and others, the plaintiffs prayed for a declaration of the uraima right of their tarwad in a certain devaswam, and for an injunction to restrain the defendants, other than the members of the plaintiff's tarwad, from executing a decree of a District Court, passed on appeal from a Munsif's Court, whereby certain lands of the devaswam were decreed to be surrendered to them in the character of uralers; it appeared (1) that plaintiffs' karnavan was a party to the suit in which the abovementioned decree was passed; (2) that the plaintiff's tarwad was otherwise entitled to the uraima right by adverse possession, if not immemorial title. *Held* that the plaintiffs were entitled to maintain the suit without proof of fraud and collusion on the part of their karnavan in the previous suit; and that they were entitled to the decree as prayed. APPU *v.* RAMAN **[I. L. R., 14 Mad., 425**

40. ——— *Former decrees against karnavan—Civil Procedure Code, s. 13—Limitation Act (XV of 1877), sch. II, arts. 91, 120—" Res judicata."*—In a suit for a declaration that the members of the Nambudri illom to which the plaintiffs belonged were the sole heirs and successors of an illom known as Kiluvapura, of which the natural line had become extinct, and for possession of certain land which had formed part of its property, the defendants were the karnavan and manager of the plaintiffs' illom and the members of another illom. It was found on the evidence that the plaintiffs' karnavan had been adopted unto the Kiluvapura illom, and that susbequently that illom and the plaintiffs' had been amalgamated under a karar executed by, among others, the wife of the last male member of the Kiluvapura illom, and that she had died less than twelve years before this suit. The defendants, other than the karnavan and manager of the plaintiffs' illom, asserted a right to a moiety of the property of the Kiluvapura illom (with which, however, it was now found on the evidence that they were less closely connected than the plaintiffs), and it appeared that that right had been similarly asserted in suits brought after the date of the karar above referred to by a member of the defendants' illom against the karnavan and manager of the plaintiffs' illom, and that decrees had been passed therein negativing the title now set up by the plaintiffs, and that part of the property now claimed was held under one of those decrees. The plaintiffs did not ask that those decrees should be set aside. *Held* (1) that the suit was not barred by limitation either under art. 91 or art. 120 of the Limitation Act; (2) that it was unnecessary for the plaintiffs to prove *malâ fides* against their karnavan in respect of his conduct in the former suits or to seek that the decrees passed therein be set aside, and that those decrees did not constitute the present claim *res judicata*, as the karnavan was not then impleaded in his capacity as such; and (3) that the plaintiffs were entitled to a decree as prayed. SHANKARAN *v.* KESAVAN . **I. L. R., 15 Mad., 6**

41. ——— *Aliyasantana law—Unjustified alienation of family property by a member of undivided family—Partition, Right of*

—*Adverse possession—Limitation.*—In 1851 the ejaman of an Aliyasantana family mortgaged family property to the ancestor of some of the defendants who and whose alienees were now in possession. The mortgagor died leaving, besides one brother, two sisters, each having a son—the family remaining undivided. In 1856 one of the sons, with the concurrence of his uncle and mother, conveyed the land to the mortgagee, but this transaction was not justified by any family necessity; and in 1857 the other son and his mother sold their undivided moiety to the plaintiff's predecessor in title. In a suit to redeem the mortgage of 1851, the plaintiff obtained a decree for redemption of a moiety of the mortgaged property. *Held* that, although it may have been supposed in 1857 that compulsory partition was permitted by the Aliyasantana law, yet as the right to the half share purported to be sold in 1857 had no legal existence, nothing could pass by that sale, and the suit should be dismissed. Neither the original mortgagee nor his son could rely on the twelve years' rule of limitation unless he could prove a subsequent valid sale, in the absence of which his possession must be taken to retain its original character. BYARI *v.* PUTTANNA . . . . **I. L. R., 14 Mad., 38**

42. ———— *Decree against karnavan on tarwad debt before partition—Execution after partition against property of person not party to execution proceedings—Joint decree executed against separate property.*—The karnavan of a Malabar tarwad borrowed money for purposes which rendered the debt binding on the tarwad. The creditor obtained a decree against the karnavan in 1879. In 1882 a partition of the tarwad property took place. In 1891 property which had fallen on partition to the present plaintiff's share was attached and brought to sale in execution of the decree of 1879. He was not joined as a party in the execution proceedings. *Held* that the Court-sale did not bind the plaintiff. *Sankara* v. *Kelu, I. L. R., 14 Mad., 29,* referred to. KUNHAPPA NAMBIAR *v.* SHRIDEVI KETTILAMMA . . . **I. L. R., 18 Mad., 451**

43. ———— *Decree against karnavan on tarwad debt before partition—Execution after partition—Joint decree executed against separate property.*—In a suit for declaration that certain land was not liable to be attached in execution of a decree obtained in 1880, it appeared that the decree was passed against the judgment-debtor as karnavan of a Malabar tarwad, and that it was for a debt incurred for purposes binding on the tarwad. In 1882 a partition had been come to between the members of the tarwad under which the property in suit had been allotted to the plaintiff. *Held* that the state of things when the debt was contracted must be looked to, and at that time the karnavan was competent to bind all the members of the tarwad. Any subsequent arrangement in the family could not affect their obligation to the creditor, who was not a party to it. The plaintiff's property therefore was liable notwithstanding the partition. KRISHNAN NAMBIAR *v.* KRISHNAN NAIR

[I. L. R., 18 Mad., 452 note

44. ———— *Decree against karnavan binding on tarwad—Parties.*—A decree in a suit in which the karnavan of a Nambudri illom or a Marumakkatayam tarwad is, in his representative capacity, joined as a defendant, and which he honestly defends, is binding on the other members of the family not actually made parties. VASUDEVAN *v.* SANKARAN . . **I. L. R., 20 Mad., 129**

45. ———— *Karnavan—Effect of decree against karnavan representing the tarwad—Res judicata—Civil Procedure Code (1882), ss. 13 and 30.*—Although the members of a tarwad or family may, in an irregular fashion, be represented by a karnavan of the tarwad in a suit, the decree therein does not raise an absolute estoppel against members not actually brought on the record. *Ittiachan* v. *Vellappan, I. L. R., 8 Mad., 484,* and *Sri Devi* v. *Kelu Eradi, I. L. R., 10 Mad., 79,* followed. KOMAPPAN NAMBIAR *v.* UKKARAN NAMBIAR . . . . **I. L. R., 17 Mad., 214**

46. ———— *Customary law of Mapillas—Multifariousness—Suit by karnavan—Right of suit.*—The plaintiff sued as the karnavan of a Mapilla tarwad to recover lands in the possession of the defendants who were a donee from and the descendants of a previous karnavan and their tenants. It appeared that the alleged previous karnavan had died less than twelve years before the suit was filed, but more than twelve years before the joinder, as a supplemental defendant, of one to whom he had conveyed certain property by way of gift five years before his death. An issue was raised as to whether the rights of the parties were governed by Makkatayam or Marumakkatayam law, and an order of a District Munsif, reciting a petition to which the alleged previous karnavan was a party, was put in evidence to show that he had in a particular instance acted in the capacity of karnavan of a Marumakkatayam tarwad. *Held* (1) that on the allegations in the plaint the plaintiff was entitled to maintain the suit alone, and that the suit was not bad for multifariousness; (2) *on the evidence*, that the plaintiff had succeeded to the office of the previous karnavan as alleged, and that the previous karnavan had followed the Marumakkatayam rule, although it was shown that other members of the family had dealt with property, described as self-acquired, under the precepts of Mahomedan law. BYATHAMMA *v.* AVULLA . **I. L. R., 15 Mad., 19**

47. ———— *Mapillas.*—The karnavan of a tarwad in Malabar sued to recover property acquired by his sister (deceased) and now in the occupation of the defendants, her children. The parties were Mapillas. The defendants pleaded (1) that the property had been given to them and their mother jointly; (2) that their mother was not governed by Marumakkatayam law. The Court of first instance found the first-mentioned plea to be good and dismissed the suit, and also found that the family was governed by Marumakkatayam law. The Court of first appeal dissented from the above finding as to the first plea, and, without deciding the second

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point, remanded the case for the trial of a general issue as to the mode of devolution of self-acquired property in Marumakkatayam Mapilla families in North Malabar; and ultimately it dismissed the suit, ruling that in Marumakkatayam Mapilla families the self-acquired property of a female descends to her children, and does not lapse on her death to her tarwad. *Quære* —Whether that decision was a correct one. Observations as to the law applicable to Mapillas. ILLIKKA PAKRAMAR *v.* KUTTI KUNHAMED

[I. L. R., 17 Mad., 69

48. ———— **Removal of karnavan from office**—*Ground for removal.*—When a karnavan was found to have made perpetual grants of certain lands belonging to his tarwad for other than family purposes, and to have made demises of certain other lands belonging to his tarwad for unusual periods on no justifiable ground,—*Held* that this did not constitute sufficient ground for removal of the karnavan from his office, his conduct not having been such as to show that he could not be retained in his position without serious risk to the interests of the family. ERAVANNI REVIVARMAN *v.* ITTAPU REVIVARMAN

[I. L. R., 1 Mad., 153

49. ———— *Grounds for removal—Tarwad property—Powers of karnavan.* —The grant of a very improvident lease following on a course of conduct pursued for some years, in which the interests of the tarwad were persistently disregarded, is sufficient ground for removing a karnavan from the management of the tarwad property. *Eravanni Revivarman* v. *Ittapu Revivarman, I. L. R., 1 Mad., 153,* approved. PONOMBILATH PARAPRAVAN KUNHAMOD HAJEE *v.* PONAMBILATH PARAPRAVAN KUTTIATH HAJEE. TOD *v.* PONAMBILATH PARAPRAVAN KUNHAMOD HAJEE

[I. L. R., 3 Mad., 169

50. ———— *Suit to remove a karnavan for mismanagement as de facto karnavan.* —A suit was brought to remove *A*, the karnavan *de jure* of a Mababar tarwad, from office on the grounds of mismanagement of tarwad property. The acts of mismanagement complained of were really done by *B* as karnavan *de facto*. The above suit was withdrawn with leave to sue again. *A* died, and was succeeded by *B*, against whom the plaintiffs brought a suit, to which all the adult but none of the minor members of the tarwad were made parties, to obtain his removal from the office of karnavan, alleging against him the acts of mismanagement above referred to. *Held* that the grounds alleged supported the action. The fact that the misfeasances were committed when *B* was *de facto* and not *de jure* karnavan did not make them the less a ground for removing him from his office of *de jure* karnavan. *Held* also that the minor members of the tarwad were sufficiently represented on the record. KUNHAN *v.* SANKARA

[I. L. R., 14 Mad., 78

51. ———— *Karnavan, disqualification for the office of—Blindness.*—Suit to remove the defendant from the office of karnavan of a Malabar tarwad. The defendant had become blind after occupying the office of karnavan for some years. *Held* that the defendant was not a fit person to be the karnavan of a tarwad, and should be removed from his office. KANARAN *v.* KUNJAN

[I. L. R., 12 Mad., 307

52. ———— *Karnavan, Disqualification for office of—Blindness.*—A blind man sued, as the karnavan of a Malabar tarwad, to recover certain land. One of the defendants, who claimed, but was not admitted, to be a member of the tarwad, and who asserted a right as kanamdar to the land in question, pleaded that the plaintiff was not competent to act as karnavan, or consequently to maintain the suit, by reason of his blindness. *Held* that it was for the members of the tarwad to take this objection, as, if they wish a blind man to act as their karnavan, he can do so; the defendant therefore was not entitled to raise this plea. UKKANDAN *v.* KUNHUNNI

[I. L. R., 15 Mad., 483

MALABAR LAW—MAINTENANCE.

1. ———— **Right to maintenance**—*Anandravan.*—*Semble*—An anandravan's right to maintenance is merely a right to be maintained in the family-house. KUNIGARATU *v.* ARRANGADEN

[2 Mad., 12

2. ———— *Anandravan.*—Though the general rule is that an anandravan cannot have separate maintenance, there are exceptions to that rule. PERU NAYAR *v.* AYYAPPAN NAYAR

[I. L. R., 2 Mad., 282

3. ———— *Anandravan—Misbehaviour.*—A karnavan (manager) of a Malabar tarwad (family) is not justified in excluding an anandravan (junior member) from participation in the income of the family property on the ground of misbehaviour or because the anandravan has other property of his own. PUTANVITIL TEYAN NAIR *v.* PUTANVITIL RAGAVAN NAIR

[I. L. R., 4 Mad., 171

4. ———— *Maintenance claimed by anandravans living in tarwad house against karnavan, who had left tarwad house and neglected to maintain family.*—Where a suit was brought by an anandravan of a Malabar tarwad living in the family house for maintenance against the karnavan, who had left the family house, resided elsewhere, and neglected to maintain the plaintiffs,—*Held* that the plaintiffs were entitled to maintain the suit. *Kunhammatha* v. *Kunhi Kutti Ali, I. L. R., 7 Mad., 235,* distinguished. KESAVA *v.* UNIKKANDA

[I. L. R., 11 Mad., 307

5. ———— *Suit by member of tarwad residing in family house—Remedy.*—A member of a Malabar tarwad living in the tarwad house cannot bring a suit against the karnavan for a monthly allowance in money on the ground that the karnavan does not make sufficient provision for his or her maintenance. KUNHAMMATHA *v.* KUNHI KUTTI ALI . . . . . I. L. R., 7 Mad., 233

MALABAR LAW—MAINTENANCE —*concluded.*

6. ——— *Karnavan—Practice of allowing karnavan half the net income disapproved.*—In suits for maintenance against the karanavan of a Malabar tarwad, the practice of awarding one moiety of the net income of the tarwad to the karnavan is not authorized by law. NARAYANI v. GOVINDA . . **I. L. R., 7 Mad., 352**

7. ——— *Member of tarwad with private means.*—The fact that a member of a Malabar tarwad has private means does not affect his right to subsistence where the income of the tarwad is sufficient to provide for all a suitable subsistence; but when the income is insufficient for this purpose, the karnavan must take into consideration the private means of each member. *Putanvitil Teyan Nair* v. *Putanvitil Ragavan Nair, I. L. R., 4 Mad., 171,* distinguished. THAYU KUNJIAMA v. SHUNGUNNI VALIA KYMAL . . . **I. L. R., 5 Mad., 71**

8. ——— *Member of tarwad—Taverai.*—A member of a tarwad divided into "taverais" with separate dwelling-houses may claim to be maintained by the karnavan in the house of the "taverai" to which he or she belongs. CHALAYIL KANDOTHA NALLAKANDIYIL PARVADI v. CHALAYIL KANDOTHA CHATHU NAMBIAR **[I. L. R., 4 Mad., 169**

9. ——— *Karnavan, Insufficient maintenance of junior members by—Suit by junior members living in a tarwad house apart from the karnavan.*—Suit by twelve junior members of a Malabar tarwad against the karnavan for arrears of maintenance. The plaintiffs lived in a tarwad house apart from the karnavan, who did not allege that this arrangement was contrary to his wishes, but pleaded that he provided for them adequately. *Held* that the plaintiffs were entitled to a decree for a reasonable amount by way of maintenance, in computing which allowance should be made for the income of the tarwad property in their possession. *Nallakandiyil Parvadi* v. *Chathu Nambiar, I. L. R., 4 Mad., 169,* followed. CHEKKUTTI v. PAKKI **[I. L. R., 12 Mad., 305**

10. ——— *Maintenance of families of male members by tarwad.*—In North Malabar the male members of a Nayar tarwad are by custom entitled to receive from the karnavan an allowance for the maintenance of their consorts and children while living in the tarwad house. VARIKARA VADAKA VITTIL VALIA PARVATTHI v. VARIKARA VADAKA VITTIL KAMARAN NAYAR **[I. L. R., 6 Mad., 341**

11. ——— *Mapillas—Separate maintenance—Marriage.*—The junior male members of a Mapilla tarwad governed by the Marumakkatayam law are entitled to maintenance from the tarwad when living in the houses of their consorts and also to a higher rate of maintenance when living with their consorts than when living as single men. CHOWAKARAN ORKATARI BAPPAN v. CHOWAKARAN CHERIA ORKATAN MAKKI **[I. L. R., 6 Mad., 259**

MALABAR LAW—MORTGAGE.

1. ——— **Kanam mortgage.**—The question whether a kanam is to be regarded as a lease or a mortgage depends upon the object for which the tenure was created. Where a kanam is granted as a security for the repayment of money advanced to the jenmi, the law of limitation applicable to mortgages must be applied. NELLAYA VARIYATH SILAPANI v. VADAKIPAT MANAKEL ASHTAMURTI NAMBUDRI **[I. L. R., 3 Mad., 382**

2. ——— *Failure to give possession—Right of suit for money advanced on it.*—When the demisor of land under a kanam agreement is unable to give possession, the demisee may repudiate the contract and recover the amount advanced. VAYALIL PUDIA MADATHEMMIL MOIDIN KUTTIAYISSA v. UDAYA VARMAVALIA RAJAH **[2 Mad., 315**

3. ——— *Suit for redemption—Express agreement.*—Although the right to hold for twelve years is inherent in every kanam according to the custom of the country, it is competent to the jenmi to exclude this right by express agreement. SHEKHARA PANIKER v. RARU NAYAR **[I. L. R., 2 Mad., 193**

4. ——— *Right to hold for twelve years.*—A kanam-holder who denies his jenmi's title forfeits his right to hold for twelve years. RAMEN NAYAR v. KANDAPUNI NAYAR **[1 Mad., 445**

5. ——— *Right to hold for twelve years.*—A kanamdar's right to hold for twelve years depends on his acting conformably to usage and the jenmi's interest, and is lost if he repudiates the jenmi's title. It makes no difference when this is first done in his answer. MAYAVANJARI CHUMAREN v. NIMINI MAYURAN . **2 Mad., 109**

6. ——— *Right of redemption—Denial of jenmi's title.*—Where a first kanam-holder, in his answer to a redemption suit by a second kanam-holder, for the first time denied his own kanam, and alleged an independent jenman right,—*Held* that he had not thereby forfeited his right to rely upon the option to make a further advance, to which as kanam-holder he was entitled, though the denial and allegation were false, and though his documents in support of such allegation were forged. PAIDAL KIDAVU v. PARAKAL IMBICHUNI KIDAVU **[1 Mad., 13**

7. ——— *Rights under a kanam—Denial of jenmi right by kanamdar—Adverse possession—Limitation—Declaration of escheat.*—*A* demised certain lands on kanam to *B* in 1853. *B* afterwards committed an offence under the Mapilla Act, and the lands were handed over for the benefit of his representatives to *C*. Government subsequently, without making *A* a party to their proceedings, declared the lands to have escheated, and in 1863 sold them to *C*. *A*'s representatives now sued to recover the lands from *C*'s representatives, who set up an adverse title and alleged that the suit was time-barred. *Held* that *C* was, at the time of

MALABAR LAW—MORTGAGE *—continued.*

the escheat, in the position of a manager for mortgagees; that the escheat proceedings of which the mortgagor had no notice did not affect his rights; that denial by the mortgagee in possession of the mortgagor's right to redeem is not sufficient to convert such possession into adverse possession. MUSSAD *v.* COLLECTOR OF MALABAR

[I. L. R., 10 Mad., 189

8.——————— *Right of a jenmi, who is a judgment-creditor, to sell the kanam right before the expiry of twelve years.*—A jenmi, who has obtained a decree for arrears of rent, may sell the kanam before the expiry of twelve years; such a sale does not put an end to the kanam, but only transfers the kanamdar's interest to the purchaser at the execution-sale. ACHUTAN NAYAR *v.* KESHAVAN

[I. L. R., 17 Mad., 271

9. ——————— *Malabar kanam—Redemption, Value of improvements on—Depreciation of, between decree and date of redemption.*—A decree for the redemption of a kanam in Malabar was passed in December 1894, when there were on the land improvements in the form of trees, etc., to the value of R1,429. Within the six months limited by the decree for redemption the mortgagor applied for execution, and it appeared that the value of improvements had diminished by the loss of trees to the value of R157. The loss was the result of want of water, and was not attributable to neglect on the part of the mortgagee. *Held* that the loss should fall on the mortgagee. KRISHNA PATTER *v.* SRINIVASA PATTER . . . **I. L. R., 20 Mad., 124**

10. ——————— *Transfer of interest—Appointment of a creditor as agent to collect rents and approriate part towards the debt—Mortgagee in possession—Usufructuary mortgage.*—In a suit to redeem a kanam on certain land, the jenm of a devaswam in Malabar, it appeared that the plaintiff held a mel-kanam in respect of the same land executed to him (subsequently to the date of the kanam sought to be redeemed) by defendant No. 3, the samudayam of the devaswam. Defendant No. 3 represented one *C*, in whose favour the uralers had, in 1741, executed a document appointing him samudayam and stating that they had received from him a kanam of 18,000 fanams on the devaswam properties and providing that he should appropriate part of the rents towards the loan. It appeared that in a suit to eject tenants, the uralers had sued as co-plaintiffs with the samudayam; in subsequent suits, however, two of the uralers had sued other tenants for rent and the samudayam for an account; both of these suits were dismissed on second appeal, and in the judgments of the High Court the samudayam was described as a mortgagee in possession. *Held*, in view of the conduct of the parties and on the terms of the document of 1741, that the samudayam was not thereby constituted a mortgagee in possession, and the mel-kanam set up by the plaintiff was invalid. KRISHNAN *v.* VELOO

[I. L. R., 14 Mad., 301

11. ——————— *Limitation—Creditor of a devaswam placed in possession as samudayam.*—In a suit brought by the uralers of a devaswam in Malabar to recover certain land in the possession of the defendant, it appeared that the defendant held under an instrument dated 1741, whereby his predecessor in title was appointed samudayam and was authorized to appropriate part of the rents of the devaswam properties to the interest on a loan made by him to the uralers. Two of these uralers had brought a previous suit against the defendant for an account of the rents received by him and for an injunction: that suit was dismissed on second appeal when the High Court described the defendant as a mortgagee in possession, but the question whether or not he was a mortgagee with or without possession was not then directly and substantially in issue. *Held* that the Court having held, following *Krishnan* v. *Veloo, I. L. R., 14 Mad., 301,* that the defendant was not a mortgagee in possession under the instrument of 1741, the suit was not barred by limitation. RAMAN *v.* SHATHANATHAN

[I. L. R., 14 Mad., 312

12. ——————— *Right of tenure.*—A kanam mortgagee does not forfeit his right to hold for twelve years from the date of the kanam by allowing the porapad to fall into arrear. RAUTAN *v.* KADANGOT SHUPAN . . . **1 Mad., 112**

See also KUNJU VELAN *v.* MANAVIKRAMA ZAMORIN. KRISHNA MANNADI *v.* SHANKARA MANAVAN

[1 Mad., 113 note

13. ——————— *Ejectment before expiration of time.*—A mel-kanamdar cannot eject a kanamdar or his assignee before the expiration of twelve years from the date of the kanam. PRAMATAN TUPEN NAMBUDRIPAD *v.* MADATIL RAMEN

[1 Mad., 296

14. ——————— *Right to redeem, and make further advances.*—The holder of a mel-kanam may recover the land from the kanam-holder, after the expiry of the term of the kanam, on payment of the sum advanced by the latter and of the value of improvements. The jenmi is not bound to give the kanam-holder the option of making further advances before demising to another tenant or kanam. MARAKAR *v.* MUNHORULI PARAMESWARAN NAMBUDRI . . . . **I. L. R., 6 Mad., 140**

15. ——————— *Tenant's right to improvements prior to demise sued on—Presumption—Usage.*—There is no universal usage in Malabar, nor any presumption that a tenant is not entitled to compensation for improvements effected prior to the date of the kanam under which he holds, and not specially reserved to him by the kanam deed. MUPANAGARI NARAYANAN NAYAR *v.* VIRUPATCHAN NAMBUDRIPAD . . . **I. L. R., 4 Mad., 287**

16. ——————— *Redemption of kanam—Amount to be ascertained before decree—Value of improvements to be ascertained before decree—Jenmi—Right to deduct arrears of rent due from sum payable.*—When a decree is passed for recovery of land demised on kanam on payment of the amount received as renewal fee, the amount must be

MALABAR LAW—MORTGAGE
—continued.

ascertained at the trial and inserted in the decree. On taking an account between the jenmi (mortgagor) and kanam-holder (mortgagee), the former, on redemption, has by custom a right to deduct all arrears of rent due to him from the sum which he has to pay to the latter, before recovering possession of the land. KANNA PISHARODI *v.* KOMBI ACHEN
[I. L. R., 8 Mad., 381

17. ———— *Right to set off arrears of rent against claim for improvements—Mortgage of right of kanamdar, how affected.*—A Malabar jenmi (mortgagor) being entitled, on redemption of the land, to set off a claim for arrears of rent due to him by the kanam-holder (mortgagee) against the claim of the latter for compensation for improvements, a pledge of his rights to a third party by the kanam-holder will not prejudice the right of the jenmi to set off his claim for arrears of rent against the sum found due to the kanam-holder for improvements. ACHUTA *v.* KALI
[I. L. R., 7 Mad., 545

See GRESSA MENON *v.* SHAMA PATTER
[I. L. R., 21 Mad., 138

18. ———— *Time for redemption.*—Where a deed was described as a kanam deed and contained stipulations as to compensation for improvements, a clause to the effect that the land was to be surrendered "whenever the amount advanced is ready" will not entitle the mortgagor to redeem before the customary twelve years' term has expired, but must be construed as referring to a period subsequent to the term of twelve years. KANARA *v.* GOVINDAN . . . **I. L. R., 5 Mad., 310**

19. ———— *Kanam—Construction of redemption clause—Time for redemption.*—The primary intention that a kanam is to be redeemed only after 12 years can be negatived either expressly or by implication by a special clause. *Puthenpurayil Kuridipravan Kanara Kurup* v. *Puthenpurayil Kuridipravan Govindan, I. L. R., 5 Mad., 311,* distinguished. AHMED KUTTI *v.* KUNHAMED
[I. L. R., 10 Mad., 192

20. ———— *Redemption suit brought within twelve years from the date of kanam—Special stipulation for redemption.*—In a suit to redeem a kanam executed less than twelve years before suit it appeared that the kanam instrument provided for the surrender of the property "if at any time the property should be necessary" for the jenmi. It was found that no special exigency had been established by the plaintiff. *Held* on the above finding that the special stipulation did not oust the general rule that the kanam was not redeemable for twelve years, and the suit was therefore premature. MAHOMED *v.* ALI KOYA . . **I. L. R., 14 Mad., 76**

21. ———— *Improvements—Trees of spontaneous growth—Redemption suit—Costs of ascertaining value of improvements.*—According to Malabar custom, kanams (mortgages) must, on the expiry of the term, either be discharged or renewed. On redemption of a kanam, the kanam-holder (mortgagee) is not entitled to claim under the head of improvements the value of trees of spontaneous growth. In suits to redeem land demised on kanam tenure, on payment of the value of improvements, the costs of the adjudication necessitated by the refusal of either party to accept the terms of compensation offered or demanded by his opponent should, when those terms are reasonable, be charged on the party refusing. NARAYANA *v.* NARAYANA
[I. L. R., 8 Mad., 284

22. ———— *Redemption on terms of admitted demise—Improvements—Local custom—Jenmi's right to a moiety—Arrears of rent—Jenmi's right to deduct from amount payable by him.*—In a suit brought against *A* and *B* for redemption of land alleged to have been demised to *A* on kanam tenure in 1874, and to be held by *B* under *A*, it was found that the demise of 1874 was invalid because it had been executed fraudulently; but inasmuch as *B* admitted that he was in possession under a similar demise of 1855, it was held that the plaintiff was entitled to redeem on the terms of the demise admitted by *B*. *Kunhi Kutti Nair* v. *Kutti Maraccar, 4 Mad., 359,* followed. Local usage of Ernad, by which the jenmi on redemption of a kanam takes credit for one-half of the value of improvements effected by the kanamdar, upheld. The right of a jenmi to deduct arrears of rent from the amount payable by him on redemption of a kanam, being a customary incident of the tenure, is not affected by the three years' period of limitation for recovery of arrears of rent. UNNIAN *v.* RAMA
[I. L. R., 8 Mad., 415

23. ———— *Transfer of Property Act (IV of 1882), s. 60—Partial redemption—Indivisibility of mortgage.*—The karnavan of a Malabar tarwad, having the jenm title to certain land and holding the uraiama right in a certain public devaswam to which other land belonged, demised lands of both descriptions on kanam to the defendant's tarwad, and subsequently executed to the plaintiff a mel-kanam of the first-mentioned land and purported to sell to him the jenm title to the last-mentioned land. In a suit brought by the plaintiff to redeem the kanam and to recover arrears of rent,—*Held* that the defendants were not estopped from denying the plaintiff's right to redeem on the ground that he did not represent the devaswam, and that the plaintiff, who had denied the title of the devaswam in the Court of first instance, was not entitled to redeem the kanam as a whole, by virtue of his admitted title to part of the premises comprised in it. KONNA PANIKAR *v.* KARUNAKARA **I. L. R., 16 Mad., 328**

24. ———— **Kanam and otti tenures**—*Time for redemption.*—*Per curiam*—It is settled law that in the case of kanam and otti mortgages it is not competent to the mortgagors to redeem before the arrival of the appointed time. *Per* INNES, J., dissenting from *Mashook Ameen Suzzada* v. *Marem Reddy, 8 Mad., 31,* if in the case of any mortgage the period for redemption is postponed to a fixed date

by a special agreement, effect should be given to such agreement. KESHAVA v. KESHAVA [I. L. R., 2 Mad., 45

25. ——— *Prior right of tenant to make further advances—Right to redeem.*—The prior right of an ottidar to make further advances is established by authorities, but there is no authority to support a kanamdar's claim to a similar privilege. An ottidar may redeem a prior kanam. KUNHAMU v. KESHAVAN NAMBUDRI [I. L. R., 3 Mad., 246

26. ——— Otti mortgage—*Denial of title—Forfeiture of right.*—An otti-holder, like a kanamdar, forfeits his right to hold for twelve years by denying the jenmi's title. KELLU ERADI v. PUAPALLI . . . . . 2 Mad., 161

27. ——— *Redemption of mortgage.*—An otti, like a kanam mortgage, cannot be redeemed before the lapse of twelve years from its date. EDATHIL ITTI v. KOPASHON NAYAR [1 Mad., 122

KUMINI AMA v. PARKAM KOLUSHERI [1 Mad., 261

28. ——— *Distinction between otti and kanam mortgage.*—An otti differs from a kanam mortgage, first, in respect of the right of pre-emption which the otti-holder possesses; secondly, in being of so large a sum that practically the jenmi's right is merely to receive a peppercorn rent. KUMINI AMA v. PARKAM KOLUSHERI [1 Mad., 261

29. ——— *Right of jenmi—Right of a second mortgagee.*—During the continuance of a first otti mortgage, the jenmi is in the same position as regards his right to make a second otti mortgage to a stranger after, as he was before, the lapse of twelve years from the date of the first mortgage. Where a jenmi made an otti mortgage, and more than twelve years after made a second otti mortgage to a stranger, without having given notice to the first mortgagees, so as to admit of the exercise of their option to advance the further sum required by the jenmi,—*Held* that the second mortgagee could not redeem the lands comprised in the first mortgage. ALI HUSAIN v. NILLAKANDEN NAMBUDIRI [1 Mad., 356

30. ——— *Kaividu otti tenure.*—According to Malabar law, land demised on the tenure called kaividu otti is redeemable. KUNDU v. IMPICHI . . . I. L. R., 7 Mad., 442

31. ——— *Right to make further advance—Second mortgage to stranger without notice to otti-holder invalid.*—*R*, having conveyed certain land to *P* on otti tenure (mortgage) in 1852, executed a deed of further charge (ottikampuram) in 1873 to *P*'s widow, and in 1879 conveyed the jenm (equity of redemption) to her. Between 1873 and 1879 *R* mortgaged the same land to *A* by jenm panayam deed. In a suit by *A* to enforce his mortgage,—*Held* that, inasmuch as *R* had not given notice to the otti-holder, nor given her the option of making the further advance made by *A*, *A* had no claim against the land. AMBU v. RAMAN [I. L. R., 9 Mad., 371

32. ——— *Forfeiture of right of pre-emption.*—An otti-holder does not forfeit his right by endeavouring to set up further charges in answer to a suit for redemption and failing to prove them, or by denying that an assignment of his jenmi's title is valid because it was made without his consent in writing and in defeasance of his right of pre-emption without previous offer to him. KANNOTH TULUVAN PARAMBAN KUNHALI v. VANNATHAN VITTIL KINATHE I. L. R., 3 Mad., 74

33. ——— *Sale of jenmi's rights at Court-sale.*—An otti mortgagee, if he avails himself of his right of pre-emption, must pay whatever sum is *bonâ fide* offered to the jenmi for his equity of redemption; but the otti-holder is entitled to be fully informed as to the circumstances and amount of the offer before electing to buy. Public notice of, and the option of bidding at, a Court-sale of the jenmi's rights, do not constitute a valid offer of pre-emption so as to deprive the otti-holder of his right of pre-emption, if he does not purchase the jenmi's rights. CHERIA KRISHNAN v. VISHNU NAMBUDRI . . . I. L. R., 5 Mad., 198

34. ——— *Right of pre-emption—Further charge created by jenmi—Auction-sale of jenmi's rights subject to further charge—Cause of action—Remedy of veppu-holder.*—A jenmi (mortgagor), having conveyed certain land upon a veppu tenure (mortgage, of which the right of pre-emption and the option of making further advances are incidents), created a further charge on the land, without giving the veppu-holder the option of making the advance required. In execution of a decree against the jenmi, a judgment-creditor brought to sale the right of the jenmi in the land subject to the further charge. In a suit brought by the veppu-holder to set aside the auction-sale on the ground that his right of pre-emption was injured thereby,—*Held* that the suit would not lie. VASUDEVAN v. KESHAVAN . . . . I. L. R., 7 Mad., 309

35. ——— *Right of pre-emption under otti—Waiver—Limitation Act (XV of 1877), s. 28.*—A jenmi, having demised certain land in Malabar on otti to defendant No. 3 in 1869, sold the jenm title to the plaintiff and defendants Nos. 1 and 2 in 1886. In 1888 defendant No 3 made a further advance to, and obtained a renewed demise from, defendants Nos. 1 and 2. The plaintiff sued more than six years after the sale to recover his share (defendant No. 3 being in possession) on payment of one-third of the otti amount. *Held* that (whether or not the suit was maintainable as framed) the third defendant had a right of pre-emption as ottidar, which had not been waived by him and was not barred by limitation, and which constituted a good defence to the suit. KANHARANKUTTI v. UTHOTTI . . . I. L. R., 13 Mad., 490

36. ——— *Ottidar's right of pre-emption—Suit to redeem kanam.*—In a suit

MALABAR LAW—MORTGAGE —*concluded.*

to redeem a kanam of 1874, it was found that the plaintiff's predecessor in title had purchased the jenm title to the land in question at a sale held in execution of a decree which was binding on the jenmi's tarwad; but it appeared that the defendant (the kanamdar) held an otti on the land, dated 1870, and had not waived his right of pre-emption as ottidar. A decree was passed providing for payment by the defendant of the purchase-money to the plaintiff, and the execution by the latter of a conveyance and in default for redemption by the plaintiff on his paying to defendant the amount of the otti. *Held* that the decree was right. UKKU *v.* KUTTI
[I. L. R., 15 Mad., 401

37. ——— *Ottidar's right of pre-emption—Waiver—Election not to purchase.*—An ottidar in Malabar loses his right of pre-emption if he refuses to bid at a Court-sale of the land comprised in his otti held in execution of a decree against the karnavan and senior anandravan of the tarwad in which the jenm right is vested, after having been specially invited to attend and exercise that right, and makes no offer to take the property for a long time after the Court-sale. AMMOTTI HAJI *v.* KUNHAYEN KUTTI
[I. L. R., 15 Mad., 480

38. ——— **Peruarthum mortgage**—*Local law of Malabar—Redemption.*—In the case of a mortgage of the kind prevailing in a certain part of Malabar called a "peruarthum" mortgage, when the mortgagor redeems, the mortgagee is entitled (before restoration of the mortgaged land) to be paid its market value at the time of redemption, not the amount for which the land was mortgaged. SHEKARI VARMA VALIA RAJAH *v.* MANGALOM AMUGAR
[I. L. R., 1 Mad., 57

MALABAR LAW—PARTITION.

See MALABAR LAW—JOINT FAMILY.
[I. L. R., 18 Mad., 451, 452 note

1. ——— **Compulsory partition**—*Makkatayam rule of inheritance—Tiyans' custom.*—The ordinary rule of Marumakkatayam against compulsory partition is equally applicable to Tiyans who follow Makkatayam, no custom to the contrary having been made out. RAMAN MENON *v.* CHATHUNNI . . . . **I. L. R., 17 Mad., 184**

2. ——— **Iluvans of Palghat**—*Custom relating to partibility of property—Tiyans.*—In a suit for partition amongst parties belonging to the caste of Iluvans of Palghat, it having been contended that the ordinary Hindu law relating to partibility of property had no application,—*Held* that *Raman Menon* v. *Chathunni, I. L. R., 17 Mad., 184,* relating to the Tiyans, could not be taken to lay down that the rule of partibility does not prevail among the Iluvans of Palghat, even assuming that the Iluvans and the Tiyans had at one time been of one class. Upon the evidence adduced to the effect that the former class had for long been treating themselves as separate from the latter, and that partition was

MALABAR LAW—PARTITION —*concluded.*

enforced as a matter of right amongst the Iluvans, the Courts were entitled to find the custom relating to partibility among the Iluvans proved. VELU *v.* CHAMU . . . **I. L. R., 22 Mad., 297**

MALABAR LAW—WILL.

1. ——— **Testamentary dispositions of tarwad property by last surviving member of tarwad valid.**—The last surviving member of a Malabar tarwad can make a valid testamentary disposition of the tarwad property. ALAMI *v.* KOMU. SECRETARY OF STATE FOR INDIA *v.* KOMU
[I. L. R., 12 Mad., 126

2. ——— **Will by member of Malabar tarwad**—*Validity of will.*—*Quære*—Whether the principle laid down in *Alami* v. *Komil, I. L. R., 12 Mad., 126,* would apply in the case of a will made by a member of a Malabar tarwad having heirs in the tarwad. KUTTYASSAN *v.* MAYAN
[I. L. R., 14 Mad., 495

3. ——— **Power of disposition by will**—*Self-acquired property—Marumakkatayam law—Right to succession certificate—Probate.*—A member of a Marumakkatayam tarwad died leaving self-acquired property. The karnavan of the tarwad applied for a succession certificate, but the application was opposed by legatees under a will of the deceased which had not been admitted to probate, but was undisputed. *Held* that the will was valid, and that the succession certificate should not be granted to the karnavan, but to one of the legatees. ACHUTAN NAYAR *v.* CHERIOTTI NAYAR **I. L. R., 22 Mad., 9**

MALICE.

See ARREST—CIVIL ARREST.
[I. L. R., 4 Calc., 583
1 N. W., Pt. II, p. 32 : Ed. 1873, 91

See CHAMPERTY . **I. L. R., 2 Calc., 233**
[L. R., 4 I. A., 33
13 B. L. R., 530

See PRIVILEGED COMMUNICATION.
[I. L. R., 12 Mad., 374

See WRONGFUL CONFINEMENT.
[I. L. R., 13 Bom., 376

1. ——— **Proof of malice**—*Suit for damages for wrongful attachment—Reasonable and probable cause, Absence of.*—Proof of malice is essential to support a suit for damages for the wrongful suing out of mesne process. By malice in its legal sense something less is meant than malevolence or vindictive feeling. Acts done vexatiously for the purpose of annoyance, acts done wrongfully and without reasonable and probable cause, acts done wantonly and without the exercise of any caution in investigating the necessity for them, have been held to be malicious. At the same time, to make an act malicious, it must be shown that it was done with a wrongful intention. Acts done in good faith and without any wrongful intention, though they may be such as a cautious person would have abstained from, are not

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necessarily malicious. From proof of the absence of such cause as would influence a man of ordinary caution, malice may be presumed ; but this is an inference which it is optional with the Court, and not compulsory on it, to draw, and it may be rebutted by proof of good faith. When the persons against whom malice is to be proved are not themselves present, but act through agents at a distance, the inference of malice should not be drawn from the mere proof of the absence of reasonable cause. GOUTIERE *v.* ROBERT . . **2 N. W., 353**

2. ——— **Suit for damages for malicious attachment**—*Reasonable and probable cause.*—In an action for damages for a malicious attachment, it must be shown that the defendant has acted with malice as well as without reasonable and probable cause. The circumstances that the facts stated in an application for attachment were true, and that nothing was concealed which the Court ought to have known, is evidence that the applicant has reasonable cause upon those facts for the application. CHOUDHAREE SHEORAJ SINGH *v.* DWARKA DOSS . . . . . . **4 N. W., 42**

MALICIOUS PROSECUTION.

See ABATEMENT OF SUIT—SUITS.
[**I. L. R., 13 Bom., 677**

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.
[**I. L. R., 25 Bom., 332**
4 C. W. N., 781

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—MALICIOUS PROSECUTION . . **6 B. L. R., 141**

See LIMITATION ACT, 1877, ART. 23 (1859, s. 1, CL. 2) . **1 B. L. R., S. N., 17**
8 W. R., 443
I. L. R., 23 Mad., 24

See MADRAS LOCAL BOARDS ACT, s. 128.
[**I. L. R., 13 Mad., 442**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—DAMAGES.
[**2 Mad., 254**
I. L. R., 14 Bom., 100

See SUBORDINATE JUDGE, JURISDICTION OF . . **I. L. R., 11 Bom., 370**
[**I. L. R., 12 Bom., 358**

1. ——— **Right to sue**—*Previous criminal prosecutions—Offence under s. 211, Penal Code—Compounding offence.*—A criminal prosecution for an offence under s. 211, Penal Code (false charge), is not a condition precedent to the right to sue for damages. The bringing of a civil suit imports no corrupt agreement or compounding of the offence in such a case. *Shama Churn Bose* v. *Bhola Nath Dutt*, *6 W. R., Civ. Ref., 9,* followed. VIRANNA *v.* NAGAYYAH . . **I. L. R., 3 Mad., 6**

MALICIOUS PROSECUTION—*continued.*

2. ——— *Reasonable and probable cause—Effect of order of discharge of a person accused of an offence before a Magistrate—Presidency Magistrates' Act, IV of 1877, s. 87.*—The discharge of an accused person by a Presidency Magistrate, under s. 87 of the Presidency Magistrates' Act, IV of 1877, is such a termination of the prosecution as entitles the accused to maintain an action for malicious prosecution. VENU *v.* COORYA NARAYAN . . . **I. L. R., 6 Bom., 376**

3. ——— *Liability for mere bonâ fide criminal prosecution.*—A complainant who put the criminal law in motion against a person by whom he had been aggrieved, such prosecution not being malicious or groundless, should not be held civilly responsible for any injury or loss thereby sustained by the person prosecuted. KISHOREE LALL *v.* ENAETH HOSSEIN KHAN. ENAETH HOSSEIN KHAN *v.* KISHOREE LALL
[**1 N. W., Pt. II, p. 11 : Ed. 1873, 71**

4. ——— *Application for sanction to prosecute—Criminal Procedure Code, s. 195—Cause of action.*—*Held* that an unsuccessful application under s. 195 of the Criminal Procedure Code for sanction to prosecute for offences under the Penal Code, in which the only loss or inquiry entailed on the party against whom such application was directed was the expense he incurred in employing counsel to appear in answer to such application, such appearance being due to the fact, not that he had been summoned, but that he had applied through counsel for notice of the application, anticipating that it would be made, afforded no cause of action in a suit for recovery of damages on account of malicious prosecution. EZID BAKHSH *v.* HARSUKH RAI . . . . **I. L. R., 9 All., 59**

5. **Necessary evidence**—*Reasonable cause, Proof of want of.*—In a suit for damages on account of a charge brought by defendant in a Criminal Court, which charge was ultimately dismissed, plaintiff must prove in the Civil Court that there was no reasonable cause for bringing the accusation: the proceedings in the Criminal Court are not evidence in the Civil Court. AGHORENATH ROY *v.* RADHIKA PERSHAD BOSE . . **14 W. R., 339**

6. ——— *Reasonable and probable cause, Want of.*—In an action for damages for a malicious prosecution, it is not sufficient to prove merely the dismissal of the charge. It must be proved that the prosecution was without reasonable and probable cause. GUNNESH DUTT SINGH *v.* MUGNEERAM CHOWDHRY
[**11 B. L. R., P. C., 321 : 17 W. R., 283**

Affirming decision of lower Court in MUGNEERAM CHOWDHRY *v.* GUNESH DUTT SINGH **5 W. R., 134**

7. ——— *Requisites for action for malicious prosecution.*—To sustain an action for malicious prosecution, the prosecution must be proved to have been malicious and without reasonable or probable cause. SVAMI NAYAUDU *v.* SUBRAMANIA MUDALI . . . . . **2 Mad., 158**

8. ——— *Proof of malice or want of reasonable cause—Costs.—Held* that, there being no proof that the defendant acted maliciously or without probable cause, the suit was not maintainable; and under the circumstances the defendant was entitled to his costs. DUNNE v. LEGGE [1 Agra, 38

9. ——— *Omission to allege malice and want of reasonable and probable cause.*—Where a plaint alleges the cause of action to be the prosecution of a false charge of forgery, and the statement of the subject-matter imports that the charge was false to the knowledge of the defendant, the omission to allege expressly malice and the absence of reasonable and probable cause is no good ground of objection to the hearing of the suit. RAMASAMI AYYAN v. RAMU MUPAN **3 Mad., 372**

10. ——— *Malice—Want of reasonable and probable cause.*—An action for damages for malicious prosecution can succeed only if the plaintiff shows both malice and the absence of reasonable and probable cause. MOONEE UMMAH v. MUNICIPAL COMMISSIONERS FOR THE TOWN OF MADRAS . . . . . **8 Mad., 151**

11. ——— **Onus probandi**—*Proof of malice and want of reasonable or probable cause.*—In an action for malicious prosecution, it is for the plaintiff to prove the existence of malice and want of reasonable or probable cause, before the defendant can be called upon to show that he acted *bonâ fide* and upon reasonable grounds, believing that the charge which he instituted was a valid one. GAUR HARI DAS ADHIKARI v. HAYAGRIB DAS **[6 B. L. R., 371**

S. C. GOUR HUREE DOSS v. HYAGRIB DOSS **[14 W. R., 425**

NOWCOUREE CHUNDER SURMAH v. BIRMOMOYEE DABEA . . . . . **3 W. R., 169**

12. ——— *Action for damages.*—In an action for damages for malicious prosecution, where it is found that the charge was made not maliciously, but with good and reasonable cause, the onus is on the plaintiff, though the charge against him was dismissed, to prove malice on the part of the defendant. Malice is not to be inferred merely from the acquittal of the plaintiff. ROSHAN SIRKAR v. NABIN CHANDRA GHATAK **[6 B. L. R., 377 note: 12 W. R., 402**

13. ——— *Proof of reasonable and probable cause.*—But if the charge were found to be false, the onus would be on the defendant to show that he had reasonable and sufficient cause for making the charge; and on his failure to show any such cause, malice may be inferred. BISWANATH RAKHIT v. RAMDHAN SIRKAR **[6 B. L. R., 375 note**

S. C. BISHONATH RUKHIT v. RAM DHONE SIRCAR **[11 W. R., 42**

14. ——— *Proof of want of reasonable cause—Inference of malice.*—In a suit for a malicious prosecution, the plaintiff is entitled and bound to show that the prosecution was malicious and without reasonable and probable cause; and if want of reasonable and probable cause be shown, malice may generally be inferred. VENGAMA NAIKAR v. RAGHAVA CHARY . **2 Mad., 291**

15. ——— *Want of reasonable cause—Inference of malice.*—In a suit for damages on the ground that the defendant made a false charge of defamation against the plaintiff and had him arrested and taken before the Magistrate, who dismissed the charge,—*Held* that the essence of the case lay in the question whether or not the complainant had reasonable ground for complaining before the Magistrate that the plaintiff had defamed him. Malice would be inferred from the absence of reasonable cause. GUNGA PERSHAD v. RAMPHAL SAHOO . . . . . **20 W. R., 177**

16. ——— *Suit against person whose name was not on record of prosecution case—Absence of reasonable and probable cause—Inference of malice.*—A suit for damages for malicious prosecution will lie against a person who was the real prosecutor in the previous case, although his name did not appear on the record. Ordinarily the absence of a reasonable and probable cause in instituting a proceeding which terminates in favour of the plaintiff would give rise to the inference of malice. RAI JUNG BAHADUR v. RAI GUDAR SAHOY **[1 C. W. N., 537**

17. ——— *Acquittal, Effect of—Good and reasonable cause.*—In a suit for damages for malicious prosecution, where it was proved that plaintiff, a man of property and respectability, had been charged by defendant with theft, and that he had been convicted before the Magistrate, but acquitted by the Sessions Judge,—*Held* that the mere fact of acquittal did not prove that the charge was malicious; that property having been found in plaintiff's house which defendant claimed as his stolen property, plaintiff could not recover damages, unless it was certain that the property in question was not stolen, but his own; and that it was for plaintiff to show that there was no ground or reasonable cause for bringing the charge. DOONGRUSSEE BYDE v. GRIDHAREE MULL DOOGUR . . **10 W. R., 439**

18. ——— *Effect of acquittal of plaintiff in Criminal Court—Evidence of malice—Reasonable and probable cause.*—The mere fact that a person has been found innocent of the charge made against him is not sufficient to entitle him to a decree in a suit for malicious prosecution. He must further prove that the defendants acted maliciously, that is, from some indirect motive and that there was no reasonable or probable cause for their action. MODY v. QUEEN INSURANCE CO.
[I. L. R., 25 Bom., 332
4 C. W. N., 781

19. ——— *Absence of probable cause—Malice, Proof of—Burden of proof.*—In a suit for damages for malicious prosecution it was found that the charge brought by the defendant against the plaintiff was unfounded, and that it was

brought without probable cause. *Held* that the absence of probable cause did not imply malice in law, and that, on the failure of the plaintiff to prove that the defendant did not honestly believe in the charge brought by him, the suit should have been dismissed. HALL *v.* VENKATAKRISHNA

[I. L. R., 13 Mad., 394

20. ———— *Suit for damages for malicious prosecution—Malice—Dishonest motive—Effect of bringing a charge of assault for 'criminal intimidation'—Damages—Reasonable and probable cause—Penal Code (Act XLV of 1860), ss. 351, 352, 503.*—Where, in a suit for damages for malicious prosecution on a charge of assault which was dismissed, it appeared from the facts as found by the lower Courts that there was 'criminal intimidation' on the part of the plaintiff, although he was not charged with that offence by the defendant,—*Held* that the plaintiff was not entitled to any damages, as no malice or dishonest motive could be imputed to the defendant in bringing the charge of 'assault'. MADHU LAL AHIR GAYAWAL *v.* SAHI PANDE DHAMI . **I. L. R., 27 Calc., 532**

21. ———— *Suit for damages for loss of reputation owing to defendant giving false information to police—Malicious prosecution—Defamation—False charge—Want of reasonable and probable cause—Malice—Privilege—Penal Code (Act XLV of 1860), ss. 182, 211, and 499.*—Certain property belonging to the defendant having been stolen, he informed the chief police constable entrusted with the inquiry that he suspected the stolen property to be concealed in plaintiff's house. Accordingly the plaintiff's house was searched, and its floor dug up, and the plaintiff was placed in confinement for an hour or so. No property was, however, found. Thereupon the plaintiff sued the defendant to recover damages for loss of character suffered by him in consequence. Both the lower Courts decreed the plaintiff's claim, holding that it lay on the defendant to prove reasonable and probable cause for the suspicion communicated to the police and the search of the plaintiff's house. On second appeal, the High Court reversed the decrees and dismissed the suit. *Held* (*per* JARDINE, *J.*) that the rule as to the burden of proof in suits for malicious prosecution should be extended to a case like the present. The onus therefore lay on the plaintiff not only to allege in the plaint, but also to prove against the defendant, malice and absence of reasonable and probable cause for the information given by him to the police. The plaintiff, however, had given no evidence of his own innocence, nor that the suspicion of the defendant was groundless, nor that the defendant had any malice. *Per* RANADE, *J.*—The present case was governed by the principles which governed suits for defamation, and under the circumstances the action of the defendant fell within the exception which protects information given to a person in authority in the discharge of a public or private duty, where no malice in fact is shown to exist. See *Mohendro Chundro* v. *Surbo Kokhya, 11 W. R., 534.* There is a distinction between the case of a false charge falling under s. 211 of the Penal Code and that of false information given to the police under s. 182. A person prosecuting another for an offence under the latter section need not prove malice and want of reasonable and probable cause except so far as they are implied in the act of giving information known to the police with the knowledge or likelihood that such information would lead a public servant to use his power to the injury or annoyance of the complainant. In an inquiry under s. 211, on the other hand, the absence of just and lawful ground for making the charge is an important element. *Gunnesh Dutt Singh* v. *Mugneeram Chowdhry, 11 B. L. R., 321: 19 W. R., 283,* distinguished. RAGHAVENDRA *v.* KASHINATHBHAT . . **I. L. R., 19 Bom., 717**

22. ———— *Prosecution by a police constable in private as well as official capacity—Malice—Suit for damages.*—A police constable, who is in effect the prosecutor and not acting merely in his official capacity, who does not take reasonable care to inform himself of the truth of the case, and who does not honestly believe in the charge preferred by him, and is actuated by an indirect motive in preferring it, is liable in a suit for damages for malicious prosecution. MINAKSHISUNDRUM PILLAI *v.* AYYATHORAI

[I. L. R., 18 Mad., 136

23. ———— *Procuring wrongful execution of a warrant of arrest—Reasonable and probable cause.*—The plaintiff sued the Municipal Commissioner of Bombay for damages, alleging that the Commissioner had maliciously and without reasonable and probable cause procured a warrant to be issued against him on the 24th March 1892, and subsequently procured that warrant to be executed at a time when its force was spent, and under circumstances when it ought not to have been executed. From the evidence it appeared that on the 21st December 1891 a notice was served on the plaintiff under s. 232 of the City of Bombay Municipal Act (III of 1888) requiring him to do certain drainage work upon premises belonging to him. The work not having been done, a summons was issued against him on the 11th February 1892, requiring him to appear before the Presidency Magistrate to answer a charge of not having complied with the above notice. The summons was returnable on the 25th February 1892, and on that day the plaintiff appeared, but the hearing was postponed until the 24th March 1892. On the 27th February 1892, the plaintiff wrote to the defendant objecting to the nature of the work he was required to do, and adding, "After this explanation I will leave the matter in the hands of the Drainage Department to do the work and will pay the expenses." In reply to this letter, the Executive Engineer on the 21st March informed the plaintiff that he must appear in Court on the 24th March, and also requested him to "take the work in hand at once and complete it within the time now allowed." On the 22nd March 1892 the plaintiff replied by letter stating that he did not understand the work and asking the Municipality to get it done, he offering to pay the expense. The letter ended as follows: "I do not see any reason now to attend in Police Court on the 24th instant, as I am ready and willing to do the work." The plaintiff did not attend the Court on the 24th March. On that same day (the 24th) a letter signed by the Municipal Commissioner was delivered to the plaintiff, dated the 23rd March, informing him that a "fresh summons" had been issued against him for not complying with the requirements of the notice served on him. The Courts held that the non-appearance of the plaintiff on the 24th March was not caused by the receipt of this letter. On the 24th idem, in consequence of the non-appearance of the plaintiff in obedience to the summons, a warrant of arrest was issued against him. The date originally inserted in the warrant for the plaintiff's appearance before the Magistrate was the 7th April, but this date was subsequently altered to the 2nd June. There was no evidence as to how or by whom this alteration was made. The plaintiff, having heard on the 5th March of the issue of the warrant, appeared next day (the 26th) before the Magistrate and surrendered, showing to the Magistrate the defendant's letter of the 23rd March and explaining why he had not attended on the 24th. A note was made of his surrender, and he was told by the Magistrate to appear on the 7th April. The plaintiff, however, did not get the warrant cancelled. He stated that at the office of the Presidency Magistrate's Court he was informed that the warrant was with the Municipality, and that he then went away and did nothing more. On the 7th April the Municipal Engineer went to the plaintiff's premises, and pointed out the work that was to be done. He (the plaintiff alleged) told the plaintiff that he need not attend the Police Court that day, as he would get the hearing of the summons postponed for a fortnight. The plaintiff then instructed a plumber to do the requisite work, which was completed (as plaintiff alleged) on the 26th April, and was passed and approved by the Municipal authorities. The plaintiff swore that he attended the Police Court on the 21st April, but apparently did not bring his appearance to the notice of the Magistrate, as the Municipal officers had left the Court before he arrived. He further stated that he attended again on the 28th April, but was told by a Municipal inspector that he might go away, as the work was done. Another hearing was apparently fixed for the 19th May, but the case was again adjourned to the 2nd June. On the 31st May the plaintiff was arrested in execution of the warrant of the 24th March. The evidence was that on that morning, at 8 o'clock, a Municipal inspector, *H*, who was not called as a witness at the hearing, accompanied by a Police sepoy, went to the plaintiff's house and pointed out the plaintiff to the sepoy who arrested him and took him in custody to the police station and subsequently before the Magistrate. He was released on depositing R25 as security for appearing when required. On the 16th June the plaintiff again appeared in the Police Court, when the summons was withdrawn. The plaintiff claimed R10,000 as damages for malicious prosecution, wrongful arrest, and detention in custody and false imprisonment. The defendant denied that he had applied for or obtained the warrant for the plaintiff's arrest or that he or his servants had anything to do with the arrest or was responsible for it, save that a sub-inspector who knew nothing of the warrant had pointed out the plaintiff to a police officer at the latter's request. He further denied that the proceedings were malicious and without reasonable and probable cause. The lower Court (STARLING, *J.*) held that the defendant was liable for the wrongful execution of the warrant against the plaintiff and awarded the latter R500. On appeal, —*Held* (affirming the decree of the lower Court) that the defendant was liable. On the 28th April, at any rate, the warrant in question was a spent warrant, and could not be properly executed, as it was, on the 31st May. As the warrant was issued by the Magistrate of his own accord, the defendant could not be liable for its execution (as shown by the case of *West* v. *Smallwood, 3 M. & W., 418*), unless he or his subordinates took an active part in executing it. The mere circumstance that the plaintiff was pointed out to the police officer who executed the warrant by a Municipal inspector might not of itself amount to taking an active part. But there were special circumstances which should be taken into consideration in conjunction with it. The length of time which elapsed before the warrant was executed, and the alteration of the date in the direction contained in the warrant as to taking bail, not explained in any way, and which could not have been made by the police, pointed to the warrant having been, if not in the actual keeping of the Municipal authorities, at any rate under their control, and to the police having been set in motion by them. Under these circumstances, it was incumbent on the defendant to give rebutting evidence, and more especially to call the Municipal inspector to explain the circumstances under which he pointed out the plaintiff to the police officer who executed the warrant. ACWORTH *v.* SHAVAKSHA DHUNJIBHAI . . **I. L. R., 19 Bom., 485**

24. ———— Evidence of reasonable and probable cause—*Conviction by Magistrate and acquittal in Sessions Court.*—In a suit to recover damages for a malicious prosecution, it was proved that the case for the prosecution having been that the plaintiffs had dishonestly broken open the defendant's grain-pit, and the defence that it was done under a claim of right, the Joint Magistrate convicted the accused, but that his sentence was reversed by the Court of Session,—*Held* that, in the absence of any special circumstances to rebut it, the judgment of one competent tribunal against the plaintiffs afforded very strong evidence of reasonable and probable cause. PARIMI BAPURAZU *v.* BELLAMKONDA CHINNA VENKAYYA . . . **3 Mad., 238**

25. ———————— *Evidence—Conviction of plaintiff by a Criminal Court.*—The fact that the plaintiff in a suit for damages for malicious prosecution has been convicted by a competent Court, although he may subsequently have been acquitted on appeal, is evidence, if unrebutted, of the strongest possible character against the plaintiff's necessary plea of want of reasonable and probable cause. *Parimi Bapirazu* v. *Bellamkonda Chinna Venkayya, 3 Mad., 238,* followed. JADUBAR SINGH *v.* SHEO SARAN SINGH

[I. L. R., 21 All., 26

MALICIOUS PROSECUTION—*continued.*

26. ———————— *Conviction by Criminal Court.*—In a suit for damages for defamation of character by maliciously bringing a false charge against the plaintiff, it is important, in determining the same, to see how the charge has been treated by the criminal authorities ; and when it was found that the plaintiff had actually been convicted by one Court, that might well be regarded as a weighty circumstance to show that the defendant acted from some adequate cause and not maliciously. GUNGA RAM *v.* HOOLASEE . . . . **2 N. W., 88**

27. ———————— *Malice—Negligence, Inference from.*—The defendant had charged the plaintiff with cheating by personation in falsely pretending that his (plaintiff's) wife had been delivered of a son, and procuring a child and passing him off as the son so born. The case was dismissed by the Magistrate, and the plaintiff brought the present suit for malicious prosecution. The defendant alleged reasonable and probable cause and the absence of malice. The Civil Judge awarded R50,000 damages to the plaintiff. Upon appeal, it was contended that the charge was not malicious, though the facts upon which it was based were allowed to be false. *Held* that this depended upon the question of the absence of reasonable and probable cause, and in case of the absence, upon the cogency of the inference derivable from it. The test which has received the most approbation is partly abstract and partly concrete. Was it reasonable and probable cause for any discreet man? Was it so to the maker of the charge? Upon the facts of this case,—*Held* that, if defendant's conduct was mere negligence, it was *dissoluta negligentia* : that the facts alleged in support of the charge were such as, if believed at all, could only be believed and acted upon through such negligence that the inference of malice was irresistible. GODAY NARRAIN GAJPATHI RAU *v.* ANKITAM VENKATA NARSING RAU **[6 Mad., 85**

28. ———————— *Guilty knowledge—Criminal intention—Proof of malice.*—It is not to be presumed, as a matter of course, from the existence of an overcharge in an account, although the error may be an important error, that the tradesman delivering the account intentionally inserted it with a view to defraud. There should generally be something more than the entry of the overcharge to justify the presumption that it was made with a guilty knowledge and criminal intention. *W* manufactured and delivered to *D* a punkha with iron supports. In the bill delivered to *D* the iron-work was entered and charged as weighing four maunds. *D* paid a certain sum on account, promising to pay the balance if he was satisfied that the charge for the iron-work was not exorbitant. *W* sued *D* in the Small Cause Court for the balance due on account of the punkha. It then appeared that the iron-work *only* weighed a little over two maunds. The Small Cause Court Judge dismissed the claim in respect of the punkha and iron-work, on the ground that the payment already made was sufficient. On 3rd February *D* applied to the Judge for sanction to prosecute *W* for making a false claim. On the next day, without making any inquiry or asking *W* for an explanation, and without awaiting the result of the investigation by the Small Cause Court Judge which would have satisfied him that there was no sufficient ground for imputing a criminal intention to *W*, he instituted a charge of cheating against *W* in the Magistrate's Court. When the Judge of the Small Cause Court closed his investigation and refused sanction, *D* did not withdraw from the prosecution of the charge in the Magistrate's Court, which was subsequently dismissed. It was proved at the investigation in the Small Cause Court that four maunds of iron had been delivered to the workmen of *W* and entered by his storekeeper as expended. In a suit by *W* against *D* to recover damages for a malicious prosecution,—*Held* that the institution of the charge in the Magistrate's Court, after the defendant had brought the matter before the Judge of the Small Cause Court and knew it was under the Judge's consideration, and his persistence in the charge in the Magistrate's Court when, after investigation, sanction had been refused by the Small Cause Court Judge, was sufficient proof of malice, and that on the facts there was no reasonable cause for criminal proceedings. WEATHERALL *v.* DILLON **[6 N. W., 200**

29. ———— **Measure of damages**—*Substantial damages.*—Where a charge has been made against a person of having given false evidence in a judicial proceeding and the circumstances of the case show no reasonable suspicion, the Court will, on suit brought, award substantial damages. ANUNDLOLL DOSS *v.* JOINTEE CHUNDER SEN **[1 Ind. Jur., N. S., 93**

30. ———— **Assessment of damages**—*Fees for counsel.*—In a suit for malicious prosecution, the expense of counsel is not a proper element in the calculation of damages awardable to a successful plaintiff. GODAY NARRAIN GAJPATHI RAU *v.* ANKITAM VENKATA NARSING RAU . **6 Mad., 85**

31. ———————— *Fees paid to vakil for defence before Criminal Court.*—In a suit for damages on account of malicious prosecution, the fee paid by the plaintiff to his vakil for the purpose of his defence before the Criminial Court is an element to be considered in assessing the damages suffered. Dictum of HOLLOWAY, *J.*, in *Gajpathi Rau* v. *Narsing Rau, 6 Mad., 85*, explained. SUBBA RAU *v.* VIRAPPA . . **I. L. R., 5 Mad., 162**

32. ———————— *Costs in Criminal Court.*—In a suit for damages for malicious prosecution, the plaintiff is entitled to recover the costs necessarily incurred by him in defending himself on the criminal charge. BUNNOMALI NUNDI *v.* HURRYDASS BYRAGI **I. L. R., 8 Calc., 710 : 11 C. L. R., 265**

"MALIK," MEANING OF—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED . **I. L. R., 10 Calc., 342**
[I. L. R., 20 Calc., 906
I. L. R., 24 Calc., 406, 834
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4 C. W. N., 437

MALIKANA.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.
[I. L. R., 3 Calc., 414

See DEED—CONSTRUCTION.
[I. L. R., 9 All., 591

See MUNSIF, JURISDICTION OF.
[I. L. R., 19 Calc., 8

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[I. L. R., 4 Calc., 839
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See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—TITLE, QUESTION OF.
[I. L. R., 9 All., 591

——— **Suit for—**

See BENGAL REGULATION VIII OF 1793, s. 46 . . **4 B. L. R., A. C., 29**

See LIMITATION ACT, 1877, ART. 132.
[4 B. L. R., A. C., 29
2 W. R., 162
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21 W. R., 88
22 W. R., 520, 551
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See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—DAMAGES.
[3 B. L. R., Ap., 96

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See LAND ACQUISITION ACT, 1870, s. 19.
[I. L. R., 17 Bom., 299

See CASES UNDER MAMLATDARS' COURTS ACT.

See WITNESS—CIVIL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES.
[I. L. R., 17 Bom., 299

——— **Court of—**

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.
[I. L. R., 5 Bom., 137

——— **Disqualification of, to try case.**

See JUDGE—QUALIFICATIONS AND DISQUALIFICATIONS.
[I. L. R., 19 Bom., 608

——— **Order of—**

See BOMBAY LAND REVENUE ACT, V OF 1879, s. 87 . **I. L. R., 8 Bom., 188**

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL . . **9 Bom., 249**

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See LIMITATION ACT, 1877, ART. 47.
[10 Bom., 479
I. L. R., 15 Bom., 299
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I. L. R., 20 Bom., 270
I. L. R., 23 Bom., 525

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION . **I. L. R., 18 Bom., 348**

See POSSESSION—EVIDENCE OF POSSESSION . . **I. L. R., 5 Bom., 387**

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.
[I. L. R., 6 Bom., 477
I. L. R., 21 Bom., 91
I. L. R., 24 Bom., 251

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See LIMITATION ACT, 1877, s. 14.
[I. L. R., 18 Bom., 734

See CASES UNDER MAMLATDARS' COURTS ACT.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 9 Bom., 97
I. L. R., 18 Bom., 449
I. L. R., 20 Bom., 630
I. L. R., 21 Bom., 731, 775

1. ——— **Bom. Act V of 1864**—*Possession—Right of way.—Held* that an order passed by a Mamlatdar under Act V of 1864 (Bombay), directing the accused to keep open a right of way to a privy, being in reality an injunction to refrain from disturbing the possession of the parties, was therefore within the jurisdiction of the Mamlatdar. REG. *v.* KRISHNASHET BIN NARAYANSHET . . . . . **5 Bom., Cr., 46**

2. ——— **Jurisdiction of Mamlatdar over officers of Government sued in their official capacity**—*Bombay Civil Courts Act (Bom. Act XIV of 1869), s. 32—Bombay Revenue Jurisdiction Act (X of 1876), s. 15.*—A Mamlatdar has jurisdiction, under Bombay Act III of 1876, to hear and determine a suit brought against officers of Government for acts purporting to have been done by them in their official capacity. A Mamlatdar has no power to inquire into matters not covered by the issues laid down by the Act itself. BALVANTRAO *v.* SPROTT . . . **I. L. R., 23 Bom., 761**

3. ——— **Effect of order of Mamlatdar as to possession**—*Act XVI of 1838, s. 1, cl. 2—Mamlatdar's Court a Revenue Court within contemplation of Bom. Reg. XVII of 1827—Maxim, "Optimus legis interpres consuetudo," Application of—Remedy when suit to set aside order as to possession is barred—Title, suit based on.*—On the 13th December 1865, prior to the passing of the Mamlatdars' Act (III of 1876), one *B* sued defendants 1 and 2 in a Mamlatdar's Court for the purpose of restraining them from disturbing him in the possession and enjoyment of the lands in dispute. On the 17th January 1864, the Mamlatdar

MAMLATDAR, JURISDICTION OF *—continued.*

made an order to that effect against the said defendants, who omitted to sue to set aside that order. In 1866, *B* being then dead, his widow (defendant 3) executed in favour of the plaintiff a miraspatra in respect of the lands in dispute, which was also ratified by her adopted son (defendant 4). In 1871 the plaintiff sued to recover possession of the lands. Defendants 1 and 2 contended (*inter aliâ*) that the lands were their private property and had never been in the possession of *B* or his widow. The suit went up to the High Court, and was remanded for the determination of the issues, *viz.*, (1) whether *B* had at the time of his death such a title to the lands as would have entitled him to make a mirasi lease thereof, and (2) whether there was any valid adoption of defendant 4 by defendant 3. On remand the Court of first instance found on the issues in the affirmative, being of opinion that defendant 3 was in possession at the time the miraspatra was executed to the plaintiff. The defendants appealed, and the Subordinate Judge confirmed the lower Court's decree. He treated the Mamlatdar's order as one made under the Mamlatdars' Act, and, as such, binding conclusively on the defendants, as it had not been set aside within three years from its date. On appeal to the High Court,—*Held* that the Subordinate Judge with appellate powers was wrong in treating the Mamlatdar's order as passed under the Mamlatdars' Act. The order was one of a Revenue Court under s. 1, cl. 2, of Act XVI of 1838. It was contended that the Mamlatdar could not make such an order under Act XVI of 1838. *Held* that, although the Collector's Court was the only Revenue Court contemplated by Regulation XVII of 1827, since the passing of Act XVI of 1838, the Mamlatdar's Court was always regarded as a Revenue Court empowered to deal with a claim to possession, and that in construing that Act the maxim "*optimus legis interpres consuetudo*" might be properly applied. The order in question was against the appellant, and under s. 7 of Act XIV of 1859 a suit by the appellant to recover the property would be barred on the 17th January 1867, and as that suit was not brought, the defendants could not assert a title other than what their actual possession might afford them. The Subordinate Judge having found that defendant 3 was in possession in 1886 when she granted the miraspatra, the appellant could not have acquired any title by possession before the plaintiff's suit in 1871. BAPU KHANDU *v.* BAJI JIVAJI

[I. L. R., 14 Bom., 372

4. ——————**Parties, Substitution of**—*Code of Civil Procedure (Act XIV of 1882), Ch. XXI, ss. 361-372, applicability to a suit in a Mamlatdar's Court—Procedure.*—The Bombay Mamlatdars' Act (III of 1876) makes no provision for the substitution of the names of heirs in the case of the death of one of the parties, and Ch. XXI of the Code of Civil Procedure (Act XIV of 1882) cannot be held to apply to proceedings in a Mamlatdar's Court. Accordingly, where a possessory suit was filed by two persons in a Mamlatdar's Court, and one of them died pending the suit, and it appeared that the right to sue did not survive to the surviving plaintiff alone,—*Held* that the Mamlatdar, having therefore no jurisdiction to substitute parties, had no alternative but to dismiss the suit. GANPATRAM JEBHAI *v.* RANCHHOD HARIBHAI

[I. L. R., 17 Bom., 645

5. —————— **Superintendence of High Court**—*Mamlatdars' Courts Act (Bom. Act III of 1876), ss. 15, cl. (a), sub-cls. (1) and (2), and 18—Execution of decree for possession against a third party.*—A third party cannot be ousted from possession of property in the execution of a decree for possession made by a Mamlatdar against a defendant under Bombay Act III of 1876, and it is beyond the power of Government by Resolution to give a Mamlatdar authority to oust a third party. *A* obtained an order in a Mamlatdar's Court against *G* for possession of a house, and in execution *N*, who was found in possession of the house, and who was reported by the village officers as holding possession for *G*, was evicted by order of the Mamlatdar. *N* then applied to the High Court. *Held* that the Mamlatdar's order was, strictly speaking, beyond his authority, but that as *N*'s petition to the High Court contained no distinct denial that he was occupying merely on behalf of the defendant, the High Court would not interfere in its extraordinary jurisdiction. NATHEKHA *v.* ABDUL ALLI . . **I. L. R., 18 Bom., 449**

6. —————— **Possessory suit**—*Mamlatdars' Courts Act (Bom. Act III of 1876), s. 15—Possession of mortgagee.*—The possession by a mortgagee is not possession on behalf of his mortgagor within the meaning of s. 15 of the Mamlatdars' Act (Bombay Act III of 1876) so as to give the Mamlatdar jurisdiction under that section. KHANDERAO *v.* NARSINGRAO . **I. L. R., 19 Bom., 289**

7. —————— **Possessory suit by landlord**—*Mamlatdars' Courts Act (Bom. Act III of 1876), s. 15—Landlord and tenant—Dispossession of tenant—Nature of possession—Constructive possession.*—A landlord who has let out his land to tenants cannot, on the tenants being dispossessed, bring a possessory suit in the Mamlatdars' Court under the provisions of the Mamlatdars' Act (Bombay Act III of 1876). The tenants cannot be said to be in possession "on behalf" of the landlord under s. 15, cl. (*a*), of the Act, and the Mamlatdar has therefore no jurisdiction to try the suit. GOMA *v.* NARSINGRAO . . **I. L. R., 20 Bom., 260**

See BHIMAJI JAYAJI PATEL *v.* GOPALA MAHADU SALE . . **I. L. R., 20 Bom., 264 note**

8. —————— **Dispossession of a third person not a party in execution of decree for possession**—*Possessory suit by third person against decree-holder—Cause of action—Mamlatdars' Courts Act (Bom. Act III of 1876)—Mamlatdar—Civil Procedure Code (1882), s. 332.*—Where in execution of a decree a person not a party to the suit is dispossessed, his dispossession does not give him a cause of action within the

jurisdiction of the Mamlatdar. S. 332 of the Civil Procedure Code (Act XIV of 1882) applies. RAMCHANDRA SUBRAO *v.* RAVJI [I. L. R., 20 Bom., 351

9. ——— **Delivery of possession in execution of a decree of a Civil Court**—*Subsequent lease to the judgment-debtor—Refusal of the Mamlatdar to restore possession after the expiration of the lease—Suit for possession—Cause of action.*—*V* obtained possession of land from *B* in execution of a decree of a Civil Court. After obtaining possession, *V* leased the land to *B*. On *B's* refusal to vacate the land on the expiration of the lease, *V* brought a possessory suit in the Mamlatdar's Court. The Mamlatdar rejected the plaint, holding that he ought not to order restoration of possession of the land again and again. *Held* that a fresh cause of action accrued to *V* on the refusal of *B* to give possession on the expiry of the lease, and that the Mamlatdar was wrong in declining to accept the plaint. VINAYAK VISHWANATH BHOPLE *v.* BALU . I. L. R., 20 Bom., 491

10. ——— **Irregular decree of Mamlatdar made by consent of parties**—*Mamlatdars' Courts Act (Bom. Act III of 1876).*—The applicant brought two possessory suits against the opponent in the Mamlatdar's Court for the recovery of certain pieces of land. By consent decrees were passed in these suits that, unless the opponent paid a certain sum of money to the applicant within two months, the latter should get possession. After the expiration of two months, the applicant, alleging that the money had not been paid as agreed, applied for execution of the decrees. The Mamlatdar found that the money had been tendered to the applicant, but had been wrongfully refused by him. He ordered execution to issue as to costs, but declined to make any order as to possession. The applicant thereupon applied to the High Court in its extraordinary jurisdiction, and alleged that the money had not been duly tendered. *Held* that the decrees were such as the Mamlatdar could not legally make under the provisions of the Mamlatdars' Courts Act (Bombay Act III of 1876), and the consent of parties could not give him power to do so. RAMRAO TATYAJI PATIL *v.* BABAJI DHONJI BIBVE [I. L. R., 20 Bom., 630

11. ——— **Possessory suit against lessee's heirs after the determination of the term**—*Death of lessee during the term of lease.*—If heirs succeed to their fathers' rights under a lease, the jurisdiction of the Mamlatdar in a suit for possession arises on the determination of that lease against such heirs as though the original tenant were then alive. AMARCHAND HINDUMAL *v.* SAVALYA [I. L. R., 21 Bom., 738

12. ——— **Dispossession of a third person not a party to suit**—*Remedy of person so dispossessed—Civil Procedure Code (1882), s. 622.*—*G* got a decree for possession against *P* in a Mamlatdars' Court. In execution the Mamlatdar directed the ouster of *C*, who was in possession and who was not a party to the decree. *Held* that the Mamlatdar's order for the execution of the decree by the ouster of *C* was without jurisdiction, and that it should be set aside under s. 622 of the Civil Procedure Code. CHINAYA *v.* GANGAVA [I. L. R., 21 Bom., 775

13. ——— **Person ousted in execution no party to the decree**—*Suit for possession in Mamlatdar's Court by person ousted.*—A person ousted in execution of a decree of the Mamlatdar's Court, to which he was no party, can himself bring a suit for possession in the Mamlatdar's Court against the person by whom he was ousted, and the defendant in such a suit cannot rely on the fact of his having obtained possession in execution of a decree against other parties as a bar to the jurisdiction of the Mamlatdar. NINGAPPA *v.* ADVEPPA [I. L. R., 24 Bom., 397

14. ——— **Remedy as between joint owners put into possession under decree of Civil Court.**—In execution of the decree obtained in 1886 in a Civil Court, the plaintiff and the defendants were put into joint possession of certain land. The plaintiff subsequently brought this suit in the Mamlatdar's Court to recover possession of the said land, alleging that the defendants, by taking cocoanuts from trees standing thereon, had dispossessed him of the said land otherwise than by due course of law. The Mamlatdar held that the plaintiff had been thereby dispossessed, and passed a decree ordering the defendants to deliver up possession of the land to the plaintiff, together with the trees growing thereon. *Held* that the Mamlatdar had no jurisdiction to pass the decree. The Civil Court had passed a decree giving the parties joint possession of the land, and the Mamlatdar had no jurisdiction to override that decision and to place the plaintiff in exclusive possession. By the decree of the Civil Court they were determined to be joint owners, and the remedy in case of unequal possession or taking of produce was a suit for an account or for partition. BHAU *v.* DADE KRISHNAJI BHAGVI I. L. R., 21 Bom., 777

MAMLATDARS' COURTS ACT (BOMBAY ACT V OF 1864).

See EXECUTION OF DECREE—MODE OF EXECUTION—GENERALLY—POWERS OF OFFICERS IN EXECUTION. [5 Bom., A. C., 158

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL . . 9 Bom., 249

See JURISDICTION OF REVENUE COURT—BOMBAY REGULATIONS AND ACTS. [I. L. R., 1 Bom., 624

See LIMITATION ACT, 1877, ART. 47.
[9 Bom., 424
I. L. R., 5 Bom., 25, 27
10 Bom., 479
I. L. R., 18 Bom., 348

MAMLATDARS' COURTS ACT (BOMBAY ACT V OF 1864)—*concluded.*

See MAMLATDAR, JURISDICTION OF.
[5 Bom., Cr., 46

See PENAL CODE, s. 188 3 Bom., Cr., 53
[5 Bom., Cr., 21

See RIGHT OF SUIT—COSTS.
[8 Bom., A. C., 29

MAMLATDARS' COURTS ACT (BOMBAY ACT III OF 1876).

See CASES UNDER MAMLATDAR, JURISDICTION OF.

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 21 Bom., 88
[I. L. R., 24 Bom., 238

See PRACTICE—CIVIL CASES—REFERENCE TO HIGH COURT.
[I. L. R., 21 Bom., 806

See SPECIFIC RELIEF ACT, s. 9.
[I. L. R., 15 Bom., 685

——— **"Houses"—"Premises."**—The intention of Bombay Act III of 1876, as stated in the preamble, was not to abolish the old, Mamlatdars' Courts and create new Courts under the same name, but was to bring into one consolidating and amending Act so much of the old law and such new law as appeared necessary for the continued regulation of the existing Courts. The High Court is therefore not deprived of the powers of superintendence and revision which it exercised over the Mamlatdars' Courts previously to the passing of that Act. *Per* PINHEY and F. D. MELVILL, *JJ.*—Under Bombay Act III of 1876, the Court of a Mamlatdar has, for purposes of the Act, jurisdiction in a town or city situated within the ordinary limits of his talukh. The word "premises" used in s. 4 of the Act includes "houses;" and the jurisdiction of the Mamlatdar's Court consequently extends over a house for purposes of the Act. It being not denied that the city of Ahmedabad is within the limits of the Daskroi talukh, the jurisdiction of the Court of the Daskroi Mamlatdar extends over a house in the city of Ahmedabad. BAI JAMNA *v.* BAI JADAV
[I. L. R., 4 Bom., 168

——— **s. 3, cl. 1**—*Head karkun taking temporary charge of office of Mamlatdar—Decree made by him in possessory suit—Jurisdiction—Bombay Land Revenue Code (Bom. Act V of 1879), s. 15.*—A karkun taking temporary charge of the office during the absence of the Mamlatdar on casual leave is not a revenue officer ordinarily exercising the powers of a Mamlatdar within the meaning of s. 3 (1) of the Mamlatdars' Courts Act (Bombay Act III of 1876). He is an officer exercising on an extraordinary occasion some such powers under the Bombay Land Revenue Code (Bombay Act V of 1879), s. 15. Therefore a decree passed by him in a possessory suit is a decree made by an unauthorized person purporting to exercise a jurisdiction which no competent authority had conferred upon him. NINGAPA *v.* DODAPA . . I. L. R., 21 Bom., 558

MAMLATDARS' COURTS ACT (BOMBAY ACT III OF 1876)—*continued.*

1. ——— **s. 4**—*Jurisdiction of Mamlatdars' Courts in redemption suits—Construction of statutes.*—Under Bombay Act III of 1876, Mamlatdars have no jurisdiction to take cognizance of suits arising out of disputed claims to redeem mortgages. SHIDLINGAPA *v.* KARISBASAPA
[I. L. R., 11 Bom., 599

2. ——— *Award of partial claim—Injunction—Practice.*—The plaintiff's suit to have the defendants restrained by injunction from causing disturbance to him in cultivating his fields was rejected by the Mamlatdar, on the ground that his allegations were not proved against all the defendants, one of the defendants having been found not to have disturbed the plaintiff. *Held,* reversing the order of the Mamlatdar, that there was nothing in the Mamlatdars' Act to prevent the Mamlatdar from granting the injunction as against the defendants against whom the case was proved. The High Court directed an injunction to go under s. 4 of the Mamlatdars' Act restraining the said defendants from causing the alleged disturbance to the plaintiff. CHINTAMANRAV NARAYAN GOLE *v.* BALA
[I. L. R., 14 Bom., 17

3. ——— *Jurisdiction—Disputes between riparian proprietors.*—A Mamlatdar's Court has no jurisdiction to determine questions arising between riparian proprietors as to the amount of water each can take from a stream. A suit will lie in a Mamlatdar's Court where a person has been dispossessed or deprived of the use, or when he has been disturbed or obstructed, or when attempt has been made to disturb or obstruct him in the use of water of which he is in possession or was in possession within six months before suit. BABAJI RAMJI *v.* BABAJI DEVJI . . I. L. R., 23 Bom., 47

4. ——— *Jurisdiction of Mamlatdar—Water-course—Riparian owners, Right of.*—The law as to riparian owners is the same in India as in England, and is stated in illustration (*h*) of s. 7 of the Easements Act (V of 1882). Each proprietor has a right to a reasonable use of the water as it passes his land, but, in the absence of some special custom, he has no right to dam it back, or exhaust it so as to deprive other riparian owners of like use. What would constitute an unreasonable diversion of water such as to disturb the use of the lower riparian owners is a question of fact which the Legislature has given a Mamlatdar jurisdiction to decide. NARAYAN HARI DEVAL *v.* KESHAV SHIVRAM DEVAL . . . I. L. R., 23 Bom., 506

5. ——— **cl. 2**—*Jurisdiction to grant an injunction—Possession—Physical possession—Disturbance of possession.*—Under s. 4, cl. 2, of the Mamlatdars' Act (Bombay Act III of 1876), a Mamlatdar can grant an injunction in those cases only in which an interruption of physical possession or enjoyment is sought to be removed. DESAI MALABHAI BAPUBHAI *v.* KESHAVBHAI KUBERBHAI
[I. L. R., 12 Bom., 419

6. ——— *Jurisdiction of Mamlatdar—Removal of earth from field—Profit of*

MAMLATDARS' COURTS ACT (BOMBAY ACT III OF 1876)—*continued.*

land.—The removal of earth from a field is a taking of a portion of the substance, not merely of a profit, of the land; and the Mamlatdar has no jurisdiction, under s. 4 of Bombay Act III of 1876, to entertain an application for an injunction to restrain the defendant from obstructing the plaintiff in the exercise of her right to take earth from the defendant's land. FAKI ISMAIL *v.* UMABAI BIVALKAR

[I. L. R., 7 Bom., 425

7. ———————— *Injunction—Possession—Constructive possession—Landlord and tenant.*—A landlord who has only a constructive possession of lands through his tenant cannot obtain relief by way of injunction under cl. 2 of s. 4 of the Mamlatdars' Act (Bombay Act III of 1876). *Desai Malabhai Bapubhai* v. *Keshavbhai Kuberbhai, I. L. R., 12 Bom., 419,* followed. NEMAVA *v.* DEVANDRAPPA . . **I. L. R., 15 Bom., 177**

8. ———————— *Jurisdiction—Suit for injunction for disturbance of possession—Possession of landlord by tenant—Physical possession—Right of suit.*—There must be physical possession to enable an aggrieved person to invoke the Mamlatdar's assistance in a case falling under the second clause of s. 4 of the Mamlatdars' Courts Act (Bombay Act III of 1876). A person who is in possession through his tenant cannot sue for an injunction for disturbance of possession under the Act. *Malabhai* v. *Keshavbhai, I. L. R., 12 Bom., 419,* approved and followed. ABA BIN SADOBA *v.* PARVATRAO BIN GANPATRAO . . . **I. L. R., 18 Bom., 46**

1. ———— s. 8—*Amendment of plaint—Mamlatdar's power to order a plan to be appended to the plaint.*—In a possessory suit filed under Bombay Act III of 1876 the Mamlatdar has no power to order the plaintiff to append a plan to the plaint, showing the situation of the property in dispute. If the plaint is defective in its statement of the necessary particulars as to the nature and situation of the property, the amendment contemplated by the Act is an amendment in writing on the face of the plaint. CHENBASAYA *v.* RUDRAPA

[I. L. R., 14 Bom., 581

2. ———————— *Suit for possession—Parties—Tenants of defendant—Rejection of plaint for misjoinder of parties—Procedure.*—Defendant No. 1, having obtained a decree against the plaintiffs for possession of certain land in the Mamlatdar's Court, leased the land to defendants Nos. 2 and 3. Shortly afterwards the Mamlatdar's decree was reversed by the High Court on the plaintiff's application. Thereupon the plaintiffs sued the first defendant and his tenants (defendants Nos. 2 and 3), who were in actual possession, to recover the land. The Mamlatdar rejected the plaint, holding that there was a misjoinder of causes of action, one suit being brought against different persons for different causes of action arising at different times. *Held* that the Mamlatdar should accept the plaint and hear the suit on its merits. The defendant, who had obtained possession under a decree which had been reversed, could not improve his position by letting third parties into possession as his tenants. They stood in the shoes of their lessor and were jointly liable with him to be ousted by proceedings taken in the Mamlatdar's Court. ANTU *v.* VISHNU GOVIND BAWA

[I. L. R., 22 Bom., 630

———— s. 13.

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.

[I. L. R., 6 Bom., 477
I. L. R., 21 Bom., 91
I. L. R., 24 Bom., 251

1. ———— s. 15, cl. (c)—*Mamlatdar's power to try subsequent suit in respect of the same subject-matter—Practice—Parties.*—The applicant had been dispossessed of certain land, in execution of a decree obtained by the opponent in the Court of the Mamlatdar of Karad, under cl. (*c*) of s. 15 of the Mamlatdars' Act, III of 1876, to which he (the applicant) was not a party. The applicant thereupon brought the present suit against the opponent to recover possession. The Mamlatdar, relying on a Government circular, dismissed the suit as *res judicata.* The applicant applied to the High Court under its extraordinary jurisdiction. *Held* that the decree made by the Mamlatdar in the former suit, under cl. (*c*) of s. 15 of the Mamlatdars' Courts Act, III of 1876, was no bar to the exercise by him of jurisdiction in the present suit, the present plaintiff (applicant) not having been a party to the former proceedings; and that it was irregular for the Mamlatdar to refer to a Resolution of Government for the purpose of determining the effect to be given to his former decree. The order of the Mamlatdar was reversed, and the case directed to be heard. GOVINDA BABAJI *v.* NAIKU JOTI . **I. L. R., 10 Bom., 78**

2. ———————— *Suit for injunction—Person dispossessed in execution of decree—His remedy by suit or application under s. 332 of the Code of Civil Procedure (Act XIV of 1882).*—A person is not entitled to claim relief (by way of injunction) under s. 15, cl. (*c*), of the Bombay Mamlatdars' Act (III of 1876), if he is not in possession at the time of the suit. A person dispossessed of his land in execution of a decree of a Civil Court against a third party should proceed for the alleged obstruction of his possession not by a suit in the Mamlatdar's Court, but by an application under s. 332 of the Code of Civil Procedure (Act XIV of 1882), or by a regular suit. GULABBHAI GOPALJI *v.* JINABHAI RATANJI . . . **I. L. R., 13 Bom., 213**

1. ———— s. 17—*Decree for possession—Obstruction to execution of decree—Power to use force in execution of decree.*—When a Mamlatdar passes a decree for possession, it is his duty, under s. 17 of Bombay Act III of 1876, not merely to issue orders to the village officers to execute the decree, but also to see that effect is really given to his decision. For this purpose he may use force, if necessary, to eject the person against whom the decree is passed. SHANKAR RAMLAL DIKSHIT *v.* MARTANDRAO BHAU TIPNIS . **I. L. R., 14 Bom., 157**

MAMLATDARS' COURTS ACT (BOMBAY ACT III OF 1876)—*continued.*

2. ——— and s. 4—*Mamlatdar's power to levy costs—Costs of litigation in High Court.*—A Mamlatdar acting under s. 4 of Bombay Act III of 1876 issued an injunction to *A*, restraining him from obstructing *B*'s possession of certain land. On *A*'s application, the High Court, in the exercise of its revisional jurisdiction, set aside the injunction order, and directed *B* to pay *A*'s costs of the application. *A* thereupon applied to the Mamlatdar to levy the costs decreed by the High Court. The Mamlatdar rejected the application for want of jurisdiction. *Held* that under s. 17 of Bombay Act III of 1876 the Mamlatdar had the same power to levy costs decreed by the High Court as he had regarding costs decreed in his own Court. The litigation in the High Court was a continuation of the suit in the Mamlatdar's Court, and any costs incurred were subject to the rules laid down in the Act. NEMAVA *v.* DEVANDRAPPA

[I. L. R.. 16 Bom., 238

3. ——— *Mamlatdar, Duty and jurisdiction of—Execution of Mamlatdar's decree by Mamlatdar under directions of Collector—Superintendence of High Court.*—A Mamlatdar having under the direction of the Collector executed a decree passed by himself directing the removal of a dam,—*Held* that, though it might be improper for the Collector to issue such a direction, which legally could only issue from the High Court, the High Court would not set aside the execution if otherwise valid. S. 17 of the Mamlatdars' Courts Act (III of 1876) is imperative, and leaves to the Mamlatdar no discretion as to the duty of enforcing the decree. The Act does not purport to provide detailed rules as to applications for execution, and a Mamlatdar's Court is not governed as to execution of decrees by the ordinary rules of procedure; and provided the procedure followed gives effect in the end to the intention of s. 17, the Court will not interfere. *Held* also that, under s. 17 of the Mamlatdars' Courts Act, a Mamlatdar was not precluded from himself supervising the execution of a decree in a case in which the village officers were from interest or other cause unlikely to give proper effect to it. RAKHMA *v.* TULAJI

[I. L. R., 19 Bom., 675

4. ——— and s. 18—*Procedure applicable to such Courts.*—Where a person is dispossessed in execution of a Mamlatdar's decree against a third party, his proper remedy is by a suit, and not by a miscellaneous application. Though the Mamlatdars' Courts, as constituted under Bombay Act III of 1876, are Civil Courts, subject to the revisional jurisdiction of the High Court, it does not follow that the provisions of the Code of Civil Procedure are generally applicable to those Courts. Bombay Act III of 1876 provides a special procedure for Mamlatdars' Courts; and there is no indication in the Act of any intention that the rules of the Code of Civil Procedure shall apply to causes for which the special procedure makes no provision. Ss. 17 and 18 of the Act, which relate to the execution of Mamlatdars' decrees, cannot be supplemented, as to matters not referred to in those sections, by any of the provisions of the Code relating to the execution of decrees of Civil Courts. KASAM SAHEB VALAD SHAH AHMED SAHEB *v.* MARUTI BIN RAMBHAJI

[I. L. R., 13 Bom., 552

5. ——— *Mamlatdar's decree, by whom it may be questioned—Reference to High Court by Collector—Practice—Procedure—Right of suit.*—A party aggrieved by a Mamlatdar's decree may apply to the High Court to set it aside, or may question its validity by a suit in a Civil Court. But where a Collector referred the record and proceedings in a case decided by a Mamlatdar under Bombay Act III of 1876, in order that the decree might be set aside as *ultra vires*, the High Court declined to interfere. VORA ISABALLI *v.* DAUDBHAI MUSABHAI

[I. L. R., 14 Bom., 371

——— s. 18—*Right of suit—Suit to set aside Mamlatdar's order.*—No suit will lie to set aside an order validly passed by a Mamlatdar under Bombay Act III of 1876, though such an order may be superseded by a decree of a Civil Court. TULJARAM *v.* BAMANJI KHARSEDJI . **I. L. R., 19 Bom., 828**

MANAGEMENT OF ESTATE BY COURT.

——— **Summary enforcement of contract made by the Court**—*Izarah lease—Lessee, Application by a person not a party to a suit.*—A Court has complete power to enforce summarily a contract made by it when managing or administering an estate, whatever that contract may be. Such power of enforcing subsisting contracts made by it is not affected by the fact that the Court has ceased to manage the estate before such contract is carried out by reason of the dismissal of the suit under an order in which the Court had derived its power of management. Case in which the Court passed summarily such an order on the application of a lessee, not a party to the suit in which the order completing the agreement for lease had been passed, and at the time when such suit was no longer in existence. SURENDRO KESHUB ROY *v.* DOORGASOONERY DOSSEE. EX-PARTE SARODAPERSAUD SOOR . **I. L. R., 15 Calc., 253**

MANAGER.

See ACT XL OF 1858, s. 18.
[I. L. R., 4 Calc., 929

See BANKERS . **I. L. R., 13 All., 88**

See BENGAL TENANCY ACT, s. 95.
[I. L. R., 22 Calc., 634
I. L. R., 23 Calc., 522
4 C. W. N., 769

——— **Application for—**

See APPEAL—ACTS—BENGAL TENANCY ACT . . **I. L. R., 14 Calc., 312**

See BENGAL TENANCY ACT, s. 93.
[I. L. R., 20 Calc., 881

See CASES UNDER LUNATIC.

MANAGER—*concluded.*

——— **Appointment of, by Court of Wards.**

See Right of Suit—Interest to support Right . . **13 B. L. R., Ap., 14**

——— **of company.**

See Possession, Order of Criminal Court as to—Parties to Proceedings . . **I. L. R., 21 Calc., 915**
[I. L. R., 25 Calc., 423

——— **of endowment.**

See Cases under Hindu Law—Endowment

——— **of joint family—**

See Cases under Hindu Law—Joint Family—Position and Power of Manager.

See Cases under Hindu Law—Joint Family—Powers of Alienation of Members—Manager.

See Limitation Act, 1877, s. 19 (1871, s. 20)—Acknowledgment of Debts.
[I. L. R., 1 Mad., 385
I. L. R., 5 Mad., 169
I. L. R., 17 Bom., 512

See Cases under Malabar Law—Joint Family.

——— **of railway, Agent of—**

See *Railways Acts, s. 77.*
[I. L. R., 24 Calc., 306

MANAGER OF ATTACHED PROPERTY.

See Act XI of 1859, s. 5.
[12 B. L. R., 297
L. R., 1 I. A., 89

See Cases under Receiver.

1. ——— **Appointment of manager**—*Discretion of Court—Civil Procedure Code, 1882, s. 503 (1859, s. 249).*—It is discretionary with the Court to appoint a manager under this section. Brojender Narain Roy *v.* Kassessur Roy
[1 W. R., Mis., 15

Oottum Singh *v.* Ram Surun Lall
[23 W. R., 287

2. ——— *Consent of decree-holder—Civil Procedure Code, 1859, s. 243.*—A manager may be appointed by the Court under Act VIII of 1859, s. 243, without the consent of the decree-holder. Thakoor Chunder *v.* Chowdry Chotee Singh . **Marsh., 261: 2 Hay, 112**

3. ——— *Civil Procedure Code, 1859, s. 243.*—In appointing a manager under s. 243, Act VIII of 1859, a Court must exercise a reasonable discretion; and the sole reason for such appointment ought to be that, whilst the debts would be equally satisfied in that manner, and as surely as in any other, the arrangement would at the same time save the debtor from great prospective loss. Zuhoorun *v.* Nujeeboodeen . **11 W. R., 505**

MANAGER OF ATTACHED PROPERTY—*continued.*

4. ——— *Lease or mortgage of attached property—Civil Procedure Code, 1859, s. 243.* S. 243, Act VIII of 1859, gives no authority to a Court to give a lease or mortgage of attached property, but only to give time to the judgment-debtor to mortgage or let his land, or sell part of it when he can satisfy the Court that there is reasonable ground to believe that the amount of the decree will be raised thereby. Luchmeeput Doogur *v.* Jugut Indur Tewaree . . **W. R., 1864, Mis., 5**

5. ——— *Civil Procedure Code, 1859, s. 243—Ground for allowing time to pay decree.*—A Judge is not bound, under s. 243, Act VIII of 1859, to allow a judgment-debtor a year's time to pay his decree, without the debtor assigning some good or sufficient reason for the delay, *e.g.,* that the money due to the judgment-creditor could be raised equally well in some other way than by immediate sale, and that the creditor would not by that arrangement be put to loss. Ram Ruttun Neogy *v.* Land Mortgage Bank of India
[17 W. R., 193

6. ——— *Ground for allowing time to pay decree—Civil Procedure Code, 1859, s. 243.*—There should be a reasonable probability of the debt being discharged by the profits of the estate within a reasonably short period. Suhuj Narain Saheb *v.* Ram Pershad Misser
[21 W. R., 146

7. ——— *Inquiry as to value of property—Rules of High Court, 11th July 1871.*—Where property of a judgment-debtor is already in charge of a manager duly appointed, and it is proposed to put other properties belonging to the debtor also under his charge, an attachment of the property is necessary before appointing the manager to take charge of them. The rule of Court of 11th July 1871 does not limit the time for which a manager should be appointed to two years. The Judge as to that should exercise a proper discretion. Banwari Lal Sahu *v.* Girdhari Singh
[8 B. L. R., Ap., 23 : 16 W. R., 275

Ajoodhya Doss *v.* Doorga Dutt Singh
[17 W. R., 101

8. ——— *Time in which debt could be paid off.*—A Court executing a decree was held to have been justified in refusing to appoint a manager for attached property belonging to the judgment-debtor where it would have taken twenty years to pay off the debt from the profits of the property. But the High Court saw no objection to the appointment of a manager to dispose of portions of the property by sale, mortgage, and otherwise, under s. 243, Code of Civil Procedure, if the debt could thereby be cleared off in six months. Mohinee Mohun Doss *v.* Ram Kant Chowdry
[15 W. R., 322

9. ——— *Distribution of estate under manager—Priority of creditors.*—After *A*, a judgment-creditor, had attached property of his debtor under the decree, the Court, at the instance of the Collector of the district, ordered that, instead of selling the estate, a manager should be appointed and the rents and profits applied in liquidation of the claim of *A* and other decree-holders. *Held* that *A* was entitled, as he would have been under s. 270, to some priority over the other creditors. The Court, finding that *A's* debt might be paid out of the proceeds of the estate in two years, and at the same time funds be left for the reduction of the other debts, ordered that it should be so. PEAREE DEBEA *v.* BOYDONAUTH BAUGH

[Marsh., 413 : 2 Hay, 537

10. ——— *Causing delay in giving satisfaction of decrees.*—Numerous decrees had been obtained against the defendants, part of whose property consisted of a village which was attached in 1859. The village was under the management of the Collector, whom the Courts below treated as a manager put in under s. 243 of the Code of Civil Procedure. The decree-holders received rateable shares in the nett income of the village in liquidation of their respective decrees. It appeared that it would take fifteen years to pay off the various decree-holders. The petitioner applied to the Civil Court for an attachment of the village in execution of his decree. The application was refused on the ground that the village was already under attachment in satisfaction of other decrees. Upon appeal the High Court ordered a sale of the village, the sale-proceeds to be dealt with in accordance with the proper provisions of the Code, on the ground that it could never have been intended to give the Civil Courts for an indefinite length of time the management of the encumbered estates of the country, or to compel decree-holders to submit to such an unreasonable delay as fifteen or twenty years before obtaining satisfaction of their decree. *Quære*—Whether s. 243 was intended to be applied to the case of more than a single decree-holder. REDNUM ATCHUTARAMAYYA *v.* MAHOMED AMIN KHAN *alias* DADA SAHIB . . 5 Mad., 272

11. ——— *Power of Court to appoint manager—Decree on specially-registered bond—Registration Act, 1866, s. 55.*—Where the lower Appellate Court passed a decree on a specially-registered bond, setting aside an arrangement made by the first Court as to payment by instalments and its order about interest,—*Held* that s. 55 of the Registration Act applied to the case, and that the High Court was competent, in subsequent execution proceedings, to make an order under s. 243, Code of Civil Procedure, appointing a receiver, or giving opportunity to the judgment-debtor to pay off the decree by mortgage of the estate. KISHEN COOMAREE BIBEE *v.* GOLAB COOMAREE BIBEE

[15 W. R., 477

12. ——— *Ground for rejecting application—Civil Procedure Code, 1859, s. 243.*—The fact of the judgment-debtor's possessing properties other than the one attached, is no ground for rejecting an application under s. 243, Act VIII of 1859, for the appointment of a manager. DEBKUMARI BIBEE *v.* RAM LAL MOOKERJEE

[3 B. L. R., Ap., 107 : 12 W. R., 6

13. ——— *Circumstances necessary for proof of necessity for order—Civil Procedure Code, 1859, s. 243.*—Where a judgment-debtor asks that a manager be appointed under Act VIII of 1859, s. 243, he must show that the circumstances are such that the order for which he applies would be a reasonable and proper one. He should not only show what is the income of the particular property and the amount due under the decree, but he should also show whether that income is unincumbered, and if incumbered, to what extent. He cannot ask the Court to make an order under this section with respect to one single property before disclosing the whole state of his affairs, the extent of his liabilities, and the means he has of meeting them. DINOBUNDHOO SINGH *v.* MACNAGHTEN

[2 C. L. R., 185

14. ——— *Civil Procedure Code, 1859, s. 243—Order staying sale of property.*—S. 243 of the Civil Procedure Code does not authorize an order in the execution department having the effect of staying the sale of certain property for one year. FYZ-OOD-DEEN *v.* GIRAUDH SINGH

[2 N. W., 1

15. ——— *Civil Procedure Code, 1859, s. 243—Decree on mortgage.*—S. 243, Act VIII of 1859, does not apply to a decree on a mortgage, when the decree declares that certain property is to be sold in satisfaction of the mortgage-debt. A manager therefore cannot be appointed under s. 243 in such a case. WOMDA KHANUM *v.* RAJROOP KOAR

[I. L. R., 3 Calc., 335 : 1 C. L. R., 295

16. ——— *Power of Court to order payment out of proceeds of sale.*—The Court has no power to order that the manager should, out of the proceeds of the estate, satisfy the claims of persons other than decree-holders. THAKOOR CHUNDER *v.* CHOWDHRY CHOTEE SINGH

[Marsh., 261 : 2 Hay, 112

17. ——— *Civil Procedure Code, 1859, s. 243—Power of Courts in mofussil to appoint manager pending suit or administration.*—*Held per* PHEAR, *J.*, that s. 243, Act VIII of 1859, does not give the Court authority to appoint a manager to carry on a judgment-debtor's business pending execution proceedings, and to invest him with power to raise money for that purpose. *Quære*—Whether the Civil Courts in the mofussil have the power possessed by the Court of Chancery in England and by the High Court in Calcutta of managing the property of parties to a cause pending suit or administration. But however this may be, the Court's manager, under such circumstances, only acquires a right to charge his costs and expenditure against the parties to the suit or persons who have knowingly placed themselves in a like position relative to his

MANAGER OF ATTACHED PROPERTY—*continued.*

management, and even then he can only do so in respect of such expenditure as has been expressly sanctioned by the Court. MORAN *v.* MITTU BIBEE

[I. L. R., 2 Calc., 58

18. ———— *Civil Procedure Code, 1859, s. 243—Effect on attachment of appointing manager.*—An estate does not cease to be under attachment merely by the appointment of a manager under s. 243, Act VIII of 1859. MOHABEER PERSHAD SINGH *v.* COLLECTOR OF TIRHOOT . 13 W. R., 423

19. ———— *Power of Court to deal with property under manager.*—The fact of a manager having been appointed to realize the profits of a property with a view to satisfy certain decrees (even though the appointment should have been confirmed by the High Court) is no bar to a Judge, on the application of another decree-holder, inquiring into the state of the property, and passing proper orders, and, should he find that the proceeds are insufficient to satisfy all the decrees within a reasonable time, causing the decree to be executed in the usual way. DIN DYAL LALL *v.* RAM RUTTUN NEOGHEE . . . . . 16 W. R., 46

20. ———— *Power of manager—Officer of Court.*—A manager appointed under Act VIII of 1859, s. 243, so far as he is an officer of the Court, is at most the hand of the Court for the purpose of gathering in, on behalf of the judgment-debtor, the moneys due to him, in order that they may be immediately applied to the satisfaction of the decree. If he does more than this and deals with the subject of the property itself, he must do so as the agent of the judgment-debtor, and not properly as an officer of Court. IN THE MATTER OF THE PETITION OF TEIL & Co. TEIL & Co. *v.* ABDOOL HYE . 19 W. R., 37

21. ———— *Power of manager under Act VIII of 1859, s. 243—Notice of enhancement—Civil Procedure Code (Act X of 1877), s. 503.*—A manager appointed under s. 243 of Act VIII of 1859 is appointed merely to collect rent and other receipts and profits of the land, to carry on the existing state of affairs as the proprietor himself had been doing, and he has no power to issue notice of enhancement. KHETTER MOHUN DUTT *v.* WELLS

[I. L. R., 8 Calc., 719 : 11 C. L. R., 13

22. ———— **Removal of manager**—*Omission to file accounts.*—Where a manager had not filed accounts and the Judge found that the management could not be continued with any prospect of the debt being paid within three years, he was held to have done right in removing the manager and ordering the property to be sold. HUREE SUNKUR MOOKERJEE *v.* JOGENDRO COOMAR MOOKERJEE

[22 W. R., 220

23. ———— *Summary removal at request of decree-holder.*—Where a manager had been appointed under s. 243, Act VIII of 1859, after hearing arguments on both sides, the Judge was held not to be justified in removing him summarily at the request of the decree-holder. His order was accordingly set aside by the High Court, as well as a subsequent order allowing the sale of other properties attached, which properties were placed along with the other in the hands of the manager. HUREE SUNKUR MOOKERJEE *v.* JOGENDRO COOMAR MOOKERJEE

[19 W. R., 66

24. ———— **Death of manager**—*Discretion of Courts as to renewing managership.*—Where a Judge, on the death of a manager appointed under Act VIII of 1859, s. 243, reviewed the progress made, and finding that, under such management, the decree was not likely to be satisfied for a very long time, directed execution to proceed against the estate,—*Held* that his discretion had been properly exercised. DOORGA DUTT SINGH *v.* BUNWAREE LALL SAHOO

[25 W. R., 33

MANDAMUS.

See CALCUTTA MUNICIPAL ACT, 1863, s. 151.

[8 B. L. R., 433

See RULES OF HIGH COURT, CALCUTTA.

[8 B. L. R., 433

———— **Order absolute for**—

See LETTERS PATENT, HIGH COURT, CL. 15.

[8 B. L. R., 433

———— **Power of High Court to issue**—

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R., 2 Calc., 278

1. ———— **Ground for issue of writ**—*Criminal charge in respect of civil suit pending—Duty of Magistrate.*—A mandamus will not issue to compel a Magistrate to proceed with a criminal charge in respect of any matter involved in, or affecting the merits of, a civil suit still pending. The proper course for a Magistrate to pursue in such a case is not to dismiss the summons, but to adjourn the hearing pending the decision of the Court in the civil action. QUEEN *v.* CLARKE

[1 Ind. Jur., O. S., 137

2. ———— *Discretion of Magistrate to refuse to proceed with criminal charge pending civil suit.*—Where a Magistrate has, in the exercise of his discretion, refused to proceed with a criminal charge pending a civil action in respect of the matter out of which the charge arose, a mandamus will not be granted to compel the hearing of the charge. EX-PARTE VARADARAJULU NAYUDU . . . . 1 Mad., 66

3. ———— *Magistrate finding evidence does not amount to offence charged—Error of law.*—A charge was made against the accused of using criminal force under s. 141 of the Penal Code. The Police Magistrate heard the evidence for the prosecution, and, without disbelieving it, decided it did not amount to the offence charged. *Held* that, assuming that an error of law had been committed, the High Court had no power to issue a mandamus to the Magistrate to commit the accused. It was not a case where the Magistrate had

MANDAMUS—*continued.*

declined jurisdiction: he had exercised his jurisdiction and heard the case. EMPRESS *v.* GASPER [I. L. R., 2 Calc., 278

4. ——— *Beng. Act VI of 1863, s. 180—Duties of Justices of Peace for Town of Calcutta—Supplying tanks for water.*—Under s. 18 of Bengal Act VI of 1863, the Justices of the Peace are required to keep up and maintain the existing tanks, reservoirs, etc., vested in them; or to substitute a new tank, reservoir, etc., for any existing tank, reservoir, etc., *i e.*, new works of a like kind, each for each, in place of the old. Therefore, where the Justices had closed a tank for the purpose of constructing in its place a different means of water-supply, a mandamus was issued directing the Justices to maintain the tank and supply it with water, or to substitute another tank in its place and supply that with water. QUEEN *v.* JUSTICES OF THE PEACE FOR TOWN OF CALCUTTA . **2 Ind. Jur., N. S., 182**

5. ——— *Matter concerning revenue—License to sell liquor—Jurisdiction of High Court—Act XI of 1849, s. 9—Beng. Act III of 1873, s. 1—21 Geo. III, c. 70, s. 8.*—Under Act XI of 1849, s. 9, as amended by Bengal Act III of 1873, s. 1, whenever a license is granted for the retail sale of intoxicating liquors, the Collector is authorized to demand " such fee, tax, or duty as may from time to time be fixed with the sanction of the Board of Revenue, or a fee, tax, or duty, adjusted or regulated in such manner and in accordance with such rules as the Board of Revenue may prescribe." The Board of Revenue having notified that liquor licenses for the year ending March 31st, 1874, would be put up to public auction, certain licensed liquor vendors moved the High Court for a mandamus to compel the Board of Revenue to issue rules prescribing the fee payable for licenses. *Held* that the matter wholly related to the revenue, and therefore, by 21 Geo. III, c. 70, s. 8, the High Court had no jurisdiction. IN THE MATTER OF AUDHUR CHUNDRA SHAW. IN THE MATTER OF ACT XI OF 1849 AS AMENDED BY BENGAL ACT III OF 1873 [11 B. L. R., 250

6. ——— *Company — Enforcement of director's right—Power of High Court.*—The High Court has jurisdiction to enforce by mandamus the right of persons duly elected directors of a joint-stock company to exercise the functions of director of such company, if such rights are interfered with by the company acting through its other directors. *Semble*—That the Court will not refuse to interfere by mandamus in such a case merely because the office of a director is not a permanent office, or because a director can be removed from his office by a special resolution of the shareholders, but, in a proper case, will restore him to his legal position. Meaning of the words " casual vacancy " considered. IN RE THE ALBERT MILLS COMPANY. NASARVANJI ASPANDIARJI *v.* SHIVJI MANIKBHAI . **9 Bom., 438**

7. ——— *Refusal by company to register transfer of shares—Transfer signed by Judge of High Court—Civil Procedure Code, 1859, s. 267.*—Where a company refused to register a transfer of shares purchased by an execution-creditor, on the ground that no share certificate had been produced, but the sale had been confirmed, and transfer signed by a Judge of the High Court under Act VIII of 1859, s. 267, a writ of mandamus was directed to issue out of the Court, ordering the company to register the transfer of such shares, and to issue fresh share certificates in respect of them. QUEEN *v.* EAST INDIAN RAILWAY COMPANY [Bourke, O. C., 395 : 1 Ind. Jur., N. S., 258

MANDAMUS—*continued.*

8. ——— *Writ to compel registrar to register transfer of ship.*—A mandamus will lie to compel the registrar to register the transfer of a ship sold in execution of decree; but where the form of transfer was not as it should have been, but quite irregular, having reference to the Merchant Shipping Act, the Court refused to issue a mandamus. IN THE MATTER OF THE SHIP "SHAH CALLANDER" . . . **1 Ind. Jur., N. S., 233**

9. ——— *Small Cause Court, Calcutta.*—A mandamus lies from the High Court to the Small Cause Court to compel it to act in accordance with law. IN RE TOOLSEE DOSS SEAL [2 Ind. Jur., N. S., 133 : 7 W. R., 228

10. ——— *Power of High Court over Small Cause Court.*—The High Court has no jurisdiction to compel a Court of Small Causes to re-hear a suit dismissed by the latter Court on the ground of *res judicata.* BROMMO ROOP GOSSAIN *v.* ANUND MOYEE DEBIA . . . **7 W. R., 316**

11. ——— **Return to writ**—*Sufficiency of—Land Acquisition Act, VI of 1857.*—By Act VI of 1857, s. 2 (for the acquisition of land for public purposes), it is enacted that, " wherever it appears to the Local Government that any land is required to be taken by Government at the public expense for a public purpose, a declaration shall be made to that effect, under the signature of a Secretary to the Government, or of some officer duly authorized to certify the orders of Government," etc. Therefore where the Justices of the Peace for the Town of Calcutta were called upon by a writ of mandamus issued out of the High Court at Calcutta to " continue and maintain the existing Wellington Square tank as a public tank and to cause the same to be supplied with water, or forthwith to substitute another such public tank," etc., and they returned that, by a notification published in the *Calcutta Gazette* on the 5th day of March instant, under the provisions of Act VI of 1857 of the Legislative Council of India, it was notified that, " Whereas it appeared to the Honourable the Lieutenant-Governor of Bengal that land was required to be taken by Government for a public purpose, *viz.*, for the Calcutta Water-Works, it was thereby declared that for the above purpose a public tank and square known as Wellington Square, etc., was required," and proceeded to justify under this notification, etc.,—*Held* that the return was bad. REG. *v.* JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA . **2 Ind. Jur., N. S., 24**

12. ——— *Pleading—Demurrer.*—The prosecutor could not, in India, both

MANDAMUS—*concluded.*

plead and demur to a return to a writ of mandamus, without first obtaining leave of the Court. REG. *v.* EAST INDIAN RAILWAY COMPANY
[1 Ind. Jur., N. S., 244

MANORIAL DUES.

See CUSTOM . I. L. R., 1 All., 440

MAPILLAS.

See MALABAR LAW—CUSTOM.
[I. L. R., 15 Mad., 60

See MALABAR LAW—JOINT FAMILY.
[I. L. R., 15 Mad., 19
I. L. R., 17 Mad., 69

See MALABAR LAW—MAINTENANCE.
[I. L. R., 6 Mad., 259

——— **Adoption of Hindu law**—*Presumption as to joint property.*—Although Mapillas in Malabar ordinarily follow the Hindu custom of holding family property undivided, yet, as they are not subject to the same personal law as the Hindus, their claims cannot be governed by the legal presumption of joint ownership. AMMUTTI *v.* KUNJI KEYI
[I. L. R., 8 Mad., 452

MAPS.

See EVIDENCE—CIVIL CASES—MAPS.

——— **Inspection of—**

See CHUR LANDS 6 B. L. R., 677
[13 Moore's I. A., 607

MARGINAL NOTES TO ACTS.

See STATUTES, CONSTRUCTION OF.
[I. L. R., 20 Calc., 609
I. L. R., 23 Calc., 55
I. L. R., 25 Calc., 853

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See MADRAS DISTRICT MUNICIPALITIES ACT, s. 198 . . I. L. R., 10 Mad., 216

——— **License for—**

See BENGAL MUNICIPAL ACT, 1884, s. 337.
[I. L. R., 20 Calc., 654

MARKET RATE.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—MARKET RATE.
[I. L. R., 10 Calc., 565

MARRIAGE.

See CASES UNDER BIGAMY.

See CONSIDERATION . . 2 Mad., 128

See HINDU LAW — INHERITANCE — DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE — MARRIAGE.

MARRIAGE—*continued.*

See HINDU LAW—MARRIAGE.

See JURISDICTION OF CIVIL COURT — MARRIAGES.

See MAHOMEDAN LAW—MARRIAGE.

See PARSIS . 3 Bom., A. C., 113
[I. L. R., 11 Bom., 1
I. L. R., 13 Bom., 302
I. L. R., 17 Bom., 146
I. L. R., 22 Bom., 430
I. L. R., 23 Bom., 279

——— **Agreements or contracts concerning—**

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY.
[11 B. L. R., 129
22 W. R., 517
25 W. R., 32
I. L. R., 10 Calc., 1054
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I. L. R., 17 Mad., 9
I. L. R., 13 Bom., 126, 131
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I. L. R., 16 Bom., 673
I. L. R., 22 Bom., 658

See SPECIFIC PERFORMANCE — SPECIAL CASES . . 7 Bom., O. C., 122
[5 N. W., 102
I. L. R., 1 Calc., 74

——— **Buddhist laws of—**

See BURMA CIVIL COURTS ACT, 1875, s. 4.
[I. L. R., 10 Calc., 777
L. R., 11 I. A., 109

——— **Dissolution of—**

See CASES UNDER DIVORCE ACT.

——— **Effect of—**

See CASES UNDER MARRIED WOMAN'S PROPERTY ACT.

See SUCCESSION ACT, s. 4.
[I. L. R., 23 Calc., 506

——— **Expenses of—**

See HINDU LAW—ALIENATION—ALIENATION BY MOTHER.
[I. L. R., 18 All., 474

See HINDU LAW — INHERITANCE — IMPARTIBLE PROPERTY.
[I. L. R., 16 Mad., 54

——— **Lawful polygamous—**

See SUCCESSION ACT, s. 56.
[I. L. R., 1 Calc., 148

——— **Nullity of—**

See DIVORCE ACT, ss. 4 AND 18.
[13 B. L. R., 109

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[I. L. R., 21 Bom., 77

MARRIAGE—*continued.*

——— **Presumption of—**

See Cases under Mahomedan Law—Acknowledgment.

See Penal Code, s. 498. [8 B. L. R., Ap., 63

——— **Proof of—**

See Cases under Adultery.

See Cases under Bigamy.

See Divorce Act, s. 14. [I. L. R., 16 Mad., 455

See Penal Code, s. 498. [I. L. R., 9 Mad., 9
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See Will—Construction. [I. L. R., 13 Mad., 379

——— **Registration of—**

See Evidence — Civil Cases — Miscellaneous Documents—Marriages, Registration of . I. L. R., 10 Calc., 607

——— **Re-marriage.**

See Hindu Law — Inheritance — Divesting of, Exclusion from, and Forfeiture of, Inheritance — Marriage . I. L. R., 19 Calc., 289
[I. L. R., 22 Calc., 589
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See Jurisdiction of Civil Court — Caste I. L. R., 13 Mad., 293

——— **Unauthorized solemnization of—**

See Marriage Act, 1872, s 68. [I. L. R., 14 Mad., 342
I. L. R., 17 Mad., 391
I. L. R., 18 Mad., 230
I. L. R., 20 Mad., 12

——— **Validity of—**

See High Court, Jurisdiction of—Bombay—Civil. [I. L. R., 16 Bom., 136

See Mahomedan Law — Acknowledgment . I. L. R., 21 Calc., 666
[L. R., 21 I. A., 56

1. ——— *Adoption by Christians of Mahomedan religion for purpose of marriage—Bigamy.—Quære*—Whether a marriage, according to Mahomedan rules, between a married Christian man and a Christian woman, both of whom became Mahomedans in order to effect the marriage, is valid. Skinner *v.* Orde
[10 B. L. R., 125 : 14 Moore's I. A., 309
17 W. R., 77

2. ——— *Law of domicile—Law of place of celebration.—Semble*—A marriage celebrated in accordance with the law of the domicile of the parties may be valid, although it would be invalid by the law of the place where the marriage was celebrated. Gasper (falsely called Gonsalves) *v.* Gonsalves . . . . 13 B. L. R., 109

MARRIAGE—*continued.*

3. ——— *Marriage with deceased wife's sister — Stat. 5 & 6 Wm. IV, c. 54.*—The marriage of an East Indian, domiciled in Calcutta, with the sister of his deceased wife, is not void under 5 & 6 Will. IV, cap. 54. Das Merces *v.* Cones . . . . . 2 Hyde, 65

4. ——— *Marriages of Native Christian converts.*—The question as to the validity of the marriage of Native Christian converts does not depend on the presence or otherwise of an ordained minister of religion. Kristo Mohun Christian *v.* Anunda . . . 16 W. R., 249

5. ——— *Prohibited degrees —Roman Catholics—East Indians – Customary law — Dispensation, Proof of — Presumption — Divorce Act (IV of 1869), ss. 19 and 53—Deceased wife's sister, Marriage with.*—In a suit for restitution of conjugal rights the parties were East Indians, and at the time of the marriage, on 22nd July 1877, were domiciled in British India, resident within the limits of Calcutta, and members of the Roman Catholic religion. The defence to the suit was that a previous marriage had, on 6th December 1871, been performed between the respondent and the petitioner's sister, and the respondent prayed that the second marriage might be declared a nullity. The ceremony of 6th December 1871 had taken place while the petitioner's sister was on her death-bed and *in extremis*, and had been celebrated in accordance with the rites of the Roman Catholic Church, and it was held both by the original Court and on appeal to be a valid marriage. The first Court (Cunningham, *J.*) held that the second marriage was null and void, on the ground that the parties were within the prohibited degrees. *Held* on appeal (by Garth, *C.J.*, and Wilson, *J.*, while referring to a Full Bench the question "whether the second marriage was a valid marriage, or, on the other hand, was either void or voidable") that it was competent to the Court, in a suit for restitution of conjugal rights, to make a declaration of nullity of marriage if the respondent showed himself entitled to such relief. *Held* by the Full Bench. The prohibited degrees mentioned in s. 19 of the Indian Divorce Act do not necessarily mean the degrees prohibited by the law of England. All that was known in respect of the parties to the marriage being that they were Roman Catholic subjects with Portuguese names, and it not having been found whether they were of English or any other European descent, or of native or mixed parentage,—*Held* that the prohibited degrees for the parties to the marriage were not the degrees prohibited by the law of England, but those prohibited by the customary law of the class to which they belonged,—that is to say, the law of the Roman Catholic Church as applied in this country. *Held* by the Division Bench (Garth, *C.J.*, and Wilson, *J.*), on the case being returned to it.—Where a man and a woman intend to become husband and wife, and a ceremony of marriage is performed between them by a clergyman competent to perform a valid marriage, the presumption in favour of everything necessary to give validity to such marriage is one of very exceptional strength, and unless rebutted by evidence

MARRIAGE—*continued.*

strong, distinct, satisfactory and conclusive, must prevail. *Piers* v. *Piers, 2 H. L. C., 331,* followed. According to the rule of the Church of Rome, a dispensation from the proper ecclesiastical authority is necessary to give validity to a marriage between a man and the sister of his deceased wife. In this case the parties were Roman Catholics and intended to become husband and wife, and a ceremony of marriage was performed between them by a clergyman competent to perform a valid marriage. *Held* that the Court was bound to presume that a dispensation necessary to remove the obstacle to the marriage on the ground of affinity had been obtained. LOPEZ *v.* LOPEZ

[I. L. R., 12 Calc., 706

6. ——— *Suit for nullity of marriage — Divorce Act (IV of 1869), ss. 18, 19 (2)—Domicile of origin—Religious community.*—Where the petitioner, a member of the Church of England, came to India about the year 1867, his domicile of origin being then English, and in 1871 married the illegitimate sister (since deceased) of his second wife, whom he subsequently married in 1887, it being uncertain what his domicile was at the date of his first marriage,—*Held* in a suit for nullity of marriage that either the petitioner carried with him to India the laws as to capacity to marry by which he was originally governed, or he was governed by the law of the class to which he belonged, and that in either case the marriage could not be supported. *Lopez* v. *Lopez, I. L. R., 12 Calc., 706,* referred to and applied. HILLIARD *v.* MITCHELL

[I. L. R., 17 Calc., 324

7. ——— *Personal status—Christian marriage followed by Mahomedan marriage—Rights of widow under Mahomedan law—Divorce.*—In a suit to obtain a widow's share under Mahomedan law in the estate of the deceased, it was proved that the plaintiff and deceased had been married in 1855 as professed Christians in a church at Meerut; that subsequently, having reverted to Mahomedanism, they were married a second time according to Mahomedan law in nikah form, which second marriage had not been dissolved by a Mahomedan divorce. In 1886 the husband died, leaving a will excluding the wife from all participation in his estate. *Held* that the personal status of the deceased being at the time of his death that of a Mahomedan, and the plaintiff's personal status being that of his wife under the same law, she was entitled to a share in his estate, notwithstanding his will, which purported, but under Mahomedan law was inoperative, to exclude her. *Quære*—Whether in the case of spouses remaining domiciled in India, where religious creed affects the rights incidental to marriage, such as that of divorce, a change of religion made honestly after marriage with the assent of both spouses, without any intent to commit a fraud on the law, effects any change in those rights SKINNER *v.* SKINNER

[I. L. R., 25 Calc., 537
L. R., 25 I. A., 34
2 C. W. N., 209

8. ——— *Suit by wife for nullity of marriage—General and relative impotency — Impotency quoad hanc — Parsi Marriage Act (XV of 1865), s. 28.*—In March 1882 the plaintiff and defendant, Parsis, were married according to the rites and ceremonies of their religion. In October 1882 the plaintiff attained puberty, and for seventeen months from that time she lived with the defendant in his parents' house; but there was no consummation of the marriage. There was no physical defect in either plaintiff or defendant, nor any unwillingness in the plaintiff to consummate the marriage; but the defendant had always entertained such hatred and disgust for the plaintiff as to result, in the opinion of the medical experts, in an incurable impotency in the defendant as regards the plaintiff. The delegates unanimously found, on the evidence, that the consummation of this marriage had from its commencement been impossible; because the defendant was, from a physical cause, namely, impotency as regards the plaintiff, unable to effect consummation. They also found that there was no collusion or connivance between the parties. *Held* on this finding that such impotency *quoad* the plaintiff must be regarded as one of the causes going to make consummation of a marriage impossible under s. 28 of Act XV of 1865, there being nothing in the Act to suggest a contrary opinion. The observations of DR. LUSHINGTON and of LORD WATSON in *G* v. *M, L. R., 10 A. C., 171,* as to impotency *quoad hanc* and practical impossiblity of consummation, approved and followed. S. *v.* B. . **I. L. R., 16 Bom., 639**

MARRIAGE ACT (CHRISTIAN) V OF 1865.

——— **s. 56**—*Offence of solemnizing illegal marriage—Celebration of marriage in Hindu form by Hindu priest where one party is a Christian convert.*—A Hindu priest was charged with knowingly and wilfully solemnizing a marriage between two persons, one of whom professed the Christian religion, the said priest not being duly authorized under s. 6 of Act V of 1865, an offence punishable under s. 56 of the same Act. The Sessions Judge discharged the accused without trial on the ground that the enactment in question was inapplicable to the celebration of a marriage according to the Hindu form by a Hindu priest, though one of the contracting parties was a Christian convert. *Held* that this view of the law was erroneous, and that the accused was *primâ facie* liable under s. 56 of the Act. ANONYMOUS CASE . . . . . **6 Mad., Ap., 20**

MARRIAGE ACT (XV OF 1872).

——— **ss. 5, 10, 12, 13, 38, 68, 70, and 73**—*Person authorized to perform marriages—Omission of formalities required, as notice, etc.*—*S*, an episcopally-ordained priest of the Syrian Church, under the jurisdiction of the Patriarch of Antioch, solemnized two marriages according to Roman ritual without publishing or causing to be affixed the notices of such marriages required by Part III of the Act. It was proved that *S* used the Roman ritual without the sanction of his Bishop, who was appointed by the Patriarch. *Held* that *S*, having

MARRIAGE ACT (XV OF 1872)—*continued.*

received episcopal ordination, was authorized to solemnize the marriages according to the rules, rites, ceremonies and customs of his church, and that it was not shown that a marriage solemnized with the Roman ritual under the sanction of the Bishop of the Syrian Church was not solemnized according to the rules, rites, ceremonies and customs of the Syrian Church. *Held* further that Part III of the Act only applies to ministers of religion licensed under that Act and not to episcopally-ordained persons. CAUSSAVEL *v.* SAUREZ . . . **I. L. R., 19 Mad., 273**

———— **ss. 18 and 66**—*False declaration—Penal Code (Act XLV of 1860), s. 193—Maxim, "Ignorantia juris non excusat."*—The maxim *ignorantia juris non excusat* cannot be applied to a declaration, though in fact false, made under s. 18 of Act XV of 1872, inasmuch as the declaration required by that section to be made is a declaration as to the belief only of the person making it; and further, in order to entail the penal consequences provided for by s. 66 of the said Act, such false declaration must be made "intentionally." QUEEN-EMPRESS *v.* ROBINSON . **I. L. R., 16 All., 212**

1. ———— **s. 68**—*Unauthorized marriage of a Christian child—Persons professing Christian religion.*—The accused, who was charged with having committed an offence under the Indian Christian Marriage Act, s. 68, was acquitted on its appearing that the Christian whose marriage he purported to solemnize was a child of the age of three years. The child had been baptized, and her father was a Christian. *Held* that the child was a person professing the Christian religion within the meaning of s. 3 of the Indian Christian Marriage Act, and that the acquittal was wrong. QUEEN-EMPRESS *v.* VEERADU

[I. L. R., 18 Mad., 230

2. ———— *"Solemnize," Meaning of—Performance of marriage by unauthorized person—Abetment.*—In the Indian Christian Marriage Act, s. 68, the word "solemnize" is equivalent to the words "conduct, celebrate, or perform." Therefore any unauthorized person, not being one of the persons being married, who takes part in performing a marriage, that is, in doing any act supposed to be material to constitute the marriage, is liable to be convicted under that section; and a charge of abetment is sustainable against the persons being married. QUEEN-EMPRESS *v.* PAUL

[I. L. R., 20 Mad., 12

3. ———— **and s. 5**—*Marriage solemnized by an unauthorized person—"Knowingly"—Presence of a Marriage Registrar.*—The lay trustee of a church in which the banns of marriage between Christians had been published, solemnized a marriage between them according to the rites of the Church of England. The Marriage Registrar attended the ceremony in a private and unofficial capacity. The person who solemnized the marriage was not of any of the classes of persons authorized to solemnize a marriage in the absence of a Marriage Registrar, and he was convicted of an offence under Act XV of 1872, s. 68. *Held* that the conviction was right. QUEEN-EMPRESS *v.* FISCHER . **I. L. R., 14 Mad., 342**

MARRIAGE ACT (XV OF 1872)—*concluded.*

4. ———— *Solemnization of marriage under Hindu rites between a Native Christian and a Hindu by a person not authorized to perform marriages under s. 5 of the Act.*—A person who performs a ceremony of marriage according to Hindu form between a Native Christian and a Hindu commits an offence under s. 68 of Act XV of 1872, unless he is authorized to solemnize marriages under s. 5 of the Act. See *Anonymous case, 6 Mad., Ap., 20.* QUEEN-EMPRESS *v.* YOHAN

[I. L. R., 17 Mad., 391

MARRIAGE PRESENTS.

———— **Suit to recover**—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY THE COURT.

[13 B. L. R., Ap., 34

MARRIAGE SETTLEMENT.

See HUSBAND AND WIFE.

[I. L. R., 10 Calc., 951

See WILL—CONSTRUCTION.

[I. L. R., 4 Calc., 514

———— **Order as to**—

See DIVORCE ACT, s. 40.

[14 B. L. R., Ap., 6

———— **Construction of settlement**—*Trust funds.*—*S*, being entitled to personal estate by a settlement executed upon her marriage with *R*, vested it in trustees on terms which conferred upon her an estate for her separate use for life, with remainder, in case she should die in the lifetime of her husband, to her children, share and share alike. The settlement did not contain a power to invest in the purchase of real estate. *R* died in the lifetime of *S*, and a portion of the trust fund was invested by the trustees in the purchase from *S* of real estate vested in her as representative of *R*. *S* afterwards married *P*, and during her second coverture a further portion of the trust fund was, with the consent of *S*, invested in the purchase of real estate. *S* survived *P*, and died intestate, leaving a son and daughter and the children of another daughter her next of kin. *Held*, first, that the events contemplated by the settlement not having arisen, the trust fund became the absolute property of *S*; and, second, that the devolution of the trust fund was to be governed by the state of its investment at the time of her death, and that therefore so much of it as was invested as above must descend as real estate. *Held* also the parties being neither Mahomedans nor Hindus, and though not, strictly speaking, all of them European British subjects, yet having all of them adopted the law which affects European British subjects in India, the real estate, whether situated within or without the local limits of the jurisdiction of the Court, would descend to the heir-at-law. RIGORDI *v.* SMITH

[1 Ind. Jur., N. S., 290

MARRIED WOMAN.

See Maintenance, Order of Criminal Court as to **I. L. R., 18 Bom., 468**

See Minor—Representation of Minor in Suits . **I. L. R., 17 Calc., 488**

——— **Enticing away—**

See Compounding Offence.
[I. L. R., 1 Mad., 191

See Cases under Penal Code, s. 498.

——— **Liability of—**

See Succession Act, s. 4.
[13 B. L. R., 383

MARRIED WOMAN'S PROPERTY ACT.

See Succession Act, s. 4.
[13 B. L. R., 383

——— **ss. 4, 7, and 8.**

See Husband and Wife.
[I. L. R., 4 Calc., 140
2 C. L. R., 431

——— **ss. 7 and 8.**

See Husband and Wife.
[I. L. R., 1 Calc., 285

——— **s. 8.**

See Parties—Parties to Suits—Husband and Wife . **10 C. L. R., 536**

1. ——— *Husband and wife—Settlement—Property settled on married woman to her separate use and without power of anticipation—Power of married woman to charge such property with payments of debts incurred subsequently to marriage.—Held* that, under s. 8 of Act III of 1874, a married woman has power to charge property settled upon herself, for her separate use without power of anticipation, with the payment of debts incurred by her subsequently to her marriage, and such a charge is valid and binding. Cursetji Pestonji Tarachand *v.* Rustomji Dossabhoy
[I. L. R., 11 Bom., 348

2. ——— **and s. 9**—*Restraint on anticipation—Transfer of Property Act (IV of 1882), s. 10.*—S. 8 of Act III of 1874 extends to the separate property of a married woman subject to a restraint upon anticipation. S. 10 of the Transfer of Property Act merely excepts from the general rule laid down in that section the particular case of a married woman, and does not give to a restraint upon anticipation any greater force than it had before the passing of the Act, but merely preserves to it the effect it had previously, leaving the Married Woman's Property Act of 1874 and the decisions upon it untouched. Hippolite *v.* Stuart
[I. L. R., 12 Calc., 522

3. ——— *Insolvency of married woman—Property settled on her for separate use without power of anticipation, whether comprised in the vesting order or not—Insolvent Act (11 & 12 Vict., c. 21), s. 63.*—A creditor's right to be

MARRIED WOMAN'S PROPERTY ACT —*concluded.*

satisfied out of the separate property of a married woman is, in the case of post-nuptial debts, restricted to the property as to which there is no restraint on anticipation. S. 8 of Act III of 1874 was not intended to a give married woman the power of evading such restraint. *Hippolite* v. *Stuart, I. L. R., 12 Calc., 522,* dissented from. In re Mantel
[I. L. R., 18 Mad., 19

MARSHALLING OF SECURITIES.

See Mortgage—Marshalling.

MASSES.

——— **Bequest for performance of—**

See Will—Construction **2 Hyde, 65**
[2 B. L. R., O. C., 148
5 B. L. R., 433
I. L. R., 15 Mad., 424

MASTER AND SERVANT.

See Arms Act, 1878.
[I. L. R., 20 Calc., 434
3 C. W. N., 304
I. L. R., 16 All., 276
I. L. R., 24 Bom., 423
I. L. R., 22 All., 118

See Charge—Form of Charge—Special Cases—Master and Servant.
[3 Bom., Ap., 1

See Government . **7 B. L. R., 683**

See Judge—Qualifications and Disqualifications.
[I. L. R., 9 Bom., 172

See Limitation Act, 1877, s. 10 (1859, s. 2) . . **1 B. L. R., S. N., 11**

See Secretary of State **1 N.W., 118**
[Bourke, A. O. C., 106
5 Bom., Ap., 1

1. ——— **Liability of master for acts of servant**—*Acts within scope of servant's duty.*—A master is responsible for the acts of his servants done within the scope of his duties, and for the master's benefit. Anunt Dass *v.* Kelly
[1 N. W., Part 7, p. 107: Ed. 1873, 194

2. ——— *Trespass.*—The appellant, having obtained a decree for khas possession of a share in a zamindari, had refused to recognize the raiyats whom the farmers under her cosharers had settled in the estate; and her servants cut and carried off the crops of those raiyats. *Held* by Glover, *J.*, that the appellant was liable for the acts of her servants, which were done in furtherance of her known wishes and for her benefit. *Held* by Loch, *J.*, that those acts were beyond the ordinary scope of the servants' duty; and that, unless it could be shown that the appellant ordered or ratified the acts, she was not liable. In the present case,

MASTER AND SERVANT—*continued.*

the circumstances gave rise to a strong presumption that the acts were done with her knowledge, which presumption had not been rebutted, and therefore she was liable. SHAMASUNDARI DEBI *v.* DUKHU MANDAL . . . . **2 B. L. R., A. C., 227**

S. C. SHAMASOONDUREE DEBIA *v.* MALLYUT MUNDUL . . . . . . **11 W. R., 101**

3. ——————— *Master of ship—Damage done to person by subordinate officer or crew.*—Where a servant in the course of his employment, and in doing what he believed to be for the interests of his master, acts carelessly, recklessly, wantonly, or improperly, the master is liable. But where the act of the servant is done by him to forward some purpose of his own, the master would not be responsible. The master, not the owners, of a merchant ship is primarily responsible for damage done in the course of his employment by one of his subordinate officers or crew to the person who is injured. ANONYMOUS . **Bourke, A. O. C., 144**

4. ——————— A boat which *S* let to *G A & Co.* for unloading the ship *B*, was lost in consequence of the negligence of the mate. *S* sued the captain for the damage sustained, and the lower Court dismissed the suit with costs, on the ground that *G A & Co.*, the ship's agents, who had hired the boat, and not the captain, were liable. *Held* on appeal, reversing the judgment of the lower Court, but without costs, that the captain was not absolved from liability because the injury was caused by the negligence of the crew, although they acted contrary to his orders; that it was the duty of the captain to deliver the cargo to the consignees, and the loading of the cargo-boats was a part of that duty; and that the fact of the owners of the ship having agents in Calcutta did not alter the relations between the captain and the public. SUTHERLAND *v.* SHAW . **Bourke, A. O. C., 92**

5. ——————— *Negligence of servant—Bailor and bailee—Proprietor and driver of public conveyance—Bom. Act VI of 1863.*—The plaintiffs sued the proprietor of a buggy for damages sustained by them by reason of the negligence of the driver of the buggy. It was proved that the arrangement between the defendant and the driver was that the driver should be entrusted with the buggy and the use of two horses for the day to be used entirely at the driver's discretion for the purpose of plying for hire. The driver was to pay three rupees a day for the use of the buggy and horses All that he made above that sum was his perquisite for his labour, and any deficiency he had to make good. *Held* that the relation between the proprietor and driver of the buggy was that of master and servant, and that the proprietor was liable for the driver's negligence. The relation between the proprietor and driver of a public conveyance established by Bombay Act VI of 1863 is similar to that existing in England under the English Acts. BOMBAY TRAMWAY COMPANY *v.* KHAIRAJ TEJPALL

[I. L. R., 7 Bom., 119

MASTER AND SERVANT—*continued.*

6. ——————— *Offer of money by defendant to avoid litigation—Suit for damages.*—The servant of the defendant, who was staying in the plaintiff's hotel, broke a filter, the property of the plaintiff. In a suit by the plaintiff for damages it appeared that the servant, when he broke the filter, was not acting within the scope of his employment, nor on the defendant's business, or for his benefit. The defendant offered to the plaintiff as compensation R30 (which was refused), but without acknowledging any liability. *Held* (1) that the defendant was not liable for the act of his servant; (2) that the plaintiff was not entitled to a decree for R30. GRAY *v.* FIDDIAN **I. L. R., 15 Mad., 73**

7. ——————— *Damage by cutting trees on land Liability of employer not established on the facts, in respect of his servant's injury, to a third party.*—On a claim by the Official Receiver for damages for the wrongful felling and carrying away of trees growing on part of the estate held on trust by him, those acts, to the injury of the owners whom he represented, were proved against certain of the defendants holding some employment under others, who were made co-defendants with them in this suit. These co-defendants were not proved to have ordered such acts, nor was there any evidence that to cut or carry away timber was within the scope of the employment of any of the defendants. The co-respondent employers were not therefore under any legal responsibility in the matter. CASPERSZ *v.* KISHORI LAL ROY CHOWDHRI . . **I. L. R., 23 Calc., 922**

[1 C. W. N., 12

8. ——————— *Trespass—Ratification—Damages.*—The plaintiff let a cargo-boat to *U C*, who had been employed by the defendants to land certain goods. During the landing of the goods a dispute as to the terms of hiring arose, and *U C* refusing to pay what was alleged by the plaintiff to be due to him for hire of his boat, the plaintiff refused to give up 50 bales then remaining unlanded from his boat. *U C* communicated the circumstances to an assistant in defendant's firm, who afterwards went with *U C* and forcibly took the goods from the plaintiff's boat without satisfying the plaintiff's lien thereon, and the defendants received them into their godowns. It was proved that *U C* and the assistants acted without the knowledge or authority of the defendants, and that the defendants received the goods without any knowledge of how they had been obtained. *Held* that, in the absence of such knowledge on their part, the receipt of the goods by them did not amount to a ratification of the wrongful act of their assistant and *U C* so as to render them liable in an action by the plaintiff for damages for the same. GIRISH CHANDRA DASS *v.* GILLANDERS, ARBUTHNOT & Co. . . . . **2 B. L. R., O. C., 140**

9. ——————— **Liability of master for criminal acts of servant**—*Express authorization.*—A master is not criminally responsible for the wrongful act of a servant, unless he can be shown to have expressly authorized it. SUFFER ALI KHAN GOLAM HYDER KHAN . **6 W. R., Cr., 60**

MASTER AND SERVANT—*continued.*

10. ——— *Abetment or instigation by master.*—To make a master criminally responsible for an offence committed by his servants, it must be shown that there has been some act or illegal omission on the part of the master whereby he abetted the offence or some prior instigation or conspiracy. QUEEN *v.* SHAMSUNDER

[1 N. W., Ed. 1873, 310

11. ——— *Indian Ports Act (XII of 1875), s. 22.*—The servants of a contractor who had engaged to discharge ballast from a ship lying in the port of Calcutta, threw the ballast into the river within the limits of the port, and thus committed an offence under s. 22 of the Indian Ports Act (XII of 1875). It did not appear that the contractor had abetted the offence. *Held* that he was not, in the absence of proof of abetment, liable for the acts of his servants. CHUNDI CHURN MOOKERJEE *v.* EMPRESS

[I. L. R., 9 Calc., 849: 12 C. L. R., 508

12. ——— **Action for harbouring or sheltering the servant of another**—*Notice of contract of service.*—An action will not lie for the mere harbouring or sheltering a person who is under a contract of service to another, even with notice of such contract of service. *Blake* v. *Lanyon, 6 T. R., 221,* distinguished. BRUKOWSKY *v.* THACKER, SPINK & Co. . . . . **6 B. L. R., 107**

13. ——— **Wrongful dismissal, Suit for**—*Claim for wages—Damages.*—Every master and employer has an undoubted right to dismiss his servant or agent at any time for justifiable cause. After the dismissal, whether wrongful or not, the servant cannot claim wages. The remedy for wrongful dismissal is by action for the damages sustained by the servant in consequence of the breach of the master's contract to employ him. USMUT KOONWAR *v.* TAYLER

[2 W. R., 307

ISSUR CHUNDER MOOKERJEE *v.* PUDDO LOCHUN GOOPTO . . . . **5 W. R., Mis., 18**

14. ——— *Misconduct.*—Mere venial faults are not sufficient, but there must be something gross in the acts or breaches of duty committed to warrant a summary dismissal. HAM *v.* EASTERN BENGAL RAILWAY Co. . **2 Hyde, 228**

15. ——— *Unskilfulness—Insolence—Justifiable dismissal.*—Unskilfulness in a servant is no ground for dismissal unless it amounts to absolute incompetence. A solitary instance of insolence is not sufficient to justify a master in dismissing a skilled servant. Where no time was specified for a day's work in a contract, whereby a company (the defendants) engaged the plaintiff, a skilled mechanic, in the capacity of an engineer, and "to make himself generally useful," any work within his capacity was held to form part of his duty. Superintendence of gas-pipes is within it. By refusing when directed to work more than eight hours a day without extra pay, plaintiff disobeyed reasonable orders, and defendants were justified in dismissing him. WILLIAMS *v.* GREAT EASTERN HOTEL Co.

[Cor., 76: 2 Hyde, 166

MASTER AND SERVANT—*continued.*

16. ——— *Probability of similar employment—Disobedience of orders—Intemperate language.*—If a firm brings out persons to a distant country and undertakes to give a return passage, and does not stipulate for putting an end to the contract on either side by specified notice, either party is entitled to the full benefit of the contract in the event of its being put an end to by the other before the expiration of the term of the engagement without regard to the probabilities of his obtaining similar employment. The dismissal of a servant is justified by refusal to disobey lawful orders, and acts of insubordination by the use of intemperate language to his employers. REID *v.* SCOTT THOMSON & Co.

[2 Hyde, 172

17. ——— *Misconduct of servant—Right to portion of pay due at end of month.*—A servant is not liable for his misconduct to forfeit such portion of his arrears of pay as had become due to him at the expiration of a month's service. The servant's misconduct may have justified his discharge in the middle of a month: if so, he is entitled to no pay for any portion of such month. BROJO MOHUN MYTEE *v.* SWAYNE. SWAYNE *v.* BROJO MOHUN ROY . . . . **1 Hay, 297**

18. ——— *Acquiescence in reduced rate of wages and stoppage of wages.*—On the 4th of July 1860 *C* engaged to come to India as engine-driver for the East Indian Railway Company on a progressive salary of R152-11-7 per month for the first year, commencing July 4th, 1860; R174-8-8 for the second; R196-5-9 for the third; R218-2-10 for the fourth, with a free passage home; and the company might at any time determine the engagement by a six months' notice. The company gave this notice in September 1861. When the six months' notice expired, the plaintiff was driving ballast trains, receiving (under his agreement) R174-8-8 per month. He continued to be so employed, and to receive pay at the same rate, without interruption or objection, until the beginning of 1864, when he was employed to drive passenger trains for the defendants, who thereupon increased his salary. The plaintiff did not assent to the increase, but claimed the balance of salary due to him, as on the footing of his whole service having been service under the original agreement. His demand not being acceded to, he sued the company to enforce it, and also for his passage-money home. He also sued for his salary for May 1861, during which month he had been suspended, and his pay had been withheld; but he had not previously claimed the pay so withheld. In 1862 he had applied to be restored to his position under his original agreement, and was refused. The Court below gave *C* a decree for the amount claimed, minus the passage-money. *Held* on appeal, reversing the decision of the Court below, that a legal notice of dismissal having been given, continuance in the service on a reduced salary is evidence of acquiescence by the servant in his dismissal; that in such a case the servant serves under a fresh contract, not at the rate of wages previously received by him, but at the rate he is actually receiving; that a servant whose wages have for one month been stopped during suspension for

alleged misconduct, and who, continuing in the service has not claimed them for several years, has acquiesced in the stoppage. CAMPBELL *v.* EAST INDIAN RAILWAY COMPANY . . Bourke, A. O. C., 56

19. ——— *Incompetence—Rendering true and just accounts.*—The plaintiff, having obtained recommendations as a tea assistant in the defendant company's garden in Assam, came out to Calcutta, and, after some interviews with the defendant's agents there, entered into an agreement with the defendants to enter into their service as assistant in their tea gardens for a period of three years. The agreement stipulated that the plaintiff should, "when required to do so, render just and true accounts, and give every other particular and information of all moneys, etc., entrusted to him, or that may come into his possession, power, or custody, or under his control;" and it was also agreed that the defendants should "be at liberty to annul this agreement at any time for wilful misconduct of the plaintiff in not fulfilling the terms and conditions to be observed by him, or if he shall be prevented by reason of continued illness from attending to, or be hindered thereby in the performance of, his duties, or by reason of the bankruptcy, insolvency, or dissolution of the defendant company," and in those cases the salary was to cease, and the plaintiff be discharged from the defendant company's service. The plaintiff proceeded to Assam, worked for a short period in the defendants' garden, and was then dismissed from the company's service, on the ground of his incompetence. In an action brought for damages for wrongful dismissal, the Judge of the Small Cause Court was of opinion that, under the circumstances, there was no implied warranty on the part of the plaintiff of his competence, and the grounds for dismissal having been expressly stated in the agreement, the defendants were not justified in dismissing him on another ground, and therefore should not be allowed to give evidence of his incompetence. *Held*, on reference to the High Court, that the plaintiff, having expressly undertaken to render true and just accounts, his incompetence to do so would, if proved, be an answer to the action, and therefore the defendants ought to have been allowed to give evidence that he was incompetent. "True and just accounts" meant such accounts as an inexperienced assistant in a tea garden might reasonably be asked to render, and were not to be interpreted merely as an undertaking that the plaintiff would act honestly by his employers. *Held* also that the agreement expressly stating the grounds of dismissal did not preclude the defendants from dismissing the plaintiff for incompetence. MACGILLIVRAY *v.* JOKAI ASSAM TEA COMPANY . . I. L. R., 2 Calc., 33

20. ——— *Justification, Plea of—Misconduct—Issues—Cross-examination.*—In a suit for wrongful dismissal in which the defendants pleaded justification by reason of the plaintiff's misconduct,—*Held* (1) that the defendants at the hearing could not give evidence of a transaction involving instances of misconduct not set forth in their written statement: they should either have filed a supplemental written statement before the hearing, or have furnished the plaintiff with particulars of the misconduct in question, and intimated to him their intention of relying on the transaction as going to establish the general allegation of misconduct; (2) that although the transaction in question could not be made the subject-matter of an ancillary issue and evidence of it, as such, could not be received, yet that questions relating to it might be put to the plaintiff in cross-examination for the purpose of affecting his credit. MUNCHERSHAW *v.* NEW DHURUMSEY SPINNING AND WEAVING COMPANY . . I. L. R., 4 Bom., 576

21 ——— *Right to wages for broken period.*—A dismissed servant is entitled to wages for any broken period during which he may have served, at the rate he was earning when dismissed. RUGHOONATH DASS *v.* HALLE [16 W. R., 60

22. ——— *Justification—Dishonest and fraudulent conduct.*—A master cannot plead, in justification of the summary dismissal of his servant, a cause the existence of which was unknown to him at the time of such dismissal. At the same time subsequent knowledge that the servant had all along in his service been guilty of dishonest or fraudulent conduct might be pleaded as a good reason why a servant should not be allowed any more than his wages up to the day of dismissal. DEBARSEE *v.* JOUGUET . . . . . 6 N. W., 130

23. ——— **Wages, Suit for**—*Subsequent misconduct—Forfeiture of wages.*—A finding of fact that an employé is entitled to his wages notwithstanding subsequent misconduct, is not wrong in law. KALEE CHURN RAWANEE *v.* BENGAL COAL COMPANY [21 W. R., 405

24. ——— **Admission by servant after illegal dismissal**—*Dismissal without notice.*—A manager's authority to make any admission which can be binding on his employers is withdrawn when he is dismissed, whether the dismissal is or is not upon such a notice as the manager has a right to demand. KALEE CHURN RAWANEE *v.* BENGAL COAL COMPANY [21 W. R., 405

25. ——— **Servant leaving after due notice, Right of**—*Right to wages—Custom of office.*—Where a servant leaves his service after giving due notice, he is entitled to receive at once all pay then due to him, without reference to the custom of the office or master he serves. THOMAS *v.* MANAGER OF THE PIONEER PRESS [2 Agra, Mis., 1

26. ——— **Monthly servant leaving without notice**—*Forfeiture of wages.*—Where a servant who was engaged by the month served from the 1st November to the 3rd December 1872, and left his master's service on the 4th December, without giving notice, it was held that the servant was entitled to be paid his wages up to the end of November, but forfeited the wages payable to him in respect of his December services. RAMJI MANAR *v.* LITTLE . . . . . 10 Bom., 57

27. ——— *Forfeiture of wages—Contract Act (IX of 1872), s. 74.*—Where

MASTER AND SERVANT—*concluded*.

the plaintiff contracted to forfeit all arrears of wages, in default of giving the defendant Company 15 days' notice before leaving the defendant Company's service, it was held that s. 74 of the Contract Act did not apply to such a contract, and that the plaintiff, by leaving the service without giving the required notice, forfeited all the wages that had not become payable, though due to him. EMPRESS OF INDIA COTTON MILLS CO. *v.* NAFFER CHUNDER ROY
[2 C. W. N., 687

28. ——— *Monthly service—Wrongful leaving of employment, Consequence of—Right to wages.*—When a monthly servant leaves his employment wrongfully in the course of the then current month, he loses all rights to wages for the time he had actually served during that month. DHUMEE BEHARA *v.* SEVENOAKS
[I. L. R., 13 Calc., 80

MASTER OF SHIP.

——— **Liability of—**

See BILL OF LADING . **13 B. L. R., 394**

See CHARTER PARTY . **8 B. L. R., 340**
[I. L. R., 7 Bom., 51

——— **Lien of, for wages and disbursements.**

See BOTTOMRY-BOND . **5 B. L. R., 258**
[6 B. L. R., 323
1 Ind. Jur., N. S., 303

MAXIMS.

——— **Actio personalis moritur cum persona.**

See RIGHT OF SUIT—SURVIVAL OF RIGHT.
[I. L. R., 13 Bom., 677

——— **"Actus curiæ neminem gravabit."**

——— The maxim "*Actus curiæ neminem gravabit*" observed upon as requiring qualification. KAMBINAYANI JAVAJI SUBBARAJULU NAYANI VARU *v.* UDDIGHIRI VENKATARAYA CHETTY
[2 Mad., 238

——— **Aedificare in tuo proprio solo non licet quod alteri noceat.**

See CUSTOM . **I. L. R., 10 All., 358**

See PRESCRIPTION—EASEMENTS—PRIVACY
[I. L. R., 10 All., 358

——— **"Audi alteram partem."**

See CLUB . **I. L. R., 7 Mad., 319**

——— **Certum est quod certum reddi potest.**

See MORTGAGE—FORM OF MORTGAGES.
[I. L. R., 9 All., 158

——— **"Contra non volentem agere non currit præscriptio."**

See LIMITATION ACT, 1877, ART. 144—ADVERSE POSSESSION.
[I. L. R., 8 Bom., 585

MAXIMS—*continued*.

——— **"Debitum et contractus sunt nullius loci."**

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—NEGOTIABLE INSTRUMENTS . **1 Mad., 436**

——— **De minimis non curat lex.**

See DEFAMATION . **I. L. R., 13 Mad., 34**

——— **"Expressio unius est exclusio alterius."**

See DEED—CONSTRUCTION . **10 Bom., 51**

——— **Expressum facit cessare tacitum.**

See TRANSFER OF PROPERTY ACT, s. 119.
[I. L. R., 21 Mad., 69

——— **"Ignorantia legis neminem excusat."**

See MARRIAGE ACT, 1872, s. 18.
[I. L. R., 16 All., 212

1. ——— *Suit to set aside illegal adoption.*—A suit to set aside the adoption of a second son must be made within twelve years from cause of action. The maxim "*Ignorantia legis neminem excusat*" applies to questions of the Hindu law of inheritance and adoption, as well as to other laws. RADHAKISSEN MAHAPATER *v.* SREEKISSEN MAHAPATER . . . . . **1 W. R., 62**

See as to this maxim SADHO SINGH *v.* KISHNEE
[3 N. W., 318

See contra, SOORBURNOMONEE DABIA *v.* PETUMBER DOBEY . . **Marsh., 221 : 1 Hay, 497**

2. ——— *Presumption as to knowledge of law and limit of.*—Where loss of life and damage have resulted from the explosion of fireworks in a passenger carriage, the onus is on the railway company to show that they took due care to prevent the conveyance of fireworks in that manner, and not on the plaintiff to shew that they did not. *Scott* v. *London Dock Co., 3 H. & C., 596; Kearney* v. *London, Brighton and South Coast Railway Co., L. R., 5 Q. B., 411* : on appeal *L. R., 6 Q. B., 759; Burne* v. *Boadle, 2 H. & C., 722; Cotton* v. *Wood, 8 C. B., N. S., 568; Foulkes* v. *Metropolitan Railway Co., L. R., 5 C. P. D., 157; Welfare* v. *London and Brighton Railway Co., L. R., 4 Q. B., 693*; and *Daniel* v. *Metropolitan Railway Co., L. R., 3 C. P., 593* : on appeal, *L. R., 5 E. & I., Ap. 45,* referred to. *Per* O'KINEALY, *J.* (in the Court below)—In the absence of evidence that the defendants had taken steps to prevent passengers from taking fireworks into the carriage, the Court cannot presume that the fireworks were taken clandestinely into the compartment, notwithstanding the fact that such carriage of fireworks is an offence, and that every one is presumed to know the law. The maxim that every man is presumed to know the law is limited to the determination of the civil or criminal liability of the person whose knowledge is in question. It cannot legitimately be made use of where (as in the present case) the parties are different and distinct

MAXIMS—*continued.*

from him. EAST INDIAN RAILWAY CO. *v.* KALLY DASS MOOKERJEE . . **I. L. R., 26 Calc., 465**

———— **"In pari delicto potior est conditio possidentis."**

See CONTRACT—WAGERING CONTRACTS.
[I. L. R., 9 Bom., 358

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.
[I. L. R., 1 All., 403

———— **"No one can be Judge in his own cause."**

See CONTRACT—CONDITIONS PRECEDENT.
[I. L. R., 5 Mad., 173

———— **Nova constitutio futuris formam imponere debet, non præteritis.**

See STATUTES, CONSTRUCTION OF.
[5 Moore's I. A., 109

1. ———— **"Nullum tempus occurrit regi"**—*Hindu law.*—This maxim is a rule of Hindu and Mahomedan as well as English law. VYAKUNTA BAPUJI *v.* GOVERNMENT OF BOMBAY
[12 Bom., Ap., 1

2. ———— *Legislation in Bombay Presidency.*—The extent to which the maxim *nullum tempus occurrit regi* has been restrained by legislation in the Presidency of Bombay considered. VYAKUNTA BAPUJI *v.* GOVERNMENT OF BOMBAY
[12 Bom., Ap., 1

GOVERNMENT OF BOMBAY *v.* HARIBHAI MONBHAI . . . . **12 Bom., Ap., 225**

———— **"Omnia præsumuntur contra spoliatorem."**

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.
[3 Bom., A. C., 116

See SALT—ACTS AND REGULATIONS RELATING TO—BOMBAY **7 Bom., A. C., 89**

———— **"Omnia præsumuntur rite esse acta."**

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—GUARDIAN.
[2 N. W., 89

See EXECUTION OF DECREE NOTICE OF EXECUTION . . . **22 W. R., 5**

See INFORMATION OF COMMISSION OF OFFENCE . **I. L. R., 7 Mad., 436**

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 10 All., 119

1. ———— *Proceedings of public officer.*—The proceedings of a public officer must be presumed to be regular; and if they took place long ago (*e.g.*, twenty years previously), it is not just to require a proof of such circumstances as due service of notice. KHAN *v.* BAMA SOONDURIE DOSSEE
[25 W. R., 62

MAXIMS—*continued.*

2. ———— *Publication of Government order, Presumption as to.*—There being no proof given by either party as to whether an istahar said to have been published by Government was or was not duly published,—*Held* that the publication of the istahar must be presumed, having regard to the presumption in favour of the due performance of official acts. PROSUNNO COOMAR ROY *v.* SECRETARY OF STATE FOR INDIA
[I. L. R., 26 Calc., 792

3. ———— *Revenue cases.*—As in civil suits so in revenue cases all things must be presumed to have been correctly done. It is not necessary to inquire into the instructions which revenue agents receive, and until the contrary is shown, the parties must be held to have been properly represented and to be bound by the decisions. AHSANOLLAH *v.* JUSODA . . . **23 W. R., 79**

4. ———— *Sale in execution for arrears of rent.*—Where a tenure is sold in execution of a decree for arrears of rent, and a certificate of sale is granted by the Collector, it must be presumed that all the ordinary proceedings relating to the payment of the purchase-money have been fulfilled. FYAZOODDEEN BHOOYA *v.* SHUMSUNNISSA BIBEE . . . . . . **12 W. R., 508**

See RAM RUKHA ROY JEMADAR *v.* GOBIND DOSS BYRAGEE . . . . . **15 W. R., 291**

5. ———— *Certificate of sale—Proof of title without production of certificate.*—A plaintiff who has purchased land at a sale in execution of a decree is not bound to rely on the certificate to prove his title. If it is proved *aliunde* that the sale took place, and that possession was given, the Court should presume, after long lapse of time and possession by a mortgagee of the purchaser, that the sale was duly made by the Court. VELAN *v.* KUMARASAMI . . **I. L. R., 11 Mad., 296**

6. ———— *Transfer of case not recorded.*—Where an estate which was subject to a mortgage was attached in execution, but was leased out to fresh tenants and under-tenants between the attachment and the sale; and the case was transferred from the jurisdiction of one Court to that of another, in some way which was not apparent on the record; and the lower Court ruled that the transfer was irregular and that the sale was void against the new lessees and under-lessees,—*Held* that the lower Court should have assumed that the sale transfer was regular and the sale good, and that all proceedings after the attachment were of no avail against the judgment-creditors. HOSSEINA *v.* JHAMUN SINGH
[25 W. R., 323

7. ———— *Irregularities in proceedings.*—Where irregularities had clearly occurred in proceedings, the Court refused to presume a person had been made a party and was therefore bound by them. CHOWDHRY MAHOMED ZUHOORUL HUQ *v.* MAHOMED YAKOOB . **23 W. R., 367**

MAXIMS—*concluded.*

——— **"Optimus interpres rerum usus."**

See LANDLORD AND TENANT—EJECTMENT—GENERALLY . **13 B. L. R., 416**

——— **Optimus legis interpres consuetudo.**

See MAMLATDAR, JURISDICTION OF.
[I. L. R., 14 Bom., 372

— **Quod fieri non debuit, factum valet.**

See CASES UNDER HINDU LAW—ADOPTION—DOCTRINE OF FACTUM VALET AS RESPECTS ADOPTION.

See HINDU LAW—ADOPTION—REQUISITES FOR ADOPTION—AUTHORITY.
[I. L. R., 12 All., 328

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT BE ADOPTED.
[I. L. R., 14 All., 67
I. L. R., 21 All., 460
L. R., 26 I. A., 113

See HINDU LAW—MARRIAGE—RIGHT TO GIVE IN MARRIAGE, ETC.
[I. L. R., 11 Bom., 247
I. L. R., 22 Bom., 812

See MADRAS TOWNS IMPROVEMENT ACT' III OF 1871, ss. 61, 62.
[I. L. R., 7 Mad., 65

——— **Respondeat superior.**

See ABETMENT . **I. L. R., 20 Bom., 394**

——— **Sic utere tuo ut alienum non lœdas.**

See CUSTOM . **I. L. R., 10 All., 358**

See PRESCRIPTION—EASEMENTS—PRIVACY.
[I. L. R., 10 All., 358

——— **Volenti non fit injuria.**

See NEGLIGENCE **I. L. R., 13 Bom., 183**

MEASUREMENT OF LANDS.

See APPEAL—MEASUREMENT OF LANDS.

See LEASE—CONSTRUCTION.
[I. L. R., 14 Calc., 99
L. R., 13 I. A., 116

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . **I. L. R., 3 Calc., 271**
[3 C. L. R., 74

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.
[I. L. R., 10 Calc., 507

——— **Power of Ameen in—**

See PENAL CODE, s. 186.
[I. L. R., 22 Calc., 286

——— **Question of standard of—**

See BENGAL TENANCY ACT, s. 158.
[I. L. R., 17 Calc., 277

MEASUREMENT OF LANDS—*continued.*

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[I. L. R., 22 Calc., 477
I. L. R., 25 Calc., 34
I. L. R., 26 Calc., 556

1. ——— **"Jurisdiction"** —*Valuation of suit—Bengal Rent Act, 1869, s. 37.*—The word "jurisdiction" in Bengal Act VIII of 1869, s. 37, refers not merely to local jurisdiction, but also to jurisdiction as to value. PEAREE MOHUN MOOKERJEE *v.* RAJ KRISTO MOOKERJEE . **20 W. R., 385**

2. ——— *Suit to measure land—Bengal Rent Act, 1869, s. 37.*—A suit to establish a zamindar's right to measure land must be brought in the Court which would have had jurisdiction in a suit to recover such land. SHURO SOONDUREE DEBIA *v.* BULORAM GOOHO . **24 W. R., 423**

3. ——— **Right to measure**—*Proprietor of estate—Bengal Rent Act, 1869, s. 37 (Beng. Act VI of 1862, s. 9.—Held* by the majority of the Court (SETON-KARR, *J., dubitante*) that a proprietor of an estate is entitled, under s. 9, Bengal Act VI of 1862, to measure the lands of any subordinate tenure within the limits of his estates, whatever the character or size of the tenure or the amount of rent paid in respect of it. RUN BAHADOOR SINGH *v.* MULOORUM TEWAREE . . . **8 W. R., 149**

4. ——— *Zamindar—Bengal Rent Act, 1869, s. 37 (Beng. Act VI of 1862, s. 9).*—There must be some express restriction before a zamindar can be precluded from the benefit given him by s. 9, Bengal Act VI of 1862, of measuring the lands in the possession of his raiyats. OOMA CHURN BISWAS *v.* SHIBNATH BAGCHEE **8 W. R., 14**

5. ——— *Proprietor in possession—Bengal Rent Act, 1869, s. 27 (Beng. Act VI of 1862, s. 9).*—Under s. 9, Bengal Act VI of 1862, the proprietor who can claim to measure must be a proprietor in possession, and not a proprietor out of possession, although he may be able to prove his title. The only question which the Collector has to try under that section is, which person is in possession, and his decision is final only as to possession and not as to title. The unsuccessful party has a right to sue in the Civil Court for a declaration of his right. KALEE DASS NUNDEE *v.* RAMGUTTEE DUTT
[6 W. R., Act X, 10

6. ——— *Right of proprietor to survey and measure—Bengal Rent Act, 1869, s. 37.*—A proprietor of an estate or tenure has a right to make a general survey and measurement of the lands comprised in his estate, under the provisions of s. 37 of the Rent Act, without proving that he is in receipt of the rents, there being nothing in law which prevents him from making such a survey or measurement as is contemplated by ss. 26 and 37 merely because his estate happens to be sub-let to a number of tenure-holders. The only excepted case is where there is a special agreement to the contrary. BROJENDRO COOMAR ROY *v.* KRISHNA COOMAR GHOSE
[I. L. R., 7 Calc., 684 : 9 C. L. R., 444

MEASUREMENT OF LANDS—*continued.*

7. ——— *Person in receipt of rents—Jurisdiction of Collector— Bengal Rent Act, 1869, s. 37 (Beng. Act VI of 1862, s. 9).*—A Collector's jurisdiction to allow a measurement where the proprietary right to the land is contested is not barred by ss. 9 and 10, Bengal Act VI of 1862, if he is satisfied that the party seeking his assistance to measure is in receipt of the rents. If the Collector disallows the measurement on the ground that the applicant is not in receipt of the rents, the party aggrieved may appeal to the Civil Court. SMITH *v.* NUNDUN LALL . . . **6 W. R., Act X, 13**

In the same case on review of judgment the order of the High Court was amended, and the case remanded to the Judge to determine, according to ss. 9 and 10 of the above Act, which party was in receipt of the rents, and under which of these sections the application for measurement had been made, and to decide accordingly. NUNDUN LALL *v.* SMITH **[7 W. R., 188**

8. ——— *Proprietor in receipt of rents—Bengal Rent Act, 1869, s. 37 (Beng. Act VI of 1862, s. 9).*—Under s. 9, Bengal Act VI of 1862, only a proprietor who is in receipt of the rents of an estate or tenure has a right to make a general survey and measurement of the land comprised in such estate or tenure. WISE *v.* RAM CHUNDER BYSACK . . . **7 W. R., 415**

AHSANOOLLAH *v.* KADIR . . **25 W. R., 92**

9. ——— *Proprietor in receipt of rents—Proof of possession of land.*—A proprietor of land need only show that he is in undoubted possession of the property to entitle him to ask the assistance of the Court to enable him to measure his land. RAJ CHUNDER ROY *v.* KISHEN CHUNDER **[4 W. R., Act X, 16**

10. ——— *Proprietor in receipt of rents—Bengal Rent Act, 1869, s. 37 (Bengal Act VI of 1862, s. 9)—Lease to third party.*—A proprietor of an estate is not barred from measurement by the fact of its being leased to a third party; nor is a proprietor bound, under s. 9, Bengal Act VI of 1862, to show that he is in actual receipt of the rents at the time when he applies to measure the land. KRISHTO MOTEE DEBIA *v.* RAM NIDHEE SIRCAR **[9 W. R., 331**

11. ——— *Neighbouring zamindar—Bengal Rent Act, 1869, ss. 37, 38 (Beng. Act VI of 1862, ss. 9 and 10).*—Ss. 9 and 10 of Act VI do not embrace the case of a neighbouring zamindar alleging to be wronged by the act of the Collector or the measuring zamindar. His remedy is in a separate civil action. PERMESSUREE PERSHAD NARAIN SINGH *v.* NUBEE BUKSH **[2 W. R., Act X, 101**

12. ——— *Restraining of right of measurement—Abandonment of rights of measurement to grantee.*—The abandonment to a grantee of all rights of measurement as against the raiyats, with a view to resumption of lands within the talukh, does not apply to a measurement of the talukh itself as against the grantee, and does not amount to a restraint of the right of measurement under Bengal Act VI of 1862. KEBUL KISHEN DOSS *v.* JAMINEE **[5 W. R., Act X, 47**

13. ——— *Lessee under Court of Wards—Bengal Rent Act, 1869, s. 37 (Beng. Act VI of 1862, s. 9).*—A lessee under the Court of Wards is competent, under s. 9, Bengal Act VI of 1862, to make a general survey of the lands comprised in his lease. WATSON & Co. *v.* BHOONYA KOONWAR NARAIN SINGH **[W. R., 1864, Act X, 105**

14. ——— *Person not in receipt of rents—Disputed title—Title—Possession—Receipt of rent.*—Where a person sues to have the assistance of the Collector to measure lands, of which he alleges himself to be the proprietor by purchase, he is not entitled to have such assistance if his title is disputed, and if he is found not to have been in possession or in the receipt of rents from the date of his purchase. DURGA CHARAN MAZUMDAR *v.* MAHOMED ABBAS BHUYA . . **6 B. L. R., 361**

S. C. DOORGA CHURN DOSS *v.* MAHOMED ABBAS BHOOYAN . . . . **14 W. R., 399**

Upholding on appeal under the Letters Patent the decision of GLOVER, *J.*, in DOORGA CHUNDER DOSS *v.* MAHOMED ABBAS BHOOYAN . **14 W. R., 121**

15. ——— *Bengal Rent Act, 1869, s. 37 (Beng. Act VI of 1862, s. 9)—Lakhiraj land.*—S. 9, Act VI of 1862, gives no authority to proprietors to survey or measure lakhiraj land. GOLAM KHEJUR *v.* ERSKINE & Co. **11 W. R., 445**

16. ——— *Right of zamindar—Lakhiraj—Bengal Rent Act, 1869, s. 37 (Beng. Act VI of 1862, s. 9).*—A zamindar is not entitled to measure the lands of a lakhirajdar holding a rent-free tenure within the limits of his estate. RANGLAL SAHU *v.* SIALI DHAR DAS **[3 B. L. R., Ap., 27 : 11 W. R., 293**

17. ——— *Bengal Rent Act, 1869, s. 37 (Beng. Act VI of 1862, s. 9)—Lakhiraj land.*—The defendant held land within the plaintiff's patni, paying rent to the plaintiff, and also certain lakhiraj lands. The plaintiff applied to the Collector for permission to make a survey and measurement of the lands of the patni. He was opposed by the defendant, who objected to any survey being made of the lakhiraj land. *Held,* under Bengal Act VI of 1862, ss. 9 and 10, the plaintiff was not entitled to survey and measure the lakhiraj land. PRASANNAMAYI DEBI *v.* CHANDRANATH CHOWDHRY **[2 B. L. R., S. N., 5 : 10 W. R., 361**

18. ——— *Bengal Rent Act, 1869, ss. 37 and 38—Right of co-sharers of joint undivided estate to measurement of land.*—A shareholder in a joint undivided estate cannot bring a suit under s. 37 of Bengal Act VIII of 1869 for the measurement of his share. SANTIRAM PANJA *v.* BYKUNT PANJAH **[10 B. L. R., 397 : 19 W. R., 280**

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Nor under Bengal Act VI of 1862, s. 10, and Bengal Act VIII of 1869, s. 38. MOOLOOK CHAND MUNDUL *v.* MODHOOSOODUN BACHASPUTTY
[10 B. L. R., 398 note : 16 W. R., 526

MAHOMED BAHADUR MOZOOMDAR *v.* RAJ KISHEN SINGH . 10 B. L. R., 401 note : 15 W. R., 522

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PEAREE MOHUN MOOKERJEE *v.* RAJ KRISTO MOOKERJEE . . . . . 20 W. R., 385

19. —————— *Bengal Rent Act, 1869, ss. 37 and 38—Measurement of lands—Co-sharers—Notice of intended measurement.*—The words "the person claiming the right to measure" in s. 37 of Bengal Act VIII of 1869 must be read as implying the sole proprietor or whole body of proprietors of the land for the measurement of which application is made. Where therefore there are joint proprietors, the notice of an intended measurement of the lands must be a notice of all the joint proprietors. It is not sufficient that one co-sharer should give notice, and make his co-sharers parties to the suit. See *Santi Ram Panjah* v. *Bykunt Panjah, 10 B. L. R., 397 : 19 W. R., 280 ; Pearee Mohun Mookerjee* v. *Raj Kisto Mookerjee, 20 W. R., 385 ;* and *Moolook Chand Mundul* v. *Modhoosoodun Bachusputty, 16 W. R., 126 : 10 B. L. R., 398 note.* ISHAN CHUNDER ROY *v.* BUSARUDDIN
[5 C. L. R., 132

20. —————— *Bengal Rent Act, 1869, s. 38—Fractional proprietor—Parties.*—A part-proprietor of an estate is competent, under Bengal Act VIII of 1869, to apply for measurement of its lands after making the remaining proprietors parties to the proceedings. ABDOOL HOSSEIN *v.* LALL CHAND MOHTAN DASS
[I. L. R., 10 Calc., 36 : 13 C. L. R., 323

21. —————— *Shareholder—Proprietor.*—An applicant under s. 10 of Bengal Act VI of 1862 must be the proprietor of the estate, and not merely a shareholder in the proprietary body. *Moolook Chund Mundul* v. *Modhoo Soodun Bachusputty, 10 B. L. R., 398 note ; Mahomed Bahadur Mozoomdar* v. *Raj Kishen Singh, 10 B. L. R., 401 note ; Shorendro Mohun Roy* v. *Bhuggobutty Churn Gangopadhya, 10 B. L. R., 403 note,* followed. BABA CHOWDHRY *v.* ABEDOODDEEN MAHOMED . . . I. L. R., 7 Calc., 69

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22. ——— **Liability to measurement** —*Bengal Rent Act, 1869, s. 37 (Beng. Act VI of 1862, s. 9)—Suit against different defendants.*—A single suit simply to measure lands may be brought under s. 9, Bengal Act VI of 1862, against several defendants, although their rights and tenures are different. SHUSHEE BHOOSUN BANERJEE *v.* NUBOCOOMAR CHATTERJEE . . . 8 W. R., 94

23. —————— *Bengal Rent Act, 1869, s. 37 (Beng. Act VI of 1862, s. 9)—Purchaser of subordinate tenure.*—The purchaser of a subordinate tenure who did not enter his name in the talukhdar's serishta, and whose tenure therefore was not wholly disconnected from the estate to which it had been joined, is liable to have his lands measured under s. 9, Bengal Act VI of 1862. TWEEDIE *v.* RAM NARAIN DOSS . 9 W. R., 151

24. ——— **Application for measurement**—*Bengal Rent Act, 1869, s. 38—Right to measure.*—Without a special application made by the proprietor under Bengal Act VIII of 1869, s. 38, neither Collector nor Judge has any right to ascertain or record tenures or under-tenures of persons interested otherwise than as occupants. KALEE NATH CHUCKERBUTTY *v.* REILY . . 24 W. R., 272

25. —————— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—S. 10, Bengal Act VI of 1862, contemplates the case of a proprietor of an estate who, by reason of inability to ascertain who are the persons liable to pay rent to him, is unable to measure his estate ; but not that of a patnidar who knows who is liable to pay rent to him, and whose attempt to get the Collector's assistance in a minute measurement of the lands held by each of the raiyats is simply with a view to harass and oppress them. DWARKANATH CHUCKERBUTTY *v.* BHOWANEE KISHORE CHUCKERBUTTY 8 W. R., 12

26. —————— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—A party applying under s. 10, Bengal Act VI of 1862, is entitled to measure only such lands as are comprised in his estate, and for which he is entitled to receive rent ; he is not entitled under cover of that section to measure lands not comprised in the estate which he has purchased. KHUGENDRONATH MULLICK *v.* KANTEE RAM PAUL . 14 W. R., 368

27. —————— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—S. 10, Bengal Act VI of 1862, contemplates possession by the receipts of rents for those lands of which the measurement is applied for. PUREEJAN KHATOON *v.* BYKUNT CHUNDER CHUCKERBUTTY
[7 W. R., 98

28. —————— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10)—Combination of raiyats to withhold information.*—Where raiyats combine to withhold from the landlord information requisite to enable him to collect his due rents, one suit may be brought against a number of them, under s. 10, Bengal Act VI of 1862, for measurement and ascertainment by the Collector of the details of the tenures of each raiyat. SOLANO *v.* SOOBRON ROY . . . 6 W. R., Act X, 4

29. —————— *Necessary proof—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—An applicant under s. 10, Bengal Act VI of 1862, must first prove what steps he has taken to obtain the knowledge of the tenures

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in his estate, and that he is unable to measure because he is unable to ascertain them. If his averments are objected to, and the Collector proceeds without inquiry, the proceedings are invalid and without jurisdiction. An applicant under the above section must be the proprietor of the estate, and not a shareholder only in the proprietary body. MAHOMED BAHADOOR MOJOOMDAR *v.* RAJ KISHEN SING [15 W. R., 522 : 10 B. L. R., 401 note

30. ——— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10)—Enhancement of rent and resumption of rent-free lands.*—S. 10, Bengal Act VI of 1862, was intended to assist a proprietor to measure the lands comprised in his estate when he cannot ascertain who the raiyats are, what lands are in their occupation, and what rents they have to pay; but not to enable him to enhance the rents of the raiyats; or resume rent-free lands by throwing the onus on the lakhirajdar to prove his rent-free holding. SHARODA PERSHAD GANGOOLY *v.* RAJ MOHUN ROY . **18 W. R., 165**

31. ——— *Necessary evidence—Beng. Act VIII of 1869, s. 38.*—Before a proprietor in possession as a ticcadar or proprietor for the time being, standing in the shoes of the proprietor, can apply under Bengal Act VIII of 1869, s. 38, to have his estate measured, he must show that he is in need of the help which the section proposes should be granted, and that he cannot ascertain who are the persons liable to pay rent to him or the nature of their holdings. Proceedings taken without inquiry as to the existence of the state of facts required under s. 38 are invalid, whether taken by the Collector or by the Civil Court. JAMALOODDEEN HOSSEIN *v.* RAMADHIN MISSER . . **24 W. R., 331**

Affirmed on appeal under the Letters Patent. [**25 W. R., 136**

32. ——— *Right of auction-purchaser to measure—Beng. Act VIII of 1869, s. 38.*—Where an auction-purchaser at a sale for arrears of Government revenue applied, under Bengal Act VIII of 1869, s. 38, for measurement of the purchased estate, and no objection was made in the first instance on the score of ability to measure by the raiyats,—*Held* that the applicant's right to measure was undoubted. *Per* GLOVER, *J.*—A zamindar cannot insist upon a measurement simply by alleging inability to measure, but must, in ordinary circumstances, prove such inability. ABDOOL BAREE *v.* MITTYANUND KOONDOO . . **21 W. R., 103**

33. ——— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10)—Power of revenue officers.*—S. 10, Bengal Act VI of 1862, merely empowers revenue officers to decide what rate of rent the tenant of a particular parcel of land has been paying, and does not empower them to declare that rent at a certain rate shall be paid simply because rent at that rate has been paid by the tenants of neighbouring lands. ANUNT MANJHEE *v.* JOY CHUNDER CHOWDHRY . . . **12 W. R., 371**

SREE MISSER *v.* CROWDY . **15 W. R., 243**

MEASUREMENT OF LANDS—*continued.*

34. ——— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10)—Duty of Collector—Rate of rent, Determination of.*—The Collector's duty under Bengal Act VI of 1862, s. 10, is to ascertain the actually existing rates of rent payable by the raiyat to the zamindar: he has no jurisdiction to assess the rent at enhanced rates. CROWDY *v.* OMRAO SINGH . . **22 W. R., 476**

RUTTOO SINGH *v.* CROWDY [**22 W. R., 477 note**

NEEM CHAND SAHOO *v.* RAM GHOLAM SINGH [**24 W. R., 424**

35. ——— *Bengal Rent Act, 1869, s. 38 (Bengal Act VI of 1862, s. 10)—Power of Collector—Question of title.*—On an application to measure the lands of a particular estate, the Collector is not empowered by Bengal Act VI of 1862 to determine summarily the character of every holding upon that estate, but only to inquire how and by whom every portion of land therein is held, and what rent is payable in respect of such land. In the event of a Collector recording that particular tenants claimed to hold as mokuraridars, a Civil Court would have jurisdiction to determine a title on which a cloud had been cast by his proceedings. WISE *v.* LAKHOO KHAN . . . . . **16 W. R., 50**

36. ——— *Power of Collector—Assessment of rents—Bengal Rent Act, 1869, s. 38 (Bengal Act VI of 1862, s. 10).*—Under the above section, the Collector is not entitled to assess the rents at what he considers to be fair and reasonable rates from the rents prevailing in the neighbouring properties, but is only authorized to ascertain for the landlord what the existing condition of his estate is, what are the measurements, what the names of his tenants, and what the rents they are paying. *Anunt Manjhee* v. *Joy Chunder Chowdhry, 12 W. R., 371,* followed. In a suit for rent by one co-sharer, the plaintiff claimed that the rent should be calculated at the rate fixed by the Collector, in a proceeding held by him under s. 10 of Bengal Act VI of 1862. It appeared that the defendants had not had notice of the proceeding, and that the Collector had ascertained the rate from the rents paid in the neighbouring properties. *Held* that the proceedings of the Collector were irregular, as he had acted without jurisdiction, and that they were not binding on the defendants for the purpose of showing the rate at which rent was payable by them. BABA CHOWDHRY *v.* ABEDOODDEEN MAHOMED . . . **I. L. R., 7 Calc., 69**

S. C. RUPENNESSA BIBI CHOWDRANI *v.* ABEDUDDIN MAHOMED . . . **8 C. L. R., 73**

37. ——— **Fixing rates of rent**—*Duty of Collector—Beng. Act VIII of 1869, s. 38—Finality of proceedings.*—In a suit in which defendant had admitted his tenancy, but had disputed the amount of the rent claimed by plaintiff, and plaintiff had not made a special application to the Collector, under s. 38, Act VIII of 1869, for the determination and record of tenures, under-tenures, and rates of rent in the land in suit,—*Held* that, in the absence of special order of the Collector fixing the rates of rent, there was no legal order which could be considered final, and the matter was open to the Civil Court. JAMALOODDEEN HOSSEIN *v.* RAMADHEEN MISSER [25 W. R., 136

affirming on appeal under the Letters Patent, S. C. [24 W. R., 331

38. ——— *Duty of Collector—Bengal Rent Act, 1869, s. 38—Delegation of powers by Collector to Ameen.*—In a suit under s. 38, the Collector cannot delegate his powers to an Ameen or accept absolutely without reservation the whole report of that officer, and order assessment in accordance with the rates found by him; such report being only a part of the evidence to be taken into consideration. SHETUL SHAIKH *v.* HILLS [24 W. R., 184

39. ——— *Ameen deputed to measure, Duty of—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—An Ameen deputed to make a measurement under the provisions of s. 10, Bengal Act VI of 1862, is bound to record the state of things as actually existing, and has no business to record what he thinks ought to be the rates. If, however, the Ameen, or the Collector superintending his proceedings, does any act not in conformity with this section, the remedy for any party dissatisfied is to appeal to the Civil Court within the time and in the manner prescribed by Act X of 1859. BALA THAKOOR *v.* MEGHBURN SINGH . . 14 W. R., 269

40. ——— *Beng. Act VIII of 1869, s. 38—Power of Collector.*—Where an application is made to a Collector under Bengal Act VIII of 1869, s. 38, for the measurement of certain lands without any "special application" to him to determine the rates of rent, any proceedings regarding the rates of rent are inadmissible. CROWDY *v.* POORUN SINGH . . . . 22 W. R., 480

41. ——— **Resistance to measurement**—*Right to intervene—Intermediate tenant—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—The fact of a measurement and jamabandi having been effected under the provisions of Bengal Act VI of 1862, s. 10, cannot deprive an intermediate tenant of the right of intervening under Act X of 1859, s. 77, nor is the intervenor deprived of that protection, even though Act X no longer exists. MUDHOO SOODUN SHAHA *v.* GOPAL SHAIKH . . 22 W. R., 508

42. ——— *Interference by third party—Duty of Collector—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10).*—Where the progress of a measurement under s. 10, Bengal Act VI of 1862, is interfered with by a third party claiming the land, the proper course for the Collector is to hold his hand, leaving it to the parties to seek their remedy in the Civil Court. He cannot, however, make any order which will prevent the intervenor coming under s. 77, Act X of 1859. WISE *v.* BANSEE SHAHA . . . 16 W. R., 51

43. ——— **Objections to measurement**—*Bengal Rent Act, 1869, s. 38—Power of Collector in dealing with objections to measurement.*—*Quære*—After having commenced proceedings under s. 38 of Bengal Act VIII of 1869, has a Collector power to refer some of the objections taken to one Deputy Collector and some to another? OMED ALI *v.* NITTYANUND ROY . . . 24 W. R., 171

44. ——— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10)—Objections to measurement proceedings.*—Where a measurement under Bengal Act VI of 1862 was completed without any objections having been made to it by the raiyats while in progress, it was held that it was not competent for the Judge in appeal to set aside the proceedings on objections made subsequently. GOLUCK KISHORE ACHARJEE *v.* KESHA MAJHEE [15 W. R., 23

45. ——— *Measurement of chur lands according to agreement—Effect of error as distinguished from fraud—Omission to object to measurement at time it was taken.*—A superior owner of chur land, and his tenants, who held it in "howladari" tenure, agreed, with reference to alluvion and diluvion, that the chur should be measured from time to time, on notice, and that, unless the tenants should give a separate "daul kabuliat" for the land found to be accreted, the superior owner should take possession of it. A measurement by the superior owner was made on notice to the tenants and *bonâ fide*; but it was incorrectly made,—the tenants, however, raising no objection at the time. They afterwards, when a suit was brought against them by the superior owner for possession of alleged accreted lands, set up the defence that the measurement had been made in their absence and was incorrect. *Held* by the Privy Council that the tenants could not defeat the suit merely on the ground of the incorrectness of the measurement, there being no fraud; but that they were not entitled to ask the Court to decide what the amount of the property was which the plaintiff was entitled to recover. ALIMUDDIN *v.* KALI KRISHNA TAGORE [I. L. R., 10 Calc., 895

46. ——— **Measurement of waste lands**—*Bengal Rent Act, 1869, s. 38—Bengal Civil Courts Act (VI of 1871), s. 22—Appeal.*—An application for the measurement of a whole estate under s. 38 of Bengal Act VIII of 1869 cannot be granted where waste lands in that estate have been brought into cultivation by various raiyats, and the landlord is unable to ascertain which of the raiyats have appropriated such waste lands as part of their jotes. Before a measurement can be ordered under that section, it is necessary to establish by evidence the facts set out in the petition for measurement and to show that the lands sought to be measured are known, but that the tenants liable to pay rent in respect of such lands are unknown. LALLA CHEDI LAL *v.* RAMDHUNI GOPE . I. L. R., 13 Calc., 57

47. ——— **Measurement of chur lands**—*Accretion to tenure—Measurement made in absence of tenants—Notice.*—Where a kabuliat stipulated that on the accretion to a certain howla of any new cultivable chur, a fresh measurement should be made of the chur and howla, and that excess rent should be paid for the excess land at a stipulated rate up to five drones, and at pergunnah rates for the

residue: in default thereof rent to be realized according to law, or service made on the tenants of a notice "requiring them to take a settlement of the excess land, and to file a kabuliat and fixing the time at fifteen days," otherwise the excess land to be settled with others,—the kabuliatdar measured the howla and accreted chur without notice to the tenants and in their absence, then served on the tenants a notice thereof, and of the increased rent demanded, requiring them to appear within fifteen days and file a kabuliat for the said amount and rent, or that he would take khas possession. In a suit, amongst other things, for assessment of rent of the excess land, —*Held* that the tenants were not bound by the measurement made by the kabuliatdar in their absence. Ram Coomar Ghose *v.* Kali Krishna Tagore [L. R., 13 I. A., 116 : I. L. R., 14 Calc., 99

48. ——— **Procedure**—*Inquiry and evidence as to inability to ascertain tenants—Beng. Act VIII of 1869, ss. 38, 39—Appeal from order—Separate appeal.*—The Court to which an application under s. 38 of Bengal Act VIII of 1869 is made on the ground that the applicant is unable to ascertain who are the persons liable to pay rent, ought not to make an order in his favour except upon inquiry and proof of his alleged inability. Where an order has been passed by the Civil Court under s. 38, and the Collector has upon that order made his decision, raiyats aggrieved by the decision ought not to appeal jointly, but separately under s. 39 of the Act. *Mahomed Bahadoor Mojoomdar* v. *Rajkishen Singh, 10 B. L. R., 40 note: 15 W. R., 522,* followed. Laloo Sirkar *v.* Jogut Kishore Acharjea [13 C. L. R., 203

49. ——— *Proof of conduct of proceedings in accordance with Act—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10)—Proceedings of revenue officers.*—*Per* Jackson, *J.* —The High Court will not hold any person bound by the finding specified in Bengal Act VI of 1862, s. 10, unless it is shown beyond a doubt that the proceedings of the revenue officers referred to have been conducted in strict accordance with the terms of that section. Dinobundhoo Chowdhry *v.* Dinonath Mookerjee . . . . . 19 W. R., 168

50. ——— *Notice—Bengal Rent Act, 1869, s. 38—Ex-parte orders—Proceedings for measurement of land.*—In proceedings under s. 38 of the Bengal Rent Law, Act VIII of 1869, the Collector should, as a rule, pass no order *ex-parte* without previously giving timely notice to the other party or parties sought to be affected by the order. In the matter of the petition of Protap Chunder Ghose. Kally Churn Dutt *v.* Protap Chunder Ghose [I. L. R., 8 Calc., 848 : 12 C. L. R., 407

51. ——— *Notice—Measurement of lands in order to enhance—Notice of enhancement—Act X of 1859, s. 26.*—An under-tenant or raiyat is not bound by measurement under Act X of 1859, s. 26, made in his absence, unless he has received notice. Jadub Chundar Halder *v.* Etawaree Lushkur . . . Marsh., 498

S. C. Etwaree Lushkur *v.* Jadub Chunder Haldar . . . . . 2 Hay, 599

52. ——— *Notice—Khasra or appraisement of land—Dannabandi tenant—Presence of tenant—Notice to tenant of khasra.*—In a suit for rent, where the quantity of land for which rent is claimed is in dispute, and the landlord produces as evidence a khasra or appraisement of the land, it is not necessary for him to show that the estimate was drawn up in presence of the defendant and was acknowledged by him; it will be sufficient if the defendant (a dannabandi tenant) had notice when the khasra was about to be made. Hureb Narain Singh *v.* Beljeet Jha . 24 W. R., 125

53. ——— *Attendance of witnesses—Inquiry—Bengal Rent Act, 1869, ss. 38, 40—Order that tenures have lapsed.*—The Collector, in proceedings for measurement of lands under s. 38 of Bengal Act VIII of 1869, cannot be said to have made a "due inquiry," and therefore should not make an order under that section that the tenures have lapsed, until he has made use of all the powers given him by s. 40 in order to procure the attendance of witnesess. Madhub Doss *v.* Jogendro Nath Roy I. L. R., 6 Calc., 673 : 8 C. L. R., 39

54. ——— *Right to appeal—Bengal Rent Act, 1869, ss. 38, 39.*—According to the procedure prescribed in Bengal Rent Act VIII of 1869, ss. 38 and 39, until the Collector has entered upon his inquiry there is but one party concerned, and no proceeding in the shape of a suit or appeal can find place until after the Collector has completed his measurement and record. Crowdy *v.* Goburdhun Roy . . . . . 22 W. R., 491

55. ——— *Appeal—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10)—Objection to measurement, Time for.*—In order to object to the proceeding of the Collector under s. 10 of Act VI of 1862, the proper course for the raiyat is to appeal to the District Judge, and not wait until the zamindar brings a suit for arrears of rent on the basis of the rate fixed by the Collector. Hurry Sankur Patwari *v.* Radha Chowdhoory [25 W. R., 346

56. ——— **Decision of Collector**—*Reconsideration of order—Right of appeal.*—The decision of the Collector referred to in s. 39 of Bengal Act VIII of 1869 must be taken to include any order made under the preceding section in the course of proceedings before him, and the provisions in the latter section for obtaining a reconsideration of any order does not deprive any one of the right of appeal. Rashbehary Ghose *v.* Barroda Prosad Mookhopadhya . . . . . 7 C. L. R., 380

57. ——— **Standard of measurement**—*Bengal Rent Act, 1869, s. 41 (Beng. Act VI of 1862, s. 11).*—Under s. 11 of Bengal Act VI of 1862, the standard pole of the pergunnah is the standard to be used in the measurement of lands sought to be assessed either under kabuliat or otherwise. Mackintosh *v.* Watson . . . 3 W. R., Act X, 123

MEASUREMENT OF LANDS—*continued.*

58. ——— *Bengal Rent Act, 1869, s. 41—Standard pole of measurement.*—The standard pole of measurement alluded to in s. 41 must mean a standard officially known, *i.e.*, known to the Collector. Shetul Shaikh *v.* Hills
[24 W. R., 184

59. ——— *Power of Collector.*—The Collector is the depository of the standard pole of each pergunnah; and it is exclusively within his province to declare what the standard of such pole is. Tarucknath Mookerjee *v.* Meydee Biswas . . . . **5 W. R., Act X, 17**

60. ——— *Power of Collector to determine standard of measurement—Bengal Rent Act, 1869, s. 41 (Beng. Act VI of 1862, s. 11).*—In an application for assistance to measure the land of a raiyat under s. 9, Bengal Act VI of 1862, the Collector has no power under s. 11 to fix with what pole the measurement is to be made, but such questions are to be reserved for after-proceedings, when any action is taken upon the result of such measurement. Ramanath Rakhit *v.* Muchiram Paramanik . . . **3 B. L. R., Ap., 63**

S. C. Romanath Rakheet *v.* Dhookhee Sham Bhooya . . . . . . **11 W. R., 510**

61. ——— *Power of Collector—Bengal Rent Act, 1869, s. 41 (Beng. Act VI of 1862, s. 11).*—The Collector has no jurisdiction in an application by the zamindar under s. 9, Bengal Act VI of 1862, for assistance to measure the holding of his raiyat, to fix the standard of the pole with which the land is to be measured. *Semble*—If the application had been under s. 10 of the Act, the Collector would have had jurisdiction to declare the length of the standard pole. Braja Kishor Sen *v.* Kasim Ali . . . . . **3 B. L. R., Ap., 78**

S. C. Brojo Kishore Sein *v.* Kassim Ali
[11 W. R., 562

62. ——— *Power of Collector—Bengal Rent Act, 1869, s. 41 (Beng. Act VI of 1862, s. 11).*—*Per* Kemp, Phear, Mitter, and Hobhouse, *JJ.*—When the right of a proprietor to make, under s. 9, Bengal Act VI of 1862, a measurement of a tenure is disputed, solely on the ground that the pole with which the measurement is attempted to be made is not the standard pole of measurement of the pergunnah, as provided in s. 11, and the parties are at issue as to what is the length of the standard pole, the Collector has jurisdiction to inquire into and decide as to the true length of the standard pole. Couch, *C.J.*, and Bayley and Jackson, *JJ.*, *contra.* Manmohini Chowdhrain *v.* Premchand Roy
[6 B. L. R., 1: 14 W. R., F. B., 4

63. ——— *Power of Judge on appeal.*—A Judge on appeal has power under s. 9, Bengal Act VI of 1862, s. 9, to declare by what standard measurements are to be made. Mackintosh *v.* Koylas Chunder Chatterjee
[W. R., 1864, Act X, 59

MEASUREMENT OF LANDS—*concluded.*

64. ——— *Bengal Rent Act, 1869, s. 41 (Beng. Act VI of 1862, s. 11)—Measuring rod of tuppah.*—S. 11, Bengal Act VI of 1862, does not preclude the use of the standard measuring rod of a tuppah. Surbanund Pandey *v.* Ruchia Pandey . . . . . **W. R., Act X, 32**

MEDAL.

——— **Taking pawn of, from soldier.**

See Army Discipline Act, 1881, s. 156.
[I. L. R., 10 Mad., 108

MEDICAL EXAMINATION.

See Hindu Law—Marriage—Restraint on, or Dissolution of, Marriage.
[I. L. R., 1 All., 549

MEDICAL OFFICER.

——— **Remuneration for professional attendance.**—The amount of remuneration for the professional attendance of a medical officer on the family of a public servant in the absence of an express agreement should be determined with reference to the circumstances in each case, and the principle adopted by the Judge in estimating the amount, that reference must be had not only to present means, but to prospects, without considering other matters, was not correct. *Held*, under the circumstances of the case, that one-fifth of the monthly income of the defendant was the fair amount to which the plaintiff was entitled for his professional attendance for the year. Rawlins *v.* Daniel . . **2 Agra, 56**

MERCANTILE USAGE.

See Custom . **7 Moore's I. A., 263**
[I. L. R., 11 Mad., 459
I. L. R., 14 Mad., 420

MERCHANDISE MARKS ACT (IV OF 1889).

See Cases under Trade Mark.

——— **s. 2, cl. 4**—*Penal Code (Act XLV of 1860), s. 486—Selling books with counterfeit property mark—Goods.*—Books are the subject of trade, and are goods within the meaning of s. 2, cl. (4), of the Indian Merchandise Marks Act (IV of 1889); therefore, when a person sells books with a counterfeit property mark, he commits an offence under s. 486 of the Indian Penal Code. Kanai Das Bairagi *v.* Radha Shyam Basack
[I. L. R., 26 Calc., 232

——— **ss. 6 and 7.**

See Criminal Procedure Codes, s. 403.
[I. L. R., 23 Calc., 174

MERCHANT SEAMEN'S ACT (I OF 1859).

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MERCHANT SEAMEN'S ACT, 1859 . . **4 Mad., Ap., 23** [**7 Mad., Ap., 32**

See MERCHANT SHIPPING ACT, 1854, s. 243. [**8 Mad., 85**

See SHIPPING LAW—MARITIME LIEN. [**2 Hyde, 273** **6 Bom., O. C., 138**

———— **17 & 18 Vict., c. 104, ss. 243 (cls. 1 and 2), 288**—*Merchant Shipping Act, 1854—43 & 44 Vict., c. 16, s. 10—Merchant Seamen's (Payment of Wages and Rating) Act, 1880—Imprisonment for desertion.*—The amendment of cls. 1 and 2 of s. 243 of 17 & 18 Vict., c. 104, by 43 & 44 Vict., c. 16, s. 10, does not affect the liability of seamen in Calcutta to imprisonment for offences under s. 83, cls. 1 and 2, of Act I of 1859. BRUCE *v.* CRONIN . **I. L. R., 12 Calc., 438**

———— **s. 111.**

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS . . . . **1 Hyde, 195**

———— **ss. 201, 202.**

See SHIPPING LAW—CERTIFICATES. [**1 Mad., 270**

MERCHANT SHIPPING ACT, 1854 (17 & 18 VICT., C. 104).

———— **ss. 24, 26**—*Applicability of Act to India as regards the rules of measurement—Act XIX of 1838, ss. 4, 13—Act X of 1841—Temporary additions to open vessels—"Strake," Meaning of the term—Rules of measurement made by the Marine Department in 1873.*—The Merchant Shipping Act of 1854 (17 & 18 Vict., c. 104) applies, as regards the rules of measurement, to the whole of Her Majesty's dominions, and is law in India so far as it is not superseded by local legislation; Act XIX of 1838 and X of 1841 do not conflict with it. The accused was the owner of a vessel registered under Act XIX of 1838, as being of $163\frac{60}{100}$ tons. In the course of a voyage the vessel's bulwarks were raised by an additional structure of a temporary character for the purpose of protecting the cargo from the sea. During this voyage the vessel was measured by a coast-guard inspector, who, following the rules of measurement issued by the Marine Department in 1873, which provide that the measurements must be taken from the top of the highest strake, temporary or otherwise, found an increase of 27 tons in the burthen of the vessel by reason of the temporary structure. This change in the burthen of the vessel having been made, the accused was prosecuted, under s. 13 of Act XIX of 1838, for omitting to register the vessel anew, and obtain a fresh certificate of registry under s. 4 of the Act. The accused was convicted and sentenced to pay a fine of R33-12. *Held*, reversing the conviction and sentence, that, there being no express provision applicable to temporary additions to open vessels either in the Indian Acts (XIX of 1838 and X of 1841) or in the Merchant Shipping Act of 1854, the rules of measurement issued in 1873 by the Marine Department were *ultra vires*, so far as they insisted on the measurement being taken from the top of a temporary addition to the upper strake. *Held* also that the additional structure put up by the accused, being only of a temporary character, to be removed at the end of the voyage, did not come within the meaning of "strake," which is a structural portion of the vessel defined as a "continuous line of planking or plates on a vessel's side reaching from stem to stern." QUEEN-EMPRESS *v.* JAMUDIN [**I. L. R., 14 Bom., 170**

MERCHANT SHIPPING ACT, 1854 (17 & 18 VICT., C. 104)—*continued.*

———— **ss. 43, 66.**

1. ———— **Non-registration of ship**—*Letter creating charge on ship.*—A letter, purporting to create a charge on a ship, was not registered as a mortgage under the Merchant Shipping Act. The ship not having a British register, it was held that the letter created a valid charge on the ship. SHIB CHUNDER DOSS *v.* COCHRANE [**Bourke, O. C., 388**

2. ———— **Attachment**—*Mortgagee—Power of sale.*—An attachment on behalf of the rights of the mortgagor of a ship will not debar the mortgagee from his power of sale under the Merchant Shipping Act. AHMED MAHOMED *v.* AUHIN [**1 Ind. Jur., N. S., 95**

3. ———— **Shipping Master, Power of**—*Discharge of seamen with consent of captain and men—Regulations of Board of Trade.*—Where the captain of a ship consents to the discharge of a seaman, who also desires to be discharged, the Shipping Master has no discretion in the matter, but is bound to sanction the discharge of the seaman under the provisions of the Merchant Shipping Acts of 1854 and 1862, and the Regulations of the Board of Trade. REG. *v.* SHIPPING MASTER OF CALCUTTA [**Ind. Jur., N. S., 371**

———— **ss. 53, 55.**

See SHIP, SALE OF. [**2 Ind. Jur., N. S., 251** **1 Ind. Jur., N. S., 263**

———— **s. 207**—*Discharge of seaman—Power of Shipping Master, Bombay.*—The Shipping Master of Bombay has a discretion vested in him of refusing to sanction the discharge of a seaman shipped from a foreign port whose articles have not expired, though the seaman consents to such discharge. IN RE LEWIS . . . **6 Bom., O. C., 42**

———— **s. 243.**

See OFFENCE ON HIGH SEAS. [**I. L. R., 21 Calc., 782**

———— *Act I of 1859, s. 83, cl. 5—Disobedience of commands by sailors.*—The Merchant Shipping Act, 1854, 17 & 18 Vict., c. 104, s. 243 (*b*), has no application to British India. The Act applicable to cases of continued wilful disobedience of lawful commands by sailors is Act I of 1859,

MERCHANT SHIPPING ACT, 1854 (17 & 18 VICT., C. 104)—*concluded.*

s. 83, cl. 5 (*c*). IN THE MATTER OF THE PETITION OF REARDON . . . . . **8 Mad., 85**

——— **s. 267.**

See OFFENCE ON HIGH SEAS.
[I. L. R., 21 Calc., 782

——— *Trial of British seamen for offences committed on British ship on the high seas—Procedure at such trial—Murder—Admiralty Courts—British seamen on British ship—Letters Patent, High Court, 1865, cl. 26—Case certified by Advocate-General.*—A British seaman who stood charged with the murder of a fellow-sailor on board a British ship on the high seas was tried by a Judge of the High Court under the Code of Criminal Procedure; the chief evidence against the prisoner being that given in the depositions of the captain and second officer of the ship, taken on commission; this evidence was admitted in evidence, and the prisoner was convicted and sentenced. It was objected that, under s. 267 of the Merchant Shipping Act of 1854, the prisoner ought to have been tried in every respect as though the trial had been held at the Central Criminal Court in London, and that the law of evidence to be applied was that prevailing in England. *Held*, on a case certified by the Advocate-General under cl. 26 of the Letters Patent, that the prisoner had been properly tried according to the ordinary practice of the High Court, and that the evidence was admissible against him. QUEEN-EMPRESS *v.* BARTON
[I. L. R., 16 Calc., 238

MERCHANT SHIPPING ACT, 1855 (18 & 19 VICT., C. 91).

——— **s. 21.**

See OFFENCE ON HIGH SEAS.
[I. L. R., 21 Calc., 782

MERCHANT SHIPPING ACT (25 & 26 VICT., C. 63).

——— **s. 3.**

See SHIP, SALE OF.
[I. L. R., 21 Mad., 395

——— **(IV of 1875), ss. 3, 5, 6, 7, and 18**—*Jurisdiction, Admiralty Courts—Board of Trade certificates—Incompetency or misconduct of holder—Statement of grounds.*—The powers conferred on Courts of Admiralty by s. 5 of Act IV of 1875, of investigating charges of incompetency or misconduct against the holders of Board of Trade certificates, is totally distinct from the power of enquiry into wrecks or casualties conferred on tribunals by the same Act. It is not correct to say that all the sections in Ch. II of Act IV of 1875 subsequent to s. 5 apply only to inquiries under that section; nor that the Courts mentioned in that section are the only Courts that can cancel a Board of Trade certificate, or report so as to enable the Local Government to cancel its own certificate. A special

MERCHANT SHIPPING ACT (25 & 26 VICT., C. 63)—*concluded.*

Court inquiring into a casualty under s. 3 has power, if all the provisions of the Act are duly complied with, to cancel a Board of Trade certificate, or to make a report to the Local Government, upon which the Government may cancel its own certificate under s. 18. In investigating charges of incompetency or misconduct under s. 5 of Act IV of 1875, it is not necessary, in order to give the Court jurisdiction, that such incompetency or misconduct should have occurred on or near the coasts of India. What is a sufficient "statement of grounds" within the meaning of ss. 6 and 7 of Act IV of 1875? IN RE THE "AVA" AND THE "BRENHILDA." GOVERNMENT OF BENGAL *v.* WHITTARD
[I. L. R., 5 Calc., 453: 5 C. L. R., 307

——— **s. 5**—*Proof of Board of Trade certificate.*—An investigation under Act IV of 1875, s. 5, into charges of incompetency or misconduct cannot proceed unless the person whose competency or conduct is to be inquired into has been proved to be the holder of a certificate granted by the Board of Trade. IN THE MATTER OF A COLLISION BETWEEN THE "AVA" AND THE "BRENHILDA"
[I. L. R., 5 Calc., 568: 5 C. L. R., 331

MERCHANTS, LAW OF

See ENGLISH LAW . **13 W. R., 420**

MERGER.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.
[I. L. R., 7 Calc., 82

See LIMITATION ACT, 1877, ART. 47.
[I. L. R., 18 Bom., 348

See MORTGAGE—MARSHALLING.
[I. L. R., 13 Mad., 383
I. L. R., 15 Mad., 268

See MORTGAGE—REDEMPTION—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM . . **I. L. R., 14 Bom., 78**

See MORTGAGE—SALE OF MORTGAGED PROPERTY—MONEY-DECREES ON MORTGAGES . . **I. L. R., 9 All., 23**

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
[I. L. R., 16 Mad., 94

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT. . **I. L. R., 21 Calc., 869**

1. ——— **Doctrine of merger**—*Applicability of, to mofussil of India.*—*Quære*—Whether the doctrine of merger applies to lands in the mofussil in this country. WOOMESH CHUNDER GOOPTO *v.* RAJNARAIN ROY . . . . **10 W. R., 15**

It does not. SAVI *v.* PUNCHANUN ROY
[25 W. R., 503

MERGER—*continued.*

2. ———— **Collateral securities**—*Promissory note—Mortgage—Registration Act (XX of 1866), s. 52*—*B* executed and delivered to *A* a promissory note, which was specially registered under s. 52 of Bengal Act XX of 1866. On the due date of the note, *A* renewed the note in consideration of *B*'s securing the debt by assigning to him, by way of mortgage, his (*B*'s) interest in certain landed property. *Held* that *A* could proceed in a summary way upon the note, notwithstanding the mortgage. RAMGOPAL LAW *v.* BLAQUIERE

[1 B. L. R., O. C., 35

3. ———— **Purchase by patnidar of zamindari rights**—*Cessation of rent as patnidar.*—The patnidar of a mehal which formed a portion of a zamindari purchased the zamindari rights in the mehal. From the date of his purchase he paid no rent as patnidar. *Held* that he could not set up his title as patnidar against his zamindari co-sharers in a suit brought by them for contribution. PROSUNNO NATH ROY *v.* JOGUT CHUNDER PUNDIT

[3 C. L. R., 159

4. ———— **Merger of securities.**—On the 5th September 1874 *R*, a Hindu, and his sons borrowed R5,000 from *V*, and mortgaged to him certain land, items 1, 2, and 3. On the 7th September 1874 *V* borrowed R5,000 from *R N*, and mortgaged his rights in items 1 and 2 and land of his own to *R N*. In 1877 *R N* bought at a sale in execution of a decree against *R* the share of *R* in the said items 1 and 2 subject to the mortgage created by *R* on 5th September 1874, and to another mortgage created by *R* on the 11th January 1875. In 1885 *R N* sued the sons of *R* and *V* to recover principal and interest due under his mortgage-bond. *V* pleaded that, as *R N* had bought *R*'s share in items 1 and 2, subject to the mortgages created by him, *R N*'s rights as mortgagee were merged in his rights as purchaser. *Held* that the claim of *R N* was not merged. VENKATA *v.* RANGA . **I. L. R., 10 Mad., 160**

5. ———— **Patni interest, Merger of, in that of zamindar**—*Co-sharers—Rent, Suit for—Land Registration Act (Beng. Act VII of 1876), s. 78.*—The doctrine of merger does not apply to the case of a patni interest coming into the same hands as the zamindari interest. *A* and *B*, two joint zamindars, having brought a patni within their zamindari to sale for arrears of rent, purchased it themselves. During the existence of the patni a dar-patni had been created, of which *C* was in possession. *A* instituted a suit against *C* to recover arrears of rent of the dar-patni for a period of three years, setting up his claim thereto both as zamindar and patnidar, and joined *B* as a *pro formâ* defendant, alleging that he was away from home at the time of the institution of the suit, and could not therefore join as a co-plaintiff. It appeared that *A*'s proprietary interest was registered under the provisions of Bengal Act VII of 1876 (the Land Registration Act), but that *B*'s interest had not been so registered. Prior to the suit coming on for hearing, *B* was transferred from the category of defendant in the suit into that of co-plaintiff. In answer to the suit, *C* contended that the non-registration of *B*'s interest precluded the plaintiffs from maintaining the suit at all, *A*'s share not being specified, having regard to the provision of s. 78 of the Act. The lower Appellate Court having dismissed the suit on this latter ground (among others),—*Held* on second appeal that the right of the plaintiffs as patnidars did not merge in their right as zamindars, and that the Land Registration Act had therefore no application to the case, the plaintiffs being entitled to maintain the suit *quâ* patnidars. JIBANTI NATH KHAN *v.* GOKOOL CHUNDER CHOWDRY . . **I. L. R., 19 Calc., 760**

MESNE PROFITS.

	Col.
1. RIGHT TO, AND LIABILITY FOR . .	5855
2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS . . .	5864
3. MODE OF ASSESSMENT AND CALCULATION	5876

See CASES UNDER DECREE—CONSTRUCTION OF DECREE—MESNE PROFITS.

See CASES UNDER DECREE—FORM OF DECREE—MESNE PROFITS.

See HINDU LAW—STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN.

[3 B. L. R., A. C., 121

See CASES UNDER INTEREST—MISCELLANEOUS CASES—MESNE PROFITS.

See CASES UNDER LIMITATION ACT, 1877, ART. 109.

See RIGHT OF SUIT—MESNE PROFITS.

[1 Ind., Jur., O. S., 83
2 C. W. N., 43
3 C. W. N., 279

———— **Suit for**—

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

[5 B. L. R., 184, 187 note
21 W. R., 223
22 W. R., 424
25 W. R., 113
I. L. R., 3 All., 543

See RES JUDICATA—CAUSES OF ACTION.

[2 B. L. R., S. N., 16 : 10 W. R., 486
Marsh., 93
9 W. R., 594

See SMALL CAUSE COURTS, MOFUSSIL—JURISDICTION—MESNE PROFITS.

[2 N. W., 18
I. L. R., 18 Calc., 316
I. L. R., 22 Mad., 196, 196 note

See CASES UNDER SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—MESNE PROFITS.

MESNE PROFITS—*continued.*

——— **Suit for, and for possession.**

See Relinquishment of, or Omission to sue for, Portion of Claim.

[5 N. W., 172
4 B. L. R., F. B., 113
I. L. R., 9 Calc., 283
I. L. R., 3 All., 660
I. L. R., 19 Calc., 615
I. L. R., 11 Mad., 151, 210
I. L. R., 17 All., 533

See Res Judicata—Relief not granted.

[I. L. R., 17 Calc., 968
I. L. R., 14 Mad., 328
I. L. R., 21 Calc., 252
I. L. R., 21 All., 425

See Valuation of Suit—Suits—Mesne Profits . . . Marsh., 165
[W. R., 1864, 327
I. L. R., 17 Calc., 704
I. L. R., 15 Bom., 416
I. L. R., 21 Mad., 371

1. RIGHT TO, AND LIABILITY FOR.

1. ——— **Suit for partition and account of right in joint estate.**—The sections of the Code of Civil Procedure relating to mesne profits are not applicable to a suit for partition or for account of the proceeds of family estate in which a plaintiff has no specific interest until decree. Pirthi Pal *v.* Jowahir Singh . I. L. R., 14 Calc., 493
[L. R., 14 I. A., 37

2. ——— **Right to mesne profits previous to partition**—*Joint family—Manager's liability to account—Mesne profits subsequent to partition, how recoverable—Civil Procedure Code (1882), s. 244—Right of suit.*—Although, as a general rule, no member of an undivided Hindu family can have any claim to mesne profits previous to partition, yet mesne profits may be allowed on partition where one member of the family has been entirely excluded from the enjoyment of the property, or where it has been held by a member who claimed to treat it as impartible, and therefore exclusively his own. Where a decree for partition is silent about mesne profits subsequent to the institution of the suit, a party is at liberty to assert his right to such profits by a separate suit. S. 244, para. 2, of the Code of Civil Procedure (Act XIV of 1882) expressly reserves such a right of suit. Bhivrav *v.* Sitaram
[I. L. R., 19 Bom., 532

3. ——— **Right to mesne profits**—*Damages for being kept out of possession.*—Regard being had to the constitution of the Courts of this country which are Courts of justice, equity, and good conscience, a decree-holder should be reimbursed damages for the time during which he is kept out of possession by the wrongful act of another party, whether his claim for subsequent damages be made in the execution of the first decree or in a regular suit. Kashee Nath Kooer *v.* Deb Kristo Ramanooj Doss . . . . . 16 W. R., 240

MESNE PROFITS—*continued.*

1. RIGHT TO, AND LIABILITY FOR —*continued.*

4. ——— *Period for which suit is pending.*—There is no objection to the award of mesne profits or interest during the whole period for which a suit is pending, however long that period may be. Kakaji bin Ranoji *v.* Bapuji bin Madhavrav . . . 8 Bom., A. C., 205

5. ——— *Legal owner—Right to sue for mesne profits.*—A party declared by a final judgment to have the legal title and the right to possession, is, so long as the judgment declaring him to be the legal owner remains in force, the only party who is legally competent to sue for mesne profits. Khettermonee Dossee *v.* Gopeemohun Roy
[1 Hay, 178

S. C. Khetturmonee Dossee *v.* Gopeemohun Roy . . . . 1 Ind. Jur., O. S., 83

6. ——— The right to sue for mesne profits is not transferable. Durga Chunder Roy *v.* Koilas Chunder Roy
[2 C. W. N., 43

7. ——— *Co-sharer claiming re-partition of his share.*—A co-sharer claiming re-partition of his share is not entitled to mesne profits unless so provided by the wajib-ul-urz. Chunder Singh *v.* Nirto . . . . 3 Agra, 11

8. ——— *Co-sharers—Mortgage after foreclosure.*—*A* obtained a decree declaring him entitled to possession under a mortgage of one-third of the property in dispute, with mesne profits. *B* subsequently obtained a decree against *A* and the other co-sharers for possession of the whole estate, with mesne profits, under another mortgage; but instead of taking full advantage of his decree he received from all the co-sharers the amount due to him on the original transaction, and restored the property to them. *Held* that *A* was entitled to recover mesne profits due to him under the original decree. Bisnoo Chunder Biswas *v.* Toyluck Nath Banerjee . . 6 W. R., Mis., 28

9. ——— *Co-sharers—Excess land.*—Plaintiff and defendant and certain others were co-sharers of an abad. Each agreed to cultivate certain portions, and afterwards to give up any excess land cultivated by him. Defendant cultivated 399 bighas in excess of his share. Plaintiff sued him and got possession of the excess land on payment to the defendant of a compensation for the expense of cultivation, and then brought his suit for mesne profits. *Held* that he was not, under the circumstances, entitled to mesne profits. Debnarayan Deb *v.* Kali Das Mitter
[6 B. L. R., Ap., 70: 14 W. R., 397

affirming on appeal Kalee Doss Mitter *v.* Deb Narain Deb . . . 13 W. R., 412

10. ——— *Persons not in actual possession—Right of suit.*—*Held* that, where the plaintiffs made over the management of their lands to their bankers, but did not part with the property in the lands, even for a temporary period,

MESNE PROFITS—*continued.*

1. RIGHT TO, AND LIABILITY FOR —*continued.*

they were entitled to maintain a suit for mesne profits against the defendants who trespassed on and occupied the lands whilst the estate was under the management of the bankers. Ramrutton Rae *v.* Dwarka Doss . . . . **2 N. W., 193**

11. ———————— *Decree-holder in possession—Rents due previous to his possession.*—When a decree-holder obtains possession of an estate in execution, he is not at liberty to sue the raiyats for rents falling due before the date of his taking possession. His proper course is to sue the late wrongful possessor for mesne profits, including the rents. Umes Chandra *v.* Shastedhar Mookerjee **[3 B. L. R., Ap., 99**

S. C. Woomesh Chunder Roy *v.* Markund Mookerjee . . . . **12 W. R., 34**

12. ———————— *Mortgagor after redemption—Period between date of suit and execution of decree.*—A suit for redemption is no bar to a mortgagor afterwards suing the mortgagee, who has been in possession, for mesne profits due between the date of suit and the execution of the decree. Gour Kishen Singh *v.* Sahay Fukeer Chund **[7 W. R., 364**

13. ———————— *Redemption of usufructuary mortgage—Mortgagee refusing to give up possession.*—An estate was mortgaged for R100; the mortgagee was put in possession, and it was stipulated that he was to enjoy the usufruct in lieu of interest, the mortgagor being entitled to redeem at any time on payment of the principal. When the mortgagor deposited the principal, the mortgagee set up a false claim upon absolute sale, and forced the plaintiffs into a regular suit in which possession was decreed to them on payment of the principal. *Held* that they were entitled to mesne profits for such period as was not barred by the statute of limitation. *Held* also that plaintiffs were entitled to interest from the date of suit. Luleet Singh *v.* Ali Reza . . . . **8 W. R., 322**

14. ———————— *Unlawful resumption by Government.*—Property which had been unlawfully resumed by Government was, on appeal, released by decree of the Privy Council. *Held* that the owner was entitled to recover mesne profits from the date of the decree. Ramnarain Mookerjee *v.* Mahtab Chund . . **1 Ind. Jur., O. S., 48**

15. ———————— *Upanchowki of istemrari tenure.*—*A* sued *B* for possession with mesne profits of a share in certain talukhs, alleging that he purchased it in execution of a decree. *B* proved that he held the lands under an upanchowki title. The lower Court, however, awarded to *A* mesne profits for six years. *Held* that, *B* having proved his upanchowki title, *A* could only be entitled to a share of the upanchowki jumma, which was not of the nature of mesne profits, but of rent; and therefore a suit to recover that could not be brought in the Civil Court. Shib Kumar Joti *v.* Kali Prasad Sen **[1 B. L. R., A. C., 167**

MESNE PROFITS—*continued.*

1. RIGHT TO, AND LIABILITY FOR —*continued.*

16. ———— **Liability for mesne profits** —*Person declared to be in wrongful possession.*—A person declared by a decree to be in wrongful possession is liable for mesne profits, which may be recovered from any property in his possession. Pearun *v.* Ahmed Ali Khan . **4 W. R., Mis., 7**

Jey Narain *v.* Torabun . **3 Agra, 216**

Hera Lall Thakoor *v.* Gridharee Lall **[8 W. R., 450**

17. ———————— *Bonâ fides.*—Parties in possession are liable for wasilat to the legal owners whom they keep out of possession, even though there was no *malâ fides* on their part. Byjnath Pershad *v.* Radhoo Singh **[10 W. R., 486**

18. ———————— *Holder of property for another.*—The mere possession by one person of another's land does not render the former liable to account for the profits. For these he is liable only where he has held tortiously, or under an agreement, express or implied, to make them good. Mahammad Ali Bava Labbi *v.* Mohiadin Nainar **[1 Mad., 107**

19. ———————— *Nature of possession—Trespasser.*—The plaintiffs, who were the junior members of a Malabar edom of which defendants Nos. 3 to 5 were the senior members, sued to recover with mesne profits possession of certain property, offering to pay the amount of a kanam advanced by defendant No. 1. It appeared that the land had been the subject of a kanam demise in 1865, that defendant No. 3, the then karnavan, had obtained in 1878 a decree for its redemption the right to execute which he assigned to a stranger, who executed it, and took possession of the property, taking from the karnavan a new kanam deed. Subsequently defendants Nos. 4 and 5 obtained a decree for possession and the cancellation of both the assignment and the kanam deed; but this decree was attached in execution proceedings in another suit and purchased by defendant No. 1, who executed it, purchased the property, deposited the kanam amount, and took possession on the 8th March 1884. The plaintiffs, who had meanwhile taken abortive proceedings to defeat the first defendant's title, instituted a suit in August 1884, praying for a decree that the sale to him be set aside without praying for possession. *Held* that defendant No. 1 was not a trespasser merely, and the plaintiffs were entitled to a deduction of the profits for the whole period during which he was in possession in computing the amount payable by them before they recovered the land. Sankaran *v.* Parvathi **[I. L. R., 19 Mad., 145**

20. ———————— *Person preventing raiyats from paying rent.*—A lessor who prevents raiyats from paying rent to the lessee when the latter comes to take possession is liable for mesne profits, even though he may not himself collect the rents. Bheekumbur Singh *v.* Raj Chunder Ghose **[15 W. R., 196**

21. ——— *Keeping owner out of possession.*—A party who has been active in wrongfully keeping another out of the possession and enjoyment of property is liable for consequential damages, whether he derived any profit himself from the possession of the land or not. Ghoogly Sahoo *v.* Chundee Pershad Misser **21 W. R., 246**

They should only be calculated for any period during which the defendant was active in keeping the plaintiff out of possession. Indurjeet Singh *v.* Radhey Singh . . **21 W. R., 269**

22. ——— *Person in wrongful possession without knowledge of defect in his title.*—*Held,* dissenting from a ruling of the late Sudder Court, that mesne profits are always recoverable from a person who has enjoyed them, even though he has been in *bonâ fide* possession without knowledge of the defect in his title. He would, if he bought with sufficient inquiry, have a remedy against his vendor. Mugun Chunder Chuttoraj *v.* Surbessur Chuckerbutty . **8 W. R., 479**

23. ——— *Person in possession apparently of right afterwards legally dispossessed.*—Where a defendant had, with apparent right, occupied newly-formed lands from which the plaintiff ejected him by establishing in a civil suit his superior title, the defendant was held liable to account to the plaintiff for those profits which the defendant had derived from the lands, and which the plaintiff, if he had been in possession, would himself have received. Abdool Kureem Biswas *v.* Campbell . . . . **8 W. R., 172**

24. ——— *Suit by purchaser with notice of defect of title, for reversal of sale.*—Where a purchaser, by the institution of a suit for the reversal of the sale, had full notice of the defect of his title, he was, on the reversal of the sale in that suit, held liable for mesne profits. Umamoyi Burmonea *v.* Tarini Prasad Ghose **[7 W. R., 225**

25. ——— *Vendor and purchaser—Sale by elder brother during younger brother's minority.*—A sale by an elder brother during a younger brother's minority having been set aside and the vendee ejected, the vendee alone, and not the vendor, whose connection with the property ceased with the sale, was held to be liable for mesne profits received and expended by the vendee whilst in possession. Shurutchunder Dey Sircar *v.* Jadubnarain Nundee . . . . . **1 W. R., 90**

26. ——— *Possession taken by third party after suit.*—About the time that judgment was given in plaintiff's favour for possession with wasilat, a third party, in satisfaction of some other claim against the defendant, attached and got possession of the land in dispute. A question consequently arose in executing plaintiff's decree as to the liability for wasilat of the year in which the defendant was put out of possession by the third party. *Held* that, as under s. 223, Code of Civil Procedure, plaintiff might have executed his decree by removal of the party who had got possession under a title created by defendant subsequent to the institution of the suit, he had the means of recovering possession while defendant had not. Under these circumstances, defendant could not be held liable for the profits. Haradhun Dutt *v.* Joykisto Banerjee **[11 W. R., 444**

27. ——— *Obstruction to possession—Dispossession.*—Obstruction to possession may be the ground of a claim for damages, but it cannot support a claim for wasilat unless there has been dispossession and the claimant has been prevented from enjoying rents and profits. Churn Singh *v.* Rungoo Singh . . **15 W. R., 221**

28. ——— *Joint judgment-debtors.*—As a general rule, a suit for wasilat will lie against parties who have been found in a previous suit for recovery of the land to have been in wrongful possession, and against them only. If the plaintiff has recovered a decree against several persons as joint wrong-doers, he is not at liberty to single out one or more of them only as defendants in the suit for wasilat. Suttya Nundo Ghosaul *v.* Suroop Chunder Doss . . . . **14 W. R., 76**

29. ——— *Joint liability—Wrong-doers not in possession.*—The plaintiff purchased a house with land attached, and sub-let the property to his vendor, one of the defendants. The defendants having in collusion prevented his enjoying rent, he sued for rent, but on their intervention the suit was dismissed. He then brought a regular suit, and obtained a decree from the Civil Court for khas possession. In a suit to recover wasilat,—*Held* that, although the defendants were not all in possession, yet, as they all continued to oppose the plaintiff's possession, they were jointly liable for the wasilat. Shamasunker Chowdhry *v.* Sreenath Banerjee **[12 W. R., 354**

30. ——— *Ijmali property where defendants have divided estate.*—In a suit to recover possession of land from the ijmali enjoyment of which the plaintiff had been excluded by the joint action of all the defendants who had divided the property between themselves,—*Held* that the defendants were all equally responsible for the damage sustained by the plaintiff, and that none of them could restrict their liability for mesne profits to that portion only of which they were in possession. *Held* also that the plaintiff was entitled to obtain mesne profits up to such time as he should get real and substantial, and not merely formal, possession of the property at the hands of the defendants in execution of his decree. Jhoonkee Paurey *v.* Ajoodhya Doss. Ajoodhya Doss *v.* Lalljee Paurey . **19 W. R., 218**

31. ——— *Actual occupier and lessor.*—Where lands are wrongfully withheld from the rightful owner, not only the actual occupiers, but also the person who has leased the land to the actual occupiers, may be held to have

committed a joint trespass, and to be jointly liable for the damages caused by such trespass. *Doe* v. *Harlow, 12 Ad. and Ell., 40,* followed. MUDUN MOHUN SINGH *v.* RAM DASS CHUCKERBUTTY [6 C. L. R., 357

32. ——— *Apportionment of liability.*—Where intermediate holders combine wrongfully to keep an auction-purchaser out of possession, they must all be held liable for mesne profits: the Court need not apportion their liability in proportion to the extent of the property respectively held by them. RAM CHUNDER SURMAH *v.* RAM CHUNDER PAL . . . . 23 W. R., 228

33. ——— *Apportionment of damages between joint tort-feasors.*—In a suit for mesne profits against a number of defendants who have been in possession of distinct portions of a newly-formed chur, and are proved to have no title thereto, it is competent to the Court, having regard to the provisions of the Civil Procedure Code, to apportion the damages payable by the defendants severally in respect of the portions held by them respectively. *Aliter,* where the defendants have jointly taken possession of a particular portion of such land. The reason for treating as joint tort-feasors all persons who have occupied portions of land ultimately found to belong to a neighbouring estate, and for applying the rule of contribution or apportionment between joint tort-feasors, is wanting in the case of a suit for mesne profits against a number of defendants who have taken possession of distinct portions of lands forming parts of a newly-formed chur to which they have no title, and it is fair and equitable in such a case that the defendants should be severally made liable for mesne profits in respect of the parcels occupied by them respectively. KRISHNA MOHUN BASACK *v.* KUNJO BEHARY BASAK . . . . 9 C. L. R., 1

34. ——— *Assessment of liability for—Suit for mesne profits with several defendants.*—In a suit for mesne profits where there are several defendants, the liability of the several defendants should be assessed in proprotion to the amount of profits which each had derived from his wrongful possession. NAWAB NAZIM OF BENGAL *v.* RAJ COOMAREE DEBEE . . 6 W. R., 113

COLLECTOR OF BOGRAH *v.* SHAMA SUNKUR MOJOOMDAR . . . . . 6 W. R., 230

35. ——— *Representative of debtor until sale of property taken in execution.*—Where execution is ordered to be taken out against the estate of a deceased judgment-debtor, and the property is sold, the representative of the debtor cannot be called to account in execution for the mesne profits of the property while in his hands. MUZHUR ALI *alias* SAT COWREE MEAH *v.* NAWAB NAZIM OF BENGAL . . . . 7 W. R., 308

36. ——— *Liability of ijaradar under an ijara granted by party in wrongful possession.*—A suit for mesne profits held to lie against a party who took an ijara pending litigation, though the decree for possession with profits was against the ijaradar's landlord. BIDYAMAYA DEBIA CHOWDHRAIN *v.* RAM LAL MISSER [8 B. L. R., Ap., 80: 17 W. R., 148

37. ——— *Dispossession of usufructuary mortgagee.*—The plaintiff for a consideration obtained from the defendant a zur-i-peshgi lease which contained an undertaking that in the event of the plaintiff's possession being interfered with by the defendant, or the defendant's previous ticcadar, the defendant would pay back to the plaintiff his money with interest and profits. The lower Appellate Court, finding that the plaintiff, after enjoyment for three years, had been turned out of possession by the previous ticcadar, gave the plaintiff a decree for the original money advanced, with interest and mesne profits for the unexpired portion of the lease. *Held* that mesne profits should not have been awarded. KHERODHUR LALL *v.* DOOLEE CHUND [19 W. R., 424

38. ——— *Decree-holder paying debt and taking possession from zur-i-peshgidar.*—Where a decree-holder, finding a zur-i-peshgidar in possession, paid the debt due by his judgment-debtor to the zur-i-peshgidar, and entering into possession himself realized the rents, it was held that he could not demand wasilat from the judgment-debtor for the same period. SHAM SOONDER KOOER *v.* RAJENDER MISSER . . 10 W. R., 390

39. ——— *Beng. Regs. XV of 1793 and I of 1798.*—*A* granted a zur-i-peshgi lease of certain lands to the defendants for a fixed term, which was to continue after the expiry of the term so long as the money advanced remained unpaid. Shortly afterwards *A* evicted the defendants and sold the land to *C* and *D*. The defendants sued *A*, *C*, and *D*, and obtained a decree for possession and mesne profits. They never got possession, but they recovered the mesne profits from *A*. On the expiry of the lease, *C* and *D* were held, in a suit brought by them, entitled to redeem. *Held* the defendants were not liable, under Regulation XV of 1793 or I of 1798, to account for the mesne profits which they had recovered. WUZEEROONNISSA *v.* SAEEDUN [B. L. R., Sup. Vol., 613: 6 W. R., 240

40. ——— *Mortgagee in possession.*—A mortgagee in possession occupies a fiduciary position towards all the persons interested as proprietors in the mortgaged estate, and to all he is answerable for whatever mesne profits he may receive in excess of the amount which he is entitled to receive by law or agreement. And when some of the proprietors assert claims, and assert such claims on behalf of themselves alone, he is entitled to require the claimants to establish the extent of their claims. DEONARAIN SINGH *v.* NAEK PERSHAD 2 N. W., 217

41. ——— *Liability of mortgagor after decree for foreclosure.*—Where a mortgagee, after obtaining a decree for foreclosure, sued for possession and mesne profits, and the mortgagor did not prove that he had given the plaintiff possession or directed his lessee to pay rent to the plaintiff. *Held* that the mortgagor (defendant) was liable for wasilat from the date of foreclosure, so far as it was not barred by limitation. Suroop Chunder Roy *v.* Mohender Chunder Roy **22 W. R., 539**

42. ———— *Vendor and purchaser—Trustee for person out of possession.*—Where in a suit for partition it appeared that the vendor of the portion sued for had kept the vendee out of possession, the vendor, though liable for mesne profits, was not in the position of trustee of the rents for the party kept out of possession. Nil Kamal Lahuri *v.* Gunomani Debi

[7 B. L. R., 113 : 15 W. R., P. C., 38

43. ———— *Ejectment of mortgagee's tenant of sír land by mortgagors.*—Where mortgagors had a right of occupancy in sír land, it was held that they could not be treated as trespassers for ejecting the mortgagees' tenant and taking possession; but inasmuch as, instead of giving notice to the mortgagees of their intention to avail themselves of such rights and to enter on the sír land as tenants, at the same time offering to pay such rent as might, having regard to the provisions of s. 7, Act XVIII of 1873, be properly payable by them, they entered on the sír land and ousted mortgagees' tenant, they rendered themselves liable for mesne profits. Bakhat Ram *v.* Wazir Ali

[I. L. R., 1 All., 448

44. ———— *Ejectment and taking possession on expiry of lease without notice of ejectment—N.-W. P. Rent Act (XII of 1881), s. 36.*—Where upon the expiry of the term of a lease, but without the written notice of ejectment required by s. 36 of the N.-W. P. Rent Act having been given by the lessor, possession was taken and rents collected by persons claiming under a subsequent lease,—*Held* that the tenancy of the first lessees did not cease upon the determination of the term of their lease, and that the second lessees were wrong-doers in usurping possession and collecting rents and profits, and were liable in a suit for damages by way of mesne profits after deduction of a sum paid by them for Government revenue, but without deduction of what they had paid the lessor or of the expenses they had incurred in collecting the rents. Shitab Dei *v.* Ajudhia Prasad

[I. L. R., 10 All., 13

45. ———— *Resumption by Government—Lakhirajdar—Fraud.*—In a suit for wasilat in respect of mâl lands fraudulently included by the lakhirajdar with lakhiraj lands resumed by Government and afterwards settled with him,—*Held* that the lakhirajdar, and not the Government, was liable; and that, as the sum claimed was definite and required no further inquiry to ascertain the amount due, interest had been properly awarded from date of suit. Coomaree Dabee *v.* Mahtab Chund

[W. R., 1864, 380

46. ———— *Assessment of mesne profits—Land out of jurisdiction.*—Where application was made for execution of a decree for possession with mesne profits of five mouzahs situated within the Court's jurisdiction, and Government revenue was so assessed upon these five mouzahs, and two other mouzahs situated in another district, that the amount paid on account of the five mouzahs and the two mouzahs respectively could not be apportioned, the Court had no jurisdiction to determine and award mesne profits for the two mouzahs not within its jurisdiction, but should have made an apportionment to the best of its ability. Nor ought the Court to have assessed the mesne profits by relying upon certain jamabandi papers made by the Government revenue officers some thirty years ago, without inquiring into the actual rents or proceeds of the estate during the period of dispossession. Puran Chunder Roy *v.* Juggessur Mookerjee . **17 W. R., 298**

47. ———— *Forfeiture of property—Liability of Government.*—Where property is confiscated by Government, it is only responsible for the profits during the time it is in possession, and to such amount as was actually realized, or such as might and would have been realized but for negligence or fraud on the part of its servants. Mohun Lall *v.* Government . . . **2 Agra, Mis., 6**

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS.

48. ———— **Assessment of mesne profits**—*Power of Court executing decree to assess mesne profits.*—A Court executing a decree has no power to assess mesne profits, unless it is ordered by the decree that the mesne profits are to be assessed in execution; and it is an essential part of a decree which orders mesne profits to be assessed in execution, to fix the period in respect of which such mesne profits are to be assessed. Wise *v.* Rajendur Coomar Roy . . . . **11 W. R., 200**

49. ———— *Order in execution of decree giving mesne profits not awarded by decree.*—An order, assumed to be made by a Court in execution, that the decree-holders should have mesne profits which had not been awarded in their decree, was held to be made without jurisdiction, and could not be regarded as taking effect. Kalka Singh *v.* Paras Ram . . . **I. L. R., 22 Calc., 434**

[L. R., 22 I. A., 68

50. ———— *Execution of decree—Decree silent as to date to which mesne profits are to run—Subsequent mesne profits.*—Where a decree is silent as to the date up to which mesne profits are to run, and merely gives a decree for possession with mesne profits, those mesne profits can only be reckoned, for the purposes of assessment in execution, up to the date of the institution of the suit. Ram Manickya Dey *v.* Juggunnath Gope . . . . **I. L. R., 5 Calc., 563**

Huronath Roy *v.* Indro Bhoosun Deb Roy [6 W. R., Mis., 33

Janokee Nath Mookerjee *v.* Raj Kisto Singh [15 W. R., 292

51. ——— *Decree for possession—Civil Procedure Code, 1859, ss. 196, 197.*—A decree for possession was construed to include mesne profits where the High Court was satisfied that such was the intention of the Court which passed the decree. A decree of a Court should, under ss. 196 and 197, Act VIII of 1859, state whether mesne profits are awarded or not; and it should distinctly state, when it reverses any points for subsequent inquiries in execution of the decree, what those points are. Raesoonissa Begum *v.* Sharoda Soonduree Chowdhrain 16 W. R., 25

52. ——— *Court with power to pass decree.*—Although the assessment of mesne profits is reserved for the period of execution of decree, it is an essential part of the decree itself, and not a mere process in execution, and must therefore be made by a Court authorized to pass the decree. Meher Jan *v.* Gerda . 25 W. R., 270

53. ——— *Act XXIII of 1861, s. 11—Profits assessable by Court in execution.*—The mesne profits which, under the provisions of s. 11, Act XXIII of 1861, are assessable by the Court executing the decree, are only such as have been by the decree made payable in respect of the subject-matter of the suit between the date of the suit and the date of the execution of the decree. Any question of mesne profits not determined by the Court making the decree is not properly cognizable by the Court executing the decree. Ram Lochan *v.* Munsoor Ali Chowdhry [11 W. R., 339

54. ——— *Act XXIII of 1861, s. 11—Suit for mesne profits.*—Where no liability to mesne profits is imposed by a decree, s. 11 of Act XXIII of 1861 does not give a power to extend the relief granted by the decree in respect of the right to mesne profits, but only to determine questions regarding the amount thereof when the right thereto has been ascertained by the decree. Subba Venkatara Maiyan *v.* Subraya Aiyan [4 Mad., 257

55. ——— *Decree silent as to mesne profits—Power of Court executing decree.*—Plaintiff sued for possession of certain lands and for mesne profits. He obtained a decree for possession, but the decree was silent as to mesne profits. *Held* that the Court executing the decree was not competent to entertain a claim for mesne profits made by the decree-holder. Chunder Coomar Roy *v.* Gonesh Chunder Dass I. L. R., 13 Calc., 283

56. ——— **Suit for mesne profits**—*Act XXIII of 1861, s. 11—Civil Procedure Code, ss. 196 and 197.*—Mesne profits are in themselves simply damages which do not exist as an obligation to be discharged until they have been awarded by a Court competent to do so. Therefore, according to s. 11, Act XXIII of 1861, mesne profits payable at the time of execution must mean mesne profits which have been at that time directed to be paid by a decree of Court. *A* obtained a decree against *B* for recovery of possession of certain property, and for mesne profits up to the date of the suit; but the decree was silent as to mesne profits after that time. *Held A* was not barred by the provisions of s. 11 of Act XXIII of 1861 from bringing a suit against *B* for mesne profits during the time that *A* was kept out of possession after the decree. Haramohini Chowdhrain *v.* Dhanmani Chowdhrain [1 B. L. R., A. C., 138 : 10 W. R., 62

Hurchurun Lal *v.* Toorab Khan [2 N. W., 176

Shum Sheer Singh *v.* Ramjeeawun Rae [2 N. W., 416

Issur Dutt Singh *v.* Alluck Misser [7 W. R., 429

Shumbho Mohun Roy *v.* Tirpoora Sunkur Roy [12 W. R., 126

57. ——— *Act XXIII of 1861, s. 11—Execution of decree—Decree for possession.*—Where, in a suit for land, the Court decreed to the plaintiff possession of the land, but made no decree in respect of mesne profits,—*Held* the plaintiff could not, under s. 11 of Act XXIII of 1861, obtain an order from the Court executing his decree declaring him entitled to any or what amount of mesne profits. Under s. 11, the question must relate to something comprised in the decree. Ekowri Singh *v.* Bijaynath Chattapadhya [4 B. L. R., A. C., 111 : 13 W. R., 11

Ameer Ahmud *v.* Zameer Ahmud [18 W. R., 122

Ram Roop Singh *v.* Sheo Golam Singh [25 W. R., 327

58. ——— *Decree for possession—Act XXIII of 1861, s. 11.*—*A*, in execution of a decree of the lower Court against *B*, obtained possession of certain land therein mentioned. On appeal by *B*, the High Court reversed the decree of the lower Court, and ordered restitution of the property to *B*; but no mention of mesne profits was made in the decree. *B* then sued for recovery of mesne profits for the period during which *A* had been in possession. *Held* that such a suit would not lie. The question of mesne profits ought to have been decided in execution under s. 11 of Act XXIII of 1861. Shib Narayan Pohraj *v.* Kishor Narayan Pohraj . . . 1 B. L. R., A. C., 146 [10 W. R., 131

59. ——— *Suit for possession—Civil Procedure Code, ss. 2, 7, and 196—Act XXIII of 1861, s. 11.* The plaintiff brought a suit for possession of land with mesne profits. The suit was dismissed. He appealed on the question of possession only, and obtained a decree for possession without any mention of mesne profits; and afterwards, in execution of the decree, he obtained possession of the land. *Held* the plaintiff could afterwards bring his suit to recover mesne profits from the date of decree for the period of six years next before the commencement of the suit, exclusive of the period during which the plaintiff was in possession. Ss. 2, 7, and 196 of Act VIII of 1859, and s. 11 of Act XXIII of 1861, were no bar to such suit. Pratap Chandra Burua *v.* Swarnamayi. Swarnamayi *v.* Pratap Chandra Burua

[4 B. L. R., F. B., 113 : 13 W. R., F. B., 15

60. ——— *After suit for immoveable property where mesne profits are not mentioned in decree.*—When a suit is brought to recover possession of immoveable property, and the decree does not provide for the mesne profits that accrued during the suit, a separate suit may be maintained for them. Where, however, it can be shown that the omission in the decree to provide for mesne profits was the deliberate act of the Court, the defendant may set that up as a defence in the separate suit. Sitaram Amrut *v.* Bhagvant Jaganath

[6 Bom., A. C., 109

61. ——— *Profits between filing of plaint and execution of decree—Act XXIII of 1861, s. 11.*—Where a decree awarding possession of immoveable property is silent as to mesne profits accruing between the filing of the plaint and the execution of the decree, the Court executing the decree has no power to award such profits. The proper course for the plaintiff to adopt, under such circumstances is to apply to the Court which passed the decree for a review, or else to file a separate suit. *Jiva Patil Rahimna* v. *Malukji Mani Nathuna, 3 Bom., A. C., 31,* overruled. Radhabai *v.* Radhabai . . . . . 4 Bom., A. C., 181

Chowdhry Imdat Ali *v.* Boonyad Ali

[14 W. R., 92

62. ——— *Act XXIII of 1861, s. 11.*—A plaintiff in possession under a decree for land and mesne profits, applied for further execution as to mesne profits and obtained an order from the Court of first instance (the District Munsif's Court). This order was reversed by the Appellate Court (the Civil Court), leaving still open to the Court of first instance to make a further order. Plaintiff, however, instead of applying again for execution, instituted a fresh suit for mesne profits in the Civil Court. The Civil Judge rejected the plaint. *Held* that s. 11, Act XXIII of 1861, warranted the rejection of the plaint, on the ground that the mesne profits to which plaintiff laid claim in the suit were payable in respect of the subject-matter of the former suit. Lakshmi Narasimhalu *v.* Chatrazu Jagannadham Pantalu *alias* Srinivasa Rau. Ex-parte Ruddravarpu Vissam Raz *alias* Konamaraze . . . . . . 3 Mad., 287

63. ——— *Power of Court executing decree to assess mesne profits not decreed.*—Where a decree was silent as to the plaintiff's right to mesne profits after the date of filing the suit, and did not reserve any question of mesne profits for further investigation, the Court which executed the decree was held to have acted *ultra vires* in ordering an investigation into mesne profits which may have accrued due pending the suit and up to the time of execution. Broughton *v.* Perhlad Sen

[19 W. R., 154

64. ——— *Act XXIII of 1861, s. 11—Separate suit—Question in execution of decree.*—*D* obtained a decree for an undivided share of certain property, but the defendants having apportioned the entire property amongst themselves and held each his own portion exclusively, *D* seized in execution a part of the share of one of them, *P.* On appeal the possession was ordered to be given up. *P* then sued to recover mesne profits for the period of *D's* possession. *Held* that the damages in question ought to have been sought in the execution proceedings when the possession itself was recovered, and not by the institution of a new suit; a Court being bound not only to place an aggrieved party back in the original position from which its erroneous action had displaced him, but also to give him compensation for such loss as he had thereby sustained. Duljeet Gorain *v.* Rewul Gorain

[22 W. R., 435

65. ——— *Act XXIII of 1861, s. 11—Question to be decided in execution of decree.*—Certain decree-holders, having been sued successfully for possession by the judgment-debtors in the first Court, appealed to the High Court, who reversed the decision, and whose order was confirmed by the Privy Council. The decree-holders on this applied for execution and for mesne profits for the interval during which they had been kept out of possession. *Held* that they were entitled to what they claimed in execution without bringing a regular suit, as the effect of the High Court's decree was to replace the parties *in statu quo.* Ununt Ram Hazrah *v.* Kuralee Pershad Mistree

[23 W. R., 441

66. ——— **Assessment under Privy Council decree**—*Execution of decree of Privy Council—Decree for possession.*—When the Privy Council declares an appellant entitled to real property, of which he was out of possession, and directs the High Court to make the inquiry necessary to ascertain what is comprised therein, and to proceed in the suit as upon the result of such inquiry may appear to be just, the High Court, on being applied to for execution, ought, besides giving possession, to ascertain and award mesne profits up to the date of giving possession. Lilanund Singh *v.* Luckmipur Sing . . . . . . 5 B. L. R., 605

S. C. Leelanund Singh *v.* Luchmessur Singh

[14 W. R., P. C., 23 : 13 Moore's I. A., 490

67. ——— **Assessment of mesne profits under Privy Council decree**—*Power of Court executing decree.*—The judgment of the Privy Council reported in *Leelanund Singh* v. *Luchmessur*

MESNE PROFITS—*continued.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*continued.*

Singh, 14 W. R., P. C., 23 : 5 B. L. R., 605, in no way militates against the Full Bench ruling in *Mosoodun Lall* v. *Bekaree Singh, B. L. R., Sup. Vol., 602 : 6 W. R., Mis., 109,* which laid it down that under s. 11, Act XXIII of 1861, the Court executing a decree is not to determine whether mesne profits are to be awarded or not, but only the amount of such profits. RAMKANYE GHOSE *v.* GOOROO PROSUNNO ROY . . . . **16 W. R., 30**

68. ——————— *Power of Court as to mesne profits in execution of decree—Decree of Privy Council executed by Courts in India.*—Where the Privy Council made an order in favour of a plaintiff, decreeing possession of certain property with mesne profits,—*Held* that the intention was to award such a sum as would compensate the plaintiff for his actual loss, and the decree therefore authorized the Courts of this country to consider and deal with the question of mesne profits as fully as a Court could which was charged with the duty of originally determining the merits of such a question between the parties to the suit. The High Court accordingly awarded the amount of actual loss found to have been incurred in respect of each year, with interest thereon from each year to the date of the High Court's order. BUDLUN *v.* FUZLOOR RUHMAN **[23 W. R., 449**

69. ——————— **Mesne profits not given by decree**—*Execution of decree—Interest.*—In construing the provisions of s. 11, Act XXIII of 1861, notwithstanding certain earlier decisions to a contrary effect, all the Indian High Courts have now recognized it to be settled law that, where the decree is silent touching interest or mesne profits subsequent to the institution of the suit, the Court executing the decree cannot, under the section in question, assess or give execution for such interest or mesne profits, but that the plaintiff is at liberty to assert his rights thereto by a separate suit. The Judicial Committee of the Privy Council, although of opinion that, if the matter had been *res integra,* the provisions of the section might have admitted of a different interpretation, being unwilling to run counter to a long and concurrent course of decisions of the Indian Courts in what is really a mere matter of procedure, accepted this construction of the law as binding. The plaintiff obtained a decree for the possession of certain lands, with mesne profits up to the date of suit. No claim was made in the plaint for mesne profits accruing due after the date of suit, and the decree was silent in respect thereof. An appeal against the decree having been brought by the defendant, execution was, from time to time, stayed by the Court on the defendant giving security, to abide the event of the appeal for the execution of the decree and for payment of the mesne profits accruing while the plaintiff remained out of possession. The decree having been confirmed on appeal, the plaintiff applied for execution in respect of the interim mesne profits. *Held,* in the Court below, that, as these were not provided for by the decree, they could not, under s. 11, Act XXIII of 1861, be awarded in execution, but must be made the subject of a separate suit. *Held* by the Judicial Committee that the proceedings whereby the defendant led the Court to stay execution and continue him in possession, laid him under an obligation to account in the suit for the mesne profits which he engaged to pay; and that this obligation was capable of being enforced by proceedings in execution, notwithstanding the construction given by the Court to s. 11; since, even if the defendant's liability to account were not to be considered "a question relating to the execution of the decree" within the meaning of the section, he was, in any case, precluded by the ordinary principles of estoppel from contending that the mesne profits in question were not payable under the decree. SADASIVA PILLAI *v.* RAMALINGA PILLAI

[15 B. L. R., 383 : 24 W. R., 193
L. R., 2 I. A., 219

S. C. in High Court, RAMALINGA PILLAI *v.* SATTEASIVA PILLAI . . . . **7 Mad., 97**

CHOWDHREE NAIN SINGH *v.* JAWAHUR SINGH
[1 N. W., 167 : Ed. 1873, 246

BHOOBUNESSUREE CHOWDHRAIN *v.* MANSON
[22 W. R., 160

ABDOOL ALI *v.* ASHRUFFUN . **25 W. R., 215**

70. ——————— *Act XXIII of 1861, s. 11.*—A decree of 1854 for possession and mesne profits, having been confirmed on appeal in February 1855, was duly executed in part up to 1861, when the decree-holder applied for execution as for mesne profits to the extent of R81. Failing in the Court of first instance, the applicant was declared by the Appellate Court, in 1863, entitled to the amount, with interest, by virtue of his decree. The judgment-debtor contested the case in the Civil Court, but his suit was dismissed on the 12th August 1865, and on the 12th July 1866 the decree-holder applied for execution of the decree for R81, the balance of mesne profits. This application was disallowed, on the ground that there was no provision in the original decree awarding mesne profits, and that an agreement to which the decree-holder had referred was not forthcoming *Held* that, as the original decree of 1854 evidently intended to give mesne profits of some kind, the Courts in 1862 and 1863 had jurisdiction, under s. 11, Act XXIII of 1861, to determine what mesne profits were due; and that, as the decree-holder was seeking to maintain the order in the Civil Courts in 1864 and 1865, his application of July 1866 was in time, and he was entitled under an order of a competent Court to receive the mesne profits claimed. HURO SOONDERY DOSSEE *v.* NOROODEEN **[11 W. R., 325**

71. ——————— *Decree for possession without mesne profits—Mesne profits afterwards allowed.*—Where an auction-purchaser, who prayed for possession as well as mesne profits, obtained a decree for possession which said nothing about mesne profits, and no reason appeared why mesne profits should be refused, the High Court allowed mesne profits in execution. KALEENATH DOSS *v.* RAJAH MEAH . . **22 W. R., 406**

72. ———— **Question of amount of mesne profits**—*Decree for possession with mesne profits from date of suit.*—A decree awarding possession with wasilat from the date of suit was held to be rightly construed as awarding mesne profits until the date when delivery of possession should be effected, and reserving the question of the amount for adjustment in execution. BUNSEE SINGH *v.* NAZUF ALI [**22 W. R., 328**

73. ———— *Suit for possession and mesne profits—Inquiry as to the latter deferred by the judgment—Decree silent as to mesne profits—Decree, Form of—Civil Procedure Code, ss. 45, 212, and 244.*—A Court, which had virtually adjudged mesne profits to the claimant in the same judgment in which it decided that she was entitled to the immoveable property claimed, left open the question of the amount of those profits to be decided in subsequent proceedings. In the decree which followed no mention was made of the profits. *Held* that it was competent to the Court to defer the inquiry in that manner, nothing in the Code of Civil Procedure preventing such a disposal of the suit. If there had been a technical omission in the decree, it had not affected the right of the plaintiff. MUHAMMAD ABDUL MAJID *v.* MUHAMMAD ABDUL AZIZ [**I. L. R., 19 All., 155**
L. R., 24 I. A., 22

74. ———— *Mesne profits between decree and possession—Power of Court executing decree.*—In a suit for possession and wasilat, the first Court awarded wasilat, but the lower Appellate Court, considering that no evidence had been given by the plaintiff of the wasilat which he was entitled to recover, allowed him up to date of suit only the amount which he had paid as Government revenue upon his mehal. *Held* that the Court executing the decree was not prevented from ascertaining the amount of wasilat which had accrued between the date of decree and the date of possession. MAHOMED BUSHEEROOLLAH CHOWDHRY *v.* HEDAET ALI CHOWDHRY . . . . . **8 W. R., 42**

75. ———— *Act XXIII of 1861, s. 11—Suit for damages for illegal appropriation of produce—Suit for mesne profits.*—A suit by a raiyat against another for damages on account of illegal appropriation of the produce of the land, including the raiyat's profits, by the defendant during certain years is not a suit for mesne profits, and is therefore unaffected by s. 11, Act XXIII of 1861. The question regarding amount cannot be settled in execution, but by separate suit. JOY KISHEN MOOKERJEE *v.* JODOONATH GHOSE . **3 W. R., 1**

76. ———— *Suit for mesne profits of land taken in excess under decree and restored.*—Where a decree-holder in execution takes possession of more land than is covered by the decree, and on an objection raised, and after inquiry made, the excess land is subsequently relinquished, the question of wasilat, being one which arises between the parties to the suit with reference to the execution of the decree, must, under Act XXIII of 1861, s. 11, be determined by the Court executing the decree, and not by a separate suit. BAMA SOONDUREE DABEE *v.* TARINEE KANT LAHOOREE . **20 W. R., 415**

See RADHA GOBIND SAHA *v.* BROJENDER COOMAR ROY CHOWDHRY . . . **7 W. R., 372**

77. ———— *Execution of decree for possession, Stay of—Right to mesne profits.*—Execution of a decree for possession merely of certain land having been stayed, and the defendant, pending an appeal to the Privy Council, continued in possession by the High Court upon his giving security for the "due performance of such order as might be made by the Privy Council," the appeal was subsequently dismissed, no order being made as to mesne profits. *Held,* on the authority of the case of *Sadasiva Pillai* v. *Ramalinga Pillai, 15 B. L. R., 383 : L. R., 2 I. A., 219 : 24 W. R., 193,* that, under the circumstances, the decree-holder was entitled to mesne profits from the date of the decree until he was put in possession, and that the amount of such profits should be determined by the execution department. See, however, the case of *Forester* v. *Secretary of State, L. R., 4 I. A., 137.* GOGUN CHUNDER SIRKAR *v.* LAIDLAY . . . **5 C. L. R., 189**

78. ———— **Decree for mesne profits**—*Execution of decree made on compromise—Procedure—Possession.*—*B* sued his brother *C* for possession of certain lands. *B* and *C* came to an amicable settlement, one of the terms of which was that *C* during his life should retain possession of certain of the lands, and that after his death they should pass to *B*. A decree was given in accordance with the terms of the compromise. On *C*'s death, his widow refused to put *B* in possession of the lands. *B* sought to obtain possession of the lands, with mesne profits, by executing the decree under the compromise against *C*'s widow. *Held* that he ought to proceed by regular suit. TARA MANI DASI *v.* RADHA JIBAN MUSTAFI
[**6 B. L. R., Ap., 142 : 14 W. R., 485**

79. ———— **Reversal of decree**—*Decree for possession — Mesne profits in execution of decree.*—*N* obtained a decree against *A* for certain lands, and was put in possession of them in execution of the decree. On appeal the decree against *A* was reversed, and the lands were accordingly restored to him, but no provision was made as to the mesne profits received by *N* when he was in possession of the lands under the decree of the lower Court. In a suit brought by *A* against *N* to recover such mesne profits, it was held that the suit would lie, and was not prohibited by s. 11 of Act XXIII of 1861. ABHRAM ALLI *v.* NATHA JALLAM **5 Bom., A. C., 74**

80. ———— *Decree for possession—Execution of decree.*—*A* sued *B* and obtained possession of certain property under a decree. On appeal this decree was reversed. The judgment and decree of the Appellate Court made no order about mesne profits which had accrued during the

time the land was in possession of *A.* *B* thereupon, seeking execution of the Appellate Court's decree, applied to be reinstated in possession, and also for an order awarding her mesne profits for the time during which she was out of possession of the said lands. *Held* that, upon such application, it was competent for the Court to cause restitution to be made of all that the party against whom the erroneous decree had been enforced had been deprived of by such enforcement. LATI KOOER *v.* SOBADRA KOOER

[I. L. R., 3 Calc., 720 : 2 C. L. R., 75

81. ———— *Decree for possession of immoveable property—Reversal of decree on appeal—Appellate decree silent as to mesne profits—Suit for recovery of mesne profits—Civil Procedure Code, 1882, s. 244.*—The plaintiff in a suit for possession of immoveable property obtained a decree for possession thereof, and in execution of the decree obtained possession of the property. This decree was subsequently reversed on appeal by the defendant. The decree of the Appellate Court was silent in respect of the mesne profits which the plaintiff had received while in possession. The defendant instituted a suit to recover those profits. *Held, per* PETHERAM, *C.J.*, OLDFIELD, BRODHURST, and DUTHOIT, *JJ.*, that the suit was not barred by s. 244 of the Civil Procedure Code, the question raised by such suit, although it might have arisen out of the decree of the Appellate Court, not "relating to the execution, discharge, or satisfaction of the decree" within the meaning of that section (because at that time no such question had arisen or was in existence), and therefore not one in respect of which a separate suit is barred by that section. *Pertab Singh* v. *Beni Ram, I. L. R., 2 All., 61,* distinguished by OLDFIELD, *J. Per* MAHMOOD, *J.*—That the suit was not barred by s. 244, the mesne profits sought to be recovered not having been realized in execution of the decree reversed on appeal. *Per* DUTHOIT, *J.*—The words in cl. (*c*) of s. 244, "any other question arising," etc., should be read as "any other questions directly arising"; otherwise the most remote inquiries would be possible in the execution department. RAM GHULAM *v.* DWARKA RAI . **I. L. R., 7 All., 170**

82. ———— *Decree for possession of immoveable property—Execution of decree—Reversal of decree on appeal—Mesne profits—Civil Procedure Code, s. 583.*—*G* obtained a decree against *R* for possession of a house, and in execution thereof obtained possession. On appeal the decree was set aside by the High Court, whose decree did not direct that the appellant should be restored to possession and was silent as to mesne profits. *Held* that, with reference to s. 583 of the Civil Procedure Code, *R* was entitled to recover possession of the property in execution of the High Court's decree; but that, with reference to the decision of the Full Bench of the Court in *Ram Ghulam* v. *Dwarka Rai, I. L. R., 7 All., 170,* he could not, in execution of that decree, recover mesne profits. GANNU LAL *v.* RAM SAHAI

[I. L. R., 7 All., 197

83. ———— *Execution of decree—Possession under decree—Restitution of property after reversal of decree—Civil Procedure Code, 1882, s. 244.*—A Court reversing a decree under which possession of property has been taken, has power to order restitution of the property taken possession of and with it any mesne profits which may have accrued during such possession. MOOKOOND LAL PAL CHOWDHRY *v.* MAHOMED SAMI MEAH

[I. L. R., 14 Calc., 484

84. ———— *Decree for possession of immoveable property—Reversal of decree on appeal—Suit for recovery of mesne profits from person who has taken possession under a decree which is subsequently reversed on appeal—Civil Procedure Code (Act XIV of 1882), s. 244.*—A landlord sued his tenant for arrears of rent, and obtained a decree for a certain amount and a declaration that, if the amount were not paid within fifteen days, the tenant should be ejected under s. 52, Bengal Act VIII of 1869. The amount was not paid, and the landlord executed the decree and obtained possession. The tenant appealed and succeeded in getting the decree set aside, and the amount found due from him for arrears by the first Court was reduced, and a decree made directing that, if the reduced amount were not paid within fifteen days, he should be ejected. He paid the amount found due by the Appellate Court within the fifteen days and recovered possession of his holding. He then brought a suit in the Munsif's Court to recover mesne profits from his landlord for the time he was in possession after the execution of the first Court's decree. It was contended on second appeal that the suit would not lie, as the matter might and should have been determined in the execution department under s. 244 of the Civil Procedure Code. *Quære*—Whether such a suit does not lie, and whether the decisions in *Lati Kooer* v. *Sahodra Kooer, 2 C. L. R., 75,* and analogous cases to the effect that such a suit does not lie, are correct. *Ram Ghulam* v. *Dwarka Rai, I. L. R., 7 All., 170,* cited and approved. AZIZUDDIN HOSSEIN *v.* RAMANUGRA ROY . **I. L. R., 14 Calc., 605**

85. ———— *Civil Procedure Code, s. 583—Claim for mesne profits on reversal of decree for possession of land executed.*—A decree for possession of immoveable property, having been executed, was reversed on appeal. The defendant applied under s. 583 of the Code of Civil Procedure for restitution of the mesne profits taken by the plaintiff. The lower Courts dismissed the application on the ground that the proper remedy was by suit. *Held* that the defendant was entitled to the relief claimed. KALIANASUNDRAM *v.* EGNAVEDESWARA

[I. L. R., 11 Mad., 261

86. ———— *Execution of decree in suit for possession—Execution pending appeal—Reversal of decree on appeal and restoration of possession—Right to restitution of mesne profits—Civil Procedure Code (1882), ss. 244 and 583—Separate suit.*—*R* brought a suit against *K* for

MESNE PROFITS—*continued.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*continued.*

possession of certain land, and obtained a decree. *K* appealed, but pending the appeal *R* took possession of the land in execution of his decree. *K* was successful in the appeal, and was restored to possession in execution of the decree of the Appellate Court, which, however, was silent as to mesne profits. In an application by *K* for mesne profits for the period during which *R* was unlawfully in possession,—*Held* that *K* was entitled to restitution of such mesne profits in the execution proceedings, and it was not necessary for him to bring a separate suit to recover them. He was entitled to such restitution either by reason of the power conferred by s. 583 of the Civil Procedure Code upon the Court which passed the decree (*Kalianasundram* v. *Egnavedeswara, I. L. R., 11 Mad., 261*) or by reason of the inherent right that the Court has to order the restitution of the thing which had been improperly taken under the erroneous decree set aside in appeal. *Mookoond Lal Pal Chowdhry v. Mahomed Sami Meeah, I. L. R., 14 Calc., 484,* referred to. RAJA SINGH *v.* KOOLDIP SINGH **I. L. R., 21 Calc., 989**

87. ———— *Decree for possession and mesne profits for certain date to be fixed in execution—Civil Procedure Code, 1882, s. 211.*—Where a decree directed that plaintiffs should get mesne profits from a certain date till delivery of possession, the amount to be fixed in execution,—*Held* that the decree was necessarily subject to the limitation laid down in s. 211 of the Civil Procedure Code (Act XIV of 1882), and that mesne profits for more than three years from the date of the decree should not be awarded, even though possession was not delivered during that period. NARAYAN GOVIND MANIK *v.* SONO SADASHIV . . **I. L. R., 24 Bom., 345**

UTTANORAM *v.* KISHORDAS **[I. L. R., 24 Bom., 149**

88. ———— **Separate suit for mesne profits**—*Decree-holder kept out of possession—Act XXIII of 1861, s. 11.*—Mesne profits for the period during which the decree-holder was executing the decree and was kept out of possession by the opposite party may be awarded by the Court under s. 11, Act XXIII of 1861. It is not necessary to bring a separate suit. HOOKUM BEBEE *v.* MAHOMED MOOSA KHAN . . . . . **6 W. R., Mis., 13**

89. ———— *Mesne profits accruing after decree.*—*Held* that no separate suit would lie for mesne profits accruing during the pendency of the suit and delivery of possession. S. 10, Act VIII of 1859, provides for mesne profits accruing before the suit. OONKUR DASS *v.* HEERA SINGH **[1 Agra, 141**

RAM SHUNKER *v.* LALEE BAEE . **2 Agra, 268**

SHUNKER LALL *v.* RAM LALL **[1 N.-W., 177: Ed. 1873, 256**

90. ———— *Act XXIII of 1861, s. 11—Mesne profits accruing after decree.*—Even with the permission of the Civil Court, a separate suit cannot be brought for mesne profits between the institution of the original suit and the execution of the decree thereon. Act XXIII of 1861, s. 11, commented on. CHENNAPA NAYUDU *v.* PITCHI REDDI . . . . . . **1 Mad., 453**

NARAYANA AIYAN *v.* SRINIVASA AIYAN **[2 Mad., 435**

MESNE PROFITS—*continued.*

. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*concluded.*

91. ———— *Prior suit for possession without mesne profits.*—A party can bring a suit for mesne profits after he has obtained a decree for possession in a prior suit, in which no provision had been made in the valuation of the suit for mesne profits. SHIVASUNDARI DEVI *v.* RAMSHAMAYAT KURMI . . . . **1 B. L. R., S. N., 3**

3. MODE OF ASSESSMENT AND CALCULATION.

92. ———— **Time for ascertaining mesne profits**—*Execution of decree.*—Where wasilat is decreed, the mode of ascertaining it is rightly reserved for the proceedings in execution. GULE *v.* MAHARANEE SREEMUTTY . . . **15 W. R., 133**

93. ———— **Ascertainment of mesne profits**—*Execution before all the mesne profits are ascertained—Power of Court executing decree.*—Execution may issue with respect to ascertained wasilat, pending inquiry as to unascertained wasilat. In ascertaining and declaring the amount of wasilat due under a decree, the Court executing it has no power to alter the decree in respect to interest awarded. AREFUNNISSA CHOWDHRAIN *v.* KOKIBUNNISSA CHOWDHRAIN . . . **24 W. R., 444**

94. ———— *Act XXIII of 1861, s. 11—Criminal Procedure Code, 1859, s. 196.*—A decree for possession and mesne profits must, with reference to s. 196, Civil Procedure Code, 1859, be held to mean mesne profits down to the date of delivery of possession. Where the amount of mesne profits is not expressly admitted, the Court is bound to deal with it as if disputed, and either to determine the amount at the trial or to reserve it for assessment in execution. DHURAM NARAIN SINGH *v.* BUNDHOO RAM **[12 W. R., 75**

But where everything is ordered to be ascertained in the execution stage, both the period and amount can be assessed. HURREHUR MOOKERJEE *v.* MOLLAH ABDOOLBUR . . . . **17 W. R., 209**

95. ———— *Power of Court executing decree.*—Where the suit is for mesne profits alone, the Court executing the decree is not competent to fix the amount in the course of execution. BHOOBUNNESSUREE CHOWDHRAIN *v.* MANSON **[22 W. R., 160**

96. ———— *Construction of decree.*—Where a decree of the High Court simply directed payment by way of damages of the proceeds of a specified share of certain property,—*Held* that it left nothing to be determined in execution, except the assessment of the rents and profits of the share

MESNE PROFITS—*continued.*

3. MODE OF ASSESSMENT AND CALCULATION—*continued.*

from which the defendants had wrongfully kept the plaintiff out of possession. DWARKA LALL MUNDUR *v.* NIRUNDRO NARAIN SINGH . **22 W. R., 461**

97. ———— **Mode of calculation of mesne profits**—*Decision of Court.*—The sum to be recovered in the case of a suit for mesne profits is of the nature of damages to be assessed by a proper exercise of the judicial discretion of the Court which is charged with the trial of the case on its merits; and it is impossible to lay down a rigid rule according to which those damages should always be calculated. HOGG *v.* DINONATH SREEMANEE . **8 W. R., 447**

98. ———— *Interest—Damages—Wasilat.*—Interest calculated upon yearly rests of rent may, when claimed by the plaintiff in his plaint, be given as an essential portion of the damages which are recoverable by a person wrongfully kept out of possession of immoveable property. *Protap Chunder Borooah* v. *Surnomoyee, 14 W. R., 151,* followed. The term "mesne profits" does not include interest year by year on those profits. *Hurro Durga Chowdhrani* v. *Surut Sundari Dabi, I. L. R., 8 Calc., 332,* followed. Principles stated on which the calculation of mesne profits should be based. BROJENDRO COOMAR ROY *v.* MADHUB CHUNDER GHOSE . . . . **I. L. R., 8 Calc., 343**

See RAMDHUL SINGH *v.* PURMESSUREE PERSHAD NARAIN SINGH . . . . **7 W. R., 78**

99. ———— *Interest, Loss of—Interest on mesne profits year by year.*—The term "mesne profits" means the amount which might have been received from the land, deducting the charges for collection; and does not include damage resulting from their not having been paid as they became due, or loss of interest year by year. HURRO DURGA CHOWDHRANI *v.* SURUT SUNDARI DEBI
[I. L. R., 8 Calc., 332
L. R., 9 I. A., 1

reversing, on appeal, the decision of the High Court in HURRO DURGA CHOWDHRANI *v.* SHARRAT SOONDERY DABEA
[I. L. R., 4 Calc., 674: 3 C. L. R., 417

100. ———— *Profits obtained from land by ordinary diligence.*—Mesne profits mean those profits which the person in actual wrongful possession of the land did actually receive, or might with ordinary and due diligence have received, from that land. DWARKANATH MITTER *v.* RAMDHUN BISWAS . . . . **8 W. R., 103**

DESILVA *v.* TEHERANEE . . **9 W. R., 374**

101. ———— *Collections by wrong-doer in excess of what could have been collected ordinarily.*—A decree-holder is entitled as mesne profits to whatever the wrong-doer has collected, though it be more than the decree-holder himself might have ordinarily collected. CHUNDER COOMAR ROY *v.* KASHEENAUTH ROY CHOWDHRY
[5 W. R., Mis., 37

102. ———— *Cultivation of lands by person in wrongful possession.*—When a person in wrongful possession of land has himself occupied and cultivated it, the proper principle on which the amount of mesne profits is to be calculated is to ascertain what would have been a fair and reasonable rent for the land if the same had been let to a tenant during the period of the unlawful occupation by the wrong-doer. ASMUT KOOER *v.* INDURJEET KOOER . . **B. L. R., Sup. Vol., 1003**

S. C. ASMED KOOER *v.* INDURJEET KOOER
[9 W. R., 445

BINDABUN CHUNDER SIRCAR *v.* ROBERTS
[B. L. R., Sup. Vol., 1004 note

CHARDON *v.* AJEET SINGH . **12 W. R., 52**

TRIPOORA SOONDUREE DEBIA *v.* COOMAR PROMOTHONATH ROY . . . . **11 W. R., 533**

BISHESSUREE DEBIA *v.* MOHUN CHUNDER BOSE
[5 W. R., Mis., 35

103. ———— *Proper principle of determining amount of damages.*—The plaintiffs obtained a decree for ejectment against the defendants on the 4th Bhadra 1299 F., but they did not obtain possession till Assar 1301 F.; they brought the present suit to recover damages, claiming R958 odd as the profits realized from the crops during 1299, 1300, and 1301. *Held* that the proper principle upon which mesne profits should be assessed in cases like these is to ascertain what would have been a fair and reasonable rent for the land if the same had been let to a tenant during the period of unlawful occupation of the wrong-doer. *Asmed Koer* v. *Indurjeet Koer, 9 W. R., 445: B. L. R., Sup. Vol., 1003; Luchmessur Singh* v. *Chairman of the Darbhanga Municipality, L. R., 17 I. A., 90, at p. 97,* followed. RAGHU NANDAN JHA *v.* JALPA PATTAP
[3 C. W. N., 748

104. ———— *Principle on which they should be assessed—Interest.*—In determining the amount payable to the holder of a decree for mesne profits, a Court is bound to consider, not what has been, or what with good management might have been, realized by the party in wrongful possession, but what the decree-holder would have realized if he had not been wrongfully dispossessed. Under a decree for mesne profits, the decree-holder is entitled to interest on such profits from the time at which they would have come to him if he had not been dispossessed. LUCKHY NARAIN *v.* KALLY PUDDO BANERJEE
[I. L. R., 4 Calc., 882: 4 C. L. R., 60

105. ———— *Principle on which they should be assessed.*—In a case of wrongful dispossession, the principle upon which wasilat should be assessed is to ascertain what the actual rents or proceeds of the estate were, and to make the wrong-doer account for them to the party dispossessed, everything being assumed against the

MESNE PROFITS—*continued.*

3. MODE OF ASSESSMENT AND CALCULATION—*continued.*

wrong-doer. DOORGA SOONDUREE DEBIA *v.* SHIBESHUREE DEBIA . . . . . **8 W. R., 101**

106. ———— *Assets which might have been realized—Amount actually collected.*—Mesne profits are not limited to the amount actually collected from an estate by the judgment-debtor, but must be calculated according to the assets which might have been realized with due diligence. SMITH *v.* SONA BIBEE . . **2 W. R., Mis., 10**

THAKOOR DOSS ROY CHOWDHRY *v.* NOBIN KRISTO GHOSE . . . . . . **22 W. R., 126**

107. ———— *Claim in plaint—Rent not received, but which might have been received.*—When a party is declared entitled to a decree for mesne profits, he is entitled not only to recover as those profits such sums as may have been collected and appropriated by others in wrongful possession, but also such sums as he would have collected had he been in possession, and which he has been prevented from collecting by having been kept wrongfully out of possession. If the plaint in a suit for mesne profits claims only rents and profits collected and received by the defendant, the plaintiff is not entitled to recover in respect of rents not received, but which by the wrongful dispossession he has been prevented from collecting; but if there is an appropriate allegation, he will be entitled to recover in respect of such rents. KOMEERUNNISSA BEGUM *v.* HUNOOMAN DOSS **Marsh., 122 : W. R., F. B., 40**
[1 Ind. Jur., O. S., 42 : 1 Hay, 266

108. ———— *Collection charges.*—The principle on which wasilat should be assessed where defendant has been compelled to relinquish possession is, that he should be made to pay that which plaintiff (decree-holder) would have enjoyed if he had not been kept out of possession by the wrongful act of defendant. ERFOONISSA CHOWDHRAIN *v.* RUKEEBOONISSA . . **9 W. R., 457**

MOBARUK ALI *v.* BOISTUB CHURN CHOWDHRY
[11 W. R., 25

109. ———— *Trespasser not allowed expenses of obtaining decrees for rent during the term of his possession.*—*Held* that a trespasser, who, after having been for some time in possession of immoveable property, was ejected in execution of a decree obtained by the rightful owner, could not have allowed to him in reduction of mesne profits expenses incurred by him in obtaining decrees for rent against tenants on the property in suit. SHARF-UD-DIN KHAN *v.* FATEHYAB KHAN
[I. L. R., 20 All., 208

110. ———— *Liability on ejectment of raiyat—Loss by dispossession.*—A superior holder who dispossesses a raiyat is liable, not merely for the profit which he makes by letting out the land, but to make good the loss which the raiyat sustains by being dispossessed. HURUCK LALL SHAHA *v.* SREENIBASH KURMOKAR . . **15 W. R., 428**

111. ———— *Cultivating raiyat ejected by zamindar.*—When a cultivating raiyat is ejected by his zamindar, the mere rent of the land realized by the zamindar from another tenant is not necessarily the measure of the damage sustained by the raiyat and recoverable by him as mesne profits. BHIRO CHANDRA MOZOOMDAR *v.* BAMUNDAS MOOKERJEE . **3 B. L. R., A. C., 88 : 11 W. R., 461**

112. ———— *Sale by occupancy-tenant—Decree in favour of land-holder against purchaser for mesne profits—Mesne profits how to be assessed.*—Where in a suit against an occupancy-tenant and his vendor, the zamindar obtained a decree for cancelment of the deed of sale, for possession of the land by ejectment, and for mesne profits from the date of suit to the date of recovery of possession,—*Held* that the mesne profits awarded must be assessed as damages against the vendee as a trespasser, and that the proper measure of such damages was not the rent which was payable by the vendor, but the actual market value of the land for the purpose of letting. MATUK DHARI SINGH *v.* ALI NAQI
[I. L. R., 10 All., 15

113. ———— *Rate of rent.*—In claiming wasilat for the period of wrongful dispossession, the owners are entitled to recover either any profit which the wrong-doer derived from the land or any rate of rent which they were receiving at the time of dispossession. JOY KISHEN DOSS *v.* TURNBULL . . . **24 W. R., 137**

114. ———— *Held* that the amount of rent actually received, together with that which might with reasonable diligence have been collected, form the amount of mesne profits to which a decree-holder is entitled. Evidence that the land was let for a certain amount is a *primâ facie* proof of the amount of mesne profits, and may be accepted by the Court unless the contrary be proved. RUGHO NATH DOBEY *v.* HUTTEE DOBEY
[1 Agra, Mis., 17

The onus being on the person in wrongful possession to show that the usual rents were not collected. OMAN *v.* RAM GOPAL MOZOOMDAR
[18 W. R., 251

115. ———— *Proof of amount.*—Mesne profits liable in execution of a decree are the rents of an estate, *minus* costs of collection, Government revenue, losses by desertion and death of raiyats, by drought, etc. The proper means of ascertaining their amount is to require the party who has held possession, and against whom the decree has passed, to produce his accounts, and, if necessary, to compel him to do so. On him lies the onus of proving the actual amount of mesne profits, and if he fail to produce his accounts, he will only have himself to blame if the amount awarded by the Court is larger than the actual mesne profits. DINOBUNDHOO NUMDEE *v.* KESHUB CHUNDER GHOSE
[3 W. R., Mis., 25

RAMNATH CHOWDHRY *v.* DIGUMBER ROY
[3 W. R., Mis., 30

MESNE PROFITS—*continued.*

3. MODE OF ASSESSMENT AND CALCULATION—*continued.*

TELUCK CHAND BABOO *v.* SOUDAMINEE DOSSEE [23 W. R., 108

116. ——————— *Proof of actual collections.*—If a Court finds that a plaintiff has been dispossessed of property, he his *primâ facie* entitled to mesne profits in respect of the period during which he was dispossessed, and it is not necessary for him to prove the actual collections made during his dispossession. It is sufficient to show what is the annual profit which in ordinary years can be collected. Thus it is sufficient to show the profits for the years preceding or subsequent to the period of dispossession. BHAWANEE DEEN SAHOO *v.* MOHUN SAHOO [1 N. W., 188: Ed. 1873, 273

117. ——————— *Rents not received—Expenses of collecting rents.*—In estimating mesne profits, not merely the amount of rents actually received by the defendant, but also those which he might have received, and which can no longer be collected, ought to be charged against him. On the other hand, the reasonable expense of collecting the rents may be allowed to him; and if he has paid rent to the zamindar, allowance may be made for such payments. But he cannot be charged with payments of rent made by the plaintiff to the zamindar. BESSUNESSOOREE DABEA *v.* TARASOONDEREE BRAHMINEE. MAHOMED HAJRA *v.* TARASOONDEREE BRAHMINEE . . . Marsh., 201: 1 Hay, 577

118. ——————— *Failure of decree-holder to prove rate of rent.*—In estimating the amount of mesne profits where a decree-holder could not give satisfactory evidence as to the rates at which he received rents and the collections he made, the judgment-debtor was held liable for the amount stated in the Collector's jammabandi, *minus* the cost of collection, leaving him to recover from Government what he has paid on account of revenue, unless the sums so paid had already been refunded by Government to the decree-holder. PALMER *v.* BAL GOBIND DOSS . . . . . 7 W. R., 230

119. ——————— *Landlord and tenant.*—*Held* that the mode of estimating the amount of mesne profits in respect of a talukh held by plaintiff under defendant was to ascertain the amount of profits which plaintiff could have realized from the talukh if he had not been dispossessed therefrom by the wrongful act of defendant; and that, as there was no necessary relation between those profits and the amount of revenue payable by the latter on account of the inferior holding, such revenue could not be treated as an element in the calculation; but that the amount of rent payable by plaintiff to defendant ought to be deducted from the gross calculation of the talukh. *Held* also that there seemed no reason why the same rule should not be adopted in this case merely because the wrong-doer was the landlord. BHYRUB CHUNDER MOJOOMDAR *v.* HURO PROSUNNO BHUTTACHARJEE. HURO PROSUNNO BHUTTACHARJEE *v.* BHYRUB CHUNDER MOJOOMDAR [17 W. R., 257

MESNE PROFITS—*continued.*

3. MODE OF ASSESSMENT AND CALCULATION—*continued.*

120. ——————— *Remission of rent or neglect to make collection.*—The rule for the assessment of mesne profits is, that the right of the true owner is to all the profits of the land, and not merely to the amount of the cash collections during the time that he is illegally kept out of possession, and the trespasser must be held responsible for all that he has realized, and received credit for everything for which he is entitled to credit, such as rents paid and charges for collection. He does not lessen his responsibility by remitting rent or neglecting to make collections. KALEE DEBEE *v.* MODHOO SOODUN CHOWDHRY . . . . . . 16 W. R., 171

121. ——————— *Gross produce of estate—Value of produce.*—Mesne profits should not be estimated on the gross produce of an estate except when all other means of ascertaining them fail. The rents due from the actual cultivators, or, if he cultivate the land by his own servants, the value of the produce, should be taken as the amount of the mesne profits. KHEMON KUREE DEBIA *v.* MODHOOMUTTY DEBIA . . . 4 W. R., Mis., 23

122. ——————— *Fair and reasonable rent.*—In a suit for possession and wasilat, where the plaintiff was the actual cultivator of the land and obtained a decree, it was held that the Full Bench ruling in *Asmut Koer* v. *Indurjeet Koer, B. L. R., Sup. Vol., 1003: 9 W. R., 446,* and not that in the case of *Saudamini Debi* v. *Anand Chandra Haldar, 7 B. L. R., 178 note: 13 W. R., 37,* was applicable, and that plaintiff was entitled to such fair and reasonable rent as the defendant might have derived from the land had he left it during the period of his wrongful occupation. MADHUB CHUNDER DUTT *v.* HARADHUN PAUL . 14 W. R., 294

123. ——————— *Person not himself cultivating the land.*—The mode of calculation laid down in *Asmut Kooer* v. *Indurjeet Kooer, B. L. R., Sup. Vol. 1003: 9 W. R., 445,* held to be applicable also to a case where a person, the wrong-doer, has not himself cultivated the land. PROMOTHONATH ROY *v.* TRIPOORA SOONDUREE DABEE [10 W. R., 463

124. ——————— *Principle of assessment—Person cultivating land.*—A suit by a raiyat having been remanded with a view to the assessment of mesne profits on the principle laid down in *Saudamini Debi* v. *Anand Chandra Haldar, 7 B. L. R., 178 note: 13 W. R., 37,* if it was found that the plaintiff had himself cultivated the lands before leasing them out to an indigo factory, the first Court, finding this to be the case, assessed the mesne profits accordingly, *i.e.,* at the lowest rate deposed to by the plaintiff's witnesses. The District Judge reversed the decision on the ground of a later ruling in *Madhub Chunder Dutt* v. *Haradhun Paul, 14 W. R., 294. Held* that the Judge ought to have followed the course indicated by the order of remand. *Held* also that the special respondent, if dissatisfied with the order of remand, ought to have applied for a

MESNE PROFITS—*continued.*

3. MODE OF ASSESSMENT AND CALCULATION—*continued.*

review, and not having done so he was not entitled to ask the Court to go behind that order and consider whether it was wrong with reference to *Madhub Chunder Dutt* v. *Haradhun Paul, 14 W. R., 294. Held* further that the later decision did not overrule the earlier one, but referred to a different case, *viz.*, that of a large zamindar entitled to rent only; and that the Full Bench ruling referred to in the later decision did not intend to lay it down that a party who is himself a cultivator is not entitled to recover the profits which he would have made out of the land by his own cultivation. NURSINGH ROY *v.* ANDERSON . . . . . **19 W. R., 125**

125. ——— *Zerayet and bhowli lands—Production of accounts to show value and produce of land.*—The loss of the party wrongfully kept out of possession must generally be measured by the actual profits arising from the usufruct of the land during that time, on an occupation of the same character as that of the party wrongfully kept out of possession at the date of his ouster or of the last legal occupant whom the plaintiff claims to succeed to, if the plaintiff himself never entered into possession. A difference in assessment should be made between zerayet and bhowli lands, a deduction being allowed as to the former on account of expenses of cultivation. As regards the produce and value of the lands in such cases, it is the duty of the judgment-debtor to produce his accounts and to prove what were the real assets of the property. ROOKUMEE KOOER *v.* RAM TUHUL ROY . . . . . . **17 W. R., 156**

126. ——— *Suit by cultivator—Damages.*—Where the plaintiff, who was a cultivator, sued for possession of certain land, of which he had been dispossessed by the defendant, with mesne profits, and the Judge gave him a decree for possession, and as to mesne profits decreed that the plaintiff should have the actual profits realized from the land, and if that could not be ascertained (as to which the burden of proof, he said, should be on the defendant), then, according to the capabilities of the soil in an average season, making the deductions necessary on account of the bad seasons, expense of cultivation, rise and fall of prices, and cost of seed; and in the case of indigo, the value of the raw produce and not of the manufactured article;—it was held that the principle on which damages were awarded was a correct principle, where the plaintiff was himself a cultivator. WATSON *v.* PYARI LAL SHAHA **[7 B. L. R., 175**

SAUDAMINI DEBEE *v.* ANAND CHANDRA HALDAR **[7 B. L. R., 178 note: 13 W. R., 37**

127. ——— *Cultivator.*—Where the party recovering possession of land of which he was wrongfully dispossessed, and claiming wasilat, is himself the cultivator, he is entitled to recover the profits which he would have made out of the land by the cultivation had he not been dispossessed. NUR SINGH ROY *v.* ANDERSON . **16 W. R., 21**

SHISTEE PERSHAD CHUCKERBUTTY *v.* KUMLA KANT ROY . . . . . **17 W. R., 348**

128. ——— *Amount which might have been received.*—Where one party illegally dispossesses another and lets his estate in farm, the amount of the rent which the party wrongfully ousted might have ordinarily received had he been in possession, and not the amount of the farm rents received during the wrongful possessor's incumbency, will, unless any special custom be proved, be the measure of mesne profits to be awarded. JUGURNATH SINGH *v.* AHMEDOOLLAH . **8 W. R., 132**

129. ——— *Unprofitable lands.*—In executing a decree for mesne profits, a Court does right in excluding from the account lands of such a nature as would, under ordinary circumstances, yield no profit, regarding which it has not been shown that the judgment-debtors had opportunities of disposing of them for a profit. BECHARAM DASS *v.* BROJONATH PAL CHOWDHRY **[9 W. R., 369**

130. ——— *Value of produce of jalkar.*—In a suit for wasilat, where it was decreed that the value of the produce of a jalkar should be ascertained in execution, the lower Appellate Court was held to have come to a right conclusion without any error of law in taking the nearest approximate value of the produce indicated by the evidence and the plaintiff's statement. ENAET ALI *v.* SOBHNATH MISSER . . . **15 W. R., 258**

131. ——— *Cancelment of darpatni tenure.*—A zamindar granted a patni to *A*, who granted a darpatni to *B*. The patni was sold for arrears of rent to *C*, who entered into possession, cancelled *B*'s darpatni, and, after two years' possession, granted a darpatni to *D*. Meantime *A*, the original patnidar, had the sale set aside in a regular suit brought for that purpose, and thereupon *B* brought a suit against *D* alone for mesne profits. *Held* that *D* was entitled to be credited with the amount of rent which he had paid to his patnidar, *C*, and with the expenses of collection. NUFFAR ALI BISWAS *v.* RAMESHAR BHUNICK **3 C. L. R., 28**

132. ——— *Decree-holder wrongfully kept out of possession.*—A decree-holder who stands in the shoes of his judgment-debtor, but who has been wrongfully kept out of possession of land for which the judgment-debtor granted a lease, is entitled to receive the profit which the judgment-debtor made out of them, and which the decree-holder would have made had he been in possession. GOOROO DYAL MUNDUR *v.* GOPAL SINGH **[24 W. R., 272**

133. ——— *Suit for mesne profits against trespasser—Costs and expenses of trespasser in collection of rent.*—*Held* by the majority of the Full Bench that a trespasser on the land of another should, in estimating the mesne profits which the owner of the land is entitled to recover from him, be allowed such costs of collecting the rents of the land as are ordinarily incurred by the owner, where such trespasser has entered or continued on the land in the exercise of a *bonâ fide* claim

of right; but where he has entered or continued on the land without any *bonâ fide* belief that he was entitled so to do, the Court may refuse to allow such costs, although he may still claim all necessary payments such as Government revenue or ground rent. *Per* STUART, *C.J.*—Whether such trespasser is a trespasser *bonâ fide* or not, he should be allowed such costs. ALTAF ALI *v.* LALJI MAL
[I. L. R., 1 All., 518

134. ——— *Allowance for extraordinary profits.*—Where a party is decreed entitled to mesne profits, the trespasser cannot be allowed to urge that the owner would not have realized as much from the land as he (the trespasser) did; but if he had obtained extraordinary profits by the expenditure of capital on the land, allowance should be made for such expenditure. SREENATH BOSE *v.* NOBIN CHUNDER BOSE . 9 W. R., 473

135. ——— *Damages incurred by tenant in consequence of ejectment.*—A landlord who ejects his tenant illegally and holds possession as a wrong-doer, although he settles another tenant on the land, is liable, not only for the rent he receives under such possession, but also for the damages incurred by the tenant whom he has ejected, in consequence of the ejectment. MAHOMED AZMUL *v.* CHADEE LALL PANDEY . . 12 W. R., 104

136. ——— *Co-sharers—Decrees for and against different parties.*—The mode of calculating mesne profits in cases of decrees for and against each of the parties is to calculate and rateably divide them, and then to allow a set-off to the extent of the profits actually received by each sharer, the deficit in each year being made good by the party who received in excess of his share. BIJOY GOBIND NAIK *v.* KALEE PROSUNNO NAIK
[16 W. R., 294

137. ——— *Co-sharers—Fair rent.*—Where the parties to a suit for certain land and for the payment of mesne profits in respect of the same were co-sharers in the estate comprising such land, and the defendants had themselves occupied and cultivated such land,—*Held* that the most reasonable and fitting mode of assessing such mesne profits was to ascertain what would be a fair rent for such land if it had been let to an ordinary tenant and had not been cultivated by the defendants. GUNGA PROSAD *v.* GAJADAR PRASAD
[I. L. R., 2 All., 651

138. ——— *Costs of collection of rent.*—Where a suit is decreed as one for possession with mesne profits, the decree-holder is not barred from asking the Court, under s. 197, Civil Procedure Code, to inquire into the amount of mesne profits in execution. In decreeing mesne profits, a Court has no right to disallow the costs of collection on the assumption that a large zamindar can collect rents without costs. GOOROO DOSS ROY *v.* ANUND MOYEE DEBIA . . 15 W. R., 203

139. ——— *Mustagiri tenures.*—Where the custom of collecting rents from mustagirs prevails, the mustagiri jumma is to be the basis of account of mesne profits to be recovered from a judgment-debtor. AHMED REZAH *v.* ENAET HOSSEIN . . . . 1 W. R., Mis., 20

140. ——— *Rent left uncollected.*—In a suit for mesne profits the defendant cannot have credit for rents which he has left uncollected from the raiyats. MUHROOA *v.* HEERARAM MISSER . . . . . . 1 Hay, 277

141. ——— *Value of trees cut down—Decree for mesne profits.*—The value of trees cut down and appropriated by a judgment-debtor, against whom a decree with mesne profits has been given, may be included in the mesne profits for which the judgment-debtor, whilst in wrongful possession, is liable. BUNEED SINGH *v.* SUDASEEB DUTT . . . . . 2 W. R., Mis., 50

142. ——— *Surunjamee, upon what profits to be allowed.*—Surunjamee should be allowed upon the amount actually collected, and not upon the net proceeds coming to the zamindar. ERFOONISSA CHOWDHRAIN *v.* RUKEEBOONISSA . . . . . 9 W. R., 457

143. ——— *Average of several years.*—Decree of Sudder Court estimating the amount of mesne profits from the average of two preceding years, as ascertained in a former suit (the evidence in the present suit being unsatisfactory on both sides), upheld. SOORIAH ROW *v.* ENOOGUNTY SOORIAH .
[5 W. R., P. C., 125 ; 2 Moore's I. A., 12

144. ——— *Endowed lands—Expenses of worship.*—In the case of endowed lands, the judgment-debtor is entitled to a deduction, from the amount of mesne profits ascertained to be due, of the expenses incurred by him in carrying on the worship of the idols. THAKOOR DOSS ACHARJEE CHUCKERBUTTY *v.* SHOSHEE BHOOSUN CHATTERJEE
[17 W. R., 208

145. ——— *Mesne profits on accreted land—Presumption as to quantity of land under cultivation—Evidence.*—In determining the mesne profits upon alluvial land gained by accretion and decreed to the respondent, the amount of such profits depending upon the quantity of land that had been under cultivation during a definite period, the Courts below found that, at the end of that time, an area of a certain number of bighas was cultivated land. There was no evidence, however, to show what had been the increase year by year of the area cultivated, and on this question the appellants objecting to the amount of the mesne profits assessed by the Court could have produced evidence consisting of the papers usually kept in a zamindari serishta showing how gradual the increase had been; but these documents they withheld. *Held* by the Privy Council that on the above fact the Courts had properly presumed against them that the entire area of all the bighas above mentioned had come under cultivation from the beginning of the period. MAHABIR PERSHAD *v.* RADHA PERSHAD SHINGH

[I. L. R., 18 Calc., 540

146. ——————— *Mesne profits, Ascertainment of—Deductions claimed.*—Where a decree awarded mesne profits of the lands claimed in the suit, and the Court declined, in execution of the decree, to investigate questions relating to the deductions claimed by the defendant, on the ground that to do so would be "to go behind the decree," and that it was not competent to the Court to do that in executing the decree,—*Held* that the mesne profits could only be ascertained after making deductions from the gross earnings for all such payments made by the defendant as the plaintiff would have been bound to make if he had been in possession. It was therefore the duty of the Court executing the decree to inquire into the payments which the defendant alleged he had made, and also to determine the question whether, as alleged by the plaintiff, the lands forming the subject-matter of the suit were rent-free. KACHAR ALA CHELA *v.* OGHADBHAI THAKARSHI. OGHADBHAI THAKARSHI *v.* KACHAR ALA CHELA

[I. L. R., 17 Bom., 35

147. ——————— *Assessment of mesne profits in execution—Civil Procedure Code (Act XIV of 1882), s. 211—Local investigation by Ameen—Civil Procedure Code, ss. 392, 393—Dakhilas or rent-receipts of tenants—Rents which by ordinary diligence might have been obtained—Interest—Discretion of Court in declining to take evidence after the report.*—The Court executing a decree for mesne profits commissioned an Ameen, under s. 392 of the Civil Procedure Code, to make a local investigation as to them. He was unable to obtain the rent dakhilas of tenants. He inquired as to the prevailing rates of rent for the land which he measured, and included in his estimate of the mesne profits rents which with ordinary diligence might have been obtained. Upon objections taken the questions arose: (1) whether the assessment should have proceeded only upon the rent actually realized, or the Ameen was right in taking the rent last mentioned into the account; (2) whether the evidence of the rent dakhilas was essential: (3) whether interest, not mentioned in the decree, should have been allowed; (4) whether or not evidence on the application of the objector should have been taken by the Court after return of the evidence taken in the locality by the Ameen together with his report. *Held* as to (1) that inclusion, in the assessment of mesne profits, of rents, which at the prevailing rates might have been received by ordinary diligence, was authorized by s. 211 of the Civil Procedure Code. As to (2), that the dakhilas were important evidence, but not essentially necessary. As to (3), that the expression "mesne profits" included, under s. 211, interest on them; but this could only be allowed for not more than three years from the decree, or until possession within that time. As to (4), the question must be decided on general principles in each case. In this instance judicial discretion had been rightly exercised in the Court executing the decree declining to take fresh evidence. GRISH CHUNDER LAHIRI *v.* SOSHI SHIKHARESWAR ROY . . . . **I. L. R., 27 Calc., 951**

[L. R., 27 I. A., 110

4 C. W. N., 631

148. ——————— *Oudh Talukhdars' Relief Act, 1870—Interest on mesne profits.*—An under-proprietor, having been dispossessed by a manager of the superior estate, appointed under the Oudh Talukhdars' Relief Act, 1870, recovered possession under a decree, and afterwards sued for mesne profits. *Held* that a person who had not himself received the mesne profits having come into possession of the talukh upon its being released from management under the above Act, would not be chargeable with sums which, as it was alleged, might have been received by way of mesne profits, but had not been received in consequence of the manager's wilful default; there being nothing to show that such talukhdar could be charged with anything more than was actually received by him. There being no rule of law obliging the Court to allow interest upon mesne profits, it is a matter for the discretion of the Court, upon consideration of the facts, whether to allow interest or not. KISHNANAND *v.* PARTAB NARAIN SINGH

[I. L. R., 10 Calc., 792: L. R., 11 I. A., 88

149. ——————— *Interest on mesne profits not given by decree—Interest not obtainable in execution—Civil Procedure Code, 1882, s. 211—Costs of collection of rents by a trespasser in possession not to be set off against mesne profits.*—A plaintiff sued for cancellation of a certain lease, and for ejectment of the defendant as a trespasser, and for mesne profits with interest on such mesne profits. The decree which he obtained was a decree for cancellation of the lease and ejectment of the defendant, and ordered that mesne profits should be ascertained in the execution department, but was silent as to interest. *Held* that interest on the mesne profits could not be obtained in execution of the decree. *Hurro Durga Chowdhrani* v. *Surut Sundari Debi, I. L. R., 8 Calc., 332,* and *Kishna Nand* v. *Kunwar Partab Narain Singh, I. L. R., 10 Calc., 792: L. R., 11 I. A., 88,* referred to. *Held* also that, as the defendant had thrust himself into an estate and not acted in the exercise of a *bonâ fide* claim of right, he was not entitled to charge collection expenses in reduction of the mesne profits. *McArthur & Co.* v. *Cornwall, L. R., 1892, A. C., 75,* distinguished. ABDUL GHAFUR *v.* RAJA RAM . **I. L. R., 22 All., 262**

150. ——————— *Experience of Judge deciding case—Evidence.*—In estimating mesne profits for a period of wrongful dispossession, the lower Courts were held to have pursued an incorrect course in deciding upon the supposed personal experience of the Judges instead of upon evidence laid before them. The Court ought to have done its best to estimate, from the evidence before it, what

MESNE PROFITS—*continued.*

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would have been the net profits which the dispossessed owner would have earned by the cultivation during that period had he been in possession. KISHEN PERSHAD SINGH *v.* CROWDY

[23 W. R., 15

151. ——— *Amount claimed less than amount proved.*—The Court cannot give a larger amount of mesne profits than is claimed, although more is proved. SOORIAH ROW *v.* COTAGHERY BOOCHIAH

[5 W. R., P. C., 127: 2 Moore's I. A., 113

GOOROO DOSS ROY *v.* BUNSHEE DHUR SEIN

[15 W. R., 61

KAROO LALL THAKOOR *v.* FORBES **7 W. R., 140**

152. ——— *Decree for amount larger than that claimed.*—A decree for wasilat for a larger sum than that mentioned in the plaint was upheld in appeal, on the ground that the plaint did not profess to do more than give the approximate value of the produce of the land, and that the sum decreed had been found due after two careful local investigations. PEAREE SOONDUREE DOSSEE *v.* ESHAN CHUNDER BOSE . **16 W. R., 302**

153. ——— *Execution of decree—Amount awarded in execution larger than that claimed in plaint—Court Fees Act (VII of 1870), s. 11, para. 2.*—The plaintiff brought a suit for possession and for a certain sum as mesne profits, which he assessed at three times the annual rent paid to the defendant by tenants in actual possession of the land. He obtained a decree for possession, and the decree ordered that the amount of mesne profits due to him should be determined in the execution proceedings. On an investigation a larger sum was found to be due to him for mesne profits than that claimed by him in his suit. The plaintiff therefore paid the excess fee as provided by para. 2 of s. 11 of Act VII of 1870; but it was held that the amount of mesne profits recoverable by him must be limited to the amount claimed in the plaint. BABOOJAN JHA *v.* BYJNATH DUTT JHA

[I. L. R., 6 Calc., 474: 7 C. L. R., 539

154. ——— *Amount claimed in plaint—Larger amount found due by Ameen.*—Where a plaintiff, in bringing a suit for possession and for mesne profits, approximately estimates the amount of such mesne profits at a certain sum, and obtains a decree which leaves the amount due as mesne profits to be ascertained in execution, he is not bound down to the amount claimed in his plaint; but if more is found due to him, he is entitled on payment of further Court-fees to recover the larger amount so found due. *Baboojan Jha* v. *Byjnath Dutt Jha, I. L. R., 6 Calc., 474,* distinguished. JADOOMOEY DABEE *v.* HAFEZ MAHOMED ALI KHAN

[I. L. R., 8 Calc., 295

155. ——— *Execution of decree—Amount stated in plaint—Estoppel.*—When, in a suit for possession of land and mesne profits at a rate stated in the plaint, a decree is passed which directs that the amount of mesne profits be ascertained in execution of the decree, the plaintiff is not limited to the amount or rate stated in his plaint, though it may be used as evidence against him in favour of the defendant. *Baboojan Jha* v. *Byjnath Dutt Jha, I. L. R., 6 Calc., 474,* explained. GAURI PRASAD KOONDOO *v.* REILY

[I. L. R., 9 Calc., 112: 12 C. L. R., 41

HURRO GOBIND BHUKUT *v.* DIGUMBUREE DEBIA

[9 W. R., 217

MILITARY AUTHORITIES, JURISDICTION OF.

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.

[13 B. L. R., 474
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MILITARY CODE.

See SMALL CAUSE COURT, MOFUSSIL—LAW OF SMALL CAUSE COURTS.

[5 Bom., A. C., 99

MILITARY COURTS OF REQUEST.

See APPEAL—ACTS—MILITARY COURTS OF REQUESTS ACT . . **2 N. W., 229**
[3 N. W., 75

See JURISDICTION—QUESTION OF JURISDICTION—GENERALLY . **1 Agra, 222**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN.

[1 Mad., 443
2 Mad., 389, 439

1. ——— **Jurisdiction**—*Act XLII of 1860—Stat. 20 & 21 Vict., c. 66, s. 67.*—S. 6 of Act XLII of 1860 did not alter or interfere with the jurisdiction of the Military Courts of Requests established by Stat. 20 & 21 Vict., c. 66, s. 67. SHANMUGA *v.* MEDDLETON . . **1 Mad., 443**

2. ——— **Act XI of 1841**—*Act XII of 1842 (Military Bazars Act)—Right of suit.*—The provisions of Act XII of 1842 apply to all the Courts established by Act XI of 1841, whether those Courts are held within or without British territory. It is incumbent on all persons claiming the privilege of suit given by these Acts, when residents within cantonments, to cause themselves to be registered. TEJ RAM *v.* MOOLTAN MULL . . **3 N. W., 70**

3. ——— *Suit against Cantonment Magistrate.*—Act XI of 1841 did not confer jurisdiction on a Military Court of Requests to entertain a suit against the Cantonment Magistrate as representing the Government. JODHRAJ *v.* CANTONMENT MAGISTRATE OF MORAR

[1 N. W., 174: Ed. 1873, 253

MILITARY COURTS OF REQUEST —*concluded.*

4. ———— *Civil Procedure Code, 1859, ss. 114, 119.*—The Code of Civil Procedure, 1859, except so far as its provisions enact rules for appeals from Subordinate Courts, did not apply to proceedings under Act XI of 1841 (Military Court of Requests Act). These proceedings are regulated by the Act, and ss. 114 and 119 of the Civil Procedure Code do not apply. Gunsam Doss *v.* Mooltan Mull . . . . . . 2 N. W., 192

5. ———— ss. 2, 17—*Persons beyond British territory.*—S. 2 and 17 of Act XI of 1841 must be read together as regards persons amenable to Military Courts of Requests beyond British territory. Mooltan Mull *v.* Gunsam Doss [3 N. W., 75

6. ———— s. 17—*Decree by default on non-appearance of plaintiff.*—The term "rules in force" in s. 17 of Act XI of 1841 is to be interpreted as equivalent to "rules for the time being in force." It is not competent for a Court of Requests to pronounce a decree (by default) in favour of defendant without considering the evidence before it. Ghuntham Doss *v.* Mooltan Mull [2 N. W., 229

MILITARY DECORATION.

———— Taking pawn of, from soldier.

See Army Act, 1881, s. 156.
[I. L. R., 10 Mad., 108

MILITARY OFFICER.

See Attachment—Subjects of Attachment—Salary . 7 N. W., 331
[I. L. R., 1 All., 730
I. L. R., 9 Mad., 170
I. L. R., 24 Calc., 102

See Small Cause Court, Mofussil—Jurisdiction—Military Men.
[2 B. L. R., S. N., 3
2 Mad., 389, 439

See Summons, Service of.
[11 B. L. R., Ap., 43

MINISTERIAL OFFICER.

See Appeal—Orders.
[3 B. L. R., A. C., 370
14 W. R., 328

See Superintendence of High Court—Charter Act, s. 15—Civil Cases.
[19 W. R., 148
20 W. R., 470

1. ———— Appointment—*Act XII of 1856, s. 3—Civil Court Ameens.*—The High Court had no authority to interfere in the case of a person who was not confirmed in an acting appointment of Civil Court Ameen for which the Judge considered some other candidate to be more fit. In the matter of Doorga Doss Doss . . . 17 W. R., 226

2. ———— *Act XVI of 1868—Power of Subordinate Judges.*—Act XVI of 1868 contemplated that the selection and appointment of persons to fill ministerial offices in the establishments of Subordinate Judges should be left to those Judges, the power of the Zillah Judge extending merely to the approval or disapproval of the person appointed. The latter's refusal of sanction must be based on grounds personal to the appointee; and he must not interfere and control the selection of persons so as to influence the inferior Judge towards the appointment of a particular candidate. In the matter of the petition of Oolfut Hossein [13 W. R., 197

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3. ———— *Act XVI of 1868, s. 9—Munsif's Court.*—Under s. 9, Act XVI of 1868, the nomination and appointment of the ministerial officers of a Munsif's Court rested with the Munsif, subject to the approval of the District Judge. If the District Judge did not approve, he could refuse his sanction, but the law did not permit him to appoint any other person. In the matter of Raj Coomar Goopto . . . 11 W. R., 354

4. ———— *Act XVI of 1868, s. 9—Appointment of serishtadar.*—In the matter of the appointment of a serishtadar in a Munsif's Court, it was held to be no irregularity or impropriety on the part of a Judge to call the attention of the Munsif to a circular order of the High Court communicating the wishes of Government that preference should be given to certain discharged officers. In the matter of Anund Chunder Chuckerbutty [14 W. R., 376

5. ———— *Power of Judge to interfere with appointment of serishtadar by Munsif.*—Where a Munsif appointed a person as serishtadar in his Court and it did not appear that the person so appointed was in any respect disqualified for the appointment, or that his appointment was open to any sort of objection whatever, or that the Munsif had neglected any of the preliminary inquiries or formalities prescribed for such cases,—*Held* that it was not competent to the Zillah Judge, merely on the ground that in his opinion the claims of some other persons were superior to those of the person appointed, to remove him from the office, and to direct the appointment of a different and specified person. In the matter of the petition of Bhoyrub Chunder Deb . . . . 7 W. R., 131

6. ———— *Removal of officer—Power of Zillah Judge.*—A Zillah Judge may refuse to confirm the appointment, by a Subordinate Court, of a disqualified person as a ministerial officer, or may rescind such an appointment if not made conformably to the rules prescribed by the High Court, and require the Subordinate Court to make a fresh appointment after observance of the rules. But he has no authority, after allowing an appointment to stand for nine months, to displace the person so appointed and to appoint another in his stead. In the matter of the petition of Kally Prosunno Chatterjea . . . . 7 W. R., 224

7. ———— Removal—*Removal of mohurrir Power of Zillah Judge.*—A Zillah Judge is not competent to remove a mohurrir from one Munsifi without any fault of his, and to subject him to los

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by requiring him to go to a distant Munsifi. In the matter of Hurro Gobind Biswas

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8. ——— **Dismissal**—*Ground for dismissal.*—The fact of a ministerial officer carrying on a shop is not such an irregularity in his conduct as to justify his dismissal. In re Komul Lochun Bhadoory . . . . . . 2 Hay, 674

9. ——— *Ground for dismissal.*—Private concerns of a ministerial officer] need not generally be taken notice of by the head of a Court or office, but if they appear on the face of the record of a case to be such that he cannot be entrusted with any onerous duty, the head of that office or Court is justified in dismissing him from office. In the matter of the petition of Feddah Hossein . . . . . . 2 Hay, 677

MINOR.

Col.

1. Evidence of Minority . . . 5894
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See Insolvent Act, s. 7.

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——— **Custody of—**

See Criminal Procedure Codes, s. 551.

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1. EVIDENCE OF MINORITY.

1. ——— **Plea of minority, Determination of**—*Personal appearance of minor.*—The plea of minority should be decided on positive evidence, and not merely on the appearance of the alleged minor. Khettermohun Ghose *v.* Ramessur Ghose . . . . W. R., 1864, 304

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MINOR—*continued.*

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.

2. ———— **Power to contract**—*Necessaries—Authority to third person—Settlement of account.*—Minors have a qualified power of contracting, and an implied or express contract for necessaries is binding absolutely on a minor. As a minor cannot himself, by reason of insufficient capacity for business, state and settle an account so as to be bound thereby, so neither can he authorize another party to do for him that which he cannot do himself. BYKUNTNATH ROY CHOWDHRY *v.* POGOSE . **5 W. R., 2**

3. ———— **Voidable contract**—*Act IX of 1872, ss. 10, 11—Bond—Minority of obligee.*—A contract entered into with a minor is merely voidable at the option of the minor; and there is nothing to prevent him suing thereon, supposing the contract to be otherwise valid. SASHI BHUSAN DUTT *v.* JADU NATH DUTT . . . **I. L. R., 11 Calc., 552**

See HARI RAM *v.* JITAN RAM
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4. ———— *Contract by a minor.*—A contract entered into with a minor is only voidable at the option of the minor. *Shashi Bhusan* v. *Jadu Nath Dutta, I. L. R., 11 Calc., 552,* followed. MAHAMED ARIF *v.* SARASWATI DEBYA
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5. ———— *Contract Act (IX of 1872), ss. 10 and 11—Suit on a bond passed to a minor.*—A money-bond taken by a minor is good in law, and may be sued on. HANMANT LAKSHMAN *v.* JAYRAO NARSINHA . **I. L. R., 13 Bom., 50**

6. ———— **Purchase from minor**—*Validity of purchase.*—A purchase from a minor is not *ipso facto* invalid. RENNIE *v.* GUNGA NARAIN CHOWDHRY . . . . . **3 W. R., 10**

7. ———— **Pre-emption**—*Guardian.*—The circumstance that a co-sharer of a village was a minor at the time of the preparation of the wajib-ul-urz, and that document was not attested on his behalf by a guardian or duly authorized representative, is not a reason for excluding him from the benefit of the provisions of that document relating to pre-emption. LAL BAHADUR SINGH *v.* DURGA SINGH
[I. L. R., 3 All., 437

8. ———— **Right of minor to contract**—*Contract by a minor—Specific performance of contract, Right of minor to enforce—Contract Act (IX of 1872), s. 11.*—A minor in this country cannot maintain a suit for specific performance of a contract entered into on his behalf by his guardian. *Flight* v. *Bolland, 4 Russ., 298,* followed. *Semble*—Having regard to the provisions of s. 11 of the Contract Act (IX of 1872), a minor in this country cannot contract at all. *Mahamed Arif* v. *Saraswati Debya, I. L. R., 18 Calc., 259,* and *Hanmant Lakshman* v. *Jayarao Narsinha, I. L. R., 13 Bom., 50,* referred to. FATIMA BIBI *v.* DEBNAUTH SHAH
[I. L. R., 20 Calc., 508

Dissented from in KRISHNASAMI *v.* SUNDARAPPAYYAR . . . **I. L. R., 18 Mad., 415**

and KHAIRUNNESSA BIBI *v.* LOKE NATH PAL
[I. L. R., 27 Calc., 276

9. ———— **Capacity of minor to contract**—*Law of domicile—Contract Act (IX of 1872), ss. 11 and 128—Suit on bond executed by minor and not ratified on his attaining majority—Liability of surety of minor.*—By the law of England, the question of the capacity of a person to enter into a contract is decided by the law of his domicile. This principle of English law is adopted by s. 11 of the Contract Act. A minor cannot be sued on a bond executed by him during minority, and not ratified by him after his majority. A surety to a bond passed by a minor for moneys borrowed for purposes of litigation not found to be necessary is liable to be sued on it, whether the contract of the minor is considered to be void or voidable. KASHIBA *v.* SHRIPAT NARSHIV
[I. L. R., 19 Bom., 697

10. ———— **Bond executed by minor**—*Necessaries—Suit against a minor on a registered bond executed by him for necessaries—Contract Act (IX of 1872), s. 68.*—On the 20th April 1886, a sum of money was advanced by *A* to a minor, who executed a bond in respect thereof and duly registered the same. The money was required by the minor to provide for his defence in certain criminal proceedings then pending against him on a charge of dacoity, and was used by him for that purpose. On the 18th June 1892 *A* instituted a suit against the minor for the amount due on the bond. It was urged on behalf of the minor, who had not attained majority at the time the suit was filed, that he was not liable to *A* for the amount advanced; that it was not advanced for "necessaries"; that he was not liable under the bond. *Held* that, the liberty of the minor being at stake, the money advanced must be taken to have been borrowed for "necessaries" within the meaning of s. 68 of the Contract Act. In such a case the bond, being the basis of the suit, could not be ignored and treated as non-existent, and, on its being proved to have been executed by the minor in respect of money advanced for necessaries, the plaintiff was entitled to a decree. SHAM CHARAN MAL *v.* CHOWDHRY DEBYA SINGH PAHRAJ
[I. L. R., 21 Calc., 872

11. ———— **Loans to a minor**—*Inquiries necessary to be made by lender—Burden of proof.*—A plaintiff who has advanced money to relieve the necessities of a minor must make all reasonable inquiries as to the facts of such necessities, and having made such inquiries and reasonably entertaining a *bonâ fide* belief in the existence of such necessities, he can advance his money in safety, even though the sum borrowed by the guardian upon the security of the minor's estate is not in point of fact used for his necessities or his benefit. On the other hand, a plaintiff who lends money without such inquiries cannot thereafter successfully have recourse

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—*continued.*

to the minor's estate for the satisfaction of the debt. *Hanooman Pershad Pandey* v. *Munraj Koonweeree, 6 Moore's I. A., 393,* referred to. KANDHIA LAL *v.* MUNA BIBI . . . **I. L. R., 20 All., 135**

12. ———— **Capacity to contract**—*Contract Act (IX of 1872), s. 10—Ratification—Release by minor father of his interest in joint property to his son—Family arrangement—Voluntary conveyance by father to son—Transaction impeached by subsequent creditors—Transfer of Property Act (IV of 1882), s. 7—Per* FARRAN, *C.J.,* and RANADE, *J.* (FULTON, *J.,* dissenting)—In India the contract of a minor is not void, but voidable only, and is capable of ratification after he attains majority. A release by a minor father of all his right and interest in the ancestral property to his son held to be valid if ratified by the donor after he attained majority. *V,* a minor member of an undivided Hindu family, in 1887 executed a release of his right and interest in certain ancestral property to his minor son. In 1882 the plaintiff obtained a decree against him in respect of a debt incurred subsequently to the date of the release, and he sought to attach the released property in execution of his decree. He impeached the validity of the release. *Per* RANADE, *J.*—The property sought to be protected by the release was admittedly ancestral property, and *V*'s minor son had a half share in it, of which the minor could at any time claim partition. The release was only intended to protect *V*'s one-half share against the consequences of his own improvidence. When all existing debts were paid off and settled, *V*'s right to make a voluntary conveyance of the same in his minor son's interest cannot be questioned. Such conveyances are well known in English law, and there have been cases in India also where Courts have given effect to such voluntary conveyances or gifts by a father to his son. *Ganga Sahai* v. *Hira Singh, I. L. R., 2 All., 809.* Such transactions do not become colourable merely because in their ultimate consequences they have the effect of protecting the family property against the prospective extravagance of the settlor, or because no adequate consideration is shown to have been paid by the party benefited. *Per* FULTON, *J.*—Apart from s. 7 of the Transfer of Property Act, 1882, which was not in force in the Presidency of Bombay when the release of 1887 was executed, a conveyance depends on a preceding contract, and cannot be valid unless the party making it is competent to contract. Without an antecedent agreement to give and receive, there can be no transfer at all. The power to convey must depend on the power to contract. Unless it can be held that the provisions of s. 10 of the Contract Act were not meant to be exhaustive, and it was intended to leave out of consideration agreements by minors, we must hold that a minor is incompetent to contract. *Held* (by FARRAN, *C.J.,* and FULTON, *J.* (RANADE, *J.,* dissenting), that the release was inoperative, and that the plaintiff was entitled to attach the property in execution of his decree. By FARRAN, *C.J.,* on the ground that it had not been ratified by *V* after he attained his majority By FULTON, *J.,* on the ground that the release was absolutely void and incapable of ratification. *Per* FARRAN, *C.J.,* and RANADE, *J.* (FULTON, *J.,* dissenting)—The release was voidable only at the option of the minor (*V*), and was not void, and, if it was ratified or not repudiated by him on attaining majority, it was, in the absence of fraud, a valid transaction, at least as against judgment-creditors whose debts were of a subsequent date. SADASHIV VAMAN DHAMANKAR *v.* TRIMBAK DIVAKAR KARUNDIKAR . . . **I. L. R., 23 Bom., 146**

13. ———— **Mortgage by infant whether void or voidable**—*Contract Act, s. 64—Evidence Act, s. 114—Misrepresentation.*—In a suit by a puisne mortgagee against the prior as well as the subsequent mortgagees and the mortgagor's representative where the subsequent mortgagees disputed the validity of the mortgages prior to the plaintiff's mortgage, but the plaintiff did not raise any issue as to that,—*Held* (1) that in a suit by a puisne mortgagee upon his mortgage, a prior mortgagee is not a necessary party, if such puisne mortgagee offer to redeem his mortgage. When the validity of the prior mortgage is in question, the offer to redeem should be made conditionally on the establishment of such mortgage; (2) that the question of the validity of the prior mortgages can be determined in this suit between the co-defendants. The prior mortgages were executed when the mortgagor was over 18, but under 21. A guardian of his person had been appointed under Act XL of 1858, but there was no evidence as to whether a certificate of administration had also been granted under that Act. The prior mortgagees thereupon contended (1) that under Act XL of 1858 a guardian of the person could not be appointed unless a certificate of administration was also granted, and there being no evidence of the latter being granted, this appointment of a guardian of the person alone was *ultra vires*; (2) that there was a fraudulent representation by the mortgagor as to his power to mortgage by which those claiming under him were estopped; (3) that the prior mortgages were not void, but only voidable; and that therefore the prior mortgagees were entitled to such relief as is indicated by s. 64 of the Contract Act. *Held* that, assuming (but without deciding the point) that under Act XL of 1858 a guardian of the person could not be appointed unless a certificate of administration was also granted, an independent appointment of a guardian of the person might be made, and, there being no evidence to show that the certificate was not granted, the Court must presume the regularity of the orders under s. 114, cl. (*e*), of the Evidence Act; (2) that with regard to fraudulent representation, it is not enough to show that the minor allowed the mortgagees to deal with him as though he were an adult, but it must be established that there was a fraudulent misrepresentation, a fraudulent allegation that a state of things existed in the truth of which representation the person had no honest belief; that there was no evidence of this; (3) that on the authority of the decisions of this Court the

Court felt bound to hold, though dissenting from the same, that the mortgages were only voidable, but held on the facts that the mortgages were avoided by the mortgagor. *Sashibhusan Dutt* v. *Jadunath Dutt, I. L. R., 11 Calc. 552; Mahomed Arif* v. *Saraswati Dabya, I. L. R., 18 Calc., 259,* doubted; and (4) that such rights as might be created under s. 64 of the Contract Act could not be enforced between the co-defendants in this suit. RAJ COOMARY *v.* PREO MADHUB NUNDY . . . **1 C. W. N., 453**

14. ———— Liability of minor in equity —*Representations as to age known to be false—Action on the contract—Action framed in tort—Right of suit—Costs.*—Where an infant obtained a loan upon the representation (which he knew to be false) that he was of age,—*Held* that no suit to recover the money could be maintained against him, there being no obligation binding upon the infant which could be enforced upon the contract either at law or in equity, but that the defendant should not be allowed costs in either Court. DHANMULL *v.* RAM CHUNDER GHOSE . . **I. L. R., 24 Calc., 265**
[1 C. W. N., 270

15. ———— Fraudulent representation by minor that he was of age—*Mortgage.*—A sum of money was advanced to a minor by a mortgagee, secured by a mortgage of house property, on the representation by the minor that he was of age, and the mortgagee was deceived by such false representation. *Held* that the mortgagee was entitled to a mortgage decree against the property of the infant. *Dhanmull* v. *Ram Chunder Ghose, I. L. R., 24 Calc., 265,* distinguished and doubted. *Nelson* v. *Stocker, 4 De Gex & J., 458, per* Turner, *L.J.,* applied. SARAL CHAND MITTER *v.* MOHUN BIBI
[I. L. R., 25 Calc., 371
2 C. W. N., 18, 201

16. ———— Mortgage by minor—*Voidable mortgage—Estoppel—Evidence Act (I of 1872), s. 115—Fraud—Contract Act (IX of 1872), s. 64—Restoration of benefit by minor.*—The general law of estoppel as enacted by s. 115 of the Evidence Act (I of 1872) will not apply to an infant, unless he has practised fraud operating to deceive. A Court administering equitable principles will deprive a fraudulent minor of the benefit of a plea of infancy; but he who invokes the aid of the Court must come with clean hands and must establish, not only that a fraud was practised on him by the minor, but that he was deceived into action by the fraud. *Ganesh Lalu* v. *Bapu, I. L. R., 21 Bom., 198,* dissented from. *Sarat Chunder* v. *Gopal Chunder Laha, I. L. R., 20 Calc., 296; Mill* v. *Fox, L. R., 37 Ch. D., 153; Wright* v. *Snow, 2 De Gex & S. 321;* and *Nelson* v. *Stocker, 4 De Gex & J., 458,* discussed. If money advanced to an infant on a mortgage declared void is spent by him, then there is no benefit which he is bound to restore under the provisions of s. 64 of the Contract Act (IX of 1872). DHURMO DASS GHOSE *v.* BRAHMO DUTT . . **I. L. R., 25 Calc., 616**
[2 C. W. N., 330

Held (on appeal affirming the above decision)—S. 115 of the Evidence Act has no application to contracts by infants; but the term "person" in that section applies only to a person of full age and competent to enter into contracts. The words "person" and "party" in s. 64 of the Contract Act are interchangeable, and mean such a person as is referred to in s. 11 of that Act, *i.e.,* a person competent to contract. A mortgagor employing an attorney, who also acts for the mortgagee in the mortgage transaction, must be taken to have notice of all facts brought to the knowledge of the attorney; and therefore, where the Court rescinded the contract of mortgage on the ground of the mortgagor's infancy and found that the attorney had notice of the infancy, or was put upon enquiry as to it,—*Held* (affirming the decision of JENKINS, *J.*) that the mortgagor was not entitled to compensation under the provisions of ss. 38 and 41 of the Specific Relief Act. *Ganesh Lala* v. *Bapu, I. L. R., 21 Bom., 198,* dissented from. *Mills* v. *Fox, L. R., 37 Ch. D., 153,* distinguished. BROHMO DUTT *v.* DHARMO DAS GHOSE
[I. L. R., 26 Calc., 381
3 C. W. N., 468

17. ———— Fraudulent representation by minor that he was of age—*Contract by minor.*—A minor representing himself to be of full age sold certain property to *A* and executed a registered deed of sale. The deed contained a recital that he was 22 years of age. *Held* in a suit by him to set aside the sale on the ground of his minority that he was estopped. GANESH LALA *v.* BAPU . . . **I. L. R., 21 Bom., 198**

18. ———— Enhancement of rent, Effect of—*Acts of mother and guardian how far binding on minor son—Kabuliat given by widow in possession to bind her son and successor to pay enhanced rent decreed against her.*—A patnidar obtained decrees for the enhancement of the rent of holdings in the possession of the widow of a deceased tenant, one decree being in respect of land formerly held by the latter, and the other in respect of a holding purchased by the widow, on behalf of her minor son by the deceased, whilst the enhancement suits were pending. The widow also signed kabuliats relating to both tenancies, agreeing, as mother of the minor, to pay the enhanced rent. *Held* that, as the patnidar was entitled to sue for enhancement, and it was not to be presumed that the mother held adversely to her son; also as she had come to what she believed to be, and was, a proper arrangement, the son, on his attaining full age and entering into possession of the tenancies, was bound by the kabuliats. WATSON & Co. *v.* SHAM LALL MITTER
[I. L. R., 15 Calc., 8
L. R., 14 I. A., 178

19. ———— Mortgage—*Power of minor to take a mortgage.*—Observations by STUART, *C.J.,* on the competency of a minor to take a mortgage. BEHARI LAL *v.* BENI LAL . **I. L. R., 3 All., 408**

MINOR—*continued.*

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—*concluded.*

20. ———————— *Act XL of 1858, s. 18—Guardian and minor—Mortgage without the sanction of the Civil Court—Void contract—Ratification by minor.*—A minor cannot ratify a mortgage of his immoveable property made by his guardian appointed under Act XL of 1858, without the sanction of the Civil Court, such a mortgage being under s. 18 of that Act void *ab initio*. Mauji Ram *v.* Tara Singh . **I. L. R., 3 All., 852**

21. ———————— *Sale in execution of decree—Usufructuary mortgage—Right of purchaser.*—The acts of a minor are only voidable, and not absolutely void. The purchaser of the right, title, and interest of a judgment-debtor sued to obtain immediate possession of the property purchased at a sale held in execution of a decree after setting aside an usufructuary mortgage executed by the judgment-debtor while a minor. *Held* that the sale in execution merely transferred to the purchaser the reversionary right of the judgment-debtor in the property, after the satisfaction of the usufructuary mortgage, and the right to set aside an act done during minority. *Held* also that, until a transaction by a minor was avoided by some distinct act on attaining majority, it must be considered valid. Hari Ram *v.* Jitan Ram . **3 B. L. R., A. C., 426: 12 W. R., 378**

See Sashi Bhusan Dutt *v.* Jadu Nath Dutt **[I. L. R., 11 Calc., 552**

3. LIABILITY FOR TORTS.

22. ———— **Responsibility of minor for his acts,**—As regards torts, a minor is responsible for his own acts. Luchmon Doss *v.* Narayan **[3 N. W., 191**

4. CUSTODY OF MINORS (ACT IX OF 1861, ETC.).

23. ———— **Right to choose custody**—*Habeas corpus, Return to.*—A girl under sixteen years of age has not such a discretion as enables her by giving her consent to protect any one from the criminal consequences of inducing her to leave the protection of a lawful guardian; but where the return to the writ of *habeas corpus* stated that a girl was above the age of sixteen (though her mother stated her to be of the age of thirteen years and nine months), the Court held that she was of years of discretion to choose for herself under whose protection she would remain. Queen *v.* Vaughan. In the matter of Ganesh Sundary Debi . . **5 B. L. R., 418**

In the matter of Khatija Bibi **[5 B. L. R., 557**

24. ———— **Application for custody of minor daughter**—*Act XL of 1858, s. 2—Principal Civil Court of original jurisdiction.*—An application was made to a Munsif for the custody of a minor daughter, which, on appeal to the Civil Judge, was dismissed. On appeal to the High Court,—*Held* all the proceedings must be quashed. The application should have been made in the principal Civil Court of original jurisdiction in the district. Harasundari Baistabi *v.* Jayadurga Baistabi . . . . **4 B. L. R., Ap., 36**

S. C. Huro Soonduree Boistobee *v.* Joy Doorga Boistobee . . . **13 W. R., 112**

Kristo Chunder Acharjee *v.* Kashee Thakooranee . . . . . . **23 W. R., 340**

25. ———— **Act IX of 1861**—*Construction of Act—Principal Civil Court of original jurisdiction.—Semble*—In Act IX of 1861, "the principal Civil Court of original jurisdiction in the district" means the principal Court of ordinary original civil jurisdiction. Ram Bunsee Koomaree *v.* Soobh Koomaree . . . **2 Ind. Jur., N. S., 193**

S. C. Ram Bunsee Koonwaree *v.* Soobh Koonwaree . . . . . . **7 W. R., 321**

26. ———————— *Pegu—European British minors.*—Act IX of 1861 applied to Pegu, and also to minors the lawful children of European natural-born British subjects. In re Hutton **[3 W. R., Rec. Ref., 5**

27. ———————— *European British minors, Custody of—Jurisdiction of Zillah Judge.*—Appellant having presented a petition to a Zillah Judge under Act IX of 1861, claiming the possession and custody of his two minor children alleged to be detained by their mother, the parties being European British subjects,—*Held* that such Judge had no power to entertain the application. In the matter of the petition of Shannon . . **2 N. W., 79**

28. ———————— **ss. 1, 3, 4**—*District Judge, Jurisdiction of—Civil Procedure Code, s. 17—Act IX of 1875 (Majority Act), s. 3—Discretion of Court—Guardian—Certificate of guardianship.*—An application was made to the District Judge of Allahabad, under s. 1 of Act IX of 1861, by a relative of a minor, alleging that the minor had, by the acts and with the connivance and assistance of the defendants, at Allahabad, been removed from the plaintiff's custody and guardianship at Allahabad, and praying for the minor's restoration thereto. At the time when the application was made, the minor was at Lahore. *Held* that, under ss. 1 and 4 of Act IX of 1861, read with s. 17 of the Civil Procedure Code, the application was cognizable by the District Judge of Allahabad, where the cause of action arose; and that, even apart from s. 17 of the Code, the minor having been in the custody and guardianship of a person within the jurisdiction of the Judge of Allahabad, that officer had full jurisdiction to deal with the application. Under s. 3 of Act IX of 1875 (the Indian Majority Act), a person under the age of eighteen is a minor within the meaning of Act IX of 1861. No such restriction as is imposed by s. 27 of Act XL of 1858, prohibiting the appointment of a guardian of any minor whose father is living and is not a minor, applies to persons applying under s. 1 of Act IX of 1861. Where the father of a minor was old and unable to work from age and weakness, and the

MINOR—*continued.*

4. CUSTODY OF MINORS (ACT IX OF 1861, ETC.)—*continued.*

minor's elder brother had been maintaining and educating the minor at his own expense,—*Held* that, under the circumstances, the brother was competent to apply under s. 1 of Act IX of 1861, and to ask for a certificate of guardianship. The words in s. 3 of Act IX of 1861, "and thereupon proceed to make such order as it shall think fit in respect to the custody or guardianship of such minor," confer on the Court an absolute discretion to make an order as to custody or guardianship, or to refrain from making such an order where the circumstances do not call for such an order being made. Where a minor Hindu over the age of sixteen, who had embraced Christianity and left the house of his elder brother by whom he had been maintained and brought up, appeared to be well able to take care of and provide for himself, and preferred to be left as he was, and had sufficient mental capacity to judge what was best for himself, the Court refused to make any order upon an application by the brother for his custody and guardianship. SARAT CHANDRA CHAKARBATI *v.* FORMAN

[I. L. R., 12 All., 213

29. ——————— **s. 7**—*Act XL of 1858, s. 12—Jurisdiction of Civil Court.*—Where application was made under Act IX of 1861, and an estate was taken charge of by the Collector under s. 12, Act XL of 1858, the interference of the Civil Court was held to be precluded alike by the former Act (s. 7) and by the latter. MOHESSUR ROY *v.* COLLECTOR OF RAJSHAHYE . **16 W. R., 263**

30. ——————— *Wife—Outcast for criminal offence.*—*P*, whose minor wife had refused to return to cohabitation with him on the ground that he was out of caste in consequence of having committed a criminal offence, applied to the District Court under Act IX of 1861 for the custody of her person. *Held* that that Act did not apply to such a case. PAKHANDU *v.* MANKI . **I. L. R., 3 All., 509**

31. ——————— *Wife—Dispute on fact of marriage.*—Where a person claims the custody of a female minor on the ground that she is his wife, and such minor denies that she is so, Act IX of 1861 does not apply. Such person should establish his claim by a suit in the Civil Court. BALMAKUND *v.* JANKI . . . . **I. L. R., 3 All., 403**

32. ——————— *Jurisdiction of District Judge—Marriage—Injunction.*—The paternal uncle of a female Hindu minor, whose father was dead, applied to the District Judge, under Act IX of 1861 for the custody of the minor and for an injunction to prevent the mother of the minor from carrying out a projected marriage. On the 8th of March 1881 the Judge issued an *ad interim* injunction. When the application came on for hearing, it appeared that the marriage had taken place before the order of injunction had reached the parties. The District Judge found that, though the mother was entitled to the custody of the minor, yet the petitioner was entitled to give the minor in marriage in preference to the mother. The District Judge also found that the marriage had not in fact been validly performed. On appeal to the High Court, it was contended that the District Judge had no jurisdiction to determine the right of any party to give an infant in marriage on an application under Act IX of 1861, or to grant an injunction; and it was also contended that the Magistrate was wrong in entering into the question of the factum of the marriage. *Held* that, under the provisions of Act IX of 1861, the District Judge had jurisdiction. *Balmakund* v. *Janki, I. L. R., 3 All., 403; Wolverhampton Waterworks Co.* v. *Hawkesford, 28 L. J. (N. S.) C. P., 242;* and *Collector of Pubna* v. *Romanath Tagore, B. L. R., Sup. Vol., 630,* referred to. *Held* also that, for the purpose of deciding whether the injunction should issue, the Judge was justified in entering into the question of the factum of the marriage, though his finding on that point would have no effect in determining its validity. IN THE MATTER OF THE PETITION OF KASHI CHUNDER SEN. BROHMOMOYEE *v.* KASHI CHUNDER SEN

[I. L. R., 8 Calc., 266: 10 C. L. R., 91

MINOR—*continued.*

4. CUSTODY OF MINORS (ACT IX OF 1861, ETC.)—*concluded.*

5. REPRESENTATION OF MINOR IN SUITS.

33. ——————— **Disability to sue**—*Objection on ground of disability.*—An infant cannot sue except by next friend, and where an objection is made on the ground of the disability of the plaintiff, it was held that the suit might be dismissed. CHINNIAH *v.* BAUBUN SAIB . . . . **5 Mad., 435**

34. ——————— *Civil Procedure Code, s. 443—Defence of minority—Guardian ad litem, Appointment of—Procedure.*—When minority is pleaded as defence to an action, a guardian should be appointed for the defendant, and a preliminary issue should be framed and tried as to whether defendant is or is not a minor. KASI DOSS *v.* KASSIM SAIT . . . . **I. L. R., 16 Mad., 344**

35. ——————— **Disability to carry on suit**—*Suit by minor—Next friend.*—Plaintiff being a minor, his suit was not dismissed, but he was directed to appoint a next friend to sue for him. ROLLO *v.* SMITH . . . . **1 B. L. R., O. C., 10**

36. ——————— **Suit by minor whose guardian has omitted to sue.**—A minor, when he comes of age, is not precluded from suing in his own name for anything that his guardian, either through ignorance or negligence, has omitted to prosecute. KYLASH CHUNDER SIRCAR *v.* GOOROO CHURN SIRCAR. GOOROO CHURN SIRCAR *v.* KYLASH CHUNDER SIRCAR . . . . . . **3 W. R., 43**

37. ——————— **Suit on behalf of minor**—*Act XL of 1858, s. 3—Suit of small value.*—A suit can be prosecuted or defended by a relative on behalf of a minor without a certificate under Act XL of 1858 when the subject-matter of the suit is of small value. A suit to recover real and personal property of the value of R7,260 was allowed to be prosecuted by the brother of a minor on behalf of himself and

his minor brother, under Act XL of 1858, s. 3. NABADWIP CHANDRA SIRKAR *v.* KALINATH PAL [3 B. L. R., Ap., 130

38. ———— *Objection to minor's representative.*—Where a suit was brought by a manager, appointed by the Court of Wards on behalf of an infant who had a right to sue, an objection to the manager's authority was disallowed as merely technical. HARDI NARAIN SAHU *v.* RUDER PERKASH MISSER . . **I. L. R., 10 Calc., 627** [L. R., 11 I. A., 26

39. ———— *Next friend of minor—Uncle representing minor nephew—Mahomedan law—Guardian.*—The rule of Mahomedan law that an uncle cannot be the guardian of the property of a minor, does not prevent an uncle representing his infant nephew, under the Code of Civil Procedure, as next friend in a suit. ABDUL BARI *v.* RASH BEHARI PAL . . . **6 C. L. R., 413**

40. ———— *Suit to set aside alienation affecting minor's interests—Mad. Reg. V of 1804, s. 8—Manager appointed under Regulation—Collector—Next friend of minor.*—The holder of an impartible zamindari governed by the law of primogeniture, having a son, executed a mining lease of part of the zamindari for a period of twenty years by which no benefit was to accrue to the grantor unless mining operations were carried on with success, and the commencement of mining operations was left optional with the lessee. On the death of the grantor, his minor son and successor brought a suit by the manager appointed under Madras Regulation V of 1804, s. 8, and the manager being subsequently dismissed, the Court of Wards authorized the Collector of the district to conduct the suit as next friend of the minor. The suit was one against the assignee of the lease to have the lease set aside. *Held* by PARKER, J., that the plaintiff could sue by the Collector as his next friend, since the Court of Wards had authorized him to do so, there is nothing in the Regulation to restrict the duty of conducting a suit as next friend of a minor to the manager appointed under s. 8. BRESFORD *v.* RAMASUBBA . **I. L. R., 13 Mad., 197**

41. ———— *Married woman —Next friend—Civil Procedure Code (Act XIV of 1882), s. 445.*—A married woman may act as the next friend of an infant plaintiff. *Guru Pershad Sing* v. *Gossain Munraj Puri, I. L. R., 11 Calc., 733,* overruled. ASIRUN BIBI *v.* SHARIP MONDUL [I. L. R., 17 Calc., 488

42. ———— *Suit by minor in Mamlatdar's Court for possession—Mamlatdars' Courts Act (Bom. Act III of 1876)—Right to sue by next friend.*—A minor may sue for possession in the Mamlatdar's Court by his next friend, although the Mamlatdars' Courts Act (Bombay Act III of 1876) makes no provision for such a suit. DATTATRAYA KESHAB *v.* VAMAN GOVIND [I. L. R., 21 Bom., 88

43. ———— A minor may sue or be sued in a Mamlatdar's Court in a suit for possession, if he is represented by a properly constituted guardian. SAIFULLA *v.* HAJI MAYA [I. L. R., 24 Bom., 238

44. ———— *Improper representation of minor—Effect on proceedings.*—Where on appeal the Court was of opinion that certain minors were not properly represented in a suit brought by them, it declared all the proceedings in the suit to be null and void as far as the minors were concerned. With regard to the party acting as their next friend, the Court allowed her to withdraw the suit with liberty to bring a fresh suit, and returned the plaint. GURU PERSHAD SINGH *v.* GOSSAIN MUNRAJ PURI [I. L. R., 11 Calc., 733

45. ———— *Representation of minor heirs as defendants by including Collector as defendant, as their guardian ad litem—Civil Procedure Code (1882), ss. 13, 244, and 312—Power of a Hindu son to question the alienation of an impartible estate by his father.*—Representation by a Collector of all minor sons of a deceased zamindar as their guardian *ad litem* under the order of the Court, the Collector being added as a defendant in the suit, is an adequate representation of all the sons, even if the Collector could only treat, under Regulation V of 1804, the particular minor on whose behalf the Court of Wards was then managing the zamindari as their proper ward. Consequently, a suit brought by one of such minors, on his attaining majority, to set aside the sale of a portion of the zamindari property attached in execution of the decree given in the former suit is barred by ss. 136, 244, and 312 of the Civil Procedure Code. SUBRAMANYA PANDYA CHOKKA TALAVAR *v.* SIVA SUBRAMANYA PILLAI . . **I. L. R., 17 Mad., 316**

46. ———— *Application for execution not being properly made—Objection not taken at proper time disallowed where minor afterwards properly represented.*—An application for execution of a decree was made, the applicant being a minor and being represented by a sub-manager under the Court of Wards. It was decided against the minor, and he then appealed. The Court of Wards subsequently released the decree-holder's estate, and, pending the appeal, a next friend was put on the record to represent the minor. On an objection being raised that the application, having been made by a sub-manager, was untenable,—*Held* that, the objection not having been raised in the Court below, and the minor having been properly represented in appeal by a next friend, the objection could not be entertained. *Bhoopendro Narain Dutt* v. *Baroda Prosad Roy Chowdhry, I. L. R., 18 Calc., 500,* distinguished. NORENDRA NATH PAHARI *v.* BHUPENDRO NARAIN RAI . . . **I. L. R., 23 Calc., 374**

47. ———— *Representation of minor by party not authorized to consent to decree—Invalid decree against minor on an alleged consent—Proof of authority to bind minor by*

consent—Beng. Reg. X of 1793—Manager of Court of Wards, Power of.—A decree-holder, who rests his case upon his decree having been made against a minor by consent, is under the necessity of proving that the consent was given by some one having authority to bind the minor thereby. In 1872, in the Settlement Court, a decree for land was made adversely to a minor, of whose persons, or for the suit, no guardian had been appointed. The minor's estate was under the charge of the Court of Wards, consisting, in the first instance, of the Deputy Commissioner of the district, who had appointed a manager of the estate. The mukhtear of the Court of Wards informed the Settlement Court that the manager consented to a decree, which was thereupon made in favour of the claimant. *Held* that there was no occasion to decide whether the minor was substantially a party to the suit in the Settlement Court, or whether his interests had not been prejudiced by his not having been impleaded through a guardian, or whether there had been fraud in the giving or alleging consent. But that the affirmative of the question whether the consent had been competently given on the minor's behalf was upon the defendant in the present suit, who had obtained the decree upon it. Their Lordships were of opinion that it had not been shown that the manager was authorized by the Court of Wards to give to the mukhtear authority to make the admission. It was not enough that the mukhtear was the mukhtear of the Court of Wards, and said that he had authority to admit the claimant's right. The decree of the Settlement Court was set aside on this last ground. The decision of the original Court in this suit, that the claimant in the settlement suit had not proved the title claimed by him, was also affirmed. MUHAMMAD MUMTAZ ALI KHAN *v.* SHEORUTTANGIR . . **I. L. R., 23 Calc., 934**
[L. R., 23 I. A., 75

48. ———————— *Wrongful admission of title against a minor—Suppression of facts by a manager appointed by the Court of Wards—Order of Settlement Court cancelled.*—At a settlement of a district in Oudh a sub-settlement was decreed in conformity with Act XXVI of 1866, which legalizes rules as to claims in respect of subordinate rights to land. The claimant alleged himself to be in virtue of a birt tenure held by him, under-proprietor of a village within the talukh of a talukhdar then a minor, whose estate was under charge of the Court of Wards, whose representative, the Deputy Commissioner of the district, had appointed a manager of the estate. This manager having reported favourably on the claim, the Deputy Commissioner sanctioned its admission; whereupon a decree for sub-settlement was made on the 30th June 1871. The present suit was brought by the talukhdar, after attaining full age, to have that decree set aside as having been obtained by fraud and collusion. That the manager was brother of the alleged birt-holder, and that he was family shareholder with him in the village, facts which the manager had suppressed, were facts proved in this suit. The defendants attempted, but failed, to establish by evidence the existence of the alleged birt. *Held* that the admission in the Settlement Court in 1871 was not binding on the plaintiff, and that, even assuming that the defendants' ancestor had been in some way in occupancy before 1857, the evidence was quite insufficient to show that a grant of a perpetual under-proprietary right had been obtained. The decree of the lower Appellate Court, cancelling the Settlement Court's order, was therefore upheld. RAM AUTAR *v.* MAHAMMAD MUMTAZ ALI
[I. L. R., 24 Calc., 853
L. R., 24 I. A., 107
1 C. W. N., 417

49. ———————— *Guardian ad litem—Guardians and Wards Act (VIII of 1890), s. 53—Civil Procedure Code, s. 443, as amended by s. 53 of Act VIII of 1890.*—S. 53 of Act VIII of 1890, amending the Code of Civil Procedure, expressly requires the appointment of a guardian *ad litem*, whether or not a guardian is appointed under Act VIII of 1890. In a suit against a minor, the summons was attempted to be served on his guardian appointed under Act VIII of 1890, but no guardian *ad litem* was appointed in the suit. The suit was decreed *ex-parte*, no one having appeared for the minor. *Held* that the decree must be set aside, and the case sent back in order that the minor might be represented in accordance with law and the case retried. DAKESHUR PERSHAD NARAIN SINGH *v.* REWAT MEHTON . . . **I. L. R., 24 Calc., 25**

50. ———————— *Ex-parte decree against minor—Minor's right to sue to set aside ex-parte decree—Proof of negligence on the part of the guardian.*—It is only where fraud or negligence is proved on the part of the guardian of a minor that the right to bring a suit to set aside the previous decision can be claimed by a minor or his administrator. The plaintiff, a minor represented by an administrator, sued to recover possession of two houses. With respect to one of the houses, there had been previous litigation. The plaintiff was the defendant, a minor represented by his guardian, and one of the present defendants was the plaintiff in that litigation, and an *ex-parte* decree was passed against the plaintiff. *Held* that the decision in the previous litigation barred the present claim with respect to the house which was the subject of that litigation, no negligence being proved on the part of the plaintiff's guardian therein. HANMANTAPA *v.* JIVUBAI
[I. L. R., 24 Bom., 547

See LALLA SHEO CHURN LAL *v.* RAMANANDAN DOBEY . . . . **I. L. R., 22 Calc., 8**

and CURSANDAS NATHA *v.* LADHAVAHU
[I. L. R., 19 Bom., 571

51. ———————— **Effect of decree in suit brought by elder brothers**—*Manager.*—The plaintiffs, Hindu brothers, brought a suit for redemption. During the minority of the plaintiffs their elder brothers had brought a previous suit to redeem

MINOR—*continued.*

5. REPRESENTATION OF MINOR IN SUITS —*continued.*

the same property, which suit had been dismissed. There was no evidence to show that in that suit they had assumed to act on behalf of the family, or that any one of them had been a *de facto* manager of the family property. *Held* that the plaintiffs were not sufficiently represented in the previous suit, and that therefore their present suit was maintainable. *Durgapersad* v. *Kesho Persad, I. L. R., 8 Calc., 656 : L. R., 9 I. A., 27*, explained. PADMAKAR VINAYAK JOSHI *v.* MAHADEV KRISHNA JOSHI **[I. L. R., 10 Bom., 21**

52. ———— **Suit against minor**—*Parties—Guardian—Act XL of 1858, s. 3—Declaratory decree.*—In a suit to set aside "the allegation of the defendant that her son *S* had been adopted by the father of the plaintiff, and had therefore inherited his property," the defendant was described in the plaint as *M*, the mother of *S;* and subsequently the words "a minor" were inserted after the name of *S*. In the proceedings in the suit the defendant designated herself as mother and guardian of *S*, a minor, but there was nothing to show she had obtained a certificate of guardianship, or had been appointed guardian *ad litem*. The two lower Courts gave a decree for the plaintiff. On special appeal to the High Court it was contended that *S* ought to be a party to the suit. *Held* that the suit, as it stood, could not be treated as a suit against the minor: the minor ought himself to have been made and been described as defendant, some other person being named as guardian. If treated as a suit against *M* only, it was wrongly brought, no suit to make any declaration as to the adoption could be brought against any other than *S* himself. MONGOLA DOSSEE *v.* SARODA DOSSEE . . . . **12 B. L. R., Ap., 2**

S. C. MONGULA DOSSEE *v.* SHARODA DOSSEE **[20 W. R., 48**

53. ———— **Sufficiency of representation**—*Improper representation of minor—Suit for "self and as guardian."—Semble*—That the fact of a suit being brought by *A* for self and as guardian of *C*, a minor, is not conclusive evidence that *C* is not so far a party to the suit as to be bound by the decree. *Sreenarain Mitter* v. *Kishen Soondery Dassee, 11 B. L. R., 171*, and *Mongola Dassee* v. *Saroda Dossee, 12 B. L. R., Ap., 2*, cited. GRISH CHUNDER MOOKERJEE *v.* MILLER . **3 C. L. R., 17**

54. ———— *Civil Procedure Code, 1877, ss. 440, 444—Liability of pleader to pay costs.*—The plaintiff, who sued for confirmation of possession of certain land on behalf of her minor sons, thus described herself in the heading of the plaint: "*S B*, widow of the late *C B*, mother and guardian on behalf of the minors, *S* and *K*, plaintiff." The suit being dismissed, an appeal was preferred under the same heading. On second appeal the appeal was headed "*S B*, widow of the late *C B*, mother and guardian of *S* and *K*, minors, appellant." The plaint alleged that the plaintiff had held possession as guardian of the minor sons. *Held* that the proceedings were bad in law, the plaint not having been framed in accordance with the provisions of s. 440 of the Civil Procedure Code. The High Court further directed that the pleader who filed the original suit and the pleaders who filed the appeal in the lower Appellate Court should be called upon to show cause, before the presiding officers of the original and the lower Appellate Courts respectively, why they should not be ordered, under s. 444 of the Civil Procedure Code, to pay the costs of the suit and the appeal. SHONAI BEWA *v.* MONORAM MUNDUL **[11 C. L. R., 15**

55. ———— *Civil Procedure Code (Act XIV of 1882), s. 440—Suit by next friend on behalf of minor—Act XL of 1858, s. 3—Certificate.*—The effect of s. 3 of Act XL of 1858, read with s. 440 of the Code of Civil Procedure, is, that a minor plaintiff must not only always sue by his next friend, but, when the suit relates to the minor's estate, the person representing the minor must either hold a certificate under the Act, or must obtain the sanction of the Court for the suit to proceed. The mere admission of a plaint by the Court does not sufficiently indicate that sanction is accorded. DURGA CHURN SHAHA *v.* NILMONEY DASS **I. L. R., 10 Calc., 134 : 13 C. L. R., 369**

See contra, AUKHIL CHUNDER *v.* TRIPOORA SOONDUREE . . . . . . **22 W. R., 525**

56. ———— *Next friend—Certificate under Act XL of 1858, s. 3—Civil Procedure Code (Act XIV of 1882), s. 440.*—S. 440 of the Civil Procedure Code, read with s. 3 of Act XL of 1858, does not make the receipt from the Court of a written permission to sue compulsory upon the next friend of an infant plaintiff. NEWAJ *v.* MAKSUD ALI . . . . **I. L. R., 12 Calc., 131**

57. ———— *Insufficient appearance on behalf of infant—Succession Act, s. 261—Civil Procedure Code (Act X of 1877), Ch. XXXI, ss. 440-464—Act XL of 1858, s. 3.*—No judgment or order passed in a suit, to which a minor subject to the provisions of Act XL of 1858 is a party, will bind him on his attaining majority, unless he is represented in the suit by some person who has either taken out a certificate or has obtained the permission of the Court to sue or defend on his behalf without a certificate. Permission granted to sue or defend on behalf of minor, under s. 3 of Act XL of 1858, should be formally placed on the record. Ch. XXXI of the Civil Procedure Code lays down the form in which a minor should appear as a party, and this form should be strictly followed. MRINAMOYI DABIA *v.* JOGODISHURI DABIA **[I. L. R., 5 Calc., 450 : 5 C. L. R., 361**

58. ———— *Suit on behalf of minor—Permission to sue.*—The uncle of a minor instituted a suit on his behalf without obtaining the formal permission of the Court in which such suit was instituted to sue on his behalf. The uncle's right to sue was denied by the defendant, and the first of the issues framed was whether he had such right. The Court decided that he had such right. *Held* in second appeal that, although permission to sue or defend a suit on behalf of a minor should be formally granted, to be of effect, such decision might fairly be accepted as in this case a sufficient and effective permission to the uncle to sue, and he was competent to maintain such suit. *Mrinamoyi Dabia* v. *Jogodishuri Dabia, I. L. R., 5 Calc., 450,* referred to. PIRTHI SINGH *v.* SOBHAN SINGH **I. L. R., 4 All., 1**

59. ———————— *Permission of Court to guardian to sue—Discretion of Court—Act XL of 1858—Civil Procedure Code (Act XIV of 1882), s. 440—Return of plaint.*—A volunteer guardian has no right to sue on behalf of a minor; the accord or refusal of permission to sue is a matter in the discretion of the Court. Where a suit is brought in violation of s. 440 of the Code of Civil Procedure, or of the provisions of Act XL of 1858, the proper course for a Court to pursue is to return the plaint, in order that the error may be rectified. RUSSICK DAS BAIRAGY *v.* PREONATH MISSEE **I. L. R., 10 Calc., 102: 12 C. L. R., 405**

60. ———————— *Act XL of 1858, s. 3—Order granting certificate to act as guardian of minor—Obtaining a certificate—Majority Act (IX of 1875).*—When a Court, to which application has been made under s. 3 of Act XL of 1858 for a certificate, has adjudged the applicant entitled to have one, he then substantially obtains it; although it may not be drawn up or issued at the time. Having obtained such an order, he has in substance complied with the terms of the Act; in the same way as, when a plaintiff has judgment that he shall have a decree in his suit, it may be said that he has then obtained his decree. Therefore, where a minor had been represented in a suit by a person who had obtained an order for a certificate under s. 3, but had not had it issued to him, the absence of a certificate was held to be not such an irregularity as entitled the minor, on coming of age, to have the proceedings set aside on the ground that he had not been properly represented. MUNGNIRAM MARWARI *v.* GURSAHAI NAND. LIAKUT HOSSEIN *v.* GURSAHAI NAND

[I. L. R., 17 Calc., 347
L. R., 16 I. A., 195

61. ———————— *Improper representation of minor—Appearance by a guardian not sanctioned—Act XL of 1858, s. 3—Act VIII of 1859—Suit against minor—Presumption when no permission recorded by Court—Misdescription of minor—Act XIV of 1882, s. 443.*—A suit was brought against a mother "for self and as guardian of *A* and *B*, minor sons of *C*, deceased," at a period when Act VIII of 1859 was in force. The mother had not taken out a certificate under Act XL of 1858, and no permission was recorded by the Court allowing the mother to defend on behalf of the infants under the provisions of s. 3 of that Act. A decree was made in the suit, and in execution thereof certain property belonging to *A* and *B* was sold and purchased by *X*, the decree-holder. Subsequently on *A*'s coming of age, *A* and *B*, by *A* as his next friend, instituted a suit against *X* and their mother to recover the property so purchased by *X*. *Held* that under the provisions of Act VIII of 1859 it was not necessary to formally record sanction to the mother to defend under s. 3 of Act XL of 1858; and that the fact of sanction having been given might be presumed by the Court, and that on the facts of the case such presumption was warranted. *Held* also that, though *A* and *B* were not properly described in the previous suit, it was a mere defect in form, and did not affect the merits of the case, being in accordance with the prevailing practice at the time when the suit was brought; and that there is no authority for saying that, when minors have been really sued, though in a wrong form, a decree against them would not be valid. JOGI SINGH *v.* KUNJ BEHARI SINGH . . **I. L. R., 11 Calc., 509**

62. ———————— *Civil Procedure Code (1882), s. 440—Suit brought on behalf of a minor by a person other than the minor's certificated guardian—Minor not properly represented.*—Where a suit was filed on behalf of two minors by a person who was not the certificated guardian of the minors, there being a guardian duly appointed by a competent Court in existence at the time, it was *held* that the suit was wrongly brought, having regard to s. 440 of the Code of Civil Procedure, and that the plaint should have been returned for amendment, and that the defect in the form of the suit was not cured by the fact, if it was one, that the person appearing therein as guardian of the minors was the karta of a joint Hindu family of which all the plaintiffs were members. *Beni Ram Bhutt* v. *Ram Lal Dhukri, I. L. R., 13 Calc., 189,* referred to. SHAM KRISHNA *v.* RAM DAS **I. L. R., 20 All., 162**

63. ———————— *Objection to description of minor—Permission to sue, Proof of—Civil Procedure Code, ss. 440, 578—Act XL of 1858, s. 3.*—Although the proper and regular manner of giving permission to sue on behalf of a minor is by an order recorded in the order-sheet, there is, nevertheless, nothing in the nature of the sanction provided by s. 3 of Act XL of 1858 which takes it out of the general rule of evidence that sanction may be proved by express words or by implication. Where on a construction of the plaint and the pleadings it is found that the minor is the real plaintiff, the mere fact of his not having been properly described in accordance with s. 440 of the Civil Procedure Code is no ground for setting aside a decree passed in the suit. BHABA PERSHAD KHAN *v.* SECRETARY OF STATE FOR INDIA . **I. L. R., 14 Calc., 159**

64. ———————— *Error in the frame of a suit against a minor defendant, Effect of—Guardian "ad litem" how appointed—Sanction of Court without formal order, Effect of—Service of summons—Civil Procedure Code (Act XIV of 1882), ss. 100 and 443.*—The plaint in a suit described one of the defendants thus: "*N C*, guardian on behalf of her own minor son, *S C*." Upon the presentation of the plaint the Court directed the plaintiff to produce an affidavit to the effect that the mother of the minor defendant was his guardian, and an affidavit having been made that the "minor defendant" was under the guardianship of the mother, ordered a suit to be registered and summons to be issued on the defendants. *N C* then filed a written statement, alleging that she held the land in suit on behalf of the minor. *Held* that, having regard to the order of the Court and the allegations made in the plaint and written statement, the suit was substantially brought against the minor, and the error of description in the plaint, being one of mere form, could not, without proof of prejudice, invalidate a decree against him in the suit. *Held* also that the want of a formal order appointing a guardian *ad litem* was not fatal to the suit, when it appeared on the face of the proceedings that the Court had sanctioned the appointment. *Held* (O'KINEALY, *J.*, dissenting) that the fact that an order appointing a guardian *ad litem* at the instance of the plaintiff was made *ex-parte* was not necessarily fatal to the suit, unless it could be shown that the minor had in any manner been prejudiced thereby. *Per* MITTER, *J.* (PETHERAM, *C.J.*, concurring), that, although the matter of the appointment of a guardian *ad litem* is left to the discretion of the Court, it is always desirable that the appointment at the instance of the plaintiff should not be made, unless the minor, or his friends and relatives in whose care he may be, failed to move the Court for that purpose within a reasonable time after receiving notice of the institution of the suit. SURESH CHUNDER WUM CHOWDHRY *v.* JUGUT CHUNDER DEB . . **I. L. R., 14 Calc., 204**

65. ——— *Minor, Suit against—Misdescription in title of the plaint and in decree, Effect of.*—In a suit brought against a minor widow as the heir of her deceased husband, she was described in the cause title of the plaint as "the deceased debtor *R A*'s heir and minor widow *B D*'s mother and guardian *A D*." The plaintiff obtained no order for the appointment of a guardian *ad litem*. He, however, obtained a decree, and the minor defendant was described therein in the same manner. *Held* that the minor was neither a party to the original suit nor to the decree, and that no property of the minor passed upon a sale in execution of such decree. *Suresh Chunder Wum Chowdhry* v. *Jugut Chunder Deb, I. L. R., 14 Calc., 204,* distinguished. GANGA PROSAD CHOWDHRY *v.* UMBICA CHURN COONDOO **I. L. R., 14 Calc., 754**

66. ——— *Decree against guardian of a minor—Immaterial irregularity—Error in description of defendant.*—In a suit by an adopted son, after the death of his adoptive father, to recover ancestral land sold in execution of a decree against his adoptive mother therein described as the guardian of the present plaintiff, who was then an infant, it appeared that the decree had been passed on a bond executed by the then defendant in respect of a debt due by her husband. *Held* that the plaintiff should be regarded as a party to the suit in which the decree executed against the land had been passed, and that the present suit should be dismissed. NATESAYYAN *v.* NARASIMMAYYAR **[I. L. R., 13 Mad., 480**

67. ——— *Suit in substance against minor—Sale-certificate, Irregular description in—Decree against widow representing her minor son—Decree, Sale of infant's share under.*—A sale-certificate expressed a rent-decree to have been made against *R*, the widow and heiress of *K*, and the mother of a minor son, name unknown. *Held* that this description, though irregular, showed that in substance the suit was against the infant, and that the infant's share was sold under the decree. *Hari Saran Moitra* v. *Bhubaneswari Debi, I. L. R., 16 Calc., 40 : L. R., 15 I. A., 195,* and *Suresh Chunder Wum Chowdhry* v. *Jugut Chunder Deb, I. L. R., 14 Calc., 204,* followed. KEDAR PROSUNNO LAHIRI *v.* PROTAP CHUNDER TALUKHDAR **[I. L. R., 20 Calc., 11**

68. ——— *Next friend—Suit filed by a minor without a next friend—Application by defendant to strike plaint off the file—Civil Procedure Code (Act XIV of 1882), s. 442.*—The plaintiff was a widow, and sued for the administration of her deceased husband's estate. The suit was filed on the 5th April 1885. On the 2nd May the defendant's attorneys gave notice to the plaintiff's attorney that the plaintiff was a minor suing without a next friend, and that the plaint must be struck off the file in consequence. The plaintiff's attorney replied that, if the plaintiff was really a minor, he would at once take steps to have her father appointed her next friend, and the plaint and proceedings amended. On the 7th May, inspection was given to the plaintiff's attorney of the plaintiff's horoscope, and after that inspection the plaintiff's attorney proposed that the proceedings should be amended by making the plaintiff's father her next friend. It appeared that the plaintiff was sixteen months under age. Nothing was done by either party for some weeks. On the 6th June the defendant's attorneys gave notice that they would apply for an order that the plaint should be taken off the file under s. 442 of the Civil Procedure Code (Act XIV of 1882). On hearing the application, the Court refused to make the order asked for. The suit did not appear to be a vexatious one, and the plaintiff's age did not appear to have been fraudulently concealed, her father having stated on oath that he believed her to be of age and expressing his willingness at once to be placed on the record as her next friend. The Courts, as a rule, only strike the plaint off the file where it appears, on the face of the plaint, that it was filed by a person who was a minor, or when it is proved that it was filed with the knowledge that the plaintiff was a minor and with the intention of deceiving the Court and evading the payment of costs in case the plaintiff fails in the claim. When the fact of minority is a *bonâ fide* question of evidence, and the defendants' allegation is found correct, then the usual course is to suspend all proceedings and to allow sufficient time to enable the minor to have himself properly represented in the suit by a next friend. ROTTON BAI *v.* CHABILDAS LALLOOBHOY . . . I. L. R., 13 Bom., 7

69. ——————— *Mesne profits—Decree made against a widow representing estate, enforced against a minor adopted son, through the widow as his guardian—Devolution of liability, along with estate, upon the minor, without his having been made formally a party to the decree—His similar liability in a suit for mesne profits.*—A minor, who had been adopted by a widow as a son to her deceased husband, was not made a party to an appeal which she preferred after the adoption, from a decree made against her when she represented the estate. *Held* that, as liability under the decree, made when the widow fully represented the estate, devolved upon the minor on his adoption, the widow's estate being also thereupon divested, it would be right for her to continue to defend, but only as guardian of the minor. Also that, it having been for the minor's benefit that the widow as guardian should appeal from a decree, which had already diminished his estate, the minor was bound by the adverse decree of the Appellate Court, although he had not been made formally a party thereto. The principle of the decision in *Dhurm Dass Pandey* v. *Shamasoondery Debia, 3 Moore's I. A., 229,* referred to, and applied in this case. *Held* also that the minor, by his adoptive mother as his guardian, was liable in a suit for mesne profits, brought after the decree upon title; it being made clear that the suit for mesne profits was substantially brought against the minor. *Suresh Chunder Wum Chowdhry v. Jugut Chunder Deb, I. L. R., 14 Calc., 204,* approved. HARI SARAN MOITRA *v.* BHUBANESWARI DEBI

[I. L. R., 16 Calc., 40
L. R., 15 I. A., 195

70. ——————— *Costs—Minor not represented by a next friend or guardian—Costs against such minor's estate—Application for leave to sue as pauper—Civil Procedure Code (Act XIV of 1882), ss. 441, 442, 444.*—Neither s. 441 nor 442 of the Code of Civil Procedure (Act XIV of 1882) gives any authority to a Court to make a minor's estate liable for costs. *A* applied for leave to file a suit *in formâ pauperis* against *B*. *B* resisted the application on the ground that *A* was a minor. The Government pleader also resisted on the ground that *A* was not a pauper. The Court, without inquiring into *A*'s pauperism, rejected the application solely on the ground that *A* was a minor, and that he was not properly represented by a next friend or guardian. The Court ordered all costs to be paid out of the minor's estate. The minor died soon afterwards. The Collector then applied to the Court to attach certain property in *B*'s hands which was alleged to form a part of the minor's estate. *B* objected, but the attachment was allowed. *Held* that the order for costs, as well as the attachment that followed thereon, were illegal and *ultra vires*. The order was clearly opposed to the provisions of s. 444 of the Code of Civil Procedure (Act XIV of 1882), under which no order affecting a minor can legally be made without such minor being represented by a next friend or guardian *ad litem*. AMICHAND TALAKCHAND *v.* COLLECTOR OF SHOLAPUR

[I. L. R., 13 Bom., 234

71. ——————— *Suit on behalf of a person alleged to be, but not in fact, a minor—Procedure to be adopted when suit is instituted through next friend on behalf of an alleged minor who is not so in fact—Plaint, Amendment of.*—When a suit is instituted by a person alleging himself to be a minor, and the suit is brought through a next friend, and when it is found that the plaintiff was not at the date of the institution of the suit in fact a minor, the Court should not dismiss the suit, as the defendant can be fully indemnified by the payment of his costs. In such a case the proper remedy is for the defendant to apply to have the plaint taken off the file or amended, and if it be not amended, the next friend's name may be treated as mere surplusage, and the suit be allowed to proceed. TAQUI JAN *v.* OBAIDULLA *alias* NANHE NAWAB

[I. L. R., 21 Calc., 866

NET LALL SAHOO *v.* KAREEM BUX

[I. L. R., 23 Calc., 686

72. ——————— *Suit brought on behalf of a person alleged to be, but not in fact, a minor—Procedure on discovery that the plaintiff was of full age at the commencement of the suit.*—A suit was instituted on behalf of a person alleged to be a minor, through her next friend. The plaintiff obtained a decree. The defendant appealed, and on this appeal the alleged minor applied to be placed on the record in her own right as respondent, stating that she had attained her majority since the institution of the suit. The affidavits, however, by which this application was supported, showed that she had been of full age at the time when the plaint was filed. *Held* that the suit must be dismissed. *Taqui Jan* v. *Obaidulla, I. L. R., 21 Calc., 866,* dissented from. SHEORANIA *v.* BHARAT SINGH

[I. L. R., 20 All., 90

73. ——————— *Representation by guardian of person, though not of estate—Bombay Minors Act (XX of 1864), s. 2—Decree binding minors.*—In execution of a decree against the estate of *V*, his estate was sold, and it ultimately came into the hands of the plaintiff as purchaser, who sued for partition. It was contended that two of the defendants, parties to the suit in which the decree was passed, being then minors, were not properly represented by their mother, *G*, also a party defendant to the suit, she not having obtained a certificate of administration under Act XX of 1864, and that the decree did not therefore bind them. *Held* that s. 2 of Act XX of 1864 did not apply, as, though *G* had not obtained a certificate, she did not claim charge of the estate. *Vijkor* v. *Jijibhai Vaji, 9 Bom., 313,* and *Jadow Mulj* v. *Chhagan Raichand, I. L. R., 5 Bom., 306,* followed. *Held* also that an issue having been raised and determined in the suit in which the decree was passed that *G* did represent the minors as guardian for the suit, and as the decree expressly named them as sued by *G*, their guardian, the minors were expressly made parties, and were properly represented by *G*. *Hari* v. *Narayan, I. L. R., 12 Bom., 427*, and *Hari Saran Moitra* v. *Bhubaneswari Debi, I. L. R., 16 Calc., 40 : L. R., 15 I. A., 195*, followed. VASUDEV MORBHAT KALE *v.* KRISHNAJI BALLAL GOKHALE

[I. L. R., 20 Bom., 534

74. ———— *Guardian ad litem, Appointment of—Act XIV of 1882, ss. 443, 464—Act XL of 1858, s. 3—Minors, Suit against, improperly framed.*—In a suit intended to be brought against some minors, the defendants were set out in the heading of the plaint as "Sharoda Sunderi Debya, widow of Chundra Kanta Chuckerbutty, deceased, mother and guardian of the minors" (setting out their names). At the filing of the plaint, the plaintiff applied for and obtained an order making Sharoda guardian of the minors for the purposes of the suit. She was not, however, guardian of the property and persons of the minors under Act XL of 1858. *Held* that the minors were not parties to the suit; that the order making Sharoda guardian *ad litem* was not made in a suit in which the minors were defendants; and that the suit must be dismissed as against the minors. *Held* also that neither the Code of Civil Procedure nor the proviso of s. 3 of Act XL of 1858 give a plaintiff any power to institute a suit against a person named by himself as guardian *ad litem* on behalf of a minor, nor do they give to the Court the power of transferring, by a mere order made *ex-parte*, an irregular proceeding such as the one above mentioned into a suit against the minor. GURU CHURN CHUCKERBUTTY *v.* KALI KISSEN TAGORE . . **I. L. R., 11 Calc., 402**

75. ———— *Suit against person of whose estate a certificate of administration is subsequently obtained—Right of guardian to defend.*—A suit having been instituted upon a bond and no appearance entered by the defendant, who admittedly was over 18 years of age on the date of the institution of the suit, *A* obtained a certificate of guardianship in respect of the property of the defendant under Act XL of 1858, and, having been allowed upon such certificate to defend the suit on behalf of the original defendant, pleaded minority. *Held* that, notwithstanding the appointment as guardian, *A* ought not to have been made a defendant, the original defendant not being a minor when the suit was instituted. KRISHNA MONGUL SHAHA *v.* AKBAR JUMMA KHAN . . **9 C. L. R., 213**

76. ———— *Appearance for minor—Notice of decree—Presence of vakil.*—A statement in a decree that a vakil had appeared and was present in Court for a minor when the decree was made was held, in a suit to set the decree aside as being made behind his back, to be notice to the minor of the decree having been made. RUKHYAKUR BHUTTACHARJEE *v.* KUROONA MOYEE DABEE

[25 W. R., 280

77. ———— *Civil Procedure Code, s. 442.*—S. 442 of the Civil Procedure Code refers to a case where the plaint on the face of it appears to have been filed by a person who was a minor. BENI RAM BHUTT *v.* RAM LAL DHUKRI

[I. L. R., 13 Calc., 189

78. ———— *Minor, when bound by proceedings against him—Minors Act (XX of 1864), s. 2—Suit by a minor one year after attaining majority, to recover property sold in execution of a decree obtained against him during minority.*—In 1870 a creditor of the plaintiff's father brought a suit (No. 573 of 1870) against the plaintiff, and obtained a money-decree against him. The plaintiff was then a minor, and his estate was administered by the Collector of Ratnagiri. In this suit he was represented by his mother and guardian. At the sale held in 1871, in execution of the decree, the property in question was purchased by the defendant, who obtained possession in 1876. In 1879 the plaintiff attained majority, and in 1882 he brought the present suit to recover the property from the defendant. *Held* that the plaintiff was not bound by the proceedings in suit No. 573 of 1870, as he had not been properly represented as required by s. 2 of Act XX of 1864. VISHNU KESSHAV *v.* RAMCHANDRA BHASKAR

[I. L. R., 11 Bom., 130

79. ———— *Decision of Survey Officers under Boundary Act (XXVIII of 1860)—Representation by Manager appointed under Mad. Reg. V of 1804, s. 8.*—A Survey Officer in 1875 held an enquiry under the Boundary Act, 1860, and demarcated certain land out of a zamindari. At that time the zamindar was a minor under the Court of Wards, and he was represented at the enquiry by the manager of his estate appointed under s. 6 of Regulation V of 1804. In a suit brought by the zamindar to recover the land it was contended that the decision of the Survey Officer was not binding on the zamindar because he was not properly represented by his guardian at the enquiry. *Held* that the decision of the Survey Officer was binding on the zamindar. KAMARAJU *v.* SECRETARY OF STATE FOR INDIA . **I. L. R., 11 Mad., 309**

80. ———— **Costs** — *Costs of defendants, Suit for—Necessaries—Contract Act, s. 68.*—Where a suit has been brought against a minor, the effect of which, if successful, would be to deprive the minor of his property, the costs of successfully defending that suit on his behalf may, when his property is in the hands of the Receiver of the Court, be recovered from the minor as necessaries in an action brought against him by his attorney. WATKINS *v.* DHUNNOO BABOO . **I. L. R., 7 Calc., 140 : 8 C. L. R., 433**

81. ———— *Next friend—Solicitor's costs for proceedings undertaken on the next friend's instructions—Liability of minor for costs when he repudiates the proceedings—Necessaries.*—A solicitor cannot recover the costs of litigation incurred by the next friend of a minor on his behalf

MINOR—*continued.*

5. REPRESENTATION OF MINOR IN SUITS —*concluded.*

from the quondam minor, who, on coming of age, repudiates the proceedings, there being no relation of contract between them. Assuming that the legal proceedings were in the nature of necessaries, the next friend is the person responsible to the solicitor. *Watkins* v. *Dhunnoo Baboo, I. L. R., 7 Calc., 140,* distinguished. Branson *v.* Appasami **[I. L. R., 17 Mad., 257**

82. ——— *Suit on behalf of minor by Court of Wards—Personal liability of officer representing Court of Wards—Choice between innocent persons.*—A suit on behalf of a minor by the Court of Wards, which was the Deputy Commissioner before whom it was instituted, having been dismissed in appeal by the High Court, it was held that the Deputy Commissioner by whose authority it had been instituted ought not to have tried the suit, and that, though in an ordinary case the person who appeared on the record on behalf of the infant would be liable for the costs, in this case, as the Deputy Commissioner was no longer in office, one of two innocent persons must bear the costs, either the minor or the defendant. It was determined accordingly that the defendant must suffer, as he was in part to blame for allowing the suit to proceed. Bikromajeet Mullo Ogalsundo Deb *v.* Court of Wards . . . . **21 W. R., 312**

83. ——— *Suit by legatees on behalf of themselves and other legatees—Civil Procedure Code (Act XIV of 1882), s. 30—Costs against next friend.*—A legatee cannot sue on behalf of himself and other legatees without an order of the Court obtained under s. 30 of the Civil Procedure Code enabling him so to sue. Where a legatee, a minor, sued in that form by her next friend without such an order, the next friend was held liable for costs on his adducing no evidence to show that the suit was for the benefit of the minor. Geereeballa Dabee *v.* Chunder Kant Mookerjee **[I. L. R., 11 Calc., 213**

84. ——— **Certificate of heirship**—*Bom. Reg. VIII of 1827.*—Under the provisions of Regulation VIII of 1827, a certificate of heirship cannot be granted to a minor. Bai Baiba *v.* Bai Daguba . . . **I. L. R., 6 Bom., 728**

6. CASES UNDER BOMBAY MINORS ACT (XX OF 1864).

See Account, Suit for. **[I. L. R., 8 Bom., 14**

See Cases under Guardian.

See Sale in Execution of Decree—Decrees against Representatives. **[I. L. R., 5 Bom., 14**

85. ——— **Application of Act**—*Minors resident out of Presidency.*—The Bombay Minors Act (XX of 1864) does not apply to minors who are not resident within the Presidency of Bombay. Maganbhai Purshotamdas *v.* Vithoba bin Narayan Shet . . . **7 Bom., A. C., 7**

MINOR—*continued.*

6. CASES UNDER BOMBAY MINORS ACT (XX OF 1864)—*continued.*

86. ——— *Alienation by a person not holding a certificate under the Act—Natural or de facto guardian—Charge of minor's person and property—Jurisdiction of Civil Court—Act XL of 1858.*—The Bombay Minors Act (XX of 1864) does not forbid the natural or *de facto* guardian of a minor not holding a certificate under the Act from disposing of property belonging to a minor. The meaning of the first section of the Act is that the care of the persons of all minors and the charge of their property shall be, as is expressly provided in Act XL of 1858, subject to the jurisdiction of the Court. Honapa *v.* Mhalpai . **I. L. R., 15 Bom., 259**

87. ——— **s. 11**—*Construction—"May," "shall."*—The provision in s. 11 of the Minors Act (XX of 1864), that when the estate of a minor consists of land the Court "may" direct the Collector to take charge of the estate, is not obligatory. In re Boevey **[I. L. R., 4 Bom., 635**

88. ——— **Nazir of Court**—*Officer of Government—Bombay Civil Courts Acts (XIV of 1869, s. 32, and X of 1876, s. 15)—Collector—Public curator under Act XIX of 1841.*—The nazir of a Civil Court who is appointed guardian of the estate of a minor under Act XX of 1864 is not an officer of Government within the meaning of s. 32 of Act XIV of 1869 as amended by s. 15 of Act X of 1876. An officer of Government, in order to come within those enactments, must be a party to a suit *in his official capacity.* The only officers of Government whom Act XX of 1864 contemplates as guardians of the estates of a minor in their official capacity are the Collector of the district and the public curator, appointed as such under Act XIX of 1841. Mohan Ishwar *v.* Haku Rupa **I. L. R., 4 Bom., 638**

Contra, Vasudev Vishnu Dikshit *v.* Narayan Jagannath Dikshit **I. L. R., 4 Bom., 642 note**

89. ——— **Authority of the Political Agent appointed by Government as manager of the estate of a minor Chief to sue in respect of the Chief's property in British territory.**—A suit was brought by the Political Agent, Southern Maratha Country, as administrator of the estate of the Chief of Mudhol, who was described in the plaint as being nineteen years of age, to eject the defendants from certain lands, belonging to the Chief, situated in the Satara District. The defendants raised a preliminary objection to the institution of the suit by the Political Agent, on the ground (among others) that he was not a certificated guardian of the Chief under the Bombay Minors Act (XX of 1864). *Held* that the appointment by Government of the Political Agent to manage the estate of the Chief of Mudhol during a certain period could not give him the position contemplated by the Bombay Minors Act (XX of 1864). With regard to property in British India, he had no authority to sue on behalf of the minor without obtaining a certificate of administration under the Act. Venkatrav Raje Ghorpade *v.* Madhavrav Ramchandra . . **I. L. R., 11 Bom., 53**

MINOR—*continued.*

6. CASES UNDER BOMBAY MINORS ACT (XX OF 1864)—*continued.*

90. ———— **Natural father of minor**—*Adoption—Residence of minor.*—The natural father of a minor who has been adopted into another family is not by Hindu law his proper guardian when either of the adoptive parents is living and willing to act as guardian. The residence of the minor with the adoptive parents is a part of the consideration for their adoption of a son, and unless serious ill-treatment or incompetency on their part be proved, they and the survivor of them are the proper guardians. LAKSHMIBAI *v.* SHRIDHAR VASUDEV TAKLE
I. L. R., 3 Bom., 1

91. ———— **Foreign guardian**—*Suit by next friend.*—A foreign guardian will not be recognized in the Courts in this country in a suit brought by such guardians to recover, on account of a minor, profits arising from immoveable property. Where a suit was brought by the agent of a minor's guardian appointed by H. H. the Gaikwad of Baroda, it was ordered that the proceedings should be amended by describing such agent as the next friend of the minor, in which capacity he was then permitted to sue. MAGANBHAI PURSHOTAMADAS *v.* VITHOBA BIN NARAYAN SHET . . . **7 Bom., A. C., 7**

92. ———— **Certificate of administration**—*Father suing on behalf of minor son.*—A father on behalf of his minor son entitled to property in his own right must obtain a certificate of administration under s. 2 of Act XX of 1864. SITARAM BHAT *v.* SITARAM GANESH **6 Bom., A. C., 250**

93. ———— *Widow suing on behalf of son.*—A widow without a certificate of administration under Act XX of 1864 is precluded from bringing a suit in her own name in respect of her minor son's property. GOPAL KASHI *v.* RAMABAI SAHEB PATVADHAN . . . **12 Bom., 17**

94. ———— *Suit against minor—Power of District Judge.*—S. 2 of Act XX of 1864 does not prohibit a person having a claim against a minor from bringing a suit until a certificate of administration has been granted. He may properly bring his suit, but immediately after his doing so he should apply to the District Judge for the appointment of an administrator, and it is competent to the District Judge, under s. 8 of the Act, to make that appointment. IN RE MOTIRAM RUPACHAND . . . . . **11 Bom., 21**

95. ———— *Right to institute suit on behalf of minor.*—There is nothing in the Minors Act (XX of 1864) to prevent the institution of a suit by the next friend of a minor who has not obtained a certificate of administration to the minor's estate, but who claims no right to have charge of the minor's property, asking for a declaration of the minor's rights, and for an order directing the defendant to pay money he owes to the minor into the principal Civil Court of the district. As the right, however, of a friend to institute a suit on behalf of a minor is under the control of the Court, and as the Minors Act, by ss. 3-7, enables a friend of the minor to protect his interests by applying for the appointment of a fit person to have charge of the property of the minor and to protect his estate, the proper course for a Court, to which a plaint on behalf of a minor is presented by his friend, is either to refuse to accept the plaint, when there is no pressing necessity for its acceptance, or in case such pressing necessity exists, to accept the plaint and stay proceedings until the plaintiff has duly obtained a certificate under the Act. VIJKOR *v.* JIJIBHAI VAJI . . . **9 Bom., 310**

96. ———— *Suit against minor.*—A suit against a minor whose estate exceeds R250 in value cannot be proceeded with unless he be represented by a person holding a certificate of administration under Act XX of 1864. The plaintiff may apply to the District Judge to appoint an administrator if none such has been appointed. DHONDIBA LAKSHUMAN *v.* KUSA . **6 Bom., A. C., 219**

97. ———— *Guardian without certificate, Authority of, to represent minor in a suit brought against him.*—Where a guardian of a minor had not obtained a certificate under the Bombay Minors Act (XX of 1864), the minor was held to be not properly represented in a suit in which a decree had been obtained against the guardian purporting to represent the minor. DAJI HIMAT *v.* DHIRAJRAM SADARAM . **I. L. R., 12 Bom., 18**

98. ———— *Guardian—Act XX of 1864, s. 2—Procedure—Civil Procedure Code (Act X of 1877), s. 440.*—Act XX of 1864 is not superseded by Act X of 1877. Where therefore a widow claimed to have charge of property in trust for her minor sons, it was held necessary, under s. 2 of Act XX of 1864, that she should obtain a certificate of administration if the whole estate was of greater value than R250; and that it was competent to the Court, if there was any pressing necessity (owing to the operation of the law of limitation) that a suit should be brought at once, to accept the plaint and stay proceedings until the mother had obtained a certificate under Act XX of 1864. MURLIDHUR *v.* SUPDU . . . **I. L. R., 3 Bom., 149**

99. ———— *Next friend—Security of minor's estate—Act XX of 1864.*—Where there is a next friend of a minor willing and competent to act for him, such next friend may file a suit on his behalf, or continue one already filed, without a certificate of administration. In the event of a decree being passed in the minor's favour, the Court can, in the absence of an administrator under Act XX of 1864, make such arrangements as it deems expedient for the security of the minor's estate, as by appointing an administrator under the Act. NAG THAKUR *v.* MADNAJI SADASHIV
I. L. R., 8 Bom., 239

100. ———— *Hindu law—Joint family—Unseparated minor—Certificate of administration of minor's share when necessary—Manager.*—Three brothers belonging to a joint Hindu family instituted a suit in the Court of a Subordinate Judge in their own names and on behalf of

MINOR—*continued.*

6. CASES UNDER BOMBAY MINORS ACT (XX OF 1864)—*continued.*

their minor brother to set aside an alienation of the family property made by their deceased father. The Subordinate Judge ruled that one of the plaintiffs must procure a certificate of administration under Act XX of 1864, s. 2, before the suit could proceed. *Held* that no certificate was necessary. The manager of the family should be allowed to proceed with the suit as next friend of the minor, with permission, if necessary, to amend the plaint accordingly. NARSINGRAV RAMCHANDRA *v.* VENKAJI KRISHNA

[I. L. R., 8 Bom., 395

101. ———— *Proceeding to enforce award—Civil Procedure Code, 1859, s. 327—Bom. Act XX of 1884, s. 2.*—As proceedings taken to file and enforce an award under s. 327 of the Civil Procedure Code are of the nature of a suit within the meaning of s. 2 of Act XX of 1864, a minor must be represented in such proceedings by a person holding a certificate of administration. VASUDEB VISHNU *v.* NARAYAN JAGANNATH . . **9 Bom., 289**

102. ———— *Guardian—Guardian of property—Guardian of person—Necessity for issue of certificate of administration in order to complete appointment of guardian of property.*—The Bombay Minors Act (XX of 1864) does not, in terms, provide for the appointment of a guardian of the property of a minor, but only for the grant of a certificate of administration, so that, until the certificate is issued, there is no such appointment of the guardian of the property as will extend the age of the minority from eighteen to twenty-one. But it is different as regards the appointment of a guardian of the person. The Act provides, in terms, for such an appointment being made, and no certificate of appointment is contemplated by the Act, on the language of which it is plain that the appointment of a guardian of the person is complete on the order of the Court being made appointing him. The plaintiff's mother, *G*, died in 1866 possessed of property which she had inherited from her husband. The plaintiff, who was born in 1858, was then a minor of the age of eight years. In 1867 the plaintiff's maternal grandfather obtained a certificate of administration. On his death, an order of Court was made on the 21st March 1873, appointing the Nazir of the Court administrator of the property and the plaintiff's mother-in-law the guardian of the person of the plaintiff, but no fresh certificate of administration was granted. In 1880 the plaintiff brought the present suit against the defendants to recover from them the property left by her mother. The defendants contended (*inter alia*) that the plaintiff had attained her majority in 1874, when she arrived at the age of sixteen, and that the suit was therefore barred by limitation. The plaintiff, on the other hand, contended that the Indian Majority Act (IX of 1875) was applicable, and that, under its provisions, she did not attain majority until she was twenty-one, *i.e.*, until the year 1879, and that the present suit was therefore in time. *Held* that the suit was not barred by limitation. The Indian Majority Act (IX of 1875) was applicable (except so far as its operation was excluded by s. 2), inasmuch as there was a guardian of the person of the plaintiff in existence both when she arrived at the age of sixteen and also when she was eighteen, and therefore the period of minority for her was extended to twenty-one years of age. YEKNATH *v.* WARUBAI

[I. L. R., 13 Bom., 285

103. ———— *Act XX of 1864, s. 18—Assignment without sanction of Court.*—S. 18 of the Minors Act XX of 1864 applies only to persons to whom a certificate has been granted under that Act. An assignment of a mortgage therefore by a widow, acting as natural guardian of her minor son, but who has not obtained a certificate under the Act (XX of 1864), is not invalid because effected without the sanction of the Court. MANISHANKAR PRANJIVAN *v.* BAI MULI . **I. L. R., 12 Bom., 686**

104. ———— *Bombay Minors Act, s. 12—Surety for guardian of a minor's estate—Release of surety—Contract Act (IX of 1872), s. 130.*—Where a surety for the guardian of a minor's estate appointed under the Bombay Minors Act (XX of 1864) applied to be released from his obligation as surety on account of the guardian's maladministration of the estate,—*Held* that the very object of requiring security was to guarantee the minor's estate against such misconduct or mismanagement on the part of the guardian; that the surety therefore could not be discharged; and that s. 130 of the Contract Act (IX of 1872) was not applicable to the case. *Quære*—Whether the surety may not apply to the Court for protection against the guardian. BAI SOMI *v.* CHOKSHI ISHVARDAS MANGALDAS . . . . **I. L. R., 19 Bom., 245**

MINORITY, DISABILITY OF—

See LIMITATION—STATUTES OF LIMITATION—ACT XXV OF 1857, s. 9.

[13 B. L. R., 445

See LIMITATION—STATUTES OF LIMITATION—ACT IX OF 1859, s. 20.

[13 B. L. R., 292
L. R., 1 I. A., 167

See CASES UNDER LIMITATION ACT, 1877, s. 7.

See LIMITATION ACT, 1877, s. 8.

[I. L. R., 10 Bom., 241
I. L. R., 13 Mad., 236
I. L. R., 16 Mad., 436

See LIMITATION ACT, 1877, ART. 177.

[I. L. R., 18 Mad., 484

See MADRAS REVENUE RECOVERY ACT, s. 59 . **I. L. R., 17 Mad., 189**

———— Evidence of—

See EVIDENCE ACT, s. 35.

[I. L. R., 17 Calc., 849
I. L. R., 18 All., 478

MIRASIDARS.

See CASES UNDER LANDLORD AND TENANT—MIRASIDARS.

See LANDLORD AND TENANT—NATURE OF TENANCY . **I. L. R., 17 Bom., 475**
[I. L. R., 19 Mad., 485

MISAPPROPRIATION OF PROPERTY.

See CERTIFICATE OF ADMINISTRATION—EFFECT OF CERTIFICATE.
[5 B. L. R., 371

See CRIMINAL MISAPPROPRIATION.

See RECEIVER . **I. L. R., 17 Mad., 501**
[I. L. R., 18 Mad., 23
I. L. R., 20 Mad., 224
I. L. R., 27 Calc., 279

———— **Damages for—**

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, ETC.
[I. L. R., 24 Calc., 672

MISCARRIAGE.

1. ———— **Causing miscarriage**—*Penal Code, s. 312.*—The offence defined in s. 312 can only be committed when a woman is in fact pregnant. QUEEN *v.* KABUL PATTUR . **15 W. R., Cr., 4**

2. ———————— *Penal Code, s. 312* —"*With child*"—*Stage of pregnancy immaterial.* —A woman is with child within the meaning of s. 312 of the Penal Code as soon as she is pregnant. *Held* therefore, where a woman was acquitted on a charge of causing herself to miscarry, on the ground that she had only been pregnant for one month, and that there was nothing which could be called even a rudimentary fœtus or child, that the acquittal was bad in law. QUEEN-EMPRESS *v.* ADEMMA
[I. L. R., 9 Mad., 369

3. ———— **Attempt to cause miscarriage**—*Penal Code, ss. 312, 511.*—In a case in which the child was full grown, the Court declined to convict the accused of causing miscarriage under s. 312 of the Penal Code—that section supposing expulsion of the child before the period of gestation is completed,—but convicted them of an attempt to cause miscarriage under ss. 312 and 511, read together. QUEEN *v.* ARUNJA BEWA
[19 W. R., Cr., 32

MISCELLANEOUS PROCEEDINGS.

———— **Civil Procedure Code, 1877-1882, s. 647 (Act XXIII of 1861, s. 38)**—*Procedure.*—S. 38, Act XXIII of 1861, was not intended to make the procedure and the powers of the Court which may be applicable in suits before decree applicable to proceedings in suits after decree, but to provide a procedure as nearly resembling Act VIII of 1859 as possible for other cases not being suits. IN THE MATTER OF THE PETITION OF JODOO MONEE DOSEE
[11 W. R., 494

MISCHIEF.

See ATTEMPT TO COMMIT OFFENCE.
[3 B. L. R., A. Cr., 55

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.
[I. L. R., 21 Bom., 536

See COMPOUNDING OFFENCE.
[I. L. R., 22 Bom., 889

See OFFENCE RELATING TO DOCUMENTS.
[I. L. R., 12 Mad., 54

See THEFT . **I. L. R., 15 Calc., 388**
[I. L. R., 17 Calc., 852

1. ———— **Requisites for offence**—*Penal Code, s. 425.*—The authority vested in the Criminal Court of punishing persons for acts of mischief is one which must be exercised with great caution, and it must be very clear, before conviction, that the accused has brought himself within the meaning of s. 425 of the Penal Code. IN THE MATTER OF THE PETITION OF RAM GHOLAM SINGH
[6 W. R., Cr., 59

2. ———————— *Probable consequential damage to other property.*—To constitute the offence of mischief according to the Penal Code, the act done must be shown to have caused destruction of some property or such a change in the property, or the situation of it, as destroys or diminishes its value or utility, or affects it injuriously. The probable consequential damage to other property would not of itself constitute mischief. ANONYMOUS
[4 Mad., Ap., 16

3. ———————— *Penal Code, s. 426* —*Wrongful intention.*—In order to convict a person of the offence of mischief under s. 426, Penal Code, it is for the prosecution to prove that the accused caused damage with a wrongful intent with a knowledge that he was not justified in doing it, and that the party under whose orders he was acting had no real title. ISSUR CHUNDER MUNDLE *v.* ROHIM SHEIKH . . . . **25 W. R., Cr., 65**

4. ———— **Damage to non-existent right**—*Penal Code, s. 425*—*Revenue sale*—*Damage done between date of sale and grant of certificate* —*Wrongful loss to property held under incomplete title.*—The damage contemplated in s. 425 of the Penal Code need not necessarily consist in the infringement of an existing, present, and complete right, but it may be caused by an act done now with the intention of defeating and rendering infructuous a right about to come into existence. Any person who contracts to purchase property, and pays in a portion of the purchase-money, has such an interest in that property, although his title may not be complete or his right final and conclusive, that the destruction of such property may cause to him wrongful loss or damage within the meaning of s. 425. DHARMA DAS GHOSE *v.* NUSSERUDDIN
[I. L. R., 12 Calc., 660

5. ———— **Invasion of right causing wrongful loss**—*Penal Code (Act XLV of 1860), ss. 341-425*—*Wrongful restraint.*—Where complainant had for the purpose of removal placed

MISCHIEF—*continued.*

certain goods upon a cart, and accused came and unyoked the bullocks, and turned the goods off the cart on to the road, and complainant thereupon went away at once leaving them there,—*Held* that, under these circumstances, a conviction under s. 341 of the Penal Code could not be sustained; but that there was such "mischief" as to bring the offence within s. 425. *Held* also that s. 425 does not necessarily contemplate damage of a destructive character. It requires merely that there should be an invasion of right, and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it. IN THE MATTER OF THE PETITION OF JUGGESHWAR DASS. JUGGESHWAR DASS *v.* KOYLASH CHUNDER CHATTERJEE . . . . **I. L. R., 12 Calc., 55**

6. ——— **Person dealing with property under belief it is his own**—*Penal Code, s. 425.*—If a person deals injuriously with property in the *bonâ fide* belief it is his own, he cannot be convicted of mischief. EMPRESS *v.* BUDH SINGH . . . . **I. L. R., 2 All., 101**

7. ——— **Cutting and carrying away bamboos**—*Penal Code, s. 426.*—In a case in which the accused was charged with having cut and carried away bamboos, the right to which was disputed, it was held that he could not be convicted of mischief under s. 426 of the Penal Code. SHAKUR MAHOMED *v.* CHUNDER MOHUN SHA . **21 W. R., Cr., 38**

8. ——— **Cutting trees on land in another's possession.**—A person commits mischief if he cuts trees on land which he claims, but of which possession, after an execution-sale, has been legally made over to another person, without any objection or formal intervention on his part. SONAI SARDAR *v.* BUKHTAR SARDAR . . **25 W. R., Cr., 46**

9. ——— **Cutting Government trees without leave.**—*Held* that it was not illegal to convict prisoners of mischief as well as of theft, the offences charged being that they had cut down Government trees without leave, and appropriated them. REG. *v.* NARAYAN KRISHNA . .

[2 Bom., 416: 2nd Ed., 392

10. ——— **Cattle straying**—*Penal Code, s. 425—Act III of 1857, s. 17—Negligence.*—S. 425 of the Penal Code supposes that the destruction was caused with the intention to cause wrongful loss or damage, and does not apply to cases of mere carelessness; and s. 17, Act III of 1857, supposes the mischief (cattle trespass) was done intentionally, and not by negligence. QUEEN *v.* ARAZ SIRCAR

[10 W. R., Cr., 29

KASHINATH GHOSE *v.* DINOBUNDHOO MYTEE

[16 W. R., Cr., 72

11. ——— *Allowing cattle to stray.*—The mere fact of allowing cattle to stray, whereby damage is caused to the complainant, affords no evidence to support a conviction on the charge of mischief. ANONYMOUS . . **6 Mad., Ap., 37**

12. ——— *Trespass.*—Mere neglect on the part of an owner of cattle to keep them from straying into fields is not causing cattle to enter a compound within the meaning of s. 425 of the Penal Code. That section requires that, before the owner is convicted of the offence, it must be proved that he actually caused the cattle to enter, knowing that by so doing he was likely to cause damage. FORBES *v.* GIRISH CHANDRA BHUTTACHARJEE

[6 B. L. R., Ap., 3: 14 W. R., Cr., 31

13. ——— *Penal Code (Act XLV of 1860), s. 425.*—In order to constitute the offence of mischief within the meaning of s. 425 of the Penal Code, it is not sufficient to show that the owner of cattle which had caused damage was guilty of carelessness in allowing them to stray. The prosecution is bound to show that there was an intention to cause wrongful loss or damage. EMPRESS *v.* BAI BAYA . . . . **I. L. R., 7 Bom., 126**

14. ——— *Penal Code, s. 426—Cattle Trespass Act, I of 1871, s. 10—Cattle causing damage to crop—Liability of owner.*—The owner of an animal which strays on to another's land, and causes damage to the crop thereon, does not, unless he has wilfully driven it upon the land, commit the offence of mischief under s. 426 of the Penal Code. QUEEN-EMPRESS *v.* SHAIK RAJU

[I. L. R., 9 Bom., 173

15. ——— *Cattle Trespass Act, 1857, s. 18—Penal Code, s. 425.*—In the case of a conviction by a Subordinate Magistrate, under s. 18 of Act III of 1857, of a person who through neglect permitted a public road to be damaged, by allowing his pigs to trespass thereon,—*Held*, on a reference to the District Magistrate, that the conviction was not illegal, because the land damaged was a public road, as the right to use a public road is limited to the purposes for which the road is dedicated. REG. *v.* LINGANA BIN GINBANA . . **4 Bom., Cr., 14**

16. ——— **Grazing cattle on waste lands.**—The defendants were convicted of mischief under s. 427 of the Penal Code for grazing their cattle upon waste lands without payment of certain capitation fees to which the prosecutor was entitled. *Held* that there was no evidence that the defendants caused mischief. ANONYMOUS . **5 Mad., Ap., 30**

17. ——— **Interference with fishery**—*Penal Code, s. 425—Wrongful loss—Proof of title.*—The right to a fishery was in dispute between the zamindar of Bally and the zamindar of Moharajpore. The former obtained a decree in the Civil Court declaring the fishery to be his, in proceedings to which the latter was not a party, and the servants of the Bally zamindar thereupon removed a bamboo bar, which the Moharajpore people had erected to prevent the passage of fish. For this they were convicted of mischief under the Penal Code, and punished by fine. *Held*, on reference to the High Court, that the conviction could not stand, as the Moharajpore zamindar had not shown that he was legally entitled to the fishery, and as it did not appear that the defendants were acting otherwise than from a *bonâ fide* belief that the Moharajpore zamindar was encroaching on their master's rights. BAKAR HALSANA *v.* DINOBANDHU BISWAS . **3 B. L. R., A. Cr., 17**

MISCHIEF—*continued.*

S. C. QUEEN *v.* DENOO BUNDHOO BISWAS [12 W. R., Cr., 1

18. ———— Pulling up stakes lawfully placed at sea within territorial limits—*Penal Code, ss. 425 and 427.*—Where certain of the inhabitants of the village of Manari in the Thana district sallied out in boats and pulled up and removed a number of fishing stakes lawfully fixed in the sea within three miles from the shore by the villagers of a neighbouring village, it was held that the Penal Code was the substantive law applicable to the case, and that the offence amounted to mischief within the meaning of ss. 425 and 427 of that Code. REG. *v.* KASTYA RAMA . . . **8 Bom., Cr., 63**

19. ———— Opening irrigation sluice at wrong time—*Penal Code, s. 425.*—The defendants were convicted of mischief under the following circumstances. During certain seasons of the year they received water through a sluice for the irrigation of their lands. At another season the sluice was closed and the water allowed to flow to the lands of other cultivators. This arrangement was prescribed by the revenue authorities, and the defendants violated it by opening their sluice during the season prescribed for the irrigation of the lands of the other cultivators. *Held* that the conviction could not be sustained: there had been no destruction of property or diminution in the value or utility of property by the defendants within the meaning of s. 425 of the Penal Code. ANONYMOUS . **7 Mad., Ap., 39**

20. ———— Endangering safety of river embankment—*Intention.*—Where the accused had, while extending a garden and laying the foundation of a house, encroached on the inner slope of a river embankment, and thereby endangered the safety of the whole station,—*Held* that, in order to justify a conviction for the offence of mischief, it must appear that the accused person had done a particular act with intent to cause, or knowing it to be likely to cause, wrongful loss, and that, as the house and garden on which the accused was engaged would be the first to be swept away in the event of the dreaded breach in the bund and consequent irruption of the river, such guilty knowledge or intent could not reasonably be inferred on his part. IN THE MATTER OF THE PETITION OF PRAN NATH SHAHA. IN THE MATTER OF THE PETITION OF ROMA NATH BANERJEE . . . . **25 W. R., Cr., 69**

21. ———— Act done without show of right—*Penal Code, s. 430—Causing diminution of water-supply.*—*Held* by the majority of a Full Bench (INNES, *J.*, dissenting) that it is not part of the definition of the offence of causing a diminution of water-supply for agricultural purposes that the act of the accused should be a mere wanton act of waste. It is sufficient that the act is done without any show of right. RAMAKRISHNA CHETTI *v.* PALANYANDI KUDAMBAR . . . **I. L. R., 1 Mad., 262**

22. ———————— *Causing diminution of water-supply—Penal Code, s. 430—Watercourse.*—Where upon the evidence it appeared that the complainant was the exclusive owner of a water-course, and that the accused had no sort of right to assert any claim to it, the causing of a diminution of the supply of water by the accused, even though in the assertion of a right, was held to be only an additional wrong, and to constitute mischief within the meaning of s. 430 of the Penal Code. *Ram Krishna Chetty* v. *Palanyandi Kudambar, I. L. R., 1 Mad., 262,* followed. QUEEN-EMPRESS *v.* JAGANNATH BHIKAJI BHAVE . **I. L. R., 10 Bom., 183**

MISCHIEF—*concluded.*

23. ———— Damage to bridge through floating logs.—The accused were convicted of mischief. The acts were, that whilst the accused were employed in floating timber through a bridge, some of the logs struck against the arch of the bridge. *Held* that the conviction was bad. ANONYMOUS . . . . **5 Mad., Ap., 40**

24. ———— Erection by one joint owner of edifice without consent of others—*Land held by joint owners—Penal Code, s. 425—Wrongful loss.*—*A*, a joint owner of a parcel of land, erected on it an edifice without the consent and against the will of *B*, another joint owner. A dispute having arisen in consequence, the Magistrate held an inquiry, and made an order, under s. 530 of the Criminal Procedure Code, 1872, awarding to *A* exclusive possession of the part of the land on which the edifice had been erected. *B* then brought a suit in the Civil Court to establish his title to joint possession of the whole parcel and for a declaration that *A* was not entitled to erect any edifice thereon; and he further prayed that such edifice should be removed. *B* obtained a decree, whereupon his servants went on the land and pulled it down. They were charged before the Deputy Magistrate with having committed mischief, and on this convicted and fined. Subsequently the accused found the men in the employ of *A* were putting up this erection, a nawbat-khana, again, and accordingly protested against its erection, pulled down the bamboos, thrust aside the servants of *A*, throwing to the ground one man who was clinging to the bamboos. *Held per* JACKSON, *J.*, that as there had been no causing of wrongful loss, the accused had not been guilty of mischief. *Held* further *per* CUNNINGHAM, *J.*, that the acts of the complainants in erecting the nawbat-khana amounted to mischief, and came within the purview of s. 425 of the Penal Code. EMPRESS *v.* RAJCOOMAR SINGH
[I. L. R., 3 Calc., 573: 1 C. L. R., 352
[2 C. L. R., 62

25. ———— Destruction of carcass—*Right to skin of animals—Village mahars—Custom.*—The owner of an animal who buries it after its death is not guilty of mischief or any other offence, although he does so with the express object of preventing the mahars of his village from taking its skin according to the custom of the country. QUEEN-EMPRESS *v.* GOVINDA PUNJA
[I. L. R., 8 Bom., 295

26. ———— Destruction of immoral document—*Penal Code, s. 426.*—The destruction of a document evidencing an agreement void for immorality may constitute the offence of mischief within the meaning of s. 426 of the Penal Code. QUEEN *v.* VYAPURY . . . **I. L. R., 5 Mad., 401**

MISDIRECTION.

See Appeal in Criminal Cases—Practice and Procedure.
[4 C. W. N., 166, 576
I. L. R., 27 Calc., 172
I. L. R., 21 Calc., 955

See Cases under Charge to Jury—Misdirection.

See Privy Council, Practice of—Criminal Cases . I. L. R., 15 All., 310
[I. L. R., 22 Bom., 528

See Cases under Revision—Criminal Cases—Verdict of Jury and Misdirection.

See Verdict of Jury—Power to interfere with Verdicts.
[23 W. R., Cr., 21
I. L. R., 9 All., 420
I. L. R., 14 Mad., 36
I. L. R., 23 Calc., 252

MISJOINDER.

See Administration . 15 B. L. R., 296
[I. L. R., 26 Calc., 891

See Appellate Court—Other Errors affecting or not Merits of Case.
[6 Bom., A. C., 177
7 Bom., A. C., 19
23 W. R., 408
13 W. R., 176
I. L. R., 10 Calc., 1061
I. L. R., 15 All., 380
I. L. R., 24 Calc., 540
I. L. R., 17 Mad., 122

See Cases under Costs—Special Cases—Misjoinder.

See Criminal Proceedings.
[I. L. R., 28 Calc., 7, 10

See Hindu Law—Joint Family—Powers of Alienation by Members—Other Members . I. L. R., 1 Calc., 226

See Cases under Joinder of Causes of Action.

See Cases under Multifariousness.

See Slander.
[15 B. L. R., 161, 166 note

See Specific Relief Act, s. 27.
[I. L. R., 1 All., 555

See Wrongful Distraint.
[I. L. R., 25 Calc., 285

1. ———— **Misjoinder of parties**—*Suit for account from different dates against two persons.*—In a suit for an account against *A* and *B* as agents, the plaintiff asked for an account as against *A* from 1265 (1858) to 1283 (1876), and as against *B* from 1281 (1874) to 1283 (1876). *Held* that there had been no misjoinder. Degamber Mitter *v.* Kallynath Roy **I. L. R., 7 Calc., 654**

S. C. Degumber Mozumdar *v.* Kallynath Roy
[9 C. L. R., 265

MISJOINDER—*continued.*

2. ———————— *Suit on bond not pledging lands.*—Plaintiff sued on a simple money-bond for the recovery of a sum of money lent by him to *R A*, a female, whose estates were under the management of a Court of Wards, and he made co-defendants in the suit certain other parties whom he charged with endeavouring to have the estates of *R A* transferred to them. He also tendered in evidence another bond, by which *R A*, the principal defendant, purported to secure a further advance, and to pledge her zamindari estates to the plaintiff till the debt was paid off. *Held* that the plaintiff had no ground of suit against the other defendants, as to whom there was misjoinder, except *R A*, the principal female defendant, as his cause of action against *R A* was based on the first bond, which did not create any charge upon the lands with which they are said to have meddled. Mahomed Zahoor Ali Khan *v.* Rutta Kooer . **9 W. R., P. C., 9**
[11 Moore's I. A., 468

3. ———————— *Suit on bond hypothecating immoveable property—Joinder of debtor and purchaser of property.*—The holder of a bond hypothecating property who seeks to recover the debt due under the bond from his debtor, and to bring to sale the hypothecated property which is in the hands of a purchaser, is at liberty to implead the debtor and the purchaser in the same suit, and there is no objection to such an action on the ground of misjoinder. Bhogi Lal *v.* Chutter Singh
[6 N. W., 323

distinguishing Makund Ram Debi Das
[6 N. W., 324 note

4. ———————— *Suit on bond.*—The plaintiff alleged in his plaint that *R* had agreed in a bond to borrow from him R5,000 in order to institute a suit against *D* as to his share in certain joint ancestral property; that *R* consequently borrowed R3,000 from him, and that, while the suit was pending, *R* and *D*, in collusion with each other and their mother, in order to deprive the plaintiff of his money, agreed to refer the suit to their mother, who, by reason of their collusion, made a statement which resulted in a smaller sum being decreed to *R* than was claimed by him, and in the property in suit remaining in the possession of *D*; and that, as both *R* and *D* had taken collusive proceedings, with intent to obstruct the plaintiff's realization of his money, they were both liable for the said sum of R3,000, and he therefore brought this suit to recover R3,000 principal, and R3,000, an equivalent of that sum, under the terms of the bond; and that the cause of action arose on the day on which *R* and *D* agreed to refer their suit to their mother. *Held* (Pearson, *J.*, dissenting) that the suit was bad for misjoinder of parties. Bisheshur Pershad *v.* Ram Churun . . . . . . **5 N. W., 25**

5. ———————— *Non-registration as tenants.*—Where a single suit for rent against the holders of several tenures is objected to on the ground of misjoinder, the mere fact of non-registration as separate holdings is no answer to the objection. The Court should inquire whether the tenants have not in

MISJOINDER—*continued.*

fact been dealt with as holders of separate tenures. LALUN MONEE v. SONA MONEE DABEE

[2 W. R., 334

6. ———— *Suit against lessees and their sureties—Jurisdiction of Revenue Court.*—Though a Revenue Court had, under Act X of 1859, no jurisdiction to take cognizance of a suit against the sureties of a lessee, a suit brought against the lessees and their sureties was not bad for misjoinder. DOORGA PERSHAD v. SHEORAJ SINGH

[5 N. W., 222

7. ———— *Suit for share of partnership assets—Insolvent estate—Administration suit by creditors—Addition as plaintiff of receiver in administration suit.*—In a suit by the widow and executrix of a testator who at his death was a member of a mercantile firm, the plaintiff claimed to be entitled to 60 cents or shares in the firm up to the date of the testator's death, and to a like share in the profits earned subsequently to his death, or to be earned by the firm so long as it continued to carry on the said agency business of the company. The defendant admitted the right of the plaintiff to the share claimed in the profits earned prior to the testator's death, but resisted her claim to any portion of the subsequent profits The testator's estate had proved insolvent; and previously to the filing of this suit an administration suit had been filed by creditors. By a decree made in that suit on the 23rd January 1883 a receiver had been appointed, who was made a co-plaintiff with the executrix in the present suit. It was contended on behalf of the defendant that there was a misjoinder, the receiver being only entitled to sue for what might be due to the testator's estate up to the date of his death. *Held* that there was no misjoinder. The receiver might have sued for everything that was due to the estate, but for greater safety the executrix was added as a plaintiff. BACHUBAI v. SHAMJI JADOWJI

[I. L. R., 9 Bom., 536

8. ———— *Plaintiffs having separate interests.*—In a suit by two plaintiffs for the value of personal property plundered, of which one plaintiff owned certain articles and the other was the owner of others, if the cause, time, place, and parties charged be the same in both instances, the fact that both plaintiffs have not a joint interest in the whole of the property plundered by the defendants is insufficient to put them out of Court JUGOBUNDHOO DUTT v. MASEYK . . . W. R., 1864, 81

9. ———— *Procedure where one plaintiff is found to have no interest.*—In a suit to recover property bought by one *S* and his mother *D* as guardian of his minor brother, where it was found that *D* alone was entitled to the properties as heir to its owner, her late father,—*Held* that it was not necessary to dismiss the suit on account of its formal incorrectness, but the name of *S* should have been struck off the record, and the suit allowed to proceed as that of *D* alone. SREERAM HAZRAH v. GYARAM HATEE . . . . . . 11 W. R., 507

10. ———— *Suit by mortgagee to recover possession of mortgaged property.*—In a suit by a mortgagee for possession of the mortgaged property, on the allegation that some of the defendants under subsequent mortgages and purchases had opposed him in obtaining possession; and to have it declared that the said mortgages and purchases were inoperative,—*Held* that the plaintiff had but one cause of action upon his mortgage deed, and was right in joining all the defendants in the suit. BAL KISHEN MAHAPATTUR v. BISTOO CHURN

[22 W. R., 532

11. ———— *Suit to cancel mortgage and deed of sale.* A registering officer having refused to register a deed of sale of certain property executed by *S* in favour of *B*, *B* sued *S* and *K* claiming the completion of the sale with delivery of the sale-deed duly executed, and possession of the property by cancelment of a deed of mortgage of the same executed in *K*'s favour by *S*. *Held* the suit was bad for misjoinder. BEHARI LAL v. KUNDAN LAL . . . . . . 7 N. W., 103

12. ———— *Owners of separate holdings once joint.*—A suit to recover possession as cultivators, brought by two plaintiffs whose holdings, although originally one, have for a long time been separated and held separately, will be dismissed for misjoinder. GIRWUR v. NYAZ ALI

[2 N. W., 306

13. ———— *Separate interests in subject-matter of suit.*—*R* owned one-third of an estate, and *P*, *B*, and *S* owned another third jointly. In a suit in which *R*, *P*, *B*, and *S*, joined in bringing against *N*, who was in possession under a deed of gift, they claimed possession and to have the deed of gift set aside. *Held* by the Full Bench that there was no misjoinder of plaintiffs in the suit. RAM SEWAK SINGH v. NAKCHED SINGH

[I. L. R., 4 All., 261

14. ———— *Suit for confirmation of possession of land not in joint possession.*—The plaintiffs alleged that certain of their lands had been wrongly recorded in some settlement papers as belonging to the defendants, but declared themselves to be still in possession of them, and prayed that they might be maintained in possession by the correction of the error in the record, which threatened the disturbance of their possession. They did not allege, however, that the fields in question, or any of them, had been recorded as jointly belonging to the defendants, nor was such the case. *Held* that, under such circumstances, the plaintiffs had no such common cause of action in the matter of the suit against the defendants as would justify the course taken in suing them all together. GUNGA RAI v. SAKEENA BEGUM

[5 N. W., 72

15. ———— *Suit for pre-emption.*—Three several sales of separate shares in the same mehal were the subject-matter of the deed of sale in a suit for pre-emption, and the purchasers of one of the shares and the purchaser of the other two shares were different persons, and the plaintiff claimed the right of pre-emption in respect of all three shares, and indiscriminately impleaded all the several vendors and vendees, who had no community of interest in the subject-matter of the suit. The Court, allowing the plea of misjoinder, which both the lower Courts had overruled, remanded the case to the Court of first instance, in order that the plaint might be returned to the plaintiff for amendment, and the suit tried and decided afresh after amendment. GOLAM *v.* WAJIDA BIBI

[7 N. W., 188

16. ———————— *Suit for redemption of mortgage—Civil Procedure Code, 1859, s. 8—Parties.*—*K* was in possession of mouzah Dharmapore as usufructuary mortgagee. A share in the mouzah was sold in the execution of a decree against the shareholder. It was afterwards transferred by private sale to *S* by the auction-purchaser. *S*, alleging that the mortgage-debt had been satisfied out of the usufruct, sued to recover possession of the share, and impleaded not only *K*, but also the heirs of the mortgagors, and his vendee, the auction-purchaser, but no cause of action was declared against those parties, nor did they resist the suit. The lower Courts dismissed the suit on the ground that separate causes of action, not between the same parties, had been included in one suit. The High Court reversed the decrees of the lower Courts so far as they dismissed the suit against the heirs of the mortgagors and the mortgagee, and remanded the suit for trial, as since the heirs of the mortgagors were interested in the account which must have been taken in the suit, it was necessary to make them parties in order that they might be bound by it. SUKHAWAT ALI *v.* KESHO TEWARI . **6 N. W., 208**

17. ———————— *Specific performance, Suit for—Joinder of third person not party to the contract.*—In a suit for specific performance of a contract entered into by defendant No. 1, the plaintiff joined as a defendant a third person who alleged that he was the owner of the property, the subject of the contract, seeking to obtain possession and other relief as against such third person stating that he was a benamidar of the first defendant. There was nothing to show that such third person had any interest distinct from the first defendant. *Held* that there was no misjoinder. The principle laid down in the cases of *Houghton* v. *Money, L. R., 2 Ch. App., 166*, and *Luchumsey Ookerda* v. *Fazulla Cassumbhoy, I. L. R., 5 Bom., 177, viz.*, that a person not a party to the contract cannot be joined in a suit for specific performance, is only applicable where from the plaintiff's case it appears that the third party, not a party to the contract, has a distinct interest from that of the other parties to the contract, which interest is sought to be declared null and void. MOKUND LALL *v.* CHOTAY LALL

[I. L. R., 10 Calc., 1061

18. ———————— *Civil Procedure Code, s. 26—Amendment of plaint—Specific Relief Act, s. 42—Declaratory suit.*—Suit by six plaintiffs praying for a declaration that certain proceedings of a District Temple Committee removing them from office as trustees of a temple were illegal. Defendants pleaded that the suit would not lie because of misjoinder. *Held* that, under s. 26 of the Code of Civil Procedure, the plaintiffs could not sue jointly, and that the plaint should be returned for amendment, one of the plaintiffs to be allowed to use it as his own. RAMANUJA *v.* DEVANYAKA

[I. L. R., 8 Mad., 361

19. ———————— *Plea of misjoinder, when sustainable—Suit against several persons claiming under different titles, Effect of—Civil Procedure Code, ss. 31 and 53.*—*A*, as auction-purchaser at a revenue sale, brought a suit against a number of persons for possession of some chur land. The defendants claimed portions of the land under different titles and pleaded misjoinder. The Court, upon the Ameen's report, gave *A* the option to amend the plaint by withdrawing the suit against any particular sets of defendants. *A* elected to go to trial on the suit as brought. *Held* that, under the circumstances, it was necessary for the Court to adjudicate on the question of misjoinder. *Held* also that the plaintiff was not entitled to join in one suit all the persons, on the ground that they obstructed his possession, unless he was able to show that those persons acted in concert or under some common title. *Held* further that, having regard to the provisions of ss. 31 and 53 of the Civil Procedure Code, the proper order of the Court should have been to reject the plaint and not dismiss the suit on the ground of misjoinder. SUDHENDU MOHUN ROY *v.* DURGA DASI . . . . **I. L. R., 14 Calc., 435**

20. ———————— *Civil Procedure Code, s. 44, Rule (b).*—An objection to the attachment and sale of certain immoveable property, raised by one who claimed to have purchased the same at a sale in execution of a prior decree, was disallowed on the ground that under the prior decree the rights of one only of the present judgment-debtors had been sold and purchased by the objector. In accordance with this order, two-thirds of the property under attachment were sold; and the objector thereupon brought a regular suit for a declaration of his right as a purchaser of the whole property in execution of the prior decree. To this suit he impleaded as defendants the decree-holder and the judgment-debtors. The suit was decreed, and in the result the decree-holder alone was compelled to pay the whole of the costs. Subsequently he brought a suit for contribution in respect of these costs, making defendants to the suit (i) *R*, one of his co-defendants in the previous suit, personally and as heir of *A*, who was another of those co-defendants, (ii) *N*, and (iii) *S*, these two being sued in the character of heirs of *A*. *Held*, with reference to a plea of misjoinder within the terms of rule (*b*) of s. 44 of the Civil Procedure Code, that, even if there were misjoinder of parties, the first Court, having proceeded to trial of the suit, and not having rejected the plaint or returned it for amendment, or amended it, should have disposed of it upon the merits, and found what *A*'s share in the amount paid by the plaintiff was, and whether assets to that amount had come to the hands of the defendants as her heirs. KISHNA RAM *v.* RAKMINI SEWAK SINGH . . **I. L. R., 9 All., 221**

21. ———————— *Form of suit.*—The defendants' ancestors or predecessors in title were the cultivating tenants of the lands of a certain

MISJOINDER—*continued.*

temple from a date not later than 1827, in which year they were so described in the paimaish accounts. In 1830, they executed a muchalka to the Collector, who then managed the temple, whereby they agreed among other things to pay certain dues. They were described in the muchalka as paracudis. In 1857 the plaintiff's predecessors took over the management of the temple from, and executed a muchalka to, the Collector, whereby he agreed among other things not to eject the raiyats as long as they paid kist. In 1882, the dues (which were payable separately) having fallen into arrear, the manager of the temple sued to eject the defendants. *Held* that the suit was not bad for misjoinder. THIAGARAJA *v.* GIYANA SAMBANDHA PANDARA SANNADHI

[I. L. R., 11 Mad., 77

22. ———————— *Joinder of plaintiffs—Wrongful act affecting the rights of the several plaintiffs—Trespass.*—Where certain persons were alleged to have committed a wrongful act by evicting the plaintiffs from certain land in which the first plaintiff claimed to be entitled to the melvaram, and the other plaintiffs to the kudivaram,—*Held* that a suit brought by the plaintiffs jointly was not bad for misjoinder. MUTHUVIJAYA RAGHUNADHA RAJU TEVAR *v.* CHOCKALINGAM CHETTI

[I. L. R., 19 Mad., 335

23. ———————— *Mad. Reg. V of 1804, s. 8—Suit by ward of the Court of Wards—Civil Procedure Code, 1882, s. 464.*—The holder of an impartible zamindari, governed by the law of primogeniture, having a son, executed a mining lease of part of the zamindari for a period of twenty years, by which no benefit was to accrue to the grantor unless mining operations were carried on with success, and the commencement of mining operations was left optional with the lessee. On the death of the grantor, his minor son and successor, by the Collector of the district as his next friend (authorized in that behalf by the Court of Wards), sued the assignee of the lessee to have the lease set aside. The second plaintiff was the grantee from the Court of Wards (acting on behalf of the minor zamindar) of certain mining rights on the same land. *Held per* MUTTUSAMI AYYAR and WILKINSON, *JJ.* (affirming the judgment of PARKER, *J.*), that the interests of the first and second plaintiffs not being inconsistent with each other, the suit was not bad for misjoinder. BERESFORD *v.* RAMASUBBA **I. L. R., 13 Mad., 197**

24. ———————— *Civil Procedure Code (Act XIV of 1882), ss. 26, 31, 34—Persons jointly interested in a suit—Objection taken for first time on appeal.*—The plaintiffs were the widow and an alleged adopted son of one *I*, who was the uncle of the defendant *R*. In execution of a decree against *R*, the property in dispute was attached. The plaintiffs intervened and objected to the attachment on the ground that the property belonged to *I*, and not to *R*, the judgment-debtor. This objection was disallowed. Thereupon the plaintiffs filed a regular suit to set aside the attachment. The Court of first instance decided in plaintiffs' favour. The defendants appealed. The lower Appellate Court was of opinion that the interests of the two plaintiffs were antagonistic, and following the decision in *Lingammal* v. *Chinna, I. L. R., 6 Mad., 239,* held that the suit was bad for misjonider of parties. The case was thereupon remanded for an amendment of the plaint. On appeal to the High Court,—*Held,* reversing the remand order, that, the objection for misjoinder as co-plaintiffs not having been taken by the defendant in the Court of first instance, the Appellate Court ought not, under s. 34 of the Code of Civil Procedure (Act XIV of 1882), to have allowed the objection. *Held* also that, as plaintiff No. 2 admitted the adoption of plaintiff No. 1, their claims were in no way antagonistic. They were both jointly interested in disproving defendant's title. They could therefore sue jointly under s. 26 of the Code of Civil Procedure. *Lingammal* v. *Chinna, I. L. R., 6 Mad., 239,* distinguished. FAKIRAPA *v.* RUDRAPA

[I. L. R., 16 Bom., 119

MISJOINDER—*concluded.*

25. ———————— *Civil Procedure Code (1882), s. 26—Joinder of plaintiffs—Persons jointly interested in a suit—Claims not antagonistic—Cause of action, Meaning of—Parties.*—The plaintiffs 1 to 4 were the daughter and daughter's sons of one *G*. They alleged that *G* died, leaving an infant son *X*, an infant daughter *H*, and a widow *C*; that the son died leaving *C* as heir, and that, upon *C's* death, the sons of *H* became entitled to the property of *X*, but that, should it appear that *G* did not leave *X* as his heir, *H* would succeed to the estate of *G* as next heir; and that the plaintiffs jointly granted a patni settlement of the property to one *B* (plaintiff No. 5), but he was kept out of possession by the defendant, who claimed it by purchase from the representatives of *P*, brother of *G*. The plaintiffs 1 to 5 joined in bringing the suit, which was one for possession of the property upon establishment of title either of plaintiff No. 1 or of plaintiffs Nos. 2, 3, and 4. On the objection of the defendant under s. 26 of the Code of Civil Procedure, that the suit was not maintainable for misjoinder of plaintiffs,—*Held* that the expression "cause of action" occurring in s. 26 of the Code is used, not in its comprehensive, but in its limited, sense, so as to include the facts constituting the infringement of the right, but not necessarily also those constituting the right itself, so that the qualification implied in the words "in respect of the same cause of action" will be satisfied if the facts, which constitute the infringement of right of the several plaintiffs, are the same, though the facts constituting the rights upon which they base their claim to that relief in the alternative may not be the same; and that, as the plaintiffs in the case complained of the same wrongful act of the defendant constituting the infringement of their right, that was their cause of action, and as they all claimed the same relief, namely, possession, and further as they did not advance any antagonistic claim, such a case came within s. 26 of the Code, and was not bad for misjoinder of plaintiffs. *Lingammal* v. *Chinna Venkatammal, I. L. R., 6 Mad., 239; Nusserwanji Merwanji Panday* v. *Gordon, I. L. R., 6 Bom., 266,* dissented from. *Fakirapa* v. *Rudrapa, I. L. R., 16 Bom., 119,* followed. HARAMONI DASSEE *v.* HARI CHURN CHOWDHRY . . **I. L. R., 22 Calc., 833**

MISPRISION OF TREASON.

See Waging War against the Queen.
[7 B. L. R., 63

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[I. L. R., 14 Bom., 241
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[I. L. R., 17 Calc., 291
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[I. L. R., 8 Calc., 118
I. L. R., 24 Calc., 533

See Right of Suit—Misrepresentation.
[I. L. R., 4 Bom., 465
2 N. W., 13
I. L. R., 24 Bom., 166

——— **as to area of land sold.**

See Vendor and Purchaser—Fraud.
[I. L. R., 18 All., 322

——— **by minor.**

See Minor—Liability of Minor on, and Right to enforce, Contracts.
[I. L. R., 24 Calc., 265
1 C. W. N., 453
I. L. R., 25 Calc., 371, 616
2 C. W. N., 18, 201, 330
I. L. R., 26 Calc., 381
I. L. R., 21 Bom., 198

MISTAKE.

See Charter-Party.
[I. L. R., 16 Bom., 561

See Hindu Law—Partition—Right to Partition—Generally.
[I. L. R., 21 Bom., 333

See Settlement—Construction.
[I. L. R., 17 Bom., 407

See Special or Second Appeal—Other Errors of Law or Procedure—Mistakes.

See Trust . I. L. R., 18 Bom., 551

——— **Condition imposed by—**

See Hindu Law—Adoption—Second, Simultaneous, and Conditional Adoptions . . I. L. R., 2 Bom., 377

——— **in filling up stamped paper.**

See Stamp Act, s. 51.
[I. L. R., 18 Mad., 122

MISTAKE—*concluded.*

——— **in name of party to contract.**

See Contract—Bought and Sold Notes . I. L. R., 20 Calc., 854

——— **in statement of age.**

See Insurance—Life Insurance.
[I. L. R., 20 Bom., 99

——— **Land sold by—**

See Limitation Act, art. 12.
[I. L. R., 20 Mad., 118

——— **Money paid by—**

See Civil Procedure Code, 1882, s. 244—Questions in Execution of Decree.
[I. L. R., 1 All., 338

See Cases under Contract Act, s. 72.

——— **of fact.**

See Certificate of Administration—Cancelment or Recall of Certificate . I. L. R., 19 Bom., 821

See Contract Act, s. 23—Illegal Contracts—Generally.
[I. L. R., 3 Calc., 602
L. R., 5 I. A., 78

See Special or Second Appeal—Grounds of Appeal—Evidence, Mode of dealing with . I. L. R., 15 Bom., 670

See Waiver . . 5 Mad., 437, 444

See Wrongful Restraint.
[I. L. R., 24 Calc., 885

——— **of law.**

See Estoppel—Estoppel by Conduct.
[I. L. R., 19 Bom., 374

See Limitation Act, 1877, s. 5.
[I. L. R., 11 Calc., 767
I. L. R., 13 Calc., 62
I. L. R., 13 Mad., 269
I. L. R., 12 All., 461

See Limitation Act, 1877, s. 14.
[I. L. R., 10 All., 587
I. L. R., 12 Bom., 320
I. L. R., 19 All., 348
3 C. W. N., 233

——— **of taxing officer.**

See Court Fees Act, 1870, s. 5.
[I. L. R., 15 All., 117

——— **Pottah granted by—**

See Collector I. L. R., 12 Mad., 404

——— **Suit brought under—**

See Limitation Act, 1877, s. 14 (1871, s. 15) . I. L. R., 3 Calc., 817
[I. L. R., 9 Calc., 255
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MOFUSSIL COURTS, POWER OF—

——— Mofussil Courts have no power to make orders *in pœnam* against persons not parties to a suit such as is possessed by the original side of the High Court. RAMNIDHY KOONDOO *v.* OJOODHYARAM KHAN . . **11 B. L. R., Ap., 37**

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MOHUNT.

See CASES UNDER HINDU LAW—ENDOWMENT.

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—MARRIAGE.
[I. L. R., 5 Bom., 682

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[I. L. R., 1 All., 539
5 W. R., Mis., 57
3 Agra, 295
I. L. R., 9 All., 1
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See ONUS OF PROOF—CUSTOM.
[I. L. R., 5 Bom., 682

——— **Personal estate of—**

See CERTIFICATE OF ADMINISTRATION—ISSUE OF, AND RIGHT TO, CERTIFICATE.
[I. L. R., 4 Calc., 954

MOKURARI ISTEMRARI TENURE.

See GRANT—CONSTRUCTION OF GRANTS.
[I. L. R., 1 Calc., 391

See CASES UNDER LEASE—CONSTRUCTION.

——— **Effect on, of subsequent farming lease.**—A mokurari holding cannot be extinguished by a subsequent farming lease. DHURM ROY *v.* MUDDOOSOODUN PROSAD CHOWDHRY
[W. R., 1864, Act X, 117

MONEY-DECREE.

See CASES UNDER EQUITY OF REDEMPTION.

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—MONEY-DECREES ON MORTGAGES.

MONEY HAD AND RECEIVED.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
[I. L. R., 15 Bom., 580

See CASES UNDER LIMITATION ACT, 1877, ART. 62.

See LIMITATION ACT, 1877, ART. 97.
[I. L. R., 19 Calc., 123
L. R., 18 I. A., 158
I. L. R., 18 Mad., 173

MONEY HAD AND RECEIVED —*continued.*

See LIMITATION ACT, 1877, ART. 120.
[I. L. R., 15 Mad., 382
I. L. R., 18 All., 430

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MONEY HAD AND RECEIVED.

1. ——— **Money paid under compulsion of law**—*Payment into Court by mortgagee of amount of decree to prevent sale of mortgaged property—Voluntary payment.*—The defendant sued one *J H P* in the Small Cause Court, and obtained a decree, in execution of which he caused a steamer to be attached as being the property of *J H P.* Thereupon the plaintiffs, alleging themselves to be in possession of the steamer as mortgagees from *J H P,* in order to obtain its release, paid the amount of the decree against *J H P* into Court, and the steamer was given up. Subsequently an order was made by the Court, on the application of the plaintiffs, that the money should remain in Court pending the result of a suit to be brought by them for its recovery. They accordingly brought a suit against the defendant. The Judge of the Small Cause Court found that *J H P* had no attachable interest in the steamer, and that the plaintiffs had paid the amount of the decree on compulsion. *Held* the plaintiffs could maintain the suit, although the defendant had not actually received the amount of the decree. MORAN *v.* DEWAN ALI SIRANG
[8 B. L. R., 418

2. ——— Money paid under compulsion of law cannot be recovered back as money had and received. JUGGOBUNDHOO GHOSE *v.* CHOWDHRY MUMTAZ HOSSEIN . **W. R., 1864, 205**

3. ——— **Voluntary payment**—*Payment without authority.*—If *A* without *B*'s authority pay *B*'s creditor, he cannot recover back from the creditor the amount so paid. MOOL CHUND *v.* AJOODHYA PERSHAD . . . **3 N. W., 162**

4. ——— *Suit by sub-lessee against lessor for malikana which he was compelled to pay.*—Where a sub-lessee pays malikana which was not specified in the sub lease as being a charge on the property, and as to which he was ignorant,—*Held* that he was equitably entitled to recover over from his lessor. TARSANAH *v.* KADHAREY LALL . . . . . **5 N. W., 1**

5. ——— **Proceeds of joint immoveable property after satisfaction of decree by sale of tenure, Suit for.**—The plaintiff and the defendant were co-owners of a certain talukh. The zamindar brought a suit for arrears of rent of the talukh against the defendant, obtained a decree, and in execution of that decree sold the tenure. The proceeds of the sale, after satisfying the zamindar's decree, were taken by the defendant; and the plaintiff instituted the present suit to recover an eight annas share thereof. *Held* that the plaintiff was entitled to recover. RAM COOMAR SEN *v.* RAM COMUL SEN . . **I. L. R., 10 Calc., 388**

MONEY HAD AND RECEIVED —*concluded.*

6. ———— **Money paid as price of goods, Suit to recover**—*Consideration, Failure of.*—Money paid as the price of goods to be delivered hereafter is money received for the use of the seller, and it is only upon failure of consideration that the money so paid becomes money received for the use of the buyer. ATUL KRISTO BOSE *v.* LYON & Co.

[I. L. R., 14 Calc., 457

MONEY LENT.

See HINDU LAW—CONTRACT—MONEY LENT . . . **5 B. L. R., 396**
[7 B. L. R., 489

See LIMITATION ACT, ART. 60.
[I. L. R., 16 Calc., 25
I. L. R., 18 Mad., 390
I. L. R., 19 Bom., 352, 775

———— **Suit for—**

See RIGHT OF SUIT—MONEY LENT.
[I. L. R., 23 Calc., 851

MONEY PAID.

See CASES UNDER LIMITATION ACT, 1877, ART. 61.

———— **by mistake.**

See CASES UNDER CONTRACT ACT, s. 72.

———— **by trespasser in possession.**

See WRONGFUL POSSESSION.
[I. L. R., 4 Calc., 566

———— **in excess satisfaction of decree.**

See CIVIL PROCEDURE CODE, 1882, s. 244—QUESTIONS IN EXECUTION OF DECREE.
[I. L. R., 1 All., 388
6 Mad., 304
17 W. R., 14
15 W. R., 160
19 W. R., 413
4 C. L. R., 577
I. L. R., 22 All., 79

———— **in execution of decree, Suit to recover—**

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 244—QUESTIONS IN EXECUTION OF DECREE.

See CASES UNDER CIVIL PROCEDURE CODE, 1882, ss. 257, 258.

———— **to prevent sale.**

See RIGHT OF SUIT—SALE FOR ARREARS OF REVENUE . **I. L. R., 13 All., 195**

See CASES UNDER SALE FOR ARREARS OF RENT—DEPOSIT TO STAY SALE.

See CASES UNDER SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

MONEY PAID—*concluded.*

1. ———— **Voluntary payment**—*Compulsory payment of revenue—Previous request.*—*L*, having been compelled by a revenue officer to pay revenue payable by *P*, sued *P* to recover the amount as having been paid on his account. His plaint disclosed no cause of action against *P*, triable in a Civil Court, for he did not plead that the payment was made at the request, expressed or implied, of *D*. There being no such request on the part of *P* to support the action, it was held that *L* could not recover. PATTU LAL *v.* LUCHMAN PARSHAD **7 N. W., 155**

2. ———— *Penal assessment of revenue paid under protest—Proof of illegal coercion.*—In order to enable one having paid money under protest to recover money so paid, it is necessary for him to show that the payment was made under illegal coercion. MUTHAYYA CHETTI *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 22 Mad., 100

3. ———— *Payment to stay sale.*—Plaintiff's ancestor had purchased in execution the right, title, and interest of *R*, one of the defendants. Antecedently to that sale the right, title, and interest of *R*, and those of two others, had been attached in execution of a decree against *D* (the uncle of *R* and father of the two others), and a sale having been ordered after purchase by plaintiff's ancestor, the latter, whose objections did not avail, finally prevented the sale by paying in the amount due. *Held* that, as *R* was not legally bound to pay the amount due under the decree against *D*, and the payment was in every sense voluntary, plaintiff could not recover from her and the sons of *D*. COLLECTOR OF SHAHABAD *v.* RAM BUDDUN SINGH . **10 W. R., 400**

4. ———— *Money paid to protect property afterwards shown to have been wrongly attached in execution of decree.*—Where the plaintiff was obliged to bring a suit and carry it up to the Appellate Court to have his title declared to his own property which the defendant had seized and attempted to sell in execution of a decree against another person, the defendant was held to have no right either in law or equity to retain money which the plaintiff had been compelled to pay him to save the property from sale. FUTTICK CHUNDER BANERJEE *v.* GOLAM ALI CHOWDHRY . **10 W. R., 453**

MONEY PAID FOR BENEFIT OF ANOTHER.

See VOLUNTARY PAYMENT.
[I. L. R., 22 Calc., 28

1. ———— **Payment of revenue by the claimant of an estate while temporarily holding it under a decree in his favour, afterwards reversed**—*Liability of owner for money so paid for his benefit.*—Where a claimant, having obtained possession of an estate under a decree in good faith, has paid the revenue and cesses (in default of which payment the estate would have been sold), although the decree may have been reversed afterwards, and he may have been deprived of possession, he nevertheless is entitled to be repaid the

MONEY PAID FOR BENEFIT OF ANOTHER—*concluded.*

amount by his opponent, who benefits by it, provided that he has not realized, or failed through any fault of his own to obtain, enough out of the rents and profits during his possession to cover this expenditure. The plaintiff had paid revenue and cesses in such a case. *Held* that on his accounting for mesne profits, and all that he had received, or might have received, from the estate, he should recover from the defendants, in whose favour the decree was ultimately made, the difference between his, the plaintiff's, payments and receipts. DAKHINA MOHAN ROY *v.* SARODA MOHAN ROY

[I. L. R., 21 Calc., 142
L. R., 20 I. A., 160

2. ———— **Revenue due on account of Hindu widow's estate paid by lambardar**—*Remedy of lambardar after death of widow for recovery of money so paid—Decree against representative of Hindu widow.*—*G D*, a separated sonless Hindu, died possessed of certain zamindari property which passed to his widow *J*. During *J*'s possession, the lambardar of the village paid certain Government revenue due by *J* in respect of the property left by *G D*. *J* died, and the property in question passed to *S N* as heir to *G D*. On suit by the lambardar to recover from *S N* the money paid on behalf of *J*, it was *held* that the only decree to which the lambardar was entitled was a decree against *S N* as *J*'s representative payable out of the assets, if any, which had come to *S N* from *J*. *Seth Chitor Mal* v. *Shib Lal, I. L. R., 14 All., 273*, referred to. SHIAMANAND *v.* HAR LAL

[I. L. R., 18 All., 471

MONEY PAID UNDER PROCESS OF DECREE.

See COSTS—INTEREST ON COSTS.

[I. L. R., 4 Calc., 229
20 W. R., 49

See MONEY HAD AND RECEIVED.

[W. R., 1864, 205

1. ———— **Reversal or supersession of decree.**—Money recovered under a decree or judgment cannot be recovered back in a fresh suit or action, whilst the decree or judgment under which it was recovered remains in force. But this rule of law rests upon the ground that the original decree or judgment must be taken to be subsisting and valid, until it has been reversed or superseded by some ulterior proceeding. If it has been so reversed or superseded, the money recovered under it ought to be refunded, and is recoverable either by summary process or by a new suit. DOORGA PERSHAD ROY CHOWDRY *v.* TARA PERSHAD ROY CHOWDHRY. SHAMA PERSHAD ROY CHOWDHRY *v.* HURRO PERSHAD ROY CHOWDHRY . . **3 W. R., P. C., 11**

[10 Moore's I. A., 203

Interest cannot be recovered on it. ASHRUFUNISSA BEGUM *v.* KHANUM JANU . . **6 W. R., 285**

2. ———— *Suit to recover money paid under decree—Act XXIII of 1861, s. 11.*—In a suit by the present defendant against the present plaintiff for enhancement of rent, the Court of first instance and the High Court made decrees for enhanced rent. The Privy Council, in the year 1873, reversed those decrees, and held that the rent could not be enhanced. Before the date of the Privy Council judgment the present defendant obtained several other judgments for enhanced rent against the present plaintiff. No application was made by him for review of those judgments, but in 1875 he brought this suit to recover the difference between the amount of enhanced rent recovered and the fixed rent which he was bound to pay. *Held* by MACPHERSON, MARKBY, and AINSLIE, JJ., following *Shama Pershad Roy Chowdhry* v. *Hurro Pershad Roy Chowdhry, 10 Moore's I. A., 203*, that the decrees for enhanced rent were superseded, and that such a suit as the present one would lie. *Held* by GARTH, C.J., and JACKSON, J., distinguishing *Shama Pershad's* case, that these decrees were not superseded: that the principle of *Marriot* v. *Hampton, 2 Smith's L. C., 6th Ed., 375*, applied, and that the plaintiff was not entitled to recover. JOGESH CHUNDER DUTT *v.* KALI CHURN DUTT

[I. L. R., 3 Calc., 30 : 1 C. L. R., 5

3. ———— **Supersession of decree**—*Suit for money paid under conditional decree.*—*A* obtained against *B* a decree for arrears of rent at enhanced rates for the year 1871. Pending an appeal from this decree, *A* obtained a second decree against *B* for arrears of rent at enhanced rates for the succeeding year. This decree, however, made the payment of so much of the rent calculated at enhanced rates contingent on the event of the Appellate Court affirming the decree in the former suit. *A* executed this last decree, and obtained payment of the rent at enhanced rates. On the reversal of the decision in the former case by the Appellate Court, *B* applied for a refund of so much of the money paid *A* as represented the rent calculated at enhanced rates. *Held* that the portion of the second decree, relating to enhanced rent, being merely conditional, was virtually superseded by the order made by the Appellate Court in the previous suit, and that such moneys were therefore recoverable. MOHAMED ELAHEE BUKSH *v.* KALLY MOHUN MOOKHOPADHYA

[I. L. R., 5 Calc., 589 : 5 C. L. R., 519

4. ———— *Suit to recover compensation in respect of property sold under a decree—Decree not reversed or superseded.*—A zamindar applied to a revenue officer to commute the rent hitherto paid in kind by certain of his tenants to a fixed money rent to be paid in future. The Assistant Collector made the order asked for and fixed the money rent to be paid in future. After that order had been made, the zamindar brought a suit for arrears of rent against the tenants in a Court of Revenue and obtained a decree for rent at the rate which had been fixed by the order of the Assistant Collector. Against this decree the tenants did not appeal, and it became final. The decree was put into execution: property of the tenants was attached and sold, and the decree was partially satisfied out of the sale-proceeds. Subsequently to the passing of the

MONEY PAID UNDER PROCESS OF DECREE—*continued.*

decree for rent, the Board of Revenue set aside the order of the Assistant Collector commuting the rent in kind to a fixed money rent. The tenants thereupon sued to recover compensation on account of the sale of their property under the decree for rent. *Held* that the suit would not lie, inasmuch as the decree for rent under which the plaintiff's property was sold was unreversed and not superseded by any competent Court. *Marriot* v. *Hampton, 2 Smith's L. C., 10th Ed., 409; Shama Parshad Roy Chowdhry* v. *Hurro Parshad Roy Chowdhry, 10 Moore's I. A., 203; Jogesh Chunder Dutt* v. *Kali Churn Dutt, I. L. R., 3 Calc., 30;* and *Nilmoney Singh Deo* v. *Sharoda Parshad Mookerjee, 18 W. R., 434,* referred to. KISHEN SAHAI *v.* BAKHTAWAR SINGH

[I. L. R., 20 All., 237

5. ———— **Decree subsequently found to be barred** —*Suit to recover money paid to save estate from sale under decree afterwards held to be barred—Jurisdiction of Civil Court.*—Application having been made to a Deputy Collector to execute a decree for rent, the judgment-debtor, in order to save his tenure from sale, brought the money into Court, and it was taken out by the decree-holder. This was done while the question was being litigated in the Civil Courts whether the decree was not barred by limitation. The result was that the decree was declared barred. *Held* that the judgment-debtor's only remedy was by a suit in the Civil Court to get back the money. GHANNOO SINGH *v.* RAM GOBIND SINGH . . . . . . **13 W. R., 231**

6. ———— **Decree passed ultra vires and subsequently reversed**—*Suit for money paid under it.*—The assignee of a decree having obtained execution of it in the Deputy Collector's Court under cover of a declaratory and mandatory decree of the Civil Court, which latter decree was set aside on appeal, a suit was brought against the assignee to recover the money which he had obtained by means of the execution proceedings. *Held* that the judgment-debtor or his representative (the plaintiff) had no title to recover the money unless he could show that he had been in some way defrauded by the transaction; the proceeding of the Deputy Collector giving him no cause of action by the mere fact of its having been *ultra vires* or not done in full exercise of judicial discretion. RAM GOBIND SINGH *v.* GHEENOO SINGH

[20 W. R., 406

7. ———— **Decree afterwards reversed**—*Suit to recover money paid under it.*—Money realized in execution of a decree may be recovered by suit, if the decree is set aside as regards the party seeking to recover. If such party was not a party to the original decree and his name appeared there owing only to misrepresentation, he is not restricted to the Court executing the decree, but is at liberty to seek his remedy in a separate suit. SHERO COOMAREE DABEE *v.* SHITARAM HAZRA . **21 W. R., 346**

8. ———— *Execution of decree—Payment of decree amount by one defendant—Reversal of decree on appeal by another defendant—Right to refund—Civil Procedure Code, s. 583.*—In a suit for rent, together with interest thereon, brought by a mortgagee against a tenant in occupation of the mortgage premises, one claiming title against the mortgagee was joined as second defendant. The suit was dismissed in the Court of first instance, but the Court of first appeal passed a decree as prayed in the plaint; and in execution the principal amount of the rent claimed, which had been paid into Court by the first defendant with the request that it should be paid out to the person entitled to it, was paid over to the plaintiff. The first defendant preferred a second appeal against the decree, so far as it awarded interest and costs: this second appeal was dismissed. The second defendant, however, preferred against the entire decree a second appeal, which was successful, that the High Court dismissed the suit throughout. On an application by the first defendant for refund of the money paid by him as stated above,—*Held* that the applicant was not entitled to the refund claimed. KASSIM SAID *v.* LUIS

[I. L. R., 17 Mad., 82

9. ———— **Voluntary payment**—*Executor de son tort—Payment of debt due by deceased—Suit to recover amount paid from heir.*—*K*, the widow of a deceased Hindu, sued to recover his estate from *V*, his brother, who had taken possession thereof as heir. Pending this suit, a decree was obtained against *V* and *K* for payment of a debt due by the deceased out of his estate. *V* paid the debt out of his own money. *K* having recovered the estate, *V* sued her to recover the money paid by him in satisfaction of the decree. *Held* that *V* was entitled to recover. KANAKAMMA *v.* VENKATARATNAM . . . . . **I. L. R., 7 Mad., 586**

10. ———— *Attachment of property of third person—Payment into Court of amount of decree by owner of property in order to release property—Application in execution for refund of money so paid.*—A certain box attached in execution of a decree against one Mathūr, whose father, alleging that it was his property and not Mathur's, paid the bailiff the amount of the decree in order to release it from attachment. He then applied to the Judge to have the money refunded to him. The Judge held the box to be his property, and directed repayment. *Held* that in making the order for repayment the Judge acted without jurisdiction, there being no provision in the Civil Procedure Code (Act XIV of 1882) under which it could be made. The proper course was to have taken steps under s. 278 of the Code to have the attachment on the property raised. By paying the amount of the decree into Court it became necessary to file a suit for the recovery of the money so paid. VARAJLAL MOTICHAND *v.* KACHIA GARBAD KHUSHAL

[I. L. R., 22 Bom., 473

MONEY PAYABLE BY INSTALMENTS.

See CASES UNDER INSTALMENTS.

MONEY PAYABLE ON DEMAND.

See Hindu Law—Contract—Money Lent . . . **5 B. L. R., 396**
[7 B. L. R., 489

See Cases under Limitation Act, 1877, art. 73.

MONEY, SUIT FOR.

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[I. L. R., 3 Calc., 23

See Res Judicata—Matters in Issue.
[I. L. R., 20 Mad., 418

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[1 B. L. R., A. Cr., 8
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—— Dismissal of—

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—— Power of, to present application for execution of decree.

See Limitation Act, 1877, art. 179 (1871, art. 167)—Joint Decrees Joint Decree-holders **I. L. R., 4 Calc., 605**

1. —— **Admission of mooktears**—*Power of High Court.*—The High Court would not interfere with Zillah Judges in the selection and admission of mooktears, under the 39th section of the Pleaders' Rules, 1866. In the matter of the petition of Mahomed Hossein
[5 W. R., Mis., 49

2. —— *Rule 39 of Rules of High Court.*—The 39th of the Rules for mooktears, issued by the Court in 1866, only required that every person who had been practising as a mooktear in the Criminal Courts should be at liberty to satisfy the Judge that he was a person of good moral character and qualified by his knowledge of law and procedure, before he could be entitled to admission under that rule. But it was not the intention of the Court that parties should be subjected to regular examinations, or that the duty imposed upon the Judge should be delegated to the Magistrate. In re Goluck Chunder Kur . **6 W. R., Mis., 29**

3. —— *Grant of certificate—Limitation.*—There was no limitation of time for the grant of a certificate by a Judge, under Rule 39 of the Rules made by the Court in 1866 for the admission of mooktears. In re Joakim
[6 W. R., Mis., 120

4. —— **Application for leave to practise in Court in another district**—*Omission to get certificate from first District Court—Ground for refusal of leave to practise.*—Where a mooktear who had been practising in Backergunge applied to the Judge of the 24-Pergunnahs for a renewal of his certificate, and the Judge of the latter district refused to grant him a certificate to practise in his district without a certificate from the authorities of Backergunge of the truth of his representations, the High Court declined to interfere, thinking the refusal reasonable, but observed that, as the application had been made within three years from the date of his certificate, if the applicant procured the certificate required by the Judge within six weeks from this date, the application ought to be treated as made within time. In the matter of Kalee Churn Banerjee . . . **18 W. R., 295**

5. —— **Appearance of mooktear**—*Right to appear—Criminal Procedure Code (Act X of 1872), s. 278—Appeal in criminal case.*—An appellant in a criminal case has a right to appear and be heard by a mooktear. Empress *v.* Shivram Gundo . . . . **I. L. R., 6 Bom., 14**

See In re Subba Aitala **I. L. R., 1 Mad., 304**

6. —— *Civil Procedure Code, 1882, s. 37—Rule 16 of Rules of High Court, Calcutta—Court Fees Act (VII of 1870), sch. II, art. 10.*—A mooktear holding a mooktearnamah bearing an eight-anna stamp authorizing him to act in a case may perform any act which a mooktear may do in the course of a case. Gunamoyee Debi *v.* Nobin Chundra Bandopadhya **1 C. W. N., 11**

7. —— **Acting as mooktear**—*Act XX of 1865, s. 13.*—The mere bringing a plaint to a vakil for his signature by a mooktear not duly qualified was not an acting as a mooktear which rendered the party liable to a fine under s. 13, Act XX of 1865. The Judge of a Court of Small Causes had no jurisdiction in such a matter, unless the plaint was one to be presented to that Court. In re Muddun Mohun Biswas . . **6 W. R., Civ. Ref., 29**

8. —— *Act XX of 1865, ss. 11 and 13 - Practising without certificate.* The writing a petition for a party who presents it in Court is not acting as a mooktear within the meaning of s. 11, Act XX of 1865; and the writer is not liable to punishment under s. 13 for practising as

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a mooktear without a certificate. IN RE KALI CHARAN CHUND 9 **B. L. R., Ap., 18 : 18 W. R., Cr., 27**

9. ———— *Presenting application for execution—Pleading—"Act"—"Plead"—Practice on Original Side, High Court.*—A mooktear having presented an application for execution under Act VIII of 1859, s. 207, the Munsif returned it upon the ground that it ought to have been presented through a pleader, and not through a mooktear. *Held* that, upon the proper construction of Act XX of 1865, s. 11, the decision of the Munsif was right, and what the mooktear was desirous of doing comes under the word "plead." The construction put by the Munsif upon the words "act" and "plead" is the same which has been put upon them for many years on the original side of the High Court, where attorneys are excluded from making any applications in Court; but advocates, who have only the right to plead, are allowed to make them. IN THE MATTER OF ISHUR KANT BHADOOREE . . . . **24 W. R., 233**

10. ———— *Act XX of 1865, ss. 13 and 42—Practising as mooktear—Applying for copy of judgment.*—*Quære*—Whether an application by a person holding an am-mooktearnamah, but having no certificate, for a copy of the judgment in a suit in which neither himself nor his employer is a party, amounts to practising as a mooktear within the meaning of s. 13, Act XX of 1865, so as to render the applicant liable to a fine under s. 42 of that Act, supposing the application to have been made for and on behalf of the employer. IN RE BAMA CHURUN GHOSAL . **2 C. L. R., 553**

11. ———— *Act XX of 1865, s. 13—Mooktear and private agent, Distinction between.*—*Per* WHITE and MITTER, *JJ.*—The mere fact that a person looks after an appeal and gives instructions to pleaders in connection with such appeal does not show that such person was practising as a mooktear within the meaning of s. 13 of Act XX of 1865. *Per* GARTH, *C.J.*—Where a person is in the habit of acting for persons in Courts of law, and holds himself out as ready to perform what is usually considered mooktear's work, for reward, such person is no less acting as a mooktear on any particular occasion, because he may have abstained on the particular occasion from doing any of those acts which a duly qualified mooktear is alone legally capable of performing. KALI KUMAR ROY *v.* NOBIN CHUNDER CHUCKERBUTTY

[I. L. R., 6 Calc., 585 : 7 C. L. R., 562

12. ———— *Revenue Court—Reference to arbitration.*—*Held* that a mooktear in a Revenue Court must be empowered by an instrument in writing to refer the matter in dispute to arbitration in the same way as a pleader in a regular suit, Ch. VI of the Civil Procedure Code, 1859, being made applicable to suits under Act X of 1859 by s. 14 of Act XIV of 1863. RAM PERSHAD *v.* NAZEER HOSSEIN . . **1 Agra, Rev., 63**

SHUNKER *v.* HUR NARAIN . **1 Agra, Rev., 49**

MOOKTEAR—*continued.*

13. ———— **Suspension or dismissal of mooktear**—*Power of High Court.*—The High Court had power, under s. 15, Act XX of 1865, to suspend or dismiss a mooktear from his office, when it saw "reasonable cause," although he might not have committed any act of "professional misconduct" under s. 16. IN THE MATTER OF THE PETITION OF GHOLAB KHAN . . **7 B. L. R., 179**

[16 W. R., Cr., 15

14. ———— **Dismissal of mooktear**—*Power of Magistrate to dismiss.*—A Magistrate has no power to give a mooktear "general dismissal" unless he is convicted of an offence involving moral turpitude or infamy. QUEEN *v.* SHAM CHAND CHOWDHRY . . . . **1 W. R., Cr., 34**

15. ———— **Suspension of mooktear**—*Power of Magistrate to suspend mooktear—Act XX of 1865.*—A Magistrate has no power to suspend a mooktear under Act XX of 1865. ROOPO BEWAH *v.* KEKAROO . . . . **21 W. R., Cr., 41**

16. ———— *Act XX of 1865, s. 16—Suspension from practice.*—Before making an order suspending a mooktear from practising, the requirements of s. 16, Act XX of 1865, should be complied with by the Magistrate. IN THE MATTER OF THE PETITION OF GHOLAB KHAN

[6 B. L. R., Ap., 83 : 15 W. R., 171

IN RE BANCHANIDHI MAHANTY

[17 W. R., Cr., 6

17. ———— **Removal of mooktear**—*Criminal charge—Evidence justifying dismissal.*—Evidence which does not support a conviction on a criminal charge cannot justify a removal from a profession (the present case being that of a mooktear). IN THE MATTER OF NIL KANT BISWAS

[9 W. R., Cr., 29

18. ———— **Reinstatement of mooktear**—*Conviction on criminal charge.*—Case of a mooktear who was reinstated by the High Court to his practice after suspension by reason of his having been convicted in two cases, the circumstances of these cases not showing that the mooktear was guilty of any moral turpitude or that he was unfit to act in the Criminal Courts as a mooktear. IN THE MATTER OF KOYLASHNAUTH CHOWDHRY

[16 W. R., Cr., 41

19. ———— **Proper Court to punish mooktear**—*Legal Practitioners Act (XVIII of 1879), ss. 10, 32—Pleader—Illegal practice.*—A pleader or mooktear practising in contravention of the provisions of s. 10 of Act XVIII of 1879 is punishable under that Act only by the Court before which he has so practised. IN THE MATTER OF THE PETITION OF GANGA DAYAL . **I. L. R., 4 All., 375**

20. ———— *Legal Practitioners Act (XVIII of 1879 as amended by Act XI of 1896), ss. 13, cl. (f), 14—Professional misconduct—Misconduct prior to enrolment as legal practitioner—"Any other reasonable cause"—Ejusdem generis—Permanent defect of character—"Taking*

MOOKTEAR—*concluded.*

Instructions" and "Misconduct"—Authority of subordinate Courts to proceed under s. 14 of the Legal Practitioners Act—Departmental enquiry—Legal proof.—One *P*, a Sub-Inspector of police, was committed for trial to the Court of Session on charges of bribery, forgery, and other offences, but was acquitted. He was, however, departmentally found guilty of misconduct and was dismissed from the Government service in 1891. In 1893, suppressing the fact of his dismissal, he obtained a certificate of good moral character from a pleader, and on the strength of that certificate gained admission to the mooktearship examination which he passed, and was enrolled as a mooktear and was practising as such for six years in the district of Bhagalpore apparently without any fault. The Sessions Judge of Bhagalpore, having made a reference under s. 14 of the Legal Practitioners Act, recommending his dismissal for the aforesaid misconduct,—*Held per* GHOSE, *J.*—The misconduct on the part of *P* being antecedent to his passing the mooktearship examination and enrolment as a mooktear, and consequently having no relation to his business as mooktear, it is extremely doubtful whether such misconduct is "any other reasonable cause" for his suspension or dismissal within the meaning of s. 13, cl. (*f*), of the Legal Practitioners Act. And it is also doubtful whether, when he applied to the pleader for a certificate, *P* was bound to relate to him the past history of his life. *Per* RAMPINI, *J.*—The misconduct of *P* constituted a "reasonable cause" for his dismissal under the provisions of s. 13, cl. (*f*), of the Legal Practitioners Act. *Per* HILL, *J.* (agreeing with RAMPINI, *J.*)—S. 13, cl. (*f*), of the Legal Practitioners Act was intended to cover misconduct other than professional misconduct and to embrace all causes other than those previously enumerated in the section, which might reasonably be regarded as disqualifying a person for retaining the office of pleader or mooktear. *In the matter of Gholab Khan, 7 B. L. R., 179,* relied on. An offence committed prior to admission may be made the foundation of proceedings under s. 13 of the Legal Practitioners Act, provided it is of such a nature as to imply a permanent defect of character of a disqualifying kind. *Held per* HILL, *J.* (agreeing with GHOSE, *J.*)—That *P*, while a sub-inspector of police, having been "departmentally," and not on legal proof, found guilty of misconduct, no case either for suspension or dismissal from the profession of mooktear had been made out against him. *In the matter of the petition of Ameenoodeen Ahmed, 6 W. R., Mis., 5,* referred to. *Held,* further, *per* HILL, *J.*—That "taking instructions" and "misconduct" referred to in s. 14 of the Legal Practitioners Act relate to cls. (*a*) and (*b*), respectively, of s. 13 of the Act, and it is only in such cases that a subordinate Court is authorized to proceed under s. 14. The charges in the present case not falling under either of these heads, the proceedings were bad. The inquiry ought to have been held by the High Court. *In the matter of Southekal Krishna Rao, I. L. R., 15 Calc., 152: L. R., 14 I. A., 154,* referred to. IN THE MATTER OF PURNA CHUNDER PAL . . **I. L. R., 27 Calc., 1023**
[4 C. W. N., 389

MOOKTEARNAMAH.

——— **Validity of mooktearnamah under seal.**—A mooktearnamah under seal is as valid as a mooktearnamah under signature. A Judge is not bound or authorized to require proof of the genuineness of the seal. IN THE MATTER OF THE PETITION OF THE MAHARAJAH OF BURDWAN . **7 W. R., 475**

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1. FORM OF MORTGAGES . . . 5956
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See CASES UNDER JURISDICTION—SUITS FOR LAND—FORECLOSURE.

MORTGAGE—*continued.*

See CASES UNDER JURISDICTION—SUITS FOR LAND—REDEMPTION.

See CASES UNDER LIMITATION ACT, 1877, ARTS. 134, 35, AND 147.

See MAHOMEDAN LAW—MORTGAGE.
[I. L. R., 20 Bom., 116

See MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—MORTGAGES.
[B. L. R., Sup. Vol., 166
6 B. L R., Ap., 114
11 W. R., 282

See MALABAR LAW—MORTGAGE.

See CASES UNDER ONUS OF PROOF—MORTGAGE.

See CASES UNDER PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

See CASES UNDER REGISTRATION ACT, 1877, s. 50.

See STAMP ACT, 1869, s. 3.
[I. L. R., 2 Calc., 58

See STAMP ACT, 1879, s. 3, CL. 4 (*b*).
[I. L. R., 9 All., 585

See STAMP ACT, 1879, s. 3, CL. 13.
[I. L. R., 11 Mad., 39
I. L. R., 21 Mad., 358
I. L. R., 27 Calc., 587
4 C. W. N., 524

See CASES UNDER STAMP ACT, 1879, SCH. I, ART. 44.

See CASES UNDER TRANSFER OF PROPERTY ACT, s. 2.

See CASES UNDER TRANSFER OF PROPERTY ACT, s. 135.

See CASES UNDER VENDOR AND PURCHASER—PURCHASE OF MORTGAGED PROPERTY.

———— **by member of joint Hindu family.**

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY FATHER.

See CASES UNDER HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS.

———— **Property sold subject to —**

See CASES UNDER SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

See CASES UNDER SALE IN EXECUTION OF DECREE - MORTGAGED PROPERTY.

———— **Property subject to -**

See COURT FEES ACT, SCH I. ART. 11.
[I. L. R., 1 Bom., 118
6 N. W., 214
8 B. L. R., Ap., 43

MORTGAGE—*continued.*

———— **Suit for sale on—**

See CASES UNDER TRANSFER OF PROPERTY ACT, s. 99.

———— **Usufructuary mortgage.**

See TRANSFER OF PROPERTY ACT, ss. 67, 68.

See TRANSFER OF PROPERTY ACT, s. 99.
[I. L. R., 16 All., 415
I. L. R., 17 All., 520
I. L. R., 26 Calc., 164
3 C. W. N., 290

See TRANSFER OF PROPERTY ACT, s. 135.
[I. L. R., 16 All., 315

1. FORM OF MORTGAGES.

1. ———— **Bond containing hypothecation.**—A bond which hypothecates property for money advanced is a deed of simple mortgage. NAZINA BIBEE *v.* JUGGOMOHUN DUTT
[14 W. R., 461

2. ———— **Proof of actual pledge and ownership of property by pledgor.**—*Decree on mortgage bond pledging land.*—The contract of hypothecation defined. A creditor suing under such a contract must prove that there was an actual pledge, and that the land was part of the debtor's estate at the time of pledge. The decree will then be for sale of the property hypothecated, unless the debtor pay the amount due with interest within a period to be fixed by the Court. CHETTI GAUNDAN *v.* SUNDARAM PILLAI . . . . . . 2 Mad., 51

3. ———— **Immoveable property made security for loan without power of sale.**—*Remedy of creditor who has a right to realize charge not amounting to a mortgage—Foreclosure.*—Where immoveable property is made by act of parties security for the payment of a debt, but no power of sale, without the intervention of a Court, is given to the creditor, there is no transfer to him of an interest in the property until a decree for sale has been made in his favour, and the transaction does not amount to a mortgage. When immoveable property has been so made security for the payment of a debt, there can be no foreclosure by the creditor, unless the terms of the contract admit of it. KHEMJI BHAGVANDASS *v.* RAMA . . . I. L. R., 10 Bom., 519

4. ———— **Mortgage without change of possession**—*Parol mortgages of chattels.*—A mortgage may be supported if proved to have been made *bonâ fide*, although the property mortgaged may have been left in the possession of the mortgagor. Mortgages of chattels may be made by parol. SHYAM SOONDER *v.* CHEITA . . . . 3 N. W., 71

5. ———— **Advance to save property from sale**—*Lien.*—A person who advances money to another for the purpose of saving a mehal of the latter from sale for arrears of rent has no lien on the property for the money advanced. *Dutt Jha* v. *Pearee Kaunt, 18 W. R., 404,* and *Enayet Hossein*

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

v. *Muddun Moonee Shahoo, 14 B. L. R., 155 : 22 W. R., 411*, cited and held not to apply. HURRY MOHUN BAGCHI *v.* GIRIS CHUNDER BUNDOPADHYA

[1 C. L. R., 152

6. ———— **Form of words of hypothecation**—*Intention of parties.*—Formal words of hypothecation are not necessary to make an hypothecation valid, if the intention of the parties is sufficiently expressed. MARTIN *v.* PURSRAM . **2 Agra, 124**

7. ———— *Uncertain agreement.*—*Semble*—That where certain persons, describing themselves as residents of J, give a bond for the payment of money, in which, as collateral security, they charge "their property" with such payment, they do not thereby create a charge on their immoveable property situated in J. *Martin* v. *Pursram, 2 Agra, 124,* distinguished. DEOJIT *v.* PITAMBER .

[I. L. R., 1 All., 275

8. ———— *Charge on immoveable property—Ambiguity.*—*A*, to whom the Government had made a grant of certain villages, executed an instrument in favour of his brother charging the payment of an annual allowance to him and his heirs for ever on the "granted villages." The instrument did not name the villages which had been granted to *A*, but there was no doubt as to the particular villages which had been granted to him. *Held* that the fact that such instrument did not specify the villages which had been granted to *A* did not constitute such an ambiguity in such instrument as to render the charge created thereby invalid. *Deojit* v. *Pitambar, I. L. R., 1 All., 275,* distinguished. *Rae Manik Chand* v. *Beharee Lal, 2 N. W., 263,* followed. KANAHIA LAL *v.* MUHAMMAD HUSAIN KHAN . . . **I. L. R., 5 All., 11**

9. ———— *Requisites of a mortgage—Contract—Construction.*—In 1862 *A*, in consideration of a debt of R150, passed to *B* a writing called karz roka or (debt-note). It provided (*inter alia*) that *B* should hold and enjoy a certain piece of land belonging to *A* for twenty years; that at the end of that period the land should be restored to *A* free from all claims for payment of the principal or interest of the debt of R150; and that, if *B* planted vines, he should be at liberty to retain the land so planted after the lapse of the twenty years as a tenant at R50 per annum. According to the terms of this agreement, *B* continued in possession of the land till 1882, when *A*, treating the transaction as a mortgage, brought this suit for redemption. *Held*, on the construction of the karz rokha, that the contract between the parties was not a mortgage, and that the defendant had a right to retain occupation at least of the vineyard, subject only to a rent of R50 a year. There was no stipulation for interest, nor was there any agreement for the payment of R150 in any case. It is not the name given to a contract, but its contents or the relations constituted by it, that determine its nature. ABDULBHAI *v.* KASHI

[I. L. R., 11 Bom., 462

10. ———— *Document not creating charge.*—*A* lent *B* R99, and *B* executed

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

a document on the 24th July 1881, whereby he agreed to repay the amount with interest in the month of Baisakh 1289 F. S. (April 1882), and further agreed that, if he did not pay the money as stipulated, he should sell his right to certain land, and that *A* should take possession thereof, and that, after *A* took possession of the land, no interest should be paid by him (*B*), and that *A* should pay the rent of the landlord out of the profits of the land without any objection. *A* instituted a suit on the 3rd August 1885 to recover the R99. *Held* that the document did not amount to a mortgage. MADHO MISSER *v.* SIDH BINAIK UPADHYA *alias* BENA UPADHYA

[I. L. R., 14 Calc., 687

11. ———— *Bond stipulating for recovery of loan from moveable and immoveable property.*—A bond containing a stipulation "that if the principal and interest is not paid up at the stipulated period, then the obligee will be at liberty to recover the whole of his money, together with the interest fixed, by instituting a suit, from my moveable and immoveable property, my own "milk," does not create a mortgage upon any property of the obligor. COLLECTOR OF ETAWAH *v.* BETI MAHARANI . **I. L. R., 14 All., 162**

12. ———— **Agreement in petition creating a lien**—*Money-decree.*—Where a suit was brought on a petition which the plaintiff contended created a mortgage-lien on certain property, the Court found the document was executed by the mortgagor with the consent of the mortgagee, and contained a clause by which the property was distinctly hypothecated to the plaintiff as a collateral security for the debt which the mortgagor had contracted. *Held* that the petition was a valid agreement between the parties creating a mortgage in favour of the plaintiff. Although a mortgagee has obtained a money-decree, he can bring a regular suit to enforce his mortgage-lien. DUMA SAHU *v.* JEONARAYAN LAL

[4 B. L. R., A. C., 27 note

S. C. DOOMA SAHOO *v.* JOONARAIN LALL

[12 W. R., 362

13. ———— **Clause in agreement giving right to sell property in default of payment**—*Suit for money-decree on mortgage.*—The plaintiff sued to recover a sum of money with interest, on a mortgage-deed, which contained the following clause: "If, by sale of the above land, the money receivable by you be not satisfied with charges, then you will realize the proper amount by selling my other landed properties, to which I will make no objection or excuse." The plaintiff asked for a simple money-decree. The defendant had other landed property besides the property mortgagad. *Held* that the plaintiff was entitled to a simple money-decree available against his moveable property only. JOGESWAR DUTT *v.* NITAICHUND CHUCKERBUTTY

[4 B. L. R., Ap., 48

14. ———— **Creation of charge on property**—*Construction of agreement.*—An agreement in a bond, executed by a mortgagor subsequently to a mortgage in the following words, *viz.*,—"after the

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

expiry of the mortgage, when the time comes for payment of the mortgage-money, first I will pay the bond with interest, and after that I will pay the amount of the mortgage,"—is sufficient to create a charge on the mortgaged estate. BHUGWAN DOSS *v.* MAHOMED JAFER . . . **4 N. W., 161**

15. ———— *Construction of mortgage-deed.*—The following terms in a deed—"that, for the security of the payment of this debt, the lands mentioned in this deed are pledged by me; and that, until the principal money and the interest recited in this deed are paid off, I will not on any account transfer the property pledged to anybody by sale or hiba-bil-awaz, or gift or mortgage in any other way"—were held to amount to a mortgage. LALA RAMDHARI LAL *v.* JANESSAR DAS **[6 B. L. R., Ap., 14**

16. ———— *Hypothecation, Validity of, as against purchaser.*—Where an instrument, whereby certain persons describing themselves therein as zamindars and shareholders of a certain named mouzah, declared that for the consideration therein expressed they mortgaged their "respective zamindari shares," and all other moveable and immoveable property owned and possessed by them, to secure the payment of the debt therein mentioned,—*Held* to be such an hypothecation as to create an interest in favour of the mortgagees which could not be defeated by a subsequent *bonâ fide* purchaser for value. RAE MANICK CHUND *v.* BEHAREE LALL **[2 N. W., 263**

17. ———— *Words creating simple mortgage.*—A suit was brought in 1884 upon a hypothecation-bond executed in April 1875, in which the obligors agreed to repay the amount borrowed with interest at R1-8 per cent. per mensem in June of the same year. There was no provision as to payment of interest after due date. The bond specified certain property as belonging to the obligors, and contained the following provision: "Our rights and property in the aforesaid talukh Rajapur shall remain pledged and hypothecated for this debt." *Held* that the terms of the bond by which the property was hypothecated were sufficiently clear and explicit to constitute a legal hypothecation of the shares and interests of which it recited at the opening that the obligors were owners. BISHEN DAYAL *v.* UDIT NARAIN . **I. L. R., 8 All., 486**

18. ———— *Usufructuary mortgage—Hypothecation—Suit for money charged on immoveable property.*—*M* and *S* executed an instrument in favour of *K* and *G* in the following terms: "We, *M* and *S*, declare that we have mortgaged a house situated in Ghaziabad, owned and possessed by us, for R300, to *K* and *G*, for two years: that we have received the mortgage-money, and nothing is due to us; that we have put the mortgagees in possession of the mortgaged property; that eight annas has been fixed as the monthly interest, in addition to the rent of the house, which we shall pay from our own pocket; that we promise to pay the aforesaid sum to the mortgagees within two years, and redeem the mortgaged property; that if we fail to pay the mortgage-money within two years, the mortgagees shall be at liberty to recover the mortgage-money in any manner they please." *Held per* STUART, *C.J.*, OLDFIELD, *J.*, and STRAIGHT, *J.* (SPANKIE, *J.*, dissenting), in a suit upon this instrument to recover the principal sum advanced by the sale of the house, that the instrument created a mortgage of the house as security for the payment of such principal sum. *Dulli* v. *Bahadur, 7 N. W., 55,* distinguished. PHUL KUAR *v.* MURLI DHAR **[I. L. R., 2 All., 527**

19. ———— *Construction of agreement—Agreement to give possession of land till repayment of debt—Right to redeem.*—By the terms of an agreement entered into by the plaintiff and defendants a pending suit was compromised, and payment of an ascertained balance found due by plaintiff was secured by the creditors (defendants) being placed in possession of plaintiff's land for fifty-five years, with the right of enjoying all the rents and profits thereof, subject to the payment of a fixed rent, part of which was to be paid to the plaintiff, and the remainder to be retained by the creditors towards payment of the debt. *Held* that the agreement was a mortgage, and, as such, redeemable on the usual terms. MASHOOK AMEEN SUZZADA *v.* MAREM REDDY **[8 Mad., 31**

20. ———— *Right to decree for sale of property—Suit for money charged on immoveable property.*—The obligor of a bond for the payment of money gave the obligee a moiety of the profits of a certain mouzah up to the end of the current settlement and charged the other moiety of such profits with the payment of such money. It was also stipulated in such bond that the obligee should take the management of such mouzah, rendering accounts to the obligor, and that, if the obligor failed to pay such money when due, the obligee should remain in possesion of the entire mouzah until payment of all that was due. The original obligor having died, his heir gave the obligee a second bond, in which he admitted the creation of the original charge and a certain further debt. A portion of such further debt he undertook to pay on a certain date, and he agreed that the balance due should be realized by the obligee from a moiety of the profits of the mouzah, according to the terms of the first bond, and that the mouzah should remain in the obligee's possession until the amounts due under both bonds were realized by him, and that he, the obligor, should have no power to sell, mortgage, or alienate the mouzah. *Held* in a suit by the obligee on the bonds that the bonds created a mortgage only of the profits of the mouzah and not of the mouzah itself, and accordingly that they did not entitle the obligee to a decree for the sale of the mouzah. GANGA PRASAD *v.* KUSYARI DIN **[I. L. R., 1 All., 611**

21. ———— *Mortgage of crops that may be grown upon a certain plot of land, its nature and effect—Transfer of Property Act—*

Contract Act.—The mortgage of indigo crops that may be grown upon a certain plot of land is a valid transaction. The transaction is neither governed by the Transfer of Property Act nor by the Contract Act; but it is in the nature of an agreement to mortgage moveable property that may come into existence in future. MISRI LAL *v.* MOZHAR HOSSEIN . . . . **I. L. R., 13 Calc., 262**

22. ——— *Moveable property —Non-existent moveables—Contract to assign after-acquired chattels—Completion of assignment on property coming into existence—Transferee with notice of hypothecation.—Held,* upon principles of equity, that a hypothecation of certain future indigo produce was a valid contract to assign such produce when it should come into existence; and that the hypothecation became complete when the crop was grown and the produce realized, and was enforcible against a transferee of such produce with notice of the obligee's equitable interest. *Collyer* v. *Isaacs, L. R., 19 Ch. D., 342,* and *Holroyd* v. *Marshall, L. R., 10 H. L., 191,* referred to. *Held* also that such an interest would not avail against a transferee without notice. *Joseph* v. *Lyons, L. R., 15 Q. B. D., 280,* and *Hallas* v. *Robinson, L. R., 15 Q. B. D., 288,* referred to. BANSIDHAR *v.* SANT LAL **[I. L. R., 10 All., 133**

23. ——— *Suit for money charged upon immoveable property—Instrument purporting in general terms to charge all the property of obligor—Maxim "certum est quod certum reddi potest"—Act IV of 1882 (Transfer of Property Act), ss. 98, 100.*—The obligor of a bond acknowledged therein that he had borrowed R153 from the obligee at the rate of R1·8 per cent. per mensem, and promised to pay the principal with interest at the agreed rate upon a date named. The bond continued thus: "To secure this money, I pledge, voluntarily and willingly, my wealth and property in favour of the said banker. Whatever property, etc., belonging to me be found by the said banker, that all should be available to the said banker. If, without discharging the debt due to this banker, I should sell, mortgage, or dispose of the property to another banker, such transfer shall be void. For this reason, I have of my free will and consent executed this hypothecation-bond that it may be of use when needed." The amount secured by the bond became due on the 6th May 1879. The bond was registered under the Registration Act as a document affecting immoveable property, and the obligor was a party to such registration. On the 9th May 1885 the obligee sued the heir of the obligor to recover the principal and interest due upon the bond by enforcement of lien against and sale of immoveable property belonging to the defendant. *Held* that the bond showed that the intention of the parties was to create by it a charge upon all the property of the obligor for the payment to the plaintiff of the principal moneys borrowed, together with interest at the agreed rate. *Najibulla Mulla* v. *Nusir Mistri, I. L. R., 7 Calc., 196,* referred to. *Held* also that the words used in the bond as indicating the property which was intended to be subject to the charge were sufficiently specific and certain to include, and were intended to include, all the property of the obligor; that, this being so, the maxim *"certum est quod certum reddi potest"* applied; and that the bond created a charge upon the immoveable property of the obligor in respect of the principal and interest in question. RAMSIDH PANDE *v.* BALGOBIND **[I. L. R., 9 All., 158**

24. ——— *Legal and equitable mortgages—Mortgage of moveable property without possession.*—The Courts of this country being Courts both of law and equity, it is immaterial for the determination of claims to attached property whether a mortgage is a legal or equitable one. Where goods are mortgaged and left in the possession of the original owner, the circumstance that they are so left is not to be held as a fraud *per se* rendering the mortgage liable to be defeated as between the mortgagor and third parties, such as *bonâ fide* purchasers or judgment-creditors. But when possession is left with the mortgagor, this is a circumstance of which the Court should take notice when determining whether the mortgage is *bonâ fide* or fraudulent. A mortgagee is not bound to take possession immediately default is made. DEANS *v.* RICHARDSON **[3 N. W., 54**

25. ——— *Will—Devise of immoveable property subject to its being charged in a particular way—Suit to enforce mortgage not so made.*—Certain immoveable property was devised by will upon condition that the devisee, who was also an executor of such will, should execute a mortgage of such property to the Official Trustee of Bengal for the time being to secure the payment of a certain legacy. The devisee, with the intention of giving effect to such condition, mortgaged such property to his co-executors. *Held,* in a suit by one of such co-executors to enforce the mortgage, that the mortgage, not being executed in accordance with the terms of the will, was invalid, and the suit was not maintainable. VAUGHAN *v.* HESELTINE **[I. L. R., 1 All., 753**

26. ——— *Intention of parties—Advance of part only of consideration.*—Where part only of the consideration has been advanced in respect of a mortgage transaction, it does not follow that the mortgagee who makes such advance is entitled to possession of a part of the mortgagor's land proportionate to the money advanced; but whether the parties by their subsequent conduct raised the inference that this was meant, may be a question of fact for the Court to determine. ACHUMBEET TEWAREE *v.* BHUGWANT PANDEY **[1 N. W., Ed. 1873, 161**

27. ——— *Agreement not to alienate—Subsequent mortgage to pay off former one.*—A stipulation not to alienate cannot operate to annul a *bonâ fide* conveyance to a third person by the mortgagor for the purpose of paying off the original mortgage-debt. DOOKHCHORE RAI *v.* HIDAYUTOOLLAH . **Agra, F. B., 7: Ed. 1874, 5**

28. ———— *Condition against alienation.*—*Held* that, where a person stipulates generally not to alienate his property, he does not thereby create a charge on any particular property belonging to him. BHUPAL *v.* JAG RAM

[I. L. R., 2 All., 449

29. ———— *Agreement not to alienate—Form of mortgage.*—By an agreement reciting that *A* had executed a bond in favour of *B* for a certain sum of money, *A*, "in order to repay the bond-money in the terms in the bond contained," declared that, "until the repayment of the money covered by the bond, he would not, from the date of the agreement, convey the property mentioned therein to any one by deed of sale, or deed of conditional sale, or mokurari pottah, or deed of mortgage, or zur-i-peshgi ticca pottah. Should he make any of these transactions is respect of the said lands, the instrument relating thereto shall be deemed invalid, and as executed in favour of nominal parties for evading payment of the money covered by the said lands." *Held* (MARKBY, J., doubting) that the instrument operated as a mortgage to *A* of the lands comprised therein. No precise form is required to create a mortgage. RAJ KUMAR RAMGOPAL NARAYAN SINGH *v.* RAM DUTT CHOWDRY

[5 B. L. R., 264: 13 W. R., F. B., 82

30. ———— *Covenant not to alienate—Mortgage.*—A bond contained a clause that the obligors would not dispose of any of the property, moveable or immoveable, in their possession until the debt was paid. *Held* that such a clause did not give the obligee of the bond a lien on such property, though he might sue for damages in respect of breach of contract. RAMBUKSH *v.* SOOKH DEO

[1 N. W., 111: Ed. 1873, 159

31. ———— *Stipulation not to alienate.*—An ikbaldawah, containing a stipulation that the debtor shall not alienate certain property till the satisfaction of the decree, does not amount to hypothecation giving the decree-holder a lien on the property. The decree-holder may sue for damages on the breach of contract by the judgment-debtors, but has no right to the property against a purchaser. CHOONEE LALL *v.* PUHULWAN SINGH **3 Agra, 270**

32. ———— *Agreement not to alienate—Construction of mortgage-deed—Gift to wife for dower.*—A mortgagor stipulated that he would not sell the property mortgaged during the subsistence of the mortgage-term; but that, if he did sell, he would sell to the mortgagee at a fixed price. He subsequently alienated a moiety of the property to his wife in lieu of dower; a suit was instituted by the mortgagee to set aside the alienation. *Held* on the construction of the mortgage-deed that the condition did not absolutely prohibit alienation, but simply conferred on the mortgagee a pre-emption right to purchase, and that the mortgagee could not sue for avoidance of the alienation to the wife, without claiming or expressing a willingness to purchase. SHIVA CHARAN DASS *v.* ROOSTUM

[Agra, F. B., 69: Ed. 1874, 53

33. ———— *Covenant not to alienate—Transfer to purchaser—Claim to pay by instalments.*—A mortgage-bond provided that the mortgage-debt should be paid in instalments, and that no transfer by the mortgagor of the property mortgaged, so long as the debt was undischarged, should be made or should be valid. Subsequently the mortgagor transferred the mortgaged property, the sale-deed providing that the unpaid balance of the mortgage-debt should be paid to the original mortgagees by instalments, and that any further sum should be paid by the mortgagor. The Court of first instance decreed possession to the purchaser, whose possession was resisted by the mortgagees, on payment of the unpaid balance of the mortgage-debt in full. On the appeal of the purchaser, who claimed to pay off the debt by instalments, the Court declined to interfere with the decree. MAHOMED ZAKAOOLLAH *v.* BANEE PERSHAD . . . **1 N. W., Ed. 1873, 135**

34. ———— *Condition against alienation—Auction-purchaser at sale in execution of decree.*—A transfer of mortgaged property made in contravention of a condition not to alienate is not absolutely void, but voidable in so far as it is in defeasance of the mortgagee's rights. Where, in contravention of a condition not to alienate, the mortgagor had transferred his proprietary right in the mortgaged property to a third person for a term of years, the Court declared that such transfer should not be binding on a purchaser at the sale in execution of the decree obtained by the mortgagee for the sale of the property in satisfaction of the mortgage-debt, unless such purchaser desired its continuance. CHUNNI *v.* THAKUR DAS . . . **I. L. R., 1 All., 126**

and *see* KHUB CHAND *v.* KALIAN DAS

[I. L. R., 1 All., 240

35. ———— *Right of assignee of bond containing covenant not to alienate property.*—A stipulation in a bond to the effect that the obligor will make no transfer of certain property hypothecated by such bond until the debt thereby secured has been paid up cannot be used by a third person, not a party to the bond, to defeat a subsequent charge upon the same property granted in favour of another creditor of the obligor. KOONDUN LAL *v.* WAZEER ALI . . **3 N. W., 205**

36. ———— *Purchaser at sale in execution of decree, Right of—Condition against alienation.*—*J* gave *B* a bond for the payment of money in which he hypothecated certain immoveable property as security for such payment, covenanting not to sell or transfer such property until the mortgage-debt had been paid. In breach of this condition, he granted *M* a lease of his rights and interests in such property for a term of twelve and a half years. *B*, having sued on such bond and obtained a decree charging such property with the satisfaction of the decree, sued *M* and *J* for the cancelment of the lease and a declaration that it would not be binding on the purchaser at a sale in the execution of the decree, alleging that the lease had been granted to defeat the execution of the decree. The High

Court refused, in view of its decision in *Chunni* v. *Thakur Das, I. L R., 1 All., 126,* to interfere with the decree of the lower Court giving *B* such a declaration. MUL CHAND *v.* BALGOBIND
[I. L. R., 1 All., 610

37. ———— *Covenant not to alienate.*—An agreement recited that *A* had executed a bond in favour of *B*, in which it was declared, "I promise to re-pay the whole principal, with interest, in the month of Phalgun 1271 F.S., and till payment of the amount I will not transfer any property by conditional sale or mortgage." The bond contained no further proviso declaring invalid future alienations of the lands belonging to *A*, in the manner specified in the bond. *Held* that the instrument did not operate as a mortgage by *A*. GUNOO SINGH *v.* LATAFUT HOSSAIN
[I. L. R., 3 Calc., 336 : 1 C. L. R., 91

38. ———— *Covenant not to alienate or encumber.*—The obligors of a bond for the payment of money covenanted as follows: "To secure this money, we have mortgaged a five gandas share out of a ten gandas share in each of the villages, etc. So long as the principal amount with interest is not paid, the hypothecated share will not be sold or mortgaged to any one." *Held* (PETHERAM, *C.J.*, dissenting) that the bond created a simple mortgage. *Per* PETHERAM, *C.J.*, that the bond gave the obligee a charge only on the property. SHEORATAN KUAR *v.* MAHIPAL KUAR
[I. L. R., 7 All., 258

39. ———— *Agreement not to alienate—Mortgage-bond.*—In consideration of a loan, *A* gave a bond, by which he covenanted "not to alienate the property of himself and his daughter, or the rest of his own property, until the loan secured by the bond was paid." The bond was recorded under the Registration Act in the book numbered "four" required to be kept by the Act. *A* subsequently sold his immoveable property, and the conveyance was recorded in the book numbered "one," in which documents relating to immoveable property have to be recorded. In a suit by the bond-creditor against the purchaser seeking to establish a lien on *A*'s immoveable property by virtue of the bond,—*Held* that the general words used in the bond were not sufficient to give a lien upon any specific property, and that the fact that the bond had been recorded in book "four" showed that it was not the intention of the parties that the immoveable property of the debtor should be charged. NAJIBULLA MULLA *v.* NUSIR MISTRI . . I. L. R., 7 Calc., 196
[8 C. L. R., 454

See also DOSS MONEY DOSSEE *v.* JONMENJOY MULLICK I. L. R., 3 Calc., 363 : 1 C. L. R., 446

40. ———— **Usufructuary mortgage**—*Construction of deed of mortgage.*—In ascertaining whether a deed, confessedly ambiguous, amounts to an usufructuary mortgage or to a lease in perpetuity, the Judge should look within the four corners of the instrument before him and ascertain from it what kind of transaction the parties had in view when

they entered into it. In the case of an usufructuary mortgage, where no term is specified, the mortgagor is entitled to re-enter on the property when, on taking an account, he is able to show that the principal and interest have been satisfied. LALA DOUL NARAIN *v.* RUNJIT SINGH . . . 1 C. L. R., 256

41. ———— *Advance on zur-i-peshgi lease.*—A lease was granted on a zur-i-peshgi advance for seven years at an annual jumma of R214-4, from which a deduction of R111-15 was to be made on account of interest; and it was also stipulated that if, after the expiration of the lease, the loan was not repaid, the lease should continue. *Held* that, under the circumstances as stated above, the transaction between the parties was a mortgage. KISHTO COOMER SINGH *v.* CHOWDREE BEERAJ SINGH . . . . . . 2 Hay, 159

42. ———— *Advance of money with possession of land till advance is repaid.*—Where a sum of money is advanced, and the person making the advance is put in receipt of the rents and profits of land by way of payment of interests on the loan, this is not a mere license or permission to the lender of the money to receive the rents, revocable at the will of the borrower, but is in the nature of a mortgage transaction. KHOOSHAL RAE *v.* JANKEE DOSS . . . . . . 2 N. W., 9

43. ———— *Transfer of Property Act (IV. of 1882), ss. 58 (d), 98—Usufructuary mortgage—Anomalous mortgage.*—A deed of mortgage executed in 1879 for a consideration of R300 provided that the term of the mortgage should be four years certain; that certain interest should be payable; that the mortgagee should have possession; that the profits should be appropriated first in lieu of yearly interest and any balance appropriated in payment of the principal debt; and that the mortgagor should be entitled to redeem if the principal and interest were paid at the expiration of the four years. The mortgagee never obtained possession and in 1882 he brought a suit against the mortgagor to recover the unpaid interest then due, and obtained a decree, which was satisfied by the sale of property belonging to the judgment-debtor. In 1886 he brought another suit for recovery of the principal together with the residue of interest up to the date of suit. *Held* that inasmuch as there was no stipulation in terms that the mortgagee was to remain in possession until payment of the mortgage-money, the instrument did not strictly fall within s. 58 *(d)* of the Transfer of Property Act (IV of 1882), *i.e.*, as a usufructuary mortgage, and that the rights and liabilities of the parties must be determined in accordance with the principles enunciated in s. 98 of that Act, *i.e.*, as an anomalous mortgage. *Held*, upon the construction of the instrument, that it must be regarded as a usufructuary mortgage not only during the four years, but after their expiration. HIKMATULLA KHAN *v.* IMAM ALI . I. L. R., 12 All., 203

44. ———— *Anomalous mortgage—Right to possession—Transfer of Property*

Act (IV of 1882), s. 98.—Two out of three co-parceners executed in favour of a creditor in respect of land belonging to the co-parcenary an instrument which contained the following terms: "As we have received R500, you will, in lieu of the said amount and interest, enjoy the said property for three years by virtue of Arakattu otti . . . . on the condition that, on the expiry of the said three years, we should redeem the land without paying either principal or interest. You will, on the expiry of the said period, deliver possession of the said immoveable property without raising any objection." The creditor obtained possession of only part of the land. *Held* that the instrument was an anomalous mortgage, and that the mortgagee was liable to ejectment after the expiry of the three years. VISVALINGA PILLAI *v.* PALANIAPPA CHETTI . . **I. L. R., 21 Mad., 1**

45. ———— *Advance by tenant to landlord on account of security for payment of rent.*—A sum taken by a landlord as an advance, to be credited to his lessee in his accounts as rent, may be considered as security for the payment of the rent, but does not change the lease into a mortgage. GRIDHAREE SINGH *v.* COLLIS . **8 W. R., 497**

46. ———— *Zur-i-peshgi lease with covenant not to alienate or evict lessee.*—By a zur-i-peshgi lease granted upon the advance of R5,517, the lessee was to hold possession of certain villages for the term of five years, and to pay himself, out of the proceeds of the villages, interest on the loan: and the lessor undertook not to mortgage or alienate the property during the term, and not to oust the lessee, or, if he did, that he would pay him R1,000. Before the expiration of the term the villages were taken in execution, and sold under a decree at the suit of a third party, and the lessee turned out of possession. *Held* that the lessee had no claim against the villages for the principal money, and that the sum of R1,000 was forfeited. NUNDLALL *v.* KULLIANABUTTEE . **Marsh., 209: 1 Hay, 532**

47. ———— *Usufructuary lease for loan—Construction of deed—Suit for possession under deed of lease or mortgage.*—*A*, the lessee for a term of a zamindari, brought a suit against *B*, the lessor, to prevent *B* interfering with his possession which he had under the lease granted to him by *B* in consideration of certain pecuniary advances made by him to *B*. The relief sought was in effect an injunction to restrain *B* from collecting the revenue of the zamindari. The defence set up by *B* in his answer was in substance that the lease was an executory contract, and being without consideration could not be enforced, and was, moreover, void for maintenance, by reason of a subsequent agreement for the advance of a sum of money to carry on a suit which had not been carried out. The Judge of the Civil Court adopted this view and held the lease void. The High Court of Madras on appeal treated the case as a suit for specific performance, and decreed execution of the lease. On appeal the Judicial Committee sustained the decree as to possession under the lease, but as it appeared from the evidence questionable whether the transaction in respect of the lease did not really operate only as a loan, and as a right to redeem might exist, the affirmance was made with a declaration that it was to be without prejudice to the claim (if any) of *B* to which he might be entitled, and to any question which might be raised as to the amount which was actually advanced by *A* to *B*. KAMALA NAIKEN *v.* PITCHACOOTTY CHETTY . . **10 Moore's I. A., 386**

48. ———— *Party paying off debt, Right to possession of.*—A party who by paying off a mortgage becomes an usufructuary mortgagee in place of the original zur-i-peshgidar does not need to sue for the amount due, but is entitled to remain in possession until the whole debt has been discharged by the usufruct. FYEZOOLLAH *v.* KAZIM HOSSEIN . . . . . **14 W. R., 29**

49. ———— *Right to proceed against land to realize debt.*—A covenant to put the creditors into possession of certain property which they were to retain for a certain period, taking the profits in lieu of interest, is only an usufructuary mortgage and not a deed of hypothecation, and a suit to bring the property to sale for the realization of the amount due under the deed is not maintainable. DULLI *v.* BAHADUR . . . **7 N. W., 55**

50. ———— *Covenant not to lease—Lease of property mortgaged—Suit to set aside lease.*—*A* mortgaged certain property to *B*, agreeing, amongst other things, not to grant in zur-i-peshgi or mortgage the property to any one so as to cause any difficulty in the realization of the money advanced under the mortgage-bond. *A* subsequently leased in zur-i-peshgi part of the property to *C*. *B* obtained a sale-decree against *A* on his mortgage, and at the sale himself became the purchaser of the property. He then brought a suit against *C* to set aside the zur-i-peshgi lease and to obtain khas possession. *Held* that the covenant in the mortgage-bond merely created a personal liability between *A* and *B*, and that the sale under *B*'s mortgage decree did not put an end to the zur-i-peshgi lease or affect the interests of the zur-i-peshgidar; that *B*'s suit against *C* was wrong in form; and that his proper course was to sue to have his right declared to sell the property in satisfaction of his mortgage-debt, so as to give the zur-i-peshgidar an opportunity of redeeming. RADHA PERSHAD MISSER *v.* MONOHUR DASS

[I. L. R., 6 Calc., 317: 7 C. L. R., 293

51. ———— *Sale—Construction whether lands had been sold or mortgaged—Evidence—Documents explained by parol—Waste land grants—Usufructuary mortgage.*—Waste lands granted in 1870 were transferred by the grantee in 1871 to his creditor, since deceased, from whose representatives in 1891 he claimed redemption, alleging that the transfer had been made upon a mortgage with possession. The grantee had previously, in 1870, mortgaged the lands to this creditor to secure advances taken for part payment of the purchase-money. In 1871 they arranged that the creditor should advance the entire balance, and they jointly

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

petitioned for an entry to be made in the register of waste land grants that the ownership had been transferred from the one to the other of them. This entry was made, and endorsements to the same effect were made on the documents of grant. On the question whether the transaction was a mortgage, or a sale as the defendants alleged it to be, general evidence was given, in addition to the documentary; and among the facts in favour of the plaintiff was that the creditor had retained uncancelled, till his death, all acknowledgments for the money advanced by him in the transaction. Although, under other circumstances, and on the documents alone, the inference might have been that there had been a sale for some undisclosed consideration, yet, on the true construction of the joint petition, and the orders made thereon, the proper conclusion was that the entry and endorsements were intended only as a record of the arrangement proposed by the parties, and sanctioned by the registering officer. The intention was not to have an absolute sale. The transaction was *held* to be a mortgage which the plaintiff was entitled to redeem. KADER MOIDEEN *v.* NEPEAN

I. L. R., 21 Calc., 882
L. R., 21 I. A., 96

52. ——————— *Sale—Conditions for repurchase.*—The plaintiffs sued to redeem an alleged mortgage made in 1823 by their ancestor to the ancestor of the defendant. The alleged mortgage recited a previous mortgage under which the mortgagee *G* was in possession, and it stated that a sale had been contemplated, but the parties could not agree as to price, but that they had now settled it at R125 and the amount due on the mortgage at R200, and that the following arrangement was come to, *viz.*, that if within four years the mortgagor paid R125 with interest, he should get back the land; if not, that the land should be the absolute property of *G*. *Held* that this was not a mortgage, but a sale. It was an agreement which put an end to the previously existing mortgage. A mere stipulation for re-purchase does not make a transaction a mortgage. To make a mortgage there must be a debt, and here there was no debt, nor was the property here conveyed as security. VASUDEO BHIKAJI JOSHI *v.* BHAU LAKSHMAN RAVUT

I. L. R., 21 Bom., 528

53. ——————— *Mortgage or sale —Test of whether instrument is a mortgage or a sale.*—In an instrument dated the 30th June 1886, styled a sale-deed, it was recited that in consideration of R2,500 certain specified properties (already mortgaged to the so-called vendees and in their possession) were "given in sale" to them and were to be enjoyed by them for ten years in any manner they liked. At the expiration of that time, the vendors were to pay the R2,500 and take back the property. In 1893 the plaintiff (a son of the so-called vendor) brought this suit treating the above instrument as a mortgage and praying for redemption. The main question in the suit was whether the instrument sued on was a mortgage or a deed of sale with the option of re-purchase after ten years. *Held* that the instrument was a mortgage. The test was whether after the execution of the deed there continued to be a debt from the so-called vendors to the vendee, or whether the pre-existing debt became extinguished on the execution of the deed. BAPU *v.* BHAVANI

I. L. R., 22 Bom., 245

54. ——————— **Mortgage by conditional sale**—*Law of mortgage in Madras and Bombay.*—The contract of mortgage by conditional sale is a form of security known throughout India, and which, by the ancient law of India which must be taken to prevail in every part of India where it has not been modified by actual legislation or established practice, is enforceable according to its letter. From the year 1858 the Courts of the Madras Presidency, and from the year 1864 the Courts of the Presidency of Bombay, have erroneously, and in contravention of the law of India as declared by the earlier decisions, adopted, with regard to this class of securities, doctrines which the English Courts of Equity have applied to mortgages in England. *Quære*—Whether in dealing with future cases the Judicial Committee ought to follow the new course of decision which has sprung up in these Presidencies, or their own decision in the case of *Pattabiramier* v. *Vencatarow Naicken, 7 B. L. R., 136: 13 Moore's I. A., 560.* The essential characteristic of a mortgage by conditional sale is that on the breach of the condition of repayment the contract executes itself, and the transaction is closed and becomes one of absolute sale without any further act of the parties or accountability between them. Where land was mortgaged on a condition that the rents should be applied first in payment of the Government revenue, next in payment of the salary of a manager, and afterwards in reduction of the debt, and it was further stipulated that instalments of a fixed amount should be paid up to a certain date by the mortgagor to the mortgagee, and that on that date a settlement of accounts should be made, and in the event of there being a balance against the mortgagor, and his not paying the same on a date fixed, the mortgagee should become the purchaser at a fixed value of so much of the land as would satisfy such balance, retaining his right to sue the mortgagor personally for any further sum that might remain due, owing to the whole of the land, as valued, growing insufficient to satisfy such balance,—*Held* that this was not a contract of mortgage by conditional sale. THUMBUSAMY MOODELLY *v.* HOOSAIN ROWTHEN . **I. L. R., 1 Mad., 1**

L. R., 2 I. A., 241

55. ——————— *Sale expiring before 1858.*—When the term of a conditional sale, whether made as a security for a loan or not, had expired before 1858, the rule laid down in *Thumbusawmy's case, I. L. R., 1 Mad., 1,* must be observed and effect given to the contract. BAPIRAZU *v.* KAMARAZU . . . **I. L. R., 3 Mad., 26**

56. ——————— *Continuing debt.*—When one party to a transaction alleges it to be a mortgage and the other alleges it to be a sale, the question for consideration is whether or not there continued to be a debt from the former to the latter. The plaintiffs sued for possession of certain lands,

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

alleging that they had been mortgaged to the defendant by their father under two documents. The defendant produced them and relied upon them as deeds of sale, which conveyed to him absolutely the lands mentioned in them. The form of the instruments was not conclusive, but it appeared *aliunde* by the conduct of the defendant himself that the deeds were intended as mere securities for money, and that he had treated them as such. Certain entries in the defendant's accounts also treated the respective considerations named in the deeds as continuing debts due to the defendant from the plaintiffs' father. The Subordinate Judge awarded the plaintiffs' claim, but his decree was reversed, on appeal, by the Assistant Judge, who held that the transaction was a sale, and not a mortgage. On appeal to the High Court,—*Held* that, under the circumstances mentioned above, a Court of Equity would regard the instruments as mere securities for money. GOVINDA *v.* JESHA PREMAJI . . . . **I. L. R., 7 Bom., 73**

57. ———————— *Sale since 1858 —Construction of right of redemption.—Per curiam* (INNES, *J.*, dissenting)—In the Madras Presidency, where contracts of mortgage by way of conditional sale have been entered into subsequent to the year 1858, redemption after the expiry of the term limited by the contract must be allowed as suggested in *Thumbusawmy Moodelly* v. *Hossain Rowthen, I. L. R., 1 Mad., 1. Per* INNES, *J.*—Contracts of mortgage and conditional sale must be construed in accordance with the intention of the parties, which can only be gathered from the terms of the instrument. It cannot be presumed that parties to mortgages by way of conditional sale executed since 1858 contracted with reference to the rule enforced by English Courts of Equity, adopted by the Sudder Court in 1858, and followed for thirteen years in this Presidency. RAMASAMI SASTRIGAL *v.* SAMIYAPPANAYAKAN

I. L. R., 4 Mad., 179

See VENKATA SUBBAYA *v.* VENKAYYA

I. L. R., 15 Mad., 230

58. ———————— *Deed, Construction of—Bai-bil-wafa—Foreclosure in the Central Provinces.*—By a bond, dated 10th February 1857, a certain village was mortgaged by one *G* to the appellants and their father as security for a loan; the bond providing that, "if I fail to pay the money as stipulated, I and my heirs shall, without objection, cause the settlement of the said village to be made with you." The interest of *G* in the village was described as that of a malguzar, and his proprietary right therein was declared by the revenue authorities shortly after the execution of the mortgage, but his payments of revenue being in arrear, the Board of Revenue granted a lease of the village for ten years to the appellants' father. The mortgagees in a suit on the bond obtained the following decree on 3rd November 1860: "As the defendant acknowledges the plaintiffs' claim, it is ordered that a decree be given to the plaintiffs for principal and interest and costs against the defendant and the mortgaged property." In proceedings in the Civil Court taken under this decree, the mortgagees asked for possession of the village, and obtained, on 17th July 1862, an order, in pursuance of which they were put in possession, an appeal by *G* being rejected. *G* took various steps to obtain possession of the mortgaged property, or a declaration of his proprietary interest therein, but failed in his endeavours, an application for a grant of the proprietary right in the village, and an appeal from an order cancelling his pottah, being rejected by the revenue authorities on 8th December 1864 and 27th July 1865, respectively; and on 12th August 1867 *G* conveyed the village by deed of sale to the respondent. In a suit brought by them to redeem the mortgage and obtain possession of the property,—*Held* that the effect of the bond was to create a simple mortgage, and not a conditional deed of sale; and that the proceedings taken under the decree of 3rd November 1860, and the order made therein of 17th July 1862, by virtue of which the mortgagees obtained possession of the mortgaged property, did not operate so as to extinguish the right of redemption. The rule that a bai-bil-wafa does not become absolute upon breach of the condition as to payment, without proceedings for foreclosure, obtains in the Central Provinces of India. GOKUL DOSS *v.* KRIPARAM . **13 B. L. R., P. C., 205**

59. ———————— *Deed of sale convertible into a mortgage—Construction of deed.*—Where a deed, which on the face of it was described as a mortgage, stated that the grantee was already in possession under a previous mortgage by the grantor and was under the second deed to receive the profits in liquidation of interest so far as they would go, and that the grantor was not to be liable to repay the principal money or such balance of interest (if any) as might accrue upon it, unless he adopted a son, and the grantee, unless that event happened, was to enjoy the property conveyed in right of purchase for the sum (principal and interest) due to him,—*Held* that the deed was a sale liable to be converted into a mortgage, and not a mortgage liable to be converted into a sale. *Howard* v. *Harris, 1 Ver., 190; Ramji* v. *Chinto, 1 Bom., 199; Shankurbhai* v. *Kassibhai, 9 Bom., 69,* referred to and distinguished. SUBHABHAT *v.* VASUDEVBHAT . **I. L. R., 2 Bom., 113**

60. ———————— *Deed of sale convertible into a mortgage—Construction of deed —Redemption, Right of—Alienation of immoveable property.*—Where the grantor executed to the grantee a document reciting a mortgage by the former to the latter of certain lands for R125, on which R200 were then due from the grantor to the grantee, and containing an agreement that the grantee should pay R75 to another creditor of the grantor, and purporting, in consideration of R275 so made up, absolutely to sell and convey the mortgaged lands to the grantee, and the grantee executed to the grantor a document of the same date reciting the sale of the mortgaged lands by the grantor to the grantee for the consideration of R275, and covenanting that the grantee should reconvey to the grantor the lands, the subject of the grant, if the grantor should repay to the grantee the sum of R275 within a certain period, and providing that, in case of default in such payment within such period, the covenant for reconveyance should become null,—*Held* that the transaction was a sale and not a mortgage, and that, consequently, the grantor had no right to redeem the lands after the expiration of the period so fixed for the payment of R275 by the grantor to the grantee, there being no evidence or allegation that, at the date of the execution of the two documents, the sum of R275 was an insufficient consideration for the sale of the lands, nor any stipulation that the grantee should account for the rents and profits received by him, or that the grantor should pay interest on the R275, nor anything to show that the grantor remained in possession after the execution of the two documents, or that subsequently to that time any advances were made by the grantee to the grantor on the security of the lands, nor anything in either document which pointed to a right on the part of the grantee to recover from the grantor the sum of R275, or any part of it, before, at, or after the period named for the re-purchase. The law as laid down in *Ramji* v. *Chinto, 1 Bom., 199, viz.,* once a mortgage always a mortgage, is still in force in the Presidency of Bombay with regard to mortgages containing clauses of conditional sale, whether executed before or after 1858. The ancient law and usage of the country respecting gahan lahan mortgages, and generally the alienation of immoveable property, discussed. KAPUJI APAJI *v.* SENAVARAJI MARVADI

I. L. R., 2 Bom., 231

61. ——————— *Vendor and purchaser—Sale.*—*Held* that an agreement by the purchaser of certain immoveable property that it should, on payment by the vendor of a certain sum within a specified time, be restored to the vendor, and that on failure of such payment it should become the absolute property of the purchaser, did not create the relation of mortgagor and mortgagee between the parties, and that, upon the vendor's failure to comply with the terms of the agreement, the property vested in the purchaser. BHUP KUAR *v.* MUHAMMADI BEGAM . . . . **I. L. R., 6 All., 37**

62. ——————— *Sale of perpetual lease, with conditional agreement to sell back to vendor, not amounting to mortgage—Reservation of right to re-purchase—Right to redeem.*—A purchaser of land, another person advancing the purchase-money for him, granted to the latter a mokurari pottah or perpetual lease, not as a security for the debt, but as an absolute acquittance of it. At the same time an ikrarnama was executed, whereby it was stipulated that when the grantor or his heirs should pay to the grantee or his heirs the amount of the above debt without interest, out of his or their own moneys without borrowing from any other person, then the pottah should be cancelled, the grantor having no claim to mesne profits during the possession of the mokuraridar. *Held* that, with regard to the terms of the instruments and the circumstances under which they were made, this transaction was not a contract of mortgage, but evidence of a sale and acquittance of a debt with power reserved to the vendor to re-purchase under certain conditions personal to him. SITUL PURSHAD *v.* LUCHMI PURSHAD

I. L. R., 10 Calc., 30 : 13 C. L. R., 382
L. R., 10 I. A., 129

63. ——————— *Vendor and purchaser—Conditional right of re-purchase—Redemption, Suit for.*—*A*, having previously hypothecated certain land to *B*, executed a conveyance of it to him in 1873 for a consideration which was now found to have been an inadequate price. On the same day, *B* executed to *A* a "counterpart document" by which he covenanted to reconvey the land and return the sale-deed if the sale amount be repaid to him in cash on 27th May 1875. The documents contained no provision as to interest, and reserved no power for the purchaser to recover his purchase-money. In 1888 *A*'s representative, alleging that the transaction evidenced by the above documents was a mortgage, brought a suit to redeem it. *Held* that the transaction did not constitute a mortgage, and that the plaintiff was not entitled to redeem. AYYAVAYYAR *v.* RAHIMANSA . . **I. L. R., 14 Mad., 170**

64. ——————— *Sale, with right reserved of re-purchase within a period, distinguished from mortgage—Construction of documents of sale and of agreement for re-sale.*—A document purporting to be one of sale, though it is accompanied by a contract reserving to the vendor a right to re-purchase the property sold on repaying the purchase money within a certain time, is not on that account to be construed as if it were a mortgage. *Alderson* v. *White, 2 De G. & J., 105,* referred to and followed, the law of India and of England being the same on this point. BHAGWAN SAHAI *v.* BHAGWAN DIN . . . **I. L. R., 12 All., 387**
L. R., 17 I. A., 98

65. ——— **Mortgage by conditional bill of sale**—*Joint property held benami in name of co-sharers—Interest of mortgagee.*—An estate was bought benami in the name of *A* by the father of *A*. After the father's death, a sum of money was raised by conditional bill of sale signed by *A* as proprietor and by his brother *B* as motullah. Afterwards, and after the death of *B*, and after *B*'s heirs had separated from *A*, *A* raised a further sum by a bill of sale, reciting the former conditional bill of sale, and that the additional sum was raised to discharge the same. *Held* that, if the grantee took with notice that he was entitled to a half share only of the estate, the additional charge would operate as a mortgage of such half share only; but that portion of the money for which the original bill of sale was given was a charge on *B*'s share as well as on the possession of his heirs. KISHEN CHUNDER GHOSE *v.* NUND KISHORE SINGH . . . . . . **Marsh., 651**

66. ——————— *Change of name in Government records—Subsequent agreement to retransfer land in Government records on payment of debt.*—In 1877 the plaintiff, being indebted to the defendant, transferred certain land to the defendant's name in the Government records. In July 1879 the defendant executed the following document to the

MORTGAGE—*continued.*

1. FORM OF MORTGAGES—*continued.*

plaintiff reciting the previous transfer and agreeing to retransfer the land to the plaintiff's name on the 12th July 1880, if the debt which would then be due should be paid off: " In the village of Behrampur is your (plaintiff's) field, Survey No. 146, measuring 5 acres 3 gunthas bearing assessment R16. You (plaintiff) have got it transferred to our name. That field therefore stands in our (defendants') name in the Government records. You owe a debt to us. On account of that debt you have transferred it to our name . . . . The field shall be retransferred to your name when you repay the said debt to me. You have cultivated the field for the produce of Samvat 1936, and a lease in respect thereof you have this day passed to me. And a stamp paper was purchased at the time of the transfer for the execution of this agreement, but no agreement was then passed. This agreement is therefore this day passed to you when the lease is executed. And you owe me (a) debt bearing interest. I will pay out of my pocket the expenses to be incurred at present in cultivating the field. The debt due to me would in all amount to R100. If you repay all these rupees due to me till the Vaishakh Shudh 6th, Samvat 1936, I will take them and retransfer the field to your name. And if you fail to pay (them) till Vaishakh Shudh 4th, you will have no claim whatever to the said field. I shall not take the rupees after the 4th (chauth), nor shall I give (or transfer the field to you . . . . . I shall lease the field to any one I like without keeping any claim of you as regards cultivation, manure and hedge. You have no claim or right whatever . . . . ." The plaintiff brought this suit to redeem the land, alleging that it had been mortgaged to the defendant, and that the debt had been paid off. The defendant contended that the transaction in 1877 was not a mortgage, but a sale of the land to him, and that the document of July 1879 was an agreement to re-sell it to the plaintiff. *Held* upon the evidence that the transaction in 1877 was a mortgage to the defendant, and not a sale. PATEL RANCHOD MORAR v. BHIKABHAI DEVIDAS . **I. L. R., 21 Bom., 704**

67. ——— *Sale with a right of re-purchase—Conditional sale effected by two contemporaneous deeds—Evidence dehors the documents showing what the transaction really was—Intention of parties.*—The plaintiff and the defendants executed upon the same day two documents. The one purported to be a deed of absolute sale of a certain estate by the plaintiff to the defendants. The other was an agreement by which the defendants covenanted, upon payment of a certain sum by a specified date, to reconvey the property sold by the first-mentioned deed. *Held* that evidence was admissible dehors the documents to show that the intention of the parties was not to effect an out-and-out sale with merely a right of re-purchase under certain conditions left in the vendor, but to constitute a mortgage by conditional sale or bai-bil-wafa. The mere fact of a deed of absolute sale being accompanied by another giving a right of re-purchase will not, for that reason alone, constitute the transaction one of mortgage, but the intention of the parties must be gathered from the terms of the deeds or from the surrounding circumstances or from both. *Alderson* v. *White, 2 De G. & J., 105; Lincoln* v. *Wright, 4 De G. & J., 16; Bhagwan Sahai* v. *Bhagwan Din, L. R., 17 I. A., 98: I. L. R., 12 All., 387; Ali Ahmad* v. *Rahmat-ullah, I. L. R., 14 All., 195; Ramasami Sastrigal* v. *Samiyappanayakan, I. L. R., 4 Mad., 179; Bapuji Apaji* v. *Senavaraji Marvadi, I. L. R., 2 Bom., 231; Bhup Kuar* v. *Muhamdi Begam, I. L. R., 6 All., 37;* and *Venkappa Chetti* v. *Akku, 7 Mad., 219,* referred to. BALKISHAN DAS v. LEGGE . . . **I. L. R., 19 All., 434**

Affirmed by the Privy Council.

[I. L. R., 22 All., 149
L. R., 27 I. A., 58
4 C. W. N., 153

68. ——— *Deed of conditional sale—Bai-bil-wafa, Nature of—Transfer of Property Act (IV of 1882), s. 58—Pre-emption, suit for.*—The transaction known to Mahomedan law as a bai-bil-wafa is a mortgage within the meaning of s. 58 of Act IV of 1882, and not a sale. The plaintiff in a suit for pre-emption had, prior to the sale of the property claimed, executed a deed in respect of his share in the village in virtue of which he claimed the right to pre-empt, the material portion of which deed was as follows: " Thirdly, if I, the vendor, or the heirs of me, the vendor, Ali Jan, *alias* Ali Ahmed, should pay off the entire consideration money mentioned above on the Puranmashi of Jeth Sudi 1299 Fasli to the said purchaser, she should without any objection or hesitation receive the money, and, returning the property sold described above in the document to me, the vendor, revoke the sale." *Held* that this deed was a bai-bil-wafa or mortgage by conditional sale, and that, as the conditional sale had not become absolute at the time when the right of pre-emption accrued, the conditional vendor or mortgagor had still a subsisting right of pre-emption. *Bhagwan Sahai* v. *Bhagwan Din, I. L. R., 12 All., 387,* distinguished. ALI AHMED v. RAHMATULLAH **[I. L. R., 14 All., 195**

69. ——— *Wazib-ul-arz—Co-sharer—Mortgagee of a co-sharer.*—Two co-sharers in a village, *A* and *G*, mortgaged their proprietary interest, with possession, to *L*. *L* made either an assignment or a sub-mortgage of her interest under the mortgage for a term of twenty years to *B*, with a foreclosure clause in case of non-payment. *B* afterwards transferred to *X* for an unexpired period of sixteen years and eleven months the interest in the property which he had acquired from *L*. One *N L*, a co-sharer in the village, thereupon brought a suit for pre-mortgage in respect of the transfer to *X*, on the basis of the village wazib-ul-arz, which gave a right of pre-emption or pre-mortgage when the share of a co-sharer should be sold or mortgaged. *Held* that, inasmuch as *B* could not be regarded as co-sharer, no right of pre-mortgage arose in favour of *N L* in respect of the transfer of the mortgagee interest from *B* to *X*. The principle laid down in *Khair un-nissa Bibi* v. *Amin Bibi, Weekly Notes, All.*

1. FORM OF MORTGAGES—*concluded.*

1887, p. 93, and in *Ali Ahmed* v. *Rahmat-ullah, I. L. R., 14 All., 195,* followed. NAND LAL *v.* BANSI [I. L. R., 20 All., 19

2. CONSTRUCTION.

70. ———— **Rights of mortgagee**—*Proviso in case of alienation of mortgaged property.*—Certain words in a mortgage-deed stipulating that in the event of the property mortgaged being sold in execution of a decree, or otherwise alienated, the mortgagee should recover from any other property in the possession of the mortgagor, whose person should also be liable for debt, were construed as merely intended to give some supposed further security to the mortgagee, but not to take away his right to issue notice of foreclosure and obtain possession by a suit, even though the mortgaged property were sold away. ACHUMBIT MISSER *v.* LALLA NUND RAM [11 W. R., 544

71. ———— *Construction of instrument of mortgage.*—An instrument, mortgaging villages for a sum payable within a certain period by instalments, and making distinct provision that, upon default in payment of an instalment the mortgagee by his servants was to take possession, and after paying the revenue and the expenses of collection, to credit the balance towards payment of the instalment, also contained the following: "Should, on the expiration of the term of this instrument, any money remain due then, till payment thereof, possession will continue according to the terms herein set out. If I do not accept this, then, as soon as the breach of promise occurs, they will at the end of the year realize the whole amount of instalment by sale of the villages and of other moveable and immoveable property belonging to me." *Held* that such an instrument must be taken as a whole, and that the true construction to be put on it should be that which, being reasonable, would also give effect to all parts of it. *Held* accordingly (on the contention that these words negatived the mortgagee's right to take possession upon default in payment of an instalment, leaving him only a right to proceed to sale) that, as this construction would not give due effect to the first part of the instrument, it must yield to a construction which not only would give such effect, but would also be the more reasonable one, *viz.*, that the mortgagee should take possession upon such a default, and also might sell if the mortgagor objected to his applying the rents in reduction of the principal and interest due. DEPUTY COMMISSIONER OF RAE BARELI *v.* RAMPAL SINGH [I. L. R., 11 Calc., 237: L. R., 12 I. A., 1

72. ———— **Arrangement for repayment by lease**—*Set-off of rent.*—On the 1st of November 1866, *A* covenanted to pay to *B* R80,351 with interest on the 16th of May 1870, and pledged certain property for repayment thereof. At the time of the mortgage this property was held by *B*, the mortgagee, under a lease which expired on the 10th of September 1870. On the 5th of November 1866 *A* granted to *B* a lease of the property hypothecated for a term of seventeen years from the 10th of September 1870 at a rent of R20,541 a year. The lease recited the mortgage-debt and the necessity of providing for payment of it, and contained an agreement that out of the annual rent *B* should retain R16,500 on account of the debt and pay the remainder to *A*. In a suit to redeem and cancel the bond and lease,—*Held* that they did not form one mortgage transaction, but were separable and separate, and that *A* would only be entitled to set off the rent retained against the mortgage-debt and interest, and thenceforth to receive the full rental of R20,351 a year for the term of the lease yet unexpired. JOOMNA PERSHAD SOOKOOL *v.* JOYRAM LAL MAHTO [2 C. L. R., 26

73. ———— *Operative words in a mortgage-deed—General language.*—A mortgage-deed, having specifically charged the property originally offered as security, extended the operation of the mortgage by general language to include all interests in the mehals, villages, and lands comprised in the sanad of a talukhdari estate. It was now questioned whether one of the villages comprised in the sanad was part of the mortgaged property. The operative words, uncontrolled by anything in any recital, declared all the above subject to the mortgage. The deed was accordingly held to include the village in question, effect being given to the operative words in their ordinary meaning. LAND MORTGAGE BANK OF INDIA *v.* ABUL KASIM KHAN . I. L. R., 26 Calc., 395

74. ———— *Previous mortgage—Sale under mortgage-decree—Effect of removal of encumbrances by mortgagor—Lis pendens.*—Where a person mortgages his interest in a property,—that interest being restricted or limited in some manner at the time of the mortgage,—the mortgagee's lien is not limited to the interest so restricted and does not cease on the restriction being removed. The removal of encumbrances from the estate of a mortgagor effected by himself will, as a general rule, enure to the benefit of the mortgagee by increasing the value of the latter's security. SHYAMA CHURN BHUTTACHARJEE *v.* ANANDA CHANDRA DAS [3 C. W. N., 233

75. ———— *Mention in mortgage-deed of another debt due to mortgagee distinct from sum advanced at date of mortgage—Clause in deed undertaking to pay off old debts when taking back the land—Old debt not a charge on land, but redemption conditional on payment of both debts.*—*V* mortgaged certain land to the defendant's father for a sum of R64 advanced by the latter at the date of the mortgage. The mortgage-deed stated that *V* owed the mortgagee another debt of R100, which was due on a separate bond, and it contained a clause in the following terms: "The principal sum of huns (coins) due on that document, as also this document, I will pay at the same time, and take back the land along with this document as well as that document. Till then you are to continue to enjoy the land . . . ." The plaintiff, having obtained a decree against the mortgagor, attached the land in execution. The defendant (son of the original mortgagee) thereupon claimed that he held a mortgage upon it to the extent of R164. On the 9th March 1881 the Court executing the plaintiff's decree made an order allowing the defendant's claim only to the extent of R64; and directing that the land should be sold subject to the defendant's lien for that sum. The plaintiffs bought the land at the execution-sale, and offered the defendant R64 in redemption of his mortgage, which the defendant refused. The plaintiffs then brought the present suit to recover possession. *Held* that the charge on the land did not include the old debt of R100. There were no words in the mortgage-deed expressly making that debt a charge on the property. The provisions in the deed only made the equity of redemption conditional on the payment of both the debts. *Quære*—Whether, under the circumstances of the case, the purchaser at the execution-sale would be bound by such a condition. YESHVANT SHENVI *v.* VITHOBA SHETI . . . . **I. L. R., 12 Bom., 231**

76. ———————— *Priority of mortgage—Intention of preserving a prior security presumed—Mortgagee—Mortgagor.*—On the 29th November 1882 *H* mortgaged to the plaintiff his one-third share in a house and garden to secure R1,000 with interest at 12 per cent. On the 3rd January 1884 *H* mortgaged his one-third share in the same house to a third person to secure R1,000 with interest at 18 per cent. On the 14th May 1884 *H* and his two brothers mortgaged to the plaintiff the entirety of the said house and garden to secure R3,400 with interest at 18 per cent. This last mortgage recited the mortgage of 29th November 1882, and a further loan of R100 by the plaintiff to *H*, and contained the following clause: "Now in order to liquidate the said debt, and on account of our necessity, we three brothers do this day mortgage to you whatever right, title, and interest we have in the said two premises and take the loan of R3,400; out of this money we have also liquidated the said debt, therefore for interest of the said money we are paying at the rate of R1-8 per month." *Held* that the transaction of the 14th May 1884 did not amount to payment of the original debt, but was in reality a further advance and a fresh security for both the old debt and the fresh advance, on different terms as to interest, the old debt remaining untouched; but that, even had the original debt been satisfied thereby, that fact would not have necessarily destroyed the security, the presumption being, unless an intention to the contrary were shown, that the plaintiff intended to keep the security alive for his own benefit. *Gokuldas Gopaldas* v. *Puranmal Premsukhdas, I. L. R., 10 Calc., 1035,* followed in principle. GOPAL CHUNDER SREEMANY *v.* HEREMBO CHUNDER HOLDAR . . . **I. L. R., 16 Calc., 523**

77. ———————— *Mortgage of a portion of bhag—Particulars of property stated in deed—Leading description—Falsa demonstratio—Bhag—Bom. Act V of 1862, s. 3.*—A mortgage-deed of certain bhagdari lands stated that "all the properties appertaining to the entire bhag" were thereby mortgaged to the plaintiff. The bhag comprised (*inter alia*) four gabhans (building sites). But the clause, which set forth the particulars of the property mortgaged thereby, specified only two gabhans, one only of which belonged to the bhag and the other did not. The deed then proceeded: "According to these particulars, lands, houses and gabhans, barnyards, wells, tanks, padars and pasture lands also, together with whatsoever may appertain to the bhag—all the properties appertaining to the whole bhag have been mortgaged and delivered into possession . . . . . There is no other property appertaining to the said bhag of which mention is not made here. *Held* that the particulars were 'the leading description,' and the supplementary description of them as constituting the entire bhag should be regarded as *falsa demonstratio.*" *Held* also that the mortgage, so far as it included property belonging to the bhag, was void under the third section of Bombay Act V of 1862, but was valid as to property not comprised in the bhag. TRIBHOVANDAS JEKISANDAS *v.* KRISHNARAM KUBERRAM

[I. L. R., 18 Bom., 283

78. ———————— *Meaning of the term "sudi"—Interest post diem.*—The use of the term "sudi" (bearing interest) in a mortgage-deed held not to imply a covenant to pay *post diem* interest, there being a specific agreement to repay the mortgage-debt, principal and interest, in seven years. RIKHI RAM *v.* SHEO PARSHAN RAM

[I. L. R., 18 All., 316

79. ———— Conditional sale—*Karanamah.*—The appellant became security for the payment by the respondent of the Government dues in respect of a mootah then about to be sold for those dues, and by the first karanamah entered into by the parties it was stipulated that, on default of the respondent to pay any part of the instalments, the appellant was to obtain a transfer of the property, and to retain it, after returning to the respondent the money which may have been paid by him. By a second karanamah entered into on the same day, the plan of a conditional sale provided by the first karanamah was reduced to a mortgage, with a covenant between the parties that, whenever the appellant should take possession of the mootah for the purpose of enabling him to discharge the amount for which he became security, he should restore the mootah to the respondent as soon as he was reimbursed all that he had advanced out of the rents and profits of the mootah. *Held* that the transaction was in the nature of a mortgage, and that there was no such inconsistency between the two instruments as to make the second invalid. KAKERLAPOODY JAGGANADHA RAZ *v.* VUTSAVOY JAGGANADHA JAGAPUTTY RAZ

[5 W. R., P. C., 117 : 2 Moore's I. A., 1

80. ———————— *Relief after time named in conveyance.*—Plaintiff executed to defendant a document of which the following is a translation: "The muddata kriyam executed on the 10th April 1835 by the Madugula zamindar to the zamindar of Bobbili. As I have conveyed to you as sale for

MORTGAGE—*continued.*

2. CONSTRUCTION—*continued.*

R6,000 the Papuchetti Seri adjoining the land of kasbah Jagganantbapuram in the zamindari of Madhugula, they are given you for absolute sale, so the said sale money has been received at the time of sale. In the event of my paying you the principal R6,000 within six months from this date, you must give back the said land Papuchetti Seri to me. In the event of our not being able to pay according to the said stipulation, you should hereditarily from son to grandson enjoy the produce of the said land, yourself paying to Government the assessment fixed on a sub-division, reckoning this sale money to be a pure sale. This muddata kriyam has been executed with my consent." *Held* that this document was a sale with a condition for re-purchase. The decisions of the late Sudder Court of Madras have carried the doctrine of relief after the time named in the conveyance so far as to say that wherever the security for money is an object of the transaction, no sale can become absolute. The High Court have followed the English rule and have held the question one of construction, admitting however, for the purpose of the construction, other documents and oral evidence. LAKSHMI CHELLIAM GARU (ZAMINDAR OF BOBBILI) *v.* KRISHNA BHUPATI DEVU MAHARAZ GARU (ZAMINDAR OF MADUGULA) . . . . . **7 Mad., 6**

81. ——— *Construction of deed—Suit for possession.*—The defendants borrowed money from the plaintiff without interest, but executed a deed stipulating that the sum borrowed was to be repaid on a given date, and that, if not paid then, the defendants should execute a patni lease of certain properties set forth in the deed, the sum borrowed being considered as a bonus for such lease; and that, if the borrowers did not execute such a lease, this deed should be counted as a patni pottah. The money not having been paid, and the lease not executed, the plaintiffs sued for possession. *Held* that they were entitled to possession on the footing of a patni from the date of suit, and that the transaction was not a conditional sale, but a contract to create a patni, for a certain consideration unless that sum was paid on a particular date. JUSEEMOODDEEN BISWAS *v.* HURO SOONDUREE DOSSEE . . . **19 W. R., 274**

82. ——— *Mortgage—Redemption, Right of—Interest—Construction of deed.*—In Chait 1275 Fasli (March 1868) *M*, having borrowed R11,200 from *S*, gave him a mortgage by way of conditional sale of certain immoveable property for a term of seven years, that is to say, extending over the years 1276, 1277, 1278, 1279, 1280, 1281, and 1282 Fasli. The sum payable as the interest of each of these years was fixed at R1,680. The mortgagee obtained payment of his interest for four years from 1276 to 1279 Fasli inclusive by bringing suits against the mortgagor. The interest for 1280, 1281, and 1282 Fasli as well as the principal sum remaining unpaid, the mortgagor sued for redemption of the mortgaged property on payment of the principal sum and the interest of the last year, 1282 Fasli, only, contending that the interest of the other years, 1280 and 1281 Fasli, was not secured on the mortgaged property, but was, under the terms of the instrument of mortgage, realizable by suit from his non-hypothecated property and person. *Held*, on the construction of the instrument of mortgage, that the mortgage was not redeemable on payment of the last year's interest only, but on payment of the interest of the other years as well. SURJU PRASAD *v.* MANSUR ALI KHAN

[I. L. R., 5 All., 463

83. ——— *Covenants as to payment of interest—Default in payment of interest.* A mortgage-deed contained covenants for payment at the expiration of a year from its date, with interest to be paid month by month, in the month following that for which it should be due, and to run on from the date of the mortgage at the same rate until the money borrowed and the interest should be paid. It was also covenanted that, if before the end of the year the mortgagor should make default in payment of interest during one month after it had become due, in that case the principal and interest should thereupon become claimable. With the latter requirement the mortgagor failed to comply, not paying the interest within the stated time. *Held* that, on the true construction of the deed, this default having taken place, this suit would lie for both the principal and interest accrued due within the year. YEO HTEAN SEW *v.* ABU ZAFFER KORESHI . **I. L. R., 27 Calc., 938**

[L. R., 27 I. A., 98

4 C. W. N., 552

84. ——— *Redemption—Condition precedent.*—In a mortgage-deed executed by a Mahomedan to a Hindu in 1820, it was stipulated that the principal and interest were to be repaid within five years, that an account was to be taken at the end of five years of the profits of the lands and any sum found due to the mortgagee, after deducting the profits of the lands from the debt, was to be paid to the mortgagee, and that the payment was to be endorsed on the bond and the lands resumed; and it was provided that, if the amount due to the mortgagee at the expiry of the said term was not paid, the lands were to be treated as sold and delivered, instead of mortgaged. *Held* that, no account having been taken as provided, the mortgage was redeemable within sixty years. MAVULALI AMIRUDIN SHARIF *v.* GUNDU SOBHANADRI . **I. L. R., 6 Mad., 339**

85. ——— **Usufructuary lease**—*Conditions of huq-i-ijara to be reserved to mortgagor—Construction of mortgage-deed.*—The defendant advanced a sum of money to *R* and *T*, who granted him as security for repayment an ijara lease of a mouzah (representing that they were entitled to 16 annas), in which lease a jumma was reserved, a portion whereof was to be applied to the discharge of interest to the defendant and a small sum to go to the mortgagors as huq-i-ijara. After execution of the ijara, the defendant was dispossessed of 8 annas by a third party who claimed to be a sharer, and he had to sue for and obtain a partition of the remaining 8 annas which he retained, for what it was worth, as security. The plaintiffs bought the mortgagors' share, and now sued for the huq-i-ijara originally reserved. *Held* that the mortgagors could not claim any benefit under the ijara lease until all the benefits which it pretended to secure to the defendant were realized by him. ACHUMBIT SINGH *v.* KESHO LALL [20 W. R., 128

86. ———— **Usufructuary mortgage**—*Condition for reconveyance of property.*—In a usufructuary mortgage it was stipulated that the property was to be reconveyed on repayment of the principal sum lent, but nothing was said as to interest. *Held* that the condition implied that the usufruct was intended to be received by the mortgagee in lieu of interest, and therefore the mere fact that the amount of the principal had been received from the usufruct was no ground for the mortgagor being entitled to re-possession of the property. BUNWAREELAL *v.* MAHOMED HOSSEIN KHAN . **2 Hay, 150**

87. ———— *Simple usufructuary mortgage—Right to have the property sold—Distinct covenant to pay the principal—Possession in lieu of interest.*—A merely usufructuary mortgage will confer no right to have the mortgaged property sold. But where there is a distinct covenant to pay the principal, and the land is security for the same, the intention of the parties is that the property should be sold. Such a transaction is a simple usufructuary mortgage, and carries with it the right to have the property sold in default of payment of the principal. A mortgagee, who is entitled to possession in lieu of interest, and who does not take possession, loses his right to interest, and cannot ask that the property be sold for default in payment of interest, the property being security for the principal only. MAHADAJI *v.* JOTI . **I. L. R., 17 Bom., 425**

88. ———— *Power of sale—Bom. Reg. V of 1827, s. 15, cl. 3.*—Where a mortgage provided that the mortgagee was to take possession of the land and enjoy the profits in lieu of interest and the mortgagor was at liberty to recover possession in any year on payment of the principal amount,—*Held* that the mortgage was a usufructuary mortgage, and under the circumstances of the case it was not the intention of the parties that the property should be sold, and that the mortgage-deed contained a special agreement which took the case out of the provisions of cl. 3, s. 15 of Regulation V of 1827, which was the law in force at the time the mortgage was effected. SADASHIV ABAJI BHAT *v.* VYANKATRAO RAMRAO SHINDE [**I. L. R., 20 Bom., 296**

89. ———— *Mortgage of a mixed character partly simple and partly usufructuary—Decree far sale—Transfer of Property Act (IV of 1882), s. 58.*—In construing a mortgage-deed, the terms of which are of a doubtful character, the intention of the parties, as deducible from their conduct at the time of execution and other contemporaneous documents executed between them, is to be looked to. Mortgage-deeds of a mixed character and other than those expressly defined in s. 58 of the Transfer of Property Act, 1882, must be construed as far as possible in accordance with the covenants contained in them. Where a deed is partly of the nature of a usufructuary mortgage and partly of the nature of a simple mortgage, the mortgagee is entitled to bring the mortgage partly to sale under the conditions set out in the deed. *Shunker Lall* v. *Poorrun Mal, 2 Agra, 150; Phul Kuar* v. *Murlidhar, I. L. R., 2 All., 527; Jugul Kishore* v. *Ram Sahai, Weekly Notes, All., 1886, p. 212; Umrao Begam* v. *Vali-ullah, Weekly Notes, 1888, p. 171; Ramayya* v. *Guruva, I. L. R., 14 Mad., 232;* and *Sirakami Ammal* v. *Savundram Ayyan, I. L. R., 17 Mad., 131,* referred to. JAFAR HUSEN *v.* RANJIT SINGH [**I. L. R., 21 All., 4**

90. ———— *Power to cancel zur-i-peshgi lease.*—The words in a zur-i-peshgi lease, "after the expiry of the term it will be competent to me (the mortgagor) in the month of Jeit of any year I can to pay the zur-i-peshgi and cancel the lease," were held to do no more than bar the mortgagor's re-entering in the middle of any year, in the event of the mortgagee's occupation continuing after the expiry of the lease, owing to the mortgagor's default to pay off the loan, and that it contained no undertaking by the mortgagee to hold on until it suited the mortgagor to pay him off. ROY GOWREE SUNKUR *v.* BHOLEE PERSHAD . **17 W. R., 211**

91. ———— *Construction of—Arrears of rent from tenants and mortgagors, Right to.*—By the terms of a deed of usufructuary mortgage the mortgage was redeemable at the end of the term by payment of the principal and the arrears of rent due from the mortgagors and the tenants. It was held, in a suit by the mortgagee (who was in possession of the mortgaged property at the time of suit), to recover the mortgage money and arrears of rent, with regard to the rents due by tenants, that it was clearly the intention of the parties that arrears reasonably due were to be paid and not such as arose from the negligence of the mortgagee, and as it was not shown that the arrears due by tenants could not have been realized by due diligence, and the mortgagee had it in his power to realize the rents, the mortgagee was not entitled to recover such arrears. CHOTI LAL *v.* KALKA PARSHAD . **7 N. W., 100**

92. ———— *Suit for excess of Government revenue paid under.*—By the terms of a deed of usufructuary mortgage the mortgagor accepted the liability on account of any addition that might be made to the demand of the Government at the time of settlement. During the currency of the mortgage tenure the mortgagees, averring that they had to pay a certain sum in excess of the amount of Government revenue entered in the deed of mortgage from 1279 to 1281 Fasli, sued the mortgagor to recover such excess. *Held* that, inasmuch as no settlement of accounts was contemplated or was necessary under the provisions of the deed of mortgage, and such deed did not contain a provision reserving the adjustment of any sums paid by the mortgagees in excess of the amount of the Government demand at the time of the execution of such deed to the time when the mortgage tenure should be brought to an end, the suit was not premature and could be entertained. NIKKA MAL *v.* SULAIMAN SHIKOH GARDNER . **I. L. R., 2 All., 193**

93. ———— **Mortgagor and mortgagee** —*Acts of mortgagor prior and subsequent to mortgage.*—A mortgagor's acts prior to the date of the mortgage bind the mortgagee; but his subsequent acts do not bind the latter, unless they are done by the mortgagor as agent for the mortgagee. KRISHNAJI LAKSHMAN RAJVADE *v.* SITARAM MURARRAV JAKHI . . . **I. L. R., 5 Bom., 496**

94. ———— *Suit for arrears of interest and sale—Suit before principal sum became due—Right of suit.*—A suit for arrears of interest accrued due on a mortgage and for the sale of the property comprised therein was brought before the date fixed for the repayment of the principal. The mortgage provided that, on default of payment of interest on the due date, interest should be chargeable on the arrear, and also that interest at an enhanced rate should be chargeable on the principal. *Held* that the plaintiff was not entitled to sue for the arrears of interest or to bring the mortgaged premises to sale before the principal became due. KANNU *v.* NATESA . **I. L. R., 14 Mad., 477**

95. ———— *"Asmani sultani," Meaning of the words—Destruction of subject of mortgage—Cost of rebuilding by mortgagee.*—A mortgage-deed stipulated that, in the event of the mortgaged house being destroyed "by asmani sultani" (*i.e.*, evils from the skies or the king), the mortgagor should rebuild it, and if he did not do so, and if the mortgagee rebuilt it, he (the mortgagor) would pay the cost of rebuilding with interest in addition to the mortgage-debt. The house was destroyed by a fire which originated in another part of the village, and the mortgagor failing to rebuild the house, the mortgagee rebuilt it. The mortgagor brought a suit for redemption. *Held* that the repayment of the costs of rebuilding the house was a condition precedent to redemption. The destruction of the house was in the nature of a calamity from heaven within the meaning of the term asmani. SAKHARAMSHET *v.* AMTHA DEVJI GANDHI **[I. L. R., 14 Bom., 28**

96. ———— *Intention of parties—Mortgagee to have possession for ten years and to receive profits in lieu of interest—Mortgagor to recover possession in the year he paid the money after the expiration of the period—Power of sale—Cl. 3, s. 15 of Bom. Reg. V of 1827—Mortgagee's personal remedy against the mortgagor—Limitation.*—Where a mortgage-bond contained a stipulation that the mortgagee should enter into possession of the mortgaged property and enjoy the rents and profits in lieu of interest for ten years, and that after the expiration of that period the mortgagor should enter into possession in the year in which he paid the debt. *Held* that it was the intention of the parties that the mortgaged property should not be sold in satisfaction of the mortgage-debt; that the mortgagee was to remain in possession for ten years, and that, under cl. 3 of s. 15 of Bombay Regulation V of 1827, he had no power of sale. The mortgagee having brought his suit within three years from the expiration of the stipulated period of ten years,—*Held* that the mortgagee's personal remedy against the mortgagor was not time-barred. IDRUS *v.* ABDUL RAHIMAN **[I. L. R., 16 Bom., 303**

97. ———— *Hypothecation of "our zamindari property"—Ascertainment of mortgagors' zamindari interest at date of mortgage—Ambiguity in deed—Act IX of 1872 (Contract Act), s. 29—Act IV of 1882 (Transfer of Property Act), s. 58.*—A deed of simple mortgage described the mortgaged property as "our zamindari property" (zamindari apni), and gave no further specification or description. It was proved that at the date of the mortgage the mortgagors had a definite and ascertained fractional share in two zamindaris. *Held* that the words "our zamindari property" were sufficiently certain, or at any rate were capable of being made certain, by the proof of the mortgagors being at the date of the mortgage-deed the owners of a specific zamindari interest; and that the mortgage was therefore not void for uncertainty. *Kanhia Lal* v. *Muhammad Husain Khan, I. L. R., 5 All., 11; Bishen Dayal* v. *Udit Narain, I. L. R., 8 All., 486; Ramsidh Pande* v. *Balgobind, I. L. R., 9 All., 158; Rae Manik Chand* v. *Behari Lal, 2 N. W., 263; Deojit* v. *Pitambar, I. L. R., 1 All., 275; Tailby* v. *Official Receiver, L. R., 13 Ap. Cas., 523;* and *Tadman* v. *D'Epineuil, L. R., 20 Ch. D., 758,* referred to. SHADI LAL *v.* THAKUR DAS **[I. L. R., 12 All., 175**

98. ———— *Kanam mortgage—Suit for sale of mortgaged property—Rights of kanamdar to sue for amount of kanam and for sale of mortgaged property in default of payment.*—A kanamdar having sued to recover the amount of his kanom and for sale of the mortgaged property in default of payment,—*Held* that such a suit is unsustainable; that a kanam, in the mortgage aspect of it, is a usufructuary mortgage; and there is no authority to support the contention that it is a simple mortgage apart from an observation in *Ramunni* v. *Brahma Dattan, I. L. R., 15 Mad., 366, at p. 379.* SRIDEVI *v.* VIRARAYAN **[I. L. R., 22 Mad., 350**

99. ———— *Transfer of Property Act, ss. 40, 58 (b), 69, 100—Charge—Lien—Transfer of interest in immoveable property—"Arh"—"Mustaghraq"—Power of sale in default—Bonâ-fide purchaser for value without notice—Rights of purchaser at sale in execution of decree.*—In January 1883 a decree was obtained upon a bond executed in October 1875, whereby certain immoveable property was made security for a loan, the transaction being described not by the word "rehan" or mortgaged, but by the words "arh" and "mustaghraq." The instrument contained no express covenant for sale of the property in default of payment, but it contained a covenant prohibiting alienation until payment, and a stipulation that, in

MORTGAGE—*continued.*

2. CONSTRUCTION—*concluded.*

the event of the property specified being destroyed or proving insufficient to satisfy the debt, the obligee might realize the amount from the obligor's person and other property. The decree directed the sale of the property as in the terms of an ordinary decree for the sale of mortgaged property. In 1885, before any steps had been taken in execution of the decree, the same property was sold in execution of a simple money-decree against the obligor, and the purchaser obtained possession. It was found as a fact that at the time of the sale the bond of October 1875 and the decree thereon of January 1883 were not notified, but through no fault of the obligee decree-holder, and that the purchaser was a *bonâ fide* transferee for value without notice of the bond and decree. *Held* that the words "arh" and "mustaghraq" used in the bond implied a power of sale in default and denoted a mortgage without possession: and the transaction, though entered into prior to the passing of the Transfer of Property Act (IV of 1882), must be regarded as amounting to a simple mortgage as defined in s. 58 (*b*) of that Act, and not as merely creating a charge as defined in s. 100; and that consequently the rights of the obligee must prevail over those of the subsequent *bonâ fide* purchaser for value without notice of the bond and the decree thereon. *Held* also by MAHMOOD, *J.*, that the title of the judgment-debtor at the time of the sale in 1885 in execution of the simple money-decree was subject to the mortgage-decree of January 1883, and the purchaser at the sale could acquire no higher title than the judgment-debtor possessed, and was equally bound by the terms of the decree of January 1883 in respect of the property which he had purchased, and could not prevent the property being sold under that decree except by paying up the decretal money. *Unnopoorna Dassee* v. *Nufur Poddar, 21 W. R., 148,* and *Enayet Hossein* v. *Giridhari Lal, 2 B. L. R., P. C., 75 : 12 Moore's I. A., 366,* referred to. *Per* MAHMOOD, *J.*—The power of sale mentioned in s. 58 (*b*) of the Transfer of Property Act is not a power in the mortgagee to bring the mortgaged property to sale independently of a Court. The observations on this point of MUTTUSWAMI AYYAR, *J.*, in *Rangasami* v. *Muttu Kumarappa, I. L. R., 10 Mad., 509,* of BIRDWOOD and JARDINE, *JJ.*, in *Khemji Bhagvandas* v. *Rama, I. L. R., 10 Bom., 519,* and of PETHERAM, *C.J.*, in *Sheoratan Kuar* v. *Mahipal Kuar, I. L. R., 7 All., 258,* dissented from. The nature of simple mortgage, hypothecation, charge and lien discussed. *Aliba* v. *Nanu, I. L. R., 9 Mad., 218; Martin* v. *Pursram, 2 Agra, 124; Raj Coomar Ram Gopal Narain Singh* v. *Ram Dutt Chowdhry, 13 W. R., F. B., 82; Moti Ram* v. *Vitai, I. L. R., 13 Bom., 90; Gopal Pandey* v. *Parsotam Das, I. L. R., 5 All., 121; Shib Lal* v. *Ganga Prasad, I. L. R., 6 All., 551; Girdhar Ranchoddas* v. *Hakamchand Revachand, 8 Bom., 75; Sobhagchand Gulabchand* v. *Bhaichand, I. L. R., 6 Bom., 193; Naran Purshotam* v. *Daolatram Virchand, I. L. R., 6 Bom., 538;* and *Durga Prasad* v. *Shambhu Nath, I. L. R., 8 All., 86,* referred to. KISHAN LAL *v.* GANGA RAM

[I. L. R., 13 All., 28

MORTGAGE—*continued.*

3. POSSESSION UNDER MORTGAGE.

100. ———— Rights of mortgagee in possession.—A mortgagee taking possession under the terms of the mortgage is entitled to have the property in the same condition as it was in when it was mortgaged. GOBIND CHUNDER BANERJEE *v.* WISE

[12 W. R., 19

101. ———— Covenant for possession by mortgagee—*Omission to give possession—Right to sue for mortgage-money.*—A deed of mortgage and conditional sale contained a covenant for possession by the mortgagee during the mortgage term. Possession was withheld, though the mortgagor received the mortgagee-money. *Held* that an action would lie by the mortgagee against the mortgagor for recovery of the principal and interest money advanced. OODIT PURKASH SINGH *v.* MARTINDELL

[4 Moore's I. A., 444

102. ———— Obstruction in getting possession—*Usufructuary mortgage—Right of mortgagee to sue for mortgage-money—Transfer of Property Act (IV of 1882), s. 68 (b) and (c).*—A usufructuary mortgagee, to whom possession of the mortgaged property had been delivered, sued the mortgagor for the mortgage-money on the ground that the mortgagor had sold a part of the mortgaged property, and the purchaser had deprived him of possession of such part. One of the conditions inserted in the deed of mortgage was that, if "on the part of the mortgagor, or other persons, any kind of dispute or any interference or obstruction took place in obtaining of possession by the mortgagee of the mortgaged property," the mortgagee should be entitled to sue for the mortgage-money. *Held* that such condition contemplated the case of the mortgagor, in the first instance, in breach of the conditions of the mortgage, failing to deliver possession to the mortgagee or to secure his possession from any obstruction or disturbance by other persons, but not the case of the mortgagee being deprived of possession after it had been once obtained and secured, and therefore the mortgagee was not entitled by virtue of such condition to sue for the mortgage-money. *Held* further that, the mortgagee's case being that he had been deprived of possession of a part of the mortgaged property, he would be entitled to sue for the mortgage-money only if he had been deprived thereof by or in consequence of the wrongful act or default of the mortgagor, and not if he had been deprived thereof by or in consequence of the wrongful act or default of other persons; that the sale by the mortgagor was not a wrongful act, there being no condition against alienation, and the sale by a mortgagor of his equity of redemption not being rendered wrongful or unlawful by any rule of law, nor being in itself a wrongful act; that a wrongful act by the purchaser, though committed under colour of the purchase, could not be said to have taken place "in consequence of the wrongful act or default of the mortgagor;" and that therefore the mortgagee had no cause of action. JHABBU RAM *v.* GIRDHARI SINGH . **I. L. R., 6 All., 298**

103. ———————— *Mortgage by conditional sale—Mortgagee in possession but afterwards dispossessed—Suit for foreclosure and* *recovery of possession—Nature of possession—Right of redemption.*—A mortgagee by conditional sale who was put into possession of the mortgaged property from the date of the mortgage and who is entitled under the mortgage-deed to hold possession is entitled, when wrongfully dispossessed to secure possession of the property by a suit brought within time, although his claim for foreclosure may be barred by limitation. The possession recovered is, however, possession as mortgagee subject to the mortgagor's right of redemption. AMAN ALI *v.* AZZAR ALI MIA

[I. L. R., 27 Calc., 185

104. ——— **Dispossession of mortgagee**—*Usufructuary mortgage—Construction of deed—Suit for money lent on dispossession.*—The plaintiff sued to recover money due on a mortgage-bond alleged to have been executed by the defendant's late husband *S*, and by his brother *J*, who, however, was relieved by the plaintiff from the debt. The conditions of the bond were that the plaintiff's father should possess the mortgaged property in consideration of interest only accruing upon the principal sum lent, and that the mortgagor should take back the property, whenever he should pay the principal sum to the mortgagee. The present suit was brought by reason of the plaintiff having been dispossessed of the property by the shareholder brothers *A* and *J*. *Held* that the money lent was recoverable notwithstanding there was no express condition in the bond to the effect that it would be recoverable in the event of dispossession by a third party. But as the money was found to have been borrowed by the defendant's husband on behalf of the family with the tacit consent of the other members, the plaintiff could recover from the present defendant only her share of the debt. GYARAM CHUCKERBUTTY *v.* BURODA DABEE

[20 W. R., 484

105. ——— *Mortgagee dispossessed of portion of property by wrongful act of mortgagor—Right to return of portion of loan.*—Where a mortgagee was deprived by the wrongful acts of the mortgagor of a portion of the land which constituted the only security for the mortgage-loan, —*Held* that he was entitled to recover from the mortgagor so much of the consideration-money as was in proportion to the land of which he had been deprived. PITAMBUR MISSER *v.* RAM SURUN SOOKOOL

[25 W. R., 7

106. ——— **Right of mortgagee in possession to proceeds of sale**—*Sale for arrears of revenue.*—A mortgagee in possession is not entitled to recover any share of the sale-proceeds of the mortgaged property sold for arrears of Government revenue, except to the extent that he shows that the usufruct of the property, while he held the mortgage, has not satisfied his debt. HURDEO NARAIN SINGH *v.* FUZLA HOSSEIN . . . 1 W. R., 270

107. ——— **Mortgagee in possession under an agreement to pay rent to mortgagor**—*Usufructuary mortgage—Accidental destruction of mortgaged premises by fire—Right of mortgagor to rent.*—The plaintiff borrowed R1,400 from the defendant, and mortgaged to the latter for eight years a piece of ground with a warehouse standing thereon. There was an agreement between the parties that the rent of the warehouse should be R16-12-0 per mensem, and that out of this amount the mortgagee should appropriate R14 towards the payment of the interest on the principal sum, and pay R2-12-0 as rent to the mortgagor. Within four years from the date of the mortgage the warehouse was destroyed by fire, and thereupon the mortgagee ceased to pay rent to the mortgagor. The latter sued to recover the site together with arrears of rent. The District Judge was of opinion that the defendant should lose the interest on the loan up to the date of the term for the redemption of the mortgage, and that he was bound to pay to the plaintiff the rent claimed by him. *Held* by INNES, *J.*, that the loss of the premises, which had arisen from accidental causes, could not affect defendant's right to recover the full amount due to him on the mortgage. There was no alteration in the liability, but merely in the source and mode of discharge. The premises having ceased to exist, nothing arising from the income could be credited towards the mortgage, and there was no residue available to pay plaintiff. *Held* by MUTTUSAMI AYYAR, *J.*, that defendant's right of possession rested on the usufructuary mortgage and not on tenancy, and his right to recover his debt with interest thereon could not be extinguished or modified by the destruction of the warehouse. As to the surplus payment, the existence of the warehouse, which produced the income of R16-12-0 a month, was the basis of the contract to make it; and the basis having failed, the obligation resting thereon must likewise fail. VENKATESHWARA *v.* KESAVA SHETTI

[I. L. R., 2 Mad., 187

108. ——— **Deprivation of security by wrongful act of mortgagor**—*Right to return of consideration.*—Where money is lent on a mortgage-deed, on the condition that, if returned with interest within a given period, the property pledged shall revert to the mortgagor, and the mortgagee finds afterwards that the property in question is subject to a prior mortgage as to which he was not informed, and that he is therefore without the supposed security, he is at liberty to sue for the return of the money advanced with interest without waiting for the expiry of the stipulated period. RADHA CHURN SHAHA *v.* PARBUTTEE CHURN DUTT . . 25 W. R., 52

109. ——— **Mortgagee deprived by diluvion of subject of mortgage**—*Usufructuary mortgage.*—Where a mortgagee is deprived by diluvion of the possession of land over which he holds an usufructuary lease before he has repaid himself the amount advanced, he has a right, unless the terms of the lease are very special, to call upon the lessor for the unpaid balance of the loan. SHEO GOLAM SINGH *v.* ROY DINKER DYAL . . . 21 W. R., 226

110. ——— **Mortgagee in possession, Liability of, to protect the mortgaged property from claims under a paramount title**

MORTGAGE—*continued.*

3. POSSESSION UNDER MORTGAGE—*continued.*

—*Bom. Reg. V of 1827, s. 15—Limitation for a suit to recover debt personally from the mortgagor where mortgage-deed contains no personal undertaking of repayment.*—By a registered mortgage-deed, dated the 11th May 1876, the defendant mortgaged certain land with possession to the plaintiff for a term of five years, the mortgage-deed stipulating that the plaintiff was to enjoy the profits, pay the assessment for it, and restore it to the defendant on repayment of the debt. But no personal undertaking to pay was given by the defendant. The land was sold by the revenue authorities for arrears of assessment due from the defendant for certain other lands of the defendant. The plaintiff now sought to recover the debt personally from the defendant. The Court of first instance dismissed the plaintiff's claim on the ground that the failure on the part of the plaintiff to pay the arrears of assessment disentitled him to recover the debt from the defendant personally. The plaintiff appealed to the District Judge, who referred the case to the High Court. *Held* that the plaintiff was not bound to save the mortgaged property from claims under a paramount title, his liability being confined under the terms of the mortgage to the payment of assessment for the property mortgaged which he had duly discharged, and that the case did not fall under s. 15 of Regulation V of 1827. The mortgage consideration for the debt having failed, the debt was recoverable within three years—the registered mortgage-deed containing no personal undertaking by the defendant (mortgagor) to pay the loan. SHWABA KHANDAPA *v.* ABAJI JOTIRAV

[I. L. R., 11 Bom., 475

111. ———— **Liability to mortgage lien of lands allotted under partition in lieu of share mortgaged**—*Land allotted in severalty to co-sharers of mortgagor.*—A mortgage of an undivided share in land may be enforced against lands which under a batwara or revenue partition have been allotted in lieu of such share whether such lands be in the possession of the mortgagor or of one who has purchased his right, title, and interest. Lands allotted in severalty by the batwara to the co-sharers of the mortgagor are not subject to the mortgage. The case of *Sidhee Nuzur Ali Khan* v. *Ojoodhyaram Khan, 10 Moore's I. A., 540,* approved. BYJNATH LALL *v.* RAMOODEEN CHOWDRY

[L. R., 1 I. A., 106 : 21 W. R., 233

112. ———— **Transfer of mortgaged property by mortgagee in exchange for similar property**—*Right of mortgagor to property acquired by exchange.*—In 1865 *N* was in possession of six shops in a market-place at Etawah. He was in possession of two as mortgagee, and of the remaining four as proprietor. The Municipal Committee of Etawah having decided to establish the market in a fresh place, and to use the site of the old market for other purposes, arranged with *N* to take the sites of his six shops in the old market-place, and to give him in lieu of them sites for six shops in the new market-place. Under this arrangement, he built six shops in the new market-place. Subsequently, the mortgagor of one of the old shops claimed possession of one of the six new ones on payment of the mortgage-money and cost of constructing the shop. *Held* that the claim could not be allowed, inasmuch as it could be justified only by proof of an agreement binding upon the parties at the time when the transaction occurred that some specific one among the new shops should be substituted for the old one which was the subject of the mortgage, and it had not been found that any such agreement was made. NIDHI LAL *v.* MAZHAR HUSAIN . . . . I. L. R., 7 All., 436

MORTGAGE—*continued.*

3. POSSESSION UNDER MORTGAGE—*concluded.*

113. ———— **Sale to mortgagee of portion of mortgaged property**—*Re-sale to mortgagor—Decree—Equitable right to whole of property mortgaged.*—*A* mortgaged a 14-anna share in a certain mouzah to *B*. *B* obtained a decree on his mortgage-bond. Subsequent to this decree *B* bought from *A* a 2-anna share in the mouzah, but at a later period resold the share to *A*. In execution of another decree which *B* had obtained against *A*, the 12-anna share in the mouzah belonging to *A* was put up for sale and purchased by *B*. *B* next applied for execution of the decree he had obtained on the mortgage-bond, seeking to sell the 2-anna share which remained in the mouzah as part of the property mortgaged to him. *Held* that, so long as *A* had only a 12-anna share of the property in his possession, *B*'s security was of necessity reduced to that amount, but on *A*'s again becoming the owner of the whole 14 annas, *B* had an equitable right to demand that the 14 annas should be held subject to his mortgage. DEOLIE CHAND *v.* NIRBAN SINGH . I. L. R., 5 Calc., 252 : 4 C. L. R., 150

114. ———— **Mortgage of property of which mortgagor is not, but afterwards becomes, owner.**—If a person mortgages property of which he has no present ownership, and subsequently becomes the owner of the mortgaged property, the lien created by the mortgage attaches to such ownership, and subsequent purchasers from the mortgagor take subject to the equities which affected the property in the hands of the mortgagor. MAHOMED ASSUDOOLLAH KHAN *v.* KARAMUTOOLLAH

[4 N. W., 11

115. ———— **Mortgage of moiety of property in reversion**—*Mortgagor subsequently inheriting moiety—Rights of mortgagee in execution of his decree.*—*A*, having mortgaged an 8-anna share of certain property which he had inherited from his father, subsequently succeeded to the remaining 8-anna share in the same property. It appeared that in respect of the property mortgaged *A* was entitled only to a reversion on the death of his mother. *Held* that the holder of a mortgage-decree on the mortgage was not at liberty to proceed against the other 8-anna share. NISTARINI DEBI *v.* BROJO NATH MOOKHOPADHYA 10 C. L. R., 229

MORTGAGE—*continued.*

4. POWER OF SALE.

116. ———— **Sale of mortgaged land in mofussil**—*Deed in English form.*—A sale, without the intervention of a Court of justice of mortgaged lands situate in the mofussil of Bombay, under a power of sale contained in an indenture of mortgage in the ordinary English form, is valid, if due notice be given to the mortgagor of the mortgagee's intention to sell, and the sale be fairly conducted. Position of a mortgagee selling under his power of sale explained. Pitamber Narayandas *v.* Vanmali Shamji . . **I. L. R., 2 Bom., 1**

117. ———— *Redemption, Suit for—Injunction.*—When property mortgaged is situated in the mofussil, but the parties to the mortgage are resident in Bombay, and the instrument of mortgage is in the English form, the parties must be held to have contracted according to English law, and to be entitled to enforce their rights according to that law. In such a case the mortgagee can exercise a power of sale contained in the mortgage-deed, and cannot be restrained from exercising such power, merely because the mortgagor has filed a suit for redemption. The mortgagor can only stay the sale *pendente lite* by paying the amount due into Court, or by giving *primâ facie* evidence that the power of sale is being exercised in a fraudulent or improper manner, contrary to the terms of the mortgage. Jagjivan Nanabhai *v.* Shridhar Balkrishna Nagarkar

[I. L. R., 2 Bom., 252

118. ———— **Sale to mortgagee under power of sale**—*Effect of such purchase by mortgagee - Title acquired by him.*—A mortgagee purchasing the mortgaged property with the consent of the mortgagor, under the power of sale contained in the mortgage-deed, acquires an unimpeachable title derived from the power of sale, which is altogether distinct from and overrides his title as a mere incumbrancer: the effect of such purchase being to vest the ownership of, and the beneficial title to, the property for the first time in himself, who had been previously a mere incumbrancer. Purmananddas Jiwandas *v.* Jamnabai . **I. L. R., 10 Bom., 49**

119. ———— **Private sale without intervention of Court.**—*Semble* (*Per* Melvill, *J.*)—That a private sale effected by a mortgagee in the mofussil without the intervention of a Court in pursuance of a power of sale given to him under his instrument of mortgage is invalid. Keshavram Krishna Joshi *v.* Bhavanji bin Babaji

[8 Bom., A. C., 142

120. ———— **Exercise of power of sale**—*Mortgagee with lease which he has the option of terminating on sale—Notice to mortgagee.*—Where a mortgage-deed gave to the mortgagee an option, in the event of a sale of the interests of the mortgagors, to throw up a lease which he held from them for the mortgaged jote and claim immediate payment from the surplus sale-proceeds,—*Held* that, before the mortgagors could withdraw the surplus proceeds from the Court, it would be necessary for them to give notice to the mortgagee of their intention to do so. Bhoobun Joy Acharjea *v.* Anund Lall Chowdhry . . . **22 W. R., 47**

MORTGAGE—*continued.*

4. POWER OF SALE—*continued.*

121. ———— *Notice of sale—Transfer of Property Act, s. 69 (1)—Invalid condition as to notice of sale.*—In a deed of mortgage of property, situate within the town of Madras, it was provided that a power of sale might be exercised after fifteen days' notice. The property was sold. *Held* that (s. 69 of the Transfer of Property Act, 1882, requiring three months' notice before such a power of sale shall be exercised) the condition as to notice was invalid, but that the sale was nevertheless valid. Madras Deposit and Benefit Society *v.* Passanha . . **I. L. R., 11 Mad., 201**

122. ———— *Transfer of Property Act, s. 67 (a)—Usufructuary mortgage—Remedy of mortgagee.*—A usufructuary mortgagee is not entitled, in the absence of a contract to that effect, to sue for sale of the mortgaged property. *Semble*—The construction placed on s. 67 (*a*) of the Transfer of Property Act, 1882, in *Venkatasami* v. *Subramanaya, I. L. R., 11 Mad., 88,* that a usufructuary mortgagee can sue either for foreclosure or for sale, but not for one or other in the alternative, is wrong. Chathu *v.* Kunjan . **I. L. R., 12 Mad., 109**

123. ———— *Surplus proceeds of sale in hands of mortgagee—Interest charged against mortgagee on such surplus from date of sale.*—A mortgagee, who under his power of sale has sold the mortgaged property, must refund to the mortgagor any surplus moneys remaining in his (mortgagee's) hands with interest at six per cent., *i.e.,* the Court rate, from the date of the completion of the sale. Abdul Rahman *v.* Noor Mahomed

[I. L. R., 16 Bom., 141

124. ———— *Form of mortgage—Bom. Reg. V of 1827—Transfer of Property Act (IV of 1882), s. 67—Mode of recovering mortgage-money.*—Where a mortgage provides that possession of the mortgaged property, if taken by the mortgagee, is only to be taken for securing due payment of the interest, the mortgagee paying the balance (if any) of the profits to the mortgagor, the mortgage is not a usufructuary mortgage, but a simple mortgage, and is governed by the general law applicable to mortgages of this nature. In such a case, although there is no covenant to pay the principal other than that implied in the statement that the principal has been received, and that the property has been mortgaged for the stipulated term of years, and although there is no express provision that it is to be recovered from the mortgaged property, Regulation V of 1827 gives the mortgagee the right to bring the property to sale, and s. 67 of the Transfer of Property Act (IV of 1882) confers upon him the same privilege. Yashvant Narayan Kamat *v.* Vithal Divakar Parulekar

[I. L. R., 21 Bom., 267

125. ———— *Notice of sale—Subsequent mortgage of same property—Notice of sale to subsequent mortgagors—Notice of sale to*

MORTGAGE—*continued.*

4. POWER OF SALE—*continued.*

subsequent mortgagees—Delay in selling—Rescission of notice of sale—Suit by second mortgagee to prevent sale—Offer to redeem joint mortgage—Right of mortgagee—Injunction to restrain sale.—Certain property was mortgaged to the defendants in 1885 for R60,000, and the mortgage-deed contained the usual power of sale on notice to the mortgagors or their assigns. The debt was not paid, and the defendants, on the 31st August 1891, gave notice of sale to the mortgagors, but did not then proceed further in the matter. Three days after this notice, *viz.*, on the 3rd September 1891, the mortgagors mortgaged the property to the plaintiffs for R10,000. On the 18th November 1892 the plaintiffs by letter offered to transfer their mortgage to the defendants or to join with them in selling the property. In the event of their being unwilling to accept either of these proposals, the plaintiffs requested the defendants to render an account of the sum due to them in order that they (the plaintiffs) might, if so advised, redeem the defendants' mortgage. On the 3rd December 1892 the plaintiffs by letter enquired whether the defendants were willing to re-convey the mortgaged property on payment of a certain sum, which was less than the amount the defendants claimed, but they did not positively offer to pay the defendants either that amount or the amount which might be found to be due. In April 1893 the defendants advertised the property for sale on the 27th of that month without giving notice of sale to the plaintiffs, and on that day the plaintiffs filed a suit and obtained a rule, restraining the defendants from proceeding with the sale. In the argument of the rule it was contended for the plaintiffs, first, that the defendants had no power to sell, because their mortgage-deed required previous notice of sale to be given to the mortgagors or their assigns, and no such notice had been given to the plaintiffs who, as subsequent mortgagees, were assigns of the equity of redemption; secondly, that the notice of sale given to the mortgagors on the 31st August 1891 had been rescinded, and a fresh notice was therefore required; and, thirdly, that inasmuch as the plaintiffs were willing to redeem the defendants' mortgage, the sale should be restrained. *Held* (1) that notice to the plaintiffs was not necessary. Proper notice had been given to the mortgagors on the 31st August 1891, three days before the plaintiffs had acquired any interest in the equity of redemption. No further notice was required to be given to any person who at that time was not an assign, in order to enable the defendants to sell under that notice. An assign must take things in the state in which he finds them, and cannot claim to alter rights which have accrued before he has any authority to interfere; (2) that the notice of sale of the 31st August 1891 had not been rescinded by the defendants, who were not bound to give a fresh notice before the sale advertised to be held on the 27th April 1893. The mere fact of a long delay taking place between the maturing of the notice of sale and the actual sale does not make a fresh notice necessary; (3) that on the evidence it did not appear that the plaintiffs were able and willing to redeem the defendants' mortgage. The plaintiffs admittedly had not the money in hand, and the Court would not interfere with a mortgagee's right to sell on the mere chance of the plaintiffs being able to make arrangements to pay the amount due at some uncertain time. Where a mortgage-deed which gave the mortgagee a power of sale contained also a proviso that the remedies of the mortgagors, their heirs, administrators, and assigns in respect of any breach of the clauses or provisions (relating to such sale) or of any impropriety or irregularity whatever in any such sale should be in damages,—*Held* on the authority of *Prichard* v. *Wilson, 10 Jur., N. S., 330,* that the Court would not grant an injunction to restrain the mortgagee from selling the mortgaged property. MUNCHERJI FURDOONJI *v.* NOOR MAHOMEDBHOY JAIRAJBHOY PIRBHOY . . . **I. L. R., 17 Bom., 711**

5. SALE OF MORTGAGED PROPERTY.

(*a*) RIGHTS OF MORTGAGEES.

126. —— **Right of mortgagee**—*Remedy on non-satisfaction of claim after sale.*—The right accruing to a lender of money under a mortgage-bond hypothecating land is to have his mortgage-lien on the land declared and the property sold in satisfaction; and if after sale the debt is not satisfied, to proceed against the debtor for the balance. WEBB *v.* RINCHIDEN . **14 W. R., 214**

LALLA MITTERJEET SINGH *v.* SCOTT **[17 W. R., 62**

127. ——— **Sale of whole property for portion of debt**—*Sale of mortgaged property for instalment of bond—Right to, or lien on, surplus proceeds.*—Where money is lent upon the security of immoveable property of a nature incapable of division, and the mortgagee, on one of the instalments becoming due, has to sell the entire property, he does not thereby lose all lien over the surplus proceeds. It seems to make no difference that the property is capable of division. RAM KANT CHOWDRY *v.* BRINDABUN CHUNDER DOSS . **16 W. R., 246**

128. ——— **Right to elect property to be sold**—*Sale of portion of property pledged.*—Where a plaintiff's bond gives him a separate lien on each and all of several mouzahs pledged as security, he is free to elect for sale whichever of the mouzahs he thinks most likely to satisfy his claim. When a portion of property pledged as security in a bond is sold in satisfaction, there is nothing to prevent the obligee from purchasing such portion. HOOLAS KOOEREE *v.* SUFEEHUN. SUFEEHUN *v.* MAHOMED HUBEEBOOLLAH KHAN . . . **8 W. R., 379**

129. ——— **Right to surplus sale-proceeds**—*Election to proceed against mortgaged property.*—Where a creditor sued upon a bond and got a decree declaring his debt leviable from certain landed property on which the bond gave him a mortgage lien, as well as for any other property found in possession of the debtor, but having elected to satisfy his mortgage-lien and procured the sale of the landed property subject to that lien,—*Held* that he was bound to recoup himself from the mortgaged property, and that he could not get any part of the surplus sale-proceeds, unless it were shown that the mortgaged land had not produced enough to satisfy his claim. Kalee Dass Ghose *v.* Lal Mohun Ghose . . . . **16 W. R., 306**

See Futeh Ali *alias* Nanna Meah *v.* Gregory [**6 W. R., Mis., 13**

130. ——— **Rights of successive mortgagees**—*Prior sale under second mortgage—Right of purchaser.*—A property was mortgaged in succession to two different persons. Under the latter of the two deeds, a money-decree was obtained and the property sold. Subsequently the earlier mortgagee obtained a money-decree, and caused the mortgagor's rights and interests to be again sold. *Held* that the purchaser at the second sale purchased, not the estate, but the mortgagor's (extinct) right, title, and interest, and could not sue for possession of the property itself. Durpo Narain Mahatah *v.* Nuleeta Soonduree Doss . . . . . . **11 W. R., 332**

131. ——— **Right of prior lien**—*Sale of hypothecated property for money-decree—Lien of subsequent mortgagee with order directing sale—Right of purchaser.*—Where property hypothecated for a debt is sold in execution of a money-decree passed under the bond hypothecating it, without any additional order in the decree for enforcing the lien on the property, and the holder of a subsequent similar bond, who has obtained an order on his decree directing the sale of the property, seeks to enforce his lien upon the property so purchased, the purchaser is entitled to go on the previous lien, as he not only stands in the shoes of the debtor, but has purchased all rights in the property hypothecated by the debtor when his hypothecation was made, and has thus also acquired the rights of the decree-holder to satisfy whose due the property was sold when this purchaser purchased. Sheo Prosun Singh *v.* Brojoo Sahoo . **7 W. R., 232**

132. ——— *Right of holder of money-decree against subsequent mortgagee after foreclosure.*—*A* executed a bond in favour of *B*, hypothecating certain immoveable property. *B* recovered a money-decree against *A*, and caused the mortgaged property to be sold. *B* became the purchaser at the sale in execution, and was put in possession. *C*, who held possession of the property under a decree for foreclosure of a subsequent mortgage of the same property to him by *A*, brought a suit against *B* for recovery of possession, and obtained a decree. *B* then brought a suit against *C* to enforce his lien under the mortgage-bond, but it was held that the suit was not maintainable. Kasimannissa Bibi *v.* Hurannissa Bibi . **7 B. L. R., Ap., 8**

S. C. Kuseemoonissa Bibee *v.* Huroonnissa Bibee . . . . . . **15 W. R., 195**

133. ——— *Right of holder of money-decree against subsequent mortgagee after foreclosure.*—*A* executed in favour of *B* a simple mortgage of certain property. He afterwards executed in favour of *C* a mortgage by bi-bil-wafa, or conditional sale, of the same property. *C* obtained a decree for foreclosure, and got possession thereunder. *B* then obtained a money-decree against *A*, and in execution seized and sold and became the purchaser of the said property, and was put into possession of it. On *C* suing *B* to recover possession, *B* claimed to be entitled to hold the property by reason of the prior lien which he had under the simple mortgage. *Held* that, as *B* had only got a money-decree and no declaration of his rights as mortgagee, he could not set up a prior lien against *C*. Kasimannissa Bibi *v.* Hurannissa Bibi . **2 B. L. R., Ap., 6**

Kusseemoonissa Beebee *v.* Hurannissa Bibi [**10 W. R., 468**

134. ——— *Suit for money-decree on mortgage.*—An application was made for leave to file a suit brought to recover the sum of R2,300 on a Bengali deed of mortgage, containing a provision that, "if I should fail within the term of six months to pay off the whole of your money with interest, in that case you will have recourse to law, and by sale of the said huts recover with interest the whole of your money. Should the whole of your money be not thereby realized, in that case you will get it by sale of whatever other property I may have elsewhere. Should even then all the money be not realized, I shall in that case be held responsible for the remainder, that is to say, I shall myself pay: if I should make any objection, it shall be false and inadmissible." The plaint asked for a money-decree. Phear, J., refused to admit the plaint. Umasundari Dasi *v.* Umacharan Sadkhan [**6 B. L. R., Ap., 117**

135. ——— *Attachment—Notice—Fraud.*—The plaintiffs advanced a sum of money on the security of a simple mortgage of a share in four talukhs, and obtained a simple money-decree. They then caused the mortgaged premises to be attached, but did not proceed to sale. Afterwards they negotiated a loan to the judgment-debtors from a third party, the present appellant, upon a simple mortgage of one of the same talukhs, concealing the existence of their prior lien, and appropriated the money so obtained in discharge of other debts due to themselves from their judgment-debtors. The appellant obtained a simple money-decree, and caused the premises to be attached and sold. Before the sale the plaintiffs gave notice of their lien, and in consequence the appellant purchased for a trifle. The plaintiffs brought the present suit for a declaration of their prior lien, and for a re-sale of the premises in satisfaction of their mortgage. The appellant contended in his defence that, as fraud was perpetrated by the plaintiffs in inducing him to make the loan without disclosing their prior lien, his mortgage should have priority over theirs. *Held* that the appellant must be considered as having the first incumbrance; that the notice of the plaintiffs' mortgage given at the execution sale could only affect the appellant's title as purchaser. Priority as between the appellant and the plaintiffs in respect of incumbrances already existing could not be affected by such notice. BHARAT LAL BHAGAT *v.* GOPAL SARAN LAL BHAGAT . **3 B. L. R., A. C., 1: 11 W. R., 286**

136. ——— *Partnership—Attachment, Right of proceeds of.*—A mortgage of the revenues of a village was executed by a firm, and the deed stipulated that the mortgagees should station a mehta or clerk of their own in the village to make the collections, who was to receive his monthly salary and daily food from the mortgagors whilst the property remained on mortgage. A mehta was accordingly appointed, who received the rents and profits of the village for a year or two, but afterwards permitted the mortgagors to receive them for four or five years. The respondent, who was one of the partners of the firm, did not execute the mortgage, but was cognizant afterwards of the execution of it, and he sued his co-partners, and obtained a decree for his share of the assets of the firm. In execution of his decree, an attachment issued against the estate. In a suit by the mortgagee for the removal of the attachment,—*Held* that the mortgage was valid up to the time of the notice of the respondent's claim (*i.e.*, when he proceeded to enforce that claim by attachment and when he became in the situation of a second incumbrancer); and that, if after that time he permitted the mortgagors to receive any portion of the produce of the estate, he ought, with respect to the moneys so received, to be postponed to the subsequent incumbrancer. JUGJEEWUN DAS KEEKA SHAH *v.* RAM DAS BRIJBOOKUN DAS

[6 W. R., P. C., 10: 2 Moore's I. A., 487

137. ——— *Lien on properties pledged by mortgage-bond and transferred by heirs for commuted allowance.*—Where a Mahomedan widow, her two minor sons, and six relatives were entitled by inheritance to certain property originally belonging to a paternal ancestor of his sons, and the six relatives received instead of their shares a commuted allowance,—*Held* that the holder of a money-decree on a mortgage-bond in which the widow and the six relatives had jointly pledged their interest in the property for the payment of money could, as against the sons, sell the seven shares in execution of his decree; it not appearing that the agreement to accept the commuted allowance was irrevocable, or that the agreement had not been entered into with the widow alone. KALLY PROSAD ROY *v.* SARFERAZ ALLI . . **1 C. L. R., 339**

138. ——— *Suit to enforce mortgage-lien on property in the possession of a third party—Properties situate in different districts—Money-decree—Execution of decree—Code of Civil Procedure (Act VIII of 1859), s. 12.*—*A*, the mortgagee, under a bond, of properties situated in districts B and C, sued in the B Court on his bond, and obtained a decree for the mortgage-money and interest, with a declaration that the decree should be satisfied by sale of all the mortgaged property. *A* had not obtained the permission of the High Court under s. 12, Act VIII of 1859, which was necessary to enable him to proceed against the property in the C district. Having attached and sold all properties comprised in his decree situate within the jurisdiction of the B Court, *A*, under a certificate issued by such Court, obtained an order from the C Court attaching lands included in his decree situate in that district. *D* intervened, on the ground that he had purchased the same property in execution of another decree of the C Court against the same judgment-debtor, and the property was released from attachment. *A* then sued *D* and the mortgagor to enforce his mortgage-lien against the property in the C district. *Held* that the B Court had jurisdiction to give *A* a decree for the amount of the mortgage-money and interest, though it had not power to enforce the decree against the property in the C district; that the only effect of the decree was to change the nature of the original debt, which was a bond-debt, into a judgment-debt for the mortgage-money and interest; and that, though *A* could not enforce his lien against the property in the C district under the decree of the B Court, yet, as that property had been sold to a third person, *D*, he was at liberty to sue *D* to establish his lien for the mortgage-debt and interest. BOLAKEE LALL *v.* THAKOOR PERTAM SINGH . **I. L. R., 5 Calc., 923: 6 C. L. R., 370**

139. ——— *Mortgaged property, Conveyance of, to mortgagee—Attachment and sale of same property under another decree—Suit by mortgagee to recover money advanced on mortgage-bond—Avoidance of conveyance—Lien.*—In 1874 the plaintiff advanced money to *F* and *Z* on the security of a mortgage of certain properties. In 1875 the plaintiff took a conveyance of the properties mortgaged to him, setting off the money due to him under the mortgage against the consideration-money. At the time of this conveyance, the same property was under attachment under a decree obtained by another person, and the property was, in execution of this decree, put up for sale, and purchased by one *G*. In a suit brought by the plaintiff on the mortgage-bond (to recover the money lent, and asking that the properties might be made liable to satisfy the debt) against *F*, *Z*, and *G*, it was held that, the conveyance of 1875 being void against *G*, the plaintiff was entitled to fall back upon the lien created by the mortgage-bond. *Bissen Doss Singh* v. *Sheo Prosad Singh, 5 C. L. R., 29*, followed. GOPAL SAHOO *v.* GUNGA PERSHAD SAHOO

[I. L. R., 8 Calc., 530

140. ——— *Money-decree—Sale under mortgage-decree Prior sale under money-decree—Suit for possession.*—On the 21st of April 1864 *A* mortgaged a certain talukh, and on the 13th of December 1865 the mortgagee obtained a mortgage-decree on his mortgage. On the 5th of April 1867 (in execution of a money-decree obtained against *A* by a third party on the 20th of September

1864) the right, title, and interest of *A* in the talukh was purchased by the defendant who entered into possession. On the 1st of July 1868 the right, title, and interest of *A* in the talukh was sold in execution of the mortgage-decree and purchased by the plaintiff. In these execution-proceedings the defendant intervened, but his claim was disallowed. On the 28th of June 1880 the plaintiff brought the present suit for possession of the talukh. *Held* that the plaintiff was not entitled to possession, but should have brought his suit to enforce the mortgage-lien against the defendant. BIR CHUNDER MANIKYA *v.* MAHOMED AFSAROO . **I. L. R., 10 Calc., 299**

141. ———— *Right of purchaser of mortgaged property—Mortgagee purchasing right, title, and interest of debtor.*—Plaintiff in 1862 purchased a house of first defendant, which was already hypothecated to second defendant. In 1863 second defendant sued first defendant in the Small Cause Court for the debt on account of which the hypothecation had been made, and got a judgment. He then had the house attached and put up to auction, bought the right, title, and interest of the judgment-debtor in the premises, and entered and continued in possession. Plaintiff claimed in the present suit to recover possession in right of his purchase in 1862. *Held* that, as first defendant had no interest whatsoever in the property at the date of the plaintiff's purchase, second defendant's purchase was not a purchase from the debtor in part satisfaction of his debt. Second defendant's claim still existed, and he could pursue his remedy, either against the person or the property; and that, as he was in possession, he had a right to demand the liquidation of the debt due to him before submitting to be turned out. *Held* also that the obligation of the first defendant gave the second defendant a two-fold remedy: one against the person, and the other against the thing. MUNI REDDI *v.* VENKATA REDDI . **3 Mad., 241**

142. ———— *First and second mortgages—Sale of mortgaged property in execution of money-decree obtained by first mortgagee—Effect on second mortgagee's rights—Purchase by one or several joint mortgagees of mortgaged property—Extinguishment of mortgage-debt—Suit for sale of mortgaged property.*—In January 1886 *B* obtained a simple money-decree only in a suit for enforcement of lien created by a bond executed by the wife of *Z*, and at a sale in execution of such decree a 10 biswas share hypothecated in the bond was sold and purchased by *Z*, in November 1872. On the 3rd May 1872 two bonds were executed in favour of *B* and *H* jointly, the first by *Z* and *I* jointly, hypothecating 6¼ out of the above-mentioned 10 biswas, and the second by *S*, in which the obligor promised to pay the obligees the amount of the bond given by *Z* and *I* in the event of such amount not being paid by them, and mortgaged certain property as security for such payment by him. In December 1872 *Z* gave another bond to *B* hypothecating the same 10 biswas, and in execution of a decree obtained by *B* upon this bond, the 10 biswas were sold and purchased by *B* himself in 1877, and in 1883 were sold by him to *D*. Subsequently, *B* and *H* brought a suit against *Z* and *I*, the joint obligors, under the bond of the 3rd May 1872, the heirs of their surety *S*, a purchaser from those heirs of the property mortgaged in the security-bond, and *D*, in which they claimed to recover the money due on the bond by sale of the property mortgaged therein and also by the sale of the property mortgaged in *S*'s security-bond. *Held* that, inasmuch as *B*'s decree of January 1866 was a simple money-decree only, *Z*'s purchase thereunder in November 1872 could not be regarded as operating in defeasance of the joint bond of the 3rd May 1872, executed by *Z* and *I*, and that the sale of November 1872 therefore left the rights of the parties wholly unaffected *quoad* that instrument. *Held* also that the effect of *B*'s purchase of the 10 biswas in 1877 upon the joint bond of the 3rd May 1872 was as effectually to extinguish the joint incumbrance thereon as if *H* had been associated with him in buying it; that consequently, when *B* sold the 10 biswas to *D* in 1883, they were free of all incumbrance under the joint bond, and that he passed to her a clean title which she could assert as a complete answer to the present suit in regard to the 6¼ biswas. BHUP SINGH *v.* ZAINULABDIN

[I. L. R., 9 All., 205

143. ———— *Right of second mortgagee—Right of sale or redemption—Mortgage suit—Parties.*—Where a mortgaged property is sold in execution of a mortgage decree at the instance of the first mortgagee, and the second mortgagee, who was no party to the previous suit, brings a suit to enforce his mortgage making the purchaser a party,—*Held* that, the property having been sold at the instance of the first mortgagee, the only right which the second mortgagee had was the right to redeem, and the plaintiff, without redeeming the first mortgage, could not bring the property to sale in satisfaction of his subsequent charge. DURGA CHURN MUKHOPADHYA *v.* CHANDRA NATH GUPTA

[4 C. W. N., 541

144. ———— *Payment by mortgagee by conditional sale of prior mortgage—Decree obtained by intermediate simple mortgagee for sale—Mortgage by conditional sale foreclosed—Intermediate simple mortgagee not entitled to sell without paying first mortgage.*—*B* made two mortgages, dated, respectively, the 10th October 1871 and 10th October 1872, of his zamindari property in favour of *P*. On 27th January 1874 *B* mortgaged 117 bighas 7 biswas and 10 dhurs of sir and cultivatory land belonging to his zamindari for R700 to the defendant. On 10th September 1877 *B* made a conditional sale of his zamindari property to the plaintiff for R4,500 to pay off the two charges created in favour of *P*. On the 10th August 1878 *B* made another mortgage to the defendant for R300 of the same 117 bighas biswas and 10 dhurs. On the 9th November 1881 defendant obtained a decree on his two bonds of the 27th January 1874 and 10th August 1878, and on his application for execution of

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

the decree the property mortgaged to him was advertised for sale on the 20th November 1883. Meanwhile the plaintiff had taken the necessary proceedings to foreclose his conditional sale, and upon the 29th March 1883 the sale was foreclosed. On the 19th November 1883 plaintiff instituted this suit with the object of having it declared that defendant was not entitled to bring to sale the property mortgaged to him. *Held* that by the conditional sale which became absolute upon the 19th March 1883 the plaintiff acquired all the rights that subsisted under the two mortgages of the 10th October 1871 and 10th October 1872, and was entitled to press those securities in his aid as prior incumbrances to that of the defendant, for the purpose of stopping him from bringing the property to sale in execution of his decree before first recouping the plaintiff the amount which the latter found to satisfy and discharge those incumbrances. *Held* further that the only right which the defendant had to bring the property to sale was upon the strength of the decree obtained on the bond of 27th January 1874, for he had no right under the instrument in his favour of the 10th August 1878. The defendant should therefore only be permitted to bring the property to sale under his decree in respect of the mortgage of 27th January 1874, when he had satisfied and discharged the two mortgage-bonds held by the plaintiff of the 10th October 1871 and 10th October 1872. ZALIM GIR *v.* RAM CHARAN SINGH

[I. L. R., 10 All., 629

145. ——— *Suit for sale of mortgaged property without redeeming prior mortgage—Form of decree—Transfer of Property Act (IV of 1882), s. 58—General Clauses Consolidation Act (I of 1868), s. 2, cl. 5.*—In a suit on a mortgage by a second mortgagee to which the prior mortgagee was a party, and in which the plaintiff prayed that the amount due to him might be realized by a sale of the mortgaged property, the Courts below dismissed the suit, holding that the plaintiff was not entitled to sell the mortgaged property without redeeming the prior mortgage. *Held* that this decree was erroneous, and that the plaintiff was entitled to an order for sale of the mortgaged property subject to the lien of the prior incumbrancer. The words "immoveable property" in s. 58 of the Transfer of Property Act denote, having regard to the definition of "immoveable property" in s. 2, cl. 5 of the General Clauses Consolidation Act (I of 1868), not only the property itself as distinguished from any equity of redemption which the mortgagor might possess in the property, but include the rights of the mortgagor in the property mortgaged at the time of the second mortgage, or in other words his equity of redemption in such property. A second mortgage therefore is, as well as a first mortgage, a mortgage of "specific immoveable property" under s. 58. The cases of *Vencatachella Kandian* v. *Panjana Dien, I. L. R., 4 Mad., 213; Khub Chand* v. *Kalian Dass, I. L. R., 1 All. 240; Raghunath Prasad* v. *Jurawan Bai, I. L. R., 8 All., 105; Gangadhara* v. *Sivarama, I. L. R., 8 Mad., 246;* and *Umes Chunder Sircar* v. *Zahur Fatima, I. L. R., 18 Calc., 164: L. R., 17 I. A., 201,* referred to and approved as to the right of a second mortgagee to a sale subject to the lien of a prior mortgagee. KANTI RAM *v.* KUTUBUDDIN MAHOMED . **I. L. R., 22 Calc., 33**

See BENI MADHUB MOHAPATRA *v.* SOURENDRA MOHAN TAGORE . . **I. L. R., 23 Calc., 795**

146. ——— *Civil Procedure Code, ss. 354, 355, and 356—Insolvency—Receiver selling a mortgaged property of insolvent—Purchase at such sale.*—By an order, dated the 8th July 1879, *A* was declared an insolvent under s. 351 of the Civil Procedure Code (XIV of 1882) and his property vested in the Receiver, who was ordered to convert it into money. Nine fields, which were part of *A's* property, had been mortgaged to the plaintiff, who was duly cited to appear and prove his debt. The plaintiff, however, failed to appear, and he was consequently omitted from the schedule of *A's* creditors. The Receiver sold one of the fields, which was purchased by *A's* undivided son *G*. At the sale the plaintiff gave notice of his claim as mortgagee. After paying off the debts of the scheduled creditors, the Receiver made over to *A* the residue of the purchase-money and the eight unsold fields. In 1881 the plaintiff sued *A* for possession of the mortgaged property, and on appeal obtained a decree. While that suit was pending, *G* sold to the defendant the field which he had purchased. In execution of his decree, the plaintiff recovered possession of the eight fields, but on attempting to get possession of the ninth field he was obstructed by the defendant, who was in possession, and he consequently brought this suit to recover it. *Held* that the plaintiff was entitled to recover it from the defendant. The only interest the insolvent had in the mortgaged premises was the equity of redemption, and this having vested in the Receiver under s. 364, he under s. 356 was directed to convert it into money. *G* therefore at the sale only purchased the equity of redemption in the one field; and the defendant, who now stood in *G's* shoes with notice of the plaintiff's claim, although he might possibly be entitled to redeem the whole nine fields comprised in the mortgage, was bound to deliver possession to the plaintiff (the mortgagee) until that was done. The mortgaged property could not be sold by the Receiver without the consent of the plaintiff (the mortgagee) or paying him off. S. 356 of the Civil Procedure Code (Act XIV of 1882) no doubt contemplates the payment of debts secured by mortgage out of the proceeds of the conversion of the insolvent's property in priority to the general creditors; but this must be taken in connection with s. 354, and must be understood as referring to those cases in which the mortgaged premises have been sold after coming to an understanding with the mortgagee. SHRIDHAR NARAYAN *v.* KRISHNAJI VITHOJI

[I. L. R., 12 Bom., 272

147. ——— *Right to sale of portion of mortgaged property—Death of sole* *mortgagee leaving several heirs—Sale of mortgagee's right by one of such heirs—Suit by purchaser for sale of mortgaged property—Act IV of 1882, s. 67.*—Upon the death of a sole mortgagee of zamindari property, his estate was divided among his heirs, one of whom, a son, was entitled to fourteen out of thirty-two shares. The son executed a sale-deed whereby he conveyed the mortgagees' rights under the mortgage to another person. In a suit for sale brought against the mortgagor by the representative of the purchaser it was found that the plaintiff acquired, under the deed of sale, only the rights in the mortgage of the son of the mortgagee, though the deed purported to be an assignment of the whole mortgage. *Held* by the Full Bench that the plaintiff was not entitled, in respect of his own share, to maintain the suit for sale against the whole property, the other parties interested not having been joined: that, moreover, he was not entitled to succeed, even in an amended action in claiming the sale of a portion of the property in respect of his own share, and that the suit was therefore not maintainable. *Bishan Dial* v. *Munni Ram, I. L. R., 1 All., 297; Bhora Roy* v. *Abilack Roy, 10 W. R., 476;* and *Bedar Bakht Muhammad Ali* v. *Khurram Bukht Yahya Ali Khan, 19 W. R., 315,* referred to. PARSOTAM SARAN *v.* MULU . . . **I. L. R., 9 All., 68**

148. ———— *Redemption of prior mortgage by puisne mortgagee—Sale, at his suit, of mortgaged property, on what terms, and with payment of what incumbrances.*—Upon a claim by a puisne mortgagee to redeem prior incumbrances, and in the alternative, for a decree ordering a sale of the property mortgaged, the sale was decreed, with application of the purchase-money to pay incumbrances in their due order; and with redemption by the plaintiff of a prior mortgagee, who was to have an option to redeem. UMES CHUNDER SIRCAR *v.* ZAHUR FATIMA . . . . **I. L. R., 18 Calc., 164**
[L. R., 17 I. A., 201

149. ———— *Mortgagee in possession not paying assessment during famine—Payment of arrears of assessment by person registered as occupant who obtains conveyance from mortgagor—Mortgagee lying by—Acquiescence—Estoppel—Foreclosure, Suit for.*—The plaintiffs, as mortgagees under a mortgage-deed executed to them by the father of the first defendant, had actual possession of the land in question from 1872 to 1877, during which time they cultivated it, and paid the assessment upon it. In the years 1877 and 1878 they ceased to cultivate it, and paid no assessment. In 1879 the first defendant (his father the mortgagor having died) sold the land to the second defendant, who then paid the arrears of assessment upon it to the Mamlatdar, and took possession. The plaintiffs took no steps to prevent his taking possession, or cultivating the land. In 1886 the plaintiffs brought this suit for foreclosure. They alleged that they had been dispossessed by the second defendant in 1879, and they claimed mesne profits for the years 1883, 1884, and 1885. The Court of first instance directed the defendant to redeem the mortgage within six months, in default whereof it granted foreclosure to the plaintiffs. On appeal the District Judge reversed that decree, holding that the plaintiffs were estopped by their conduct from recovering the land from the second defendant who had purchased it in good faith and for value. On appeal to the High Court,—*Held,* restoring the order of the Court of first instance, that the plaintiffs were entitled to a decree. The second defendant only acquired by his purchase the mortgagor's interest in the land. Even if the mortgagor had been in actual possession, the registration of the mortgage would have been notice to the purchaser of the mortgagee's title. As to the question of estoppel, the mortgagees were under no obligation to do anything, as it was not suggested that they stood by while the second defendant was negotiating for his purchase, or had led him by so doing to suppose that they were not interested in the land; they lived at a distance from the land, and it did not appear that they ever knew of the sale. Nor was there any obligation upon them to move in the matter after the conveyance of the land to the second defendant, provided they did not postpone doing so beyond the period prescribed by the Act of Limitation. CHINTAMAN RAMCHANDRA *v.* DAREPPA
[I. L. R., 14 Bom., 506

150. ———— *Second mortgage of the same property to the same person—Sale in execution of decree on first mortgage—Purchase by mortgagee decree-holder.*—A decree-holder holding two decrees of different Courts on separate bonds hypothecating the same property, in execution of the first decree purchased the property himself. The surplus of the sale-proceeds was distributed by the Court among other persons who held money-decrees against the same judgment-debtor. *Held* that the mortgagee decree-holder could not afterwards execute the second decree against property of the judgment-debtor not included in the hypothecation bond. *Ahmad Wali* v. *Bakar Hussain, Weekly Notes, All., 1882, p. 61; Khwajah Bakhsh* v. *Imaman, Weekly Notes, All., 1885, p. 210,* and *Babu Ravji* v. *Ramji Svarupji, I. L. R., 11 Bom., 112,* referred to. BALLAM DAS *v.* AMAR RAJ
[I. L. R., 12 All., 537

151. ———— *Holder of two mortgages on the same property suing separately on each.*—There is nothing in the Code of Civil Procedure or in the Transfer of Property Act to prevent the holder of two independent mortgages over the same property, who is not restrained by any covenant in either of them, from obtaining a decree for sale on each of them in a separate suit. SUNDAR SINGH *v.* BHOLU . . **I. L. R., 20 All., 322**

152. ———— *Effect of sale of portion of mortgaged property under a decree not on the mortgage—Right of mortgagee to have subsequent sale of mortgaged property taking into account the full value of the property previously*

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

brought to sale.—When a mortgagee holding a mortgage over two distinct properties brings one of them to sale in execution of a decree against the mortgagor, not being a decree on his mortgage, and purchases such property himself, the whole mortgage is not necessarily thereby extinguished; but, if the mortgagee subsequently seeks to bring the mortgaged property to sale in execution of a decree obtained on his mortgage, he will have to bring into account the full value of the portion of the mortgaged property purchased by him under his former decree. *Sumera Kuar* v. *Bhagwant Singh, Weekly Notes, All. (1895), 1,* followed. *Ahmad Wali* v. *Bakar Husain, Weekly Notes, All. (1893), 61; Ballam Dass* v. *Amar Raj, I. L. R., 12 All., 537,* referred to. CHUNNA LAL *v.* ANANDI LAL

I. L. R., 19 All., 196

153. ———— *Mortgage by joint owner—Mortgagee becoming purchaser of part of mortgaged property—Right of redemption of part of mortgaged property—Apportionment of mortgage-debt—Right of mortgagee to keep security entire—Right of purchaser of mortgagee's interest to sue for partition—Joint possession.*—When a mortgagee acquires by purchase the interest of some of the mortgagors, he acquires only a right to sue for partition after the redemption of the entire security has been effected. He must first surrender or restore the mortgage security and then urge what title he may have acquired by the purchase. The general rule is that a mortgagee has a right to insist that his security shall not be split up, but in the following cases there is no objection to do so and to rateably distribute the mortgage-debt:—(*a*) When the mortgagee does not insist on keeping the security entire. (*b*) When the original contract itself recites that the mortgagors join together in mortgaging their separate shares. (*c*) When the mortgagee has himself split up the security, *e.g.*, when he buys a portion of the mortgaged estate. In this case he is estopped from seeking to throw the whole burden on that part of the property still mortgaged with him. In 1872 the plaintiffs' father (*K*) and brother (*B*) mortgaged seven lots of land with possession to the father of defendants Nos. 1, 2, and 3. Four of these lots were subsequently sold to defendants Nos. 4 to 8, with the consent of the mortgagees, who continued in possession of the remaining three lots. In 1878, in execution of a decree, *B*'s interest in these latter three lots was sold, and was purchased by defendants Nos. 1, 2, and 3. In 1889 the defendants Nos. 1, 2, and 3 sold these three lots to defendant No. 9. In 1881 the plaintiffs (sons and brothers of the original mortgagors) sued to redeem all the lands comprised in the mortgage of 1872. The first Court as to the first four lots *held* that defendants Nos. 4 to 8 had been in adverse possession of the first four lots for more than twelve years, and that as to them the suit was barred. As to the remaining three lots, it passed a decree for redemption of the plaintiffs' three-fourths share of the lands, and directed that on payment within six months by them of R500 to defendant No. 9 (who stood in the place of defendants Nos. 1, 2, and 3), they should be put in possession of the lands jointly with defendant No. 9. In appeal the decree was confirmed as to the first four lots, but as to the remaining three lots, the Judge found that the mortgage debt had been paid, and that a sum of R348-5-0 was due from the mortgagees in possession (defendants Nos. 1, 2, 3, and 9) to the plaintiff. He therefore ordered payment of three-fourths of this amount by defendant No. 9 to plaintiffs, and directed that they should be put in possession of their three-fourths share of the lands jointly with defendant No. 9. On appeal to the High Court as to the right to redeem the said three lots,—*Held* that the plaintiffs were entitled to redeem the whole of the said three lots which had been admittedly mortgaged in 1872 and not merely a three-fourths share therof, and were also entitled to the whole of the surplus sum of R348 found due by the mortgagees in possession. *Held* also that defendant No. 9, who had acquired from the mortgagees (defendants Nos. 1, 2, and 3) the equity of redemption in part of the mortgaged property, was not entitled to possession of his share jointly with the plaintiffs. The mortgaged property should first be restored to the plaintiffs, and then defendant No. 9 might bring a separate suit for partition. NARAYAN *v.* GANPAT. GANPAT *v.* NARAYAN **I. L. R., 21 Bom., 619**

154. ———— *Prior and subsequent mortgages—Price to be paid by a subsequent mortgagee redeeming after the mortgaged property has been brought to sale and purchased by the prior mortgagee—Transfer of Property Act (IV of 1882), ss. 74, 75, and 85.*—A subsequent mortgagee is not entitled to redeem the prior mortgage by simply paying the price for which the prior mortgagee may have purchased the mortgaged property at an auction-sale held in execution of a decree obtained by him without joining the subsequent mortgagee as a party; but such subsequent mortgagee must, if he wishes to redeem, pay to the prior mortgagee the full amount due on his mortgage. *Gunga Pershad Sahu* v. *Land Mortgage Bank, I. L. R., 21 Calc., 366,* and *Dadoba Arjunji* v. *Damodar Raghunath, I. L. R., 16 Bom., 486,* referred to. *Baldeo Bharthi* v. *Hushiar Singh, Weekly Notes, All. (1895), 46,* distinguished. DIP NARAYAN SINGH *v.* HIRA SINGH

I. L. R., 19 All., 527

155. ———— *Prior and subsequent incumbrancers, Rights of, inter se—Transfer of Property Act (IV of 1882), s. 85—Sale in execution of decree obtained by first mortgagee in a suit to which the second mortgagee was not a party—Rights of auction-purchaser and mortgagor as regards the second mortgagee.*—A prior mortgagee, *K*, obtained a decree in a suit upon his mortgage, to which suit a puisne mortgagee, *G*, was not made a party, and subsequently one *B* attached the decree, and, having put up the property for sale, purchased it himself. *G*, the puisne mortgagee, having brought a suit for redemption of *K*'s mortgage and sale of the property, *K* sold his rights to *P*, who was thereupon added

as a defendant. *G* obtained a decree for redemption and sale. *Held* per BANERJI, J., that *P* was entitled to the whole amount which *G* had to pay for redemption of the prior mortgage, with the exception of the amount of the purchase-money paid by *B* at the auction-sale, which amount, and which amount only, would be due to *B* or his representatives. *Dip Narain Singh* v. *Hira Singh, I. L. R., 19 All., 527*, and *Baldeo Bharthi* v. *Hushiar Singh, Weekly Notes, All., 1895, p. 45*, approved. *Held per* AIKMAN, J., that the auction-purchaser, *B* (or his representatives), was entitled to the whole amount to be paid by *G* for redemption of the first mortgage. *Dip Narain Singh* v. *Hira Singh, I. L. R., 19 All., 527*, differed from, and *Baldeo Bharthi* v. *Hushiar Singh, Weekly Notes, All., 1895, p. 45*, distinguished. WAHID-UN-NISSA *v.* GOBARDHAN DAS

[I. L. R., 22 All., 453

156. ——————— *Renewal of mortgage—Priority over subsequent incumbrance—Transfer of Property Act (IV of 1882), s. 10.*—Where a mortgagee, subsequently to the execution of the mortgage-deed, takes another mortgage in renewal of the former deed, he has priority over incumbrances subsequent to the first deed. ALAGARAN CHETTI *v.* LAKSHMANAN CHETTI . **I. L. R., 20 Mad., 274**

157. ——————— *Sale by mortgagor of part of the mortgaged property—Effect of such sale on rights of the mortgagee.*—The right of a mortgagee to bring any portion of the mortgaged property to sale is not curtailed by the mortgagor subsequently to the mortgage selling a portion of the mortgaged property to a third person. *Lala Dilawar Sahai* v. *Dewan Bolakiram, I. L. R., 11 Calc., 258; Rama Raju* v. *Yerramilli Subbarayudu, I. L. R., 5 Mad., 387*; and *Panwari Das* v. *Muhammad Mashiat, I. L. R., 9 All., 690*, referred to. BHIKARI DAS *v.* DALIP SINGH . **I. L. R., 17 All., 434**

158. ——————— *Transfer of Property Act (IV of 1882), s. 88—Suit for sale on a mortgage—Purchase at auction-sale by decree-holder—Further execution sought against other property comprised in the mortgage—Amount for which decree-holder must give credit to mortgagor.*—A mortgagee decree-holder, in a suit for sale under s. 88 of the Transfer of Property Act, 1882, brought part of the mortgaged property to sale, and with the leave of the Court, purchased it himself. The amount realized by the sale being insufficient to satisfy the mortgage-debt, the decree-holder applied for execution against the remainder of the property comprised in the mortgage. *Held* that the decree-holder was not bound to give credit to the mortgagor to the amount of the market value of the mortgaged property purchased by him, but only to the amount of the actual purchase-money. *Mahabir Parshad Singh* v. *Macnaghten, I. L. R., 16 Calc., 682; Sheonath Doss* v. *Janki Prosad Singh, I. L. R., 16 Calc., 132*; and *Gunga Pershad* v. *Jawahir Singh, I. L. R., 19 Calc., 4*, referred to. MUHAMMAD HUSEN ALI KHAN *v.* THAKUR DHARAM SINGH

[I. L. R., 18 All., 31

159. ——————— *Rights of prior and subsequent incumbrancers inter se—Rights of mortgagee purchasing equity of redemption—Right of sale of mortgaged property.*—*A* and *B* jointly mortgaged certain immoveable property to *X* by a simple mortgage-deed on the 10th September 1882. They again mortgaged the same property to *X* on the 23rd February 1884. On the 6th August 1885 *A* mortgaged a portion of the said property to *Y*. On the 12th August 1885 *B* mortgaged a portion of the same property to *X*. On the 21st August 1885 *A* mortgaged a portion of the same property to *Z*. On the 20th September 1886 *A* and *B* sold to *X* the property mortgaged to him, and with the proceeds of that sale *X*'s three mortgages were paid off. On the 8th January 1887 *Y* sued *A*, *B*, and *X* for cancelment of the deed of sale of the 20th September 1886, and for sale of the property mortgaged to him under his deed of the 6th August 1885. *Y* did not make *Z* a party to this suit. He did not ask for redemption of *X*'s mortgages nor for foreclosure of *Z*'s mortgage. Upon these facts it was held by EDGE, *C.J.*, STRAIGHT, TYRRELL and KNOX, *JJ.*, MAHMOOD, *J.*, *dissentiente*, (1) That *X*, not having exhibited any intention of foregoing altogether his rights in respect of the mortgages of the 10th September 1882 and the 23rd February 1884, was entitled to keep those securities alive and to use them as a shield against the claim of *Y*, the subsequent mortgagee, to the extent of the amount which was due under them on the 20th September 1886. *Gokaldas Gopaldas* v. *Rambaksh Sheochand, I. L. R., 10 Calc., 1035: L. R., 11 I. A., 126; Gaya Prasad* v. *Salik Prasad, I. L. R., 3 All., 682; Mul Chand Kuber* v. *Lallu Trikam, I. L. R., 6 Bom., 404; Shantapa* v. *Balapa, I. L. R., 6 Bom., 561; Ramu Naikan* v. *Subbaraya Mudali, 7 Mad., 229; Sirbadh Rai* v. *Raghunath Prasad, I. L. R., 7 All., 568; Janki Prasad* v. *Sri Matra Mautangui Debia, I. L. R., 7 All., 577*: and *Gangadhara* v. *Sivarama, I. L. R., 8 Mad., 246*, referred to. (2) That *Y* as subsequent mortgagee could not bring to sale under his mortgage-deed the property mortgaged to him without first redeeming *X*'s two prior mortgages. *Wajed Hossein* v. *Hafez Ahmed Rezah, 17 W. R., 480; Khub Chand* v. *Kalian Das, I. L. R., 1 All., 240; Kasum-un-nissa Bibi* v. *Nilratna Bose, I. L. R., 8 Calc., 79; Har Prasad* v. *Bhagwan Das, I. L. R., 4 All., 196; Muhammad Ibrahim* v. *Tek Chand, Weekly Notes, All., 1882, p. 59; Ali Hasan* v. *Dhirja, I. L. R., 4 All., 518; Zalim Gir* v. *Ram Charan Singh, I. L. R., 10 All., 629*; and *Umesh Chunder Sircar* v. *Zahur Fatima, I. L. R., 18 Calc., 164: L. R., 17 I. A., 201*, referred to, in addition to the cases cited above. *Raghunath Prasad* v. *Jurawan Rai, I. L. R., 8 All., 105*, distinguished. *Vencata Chella Kandian* v. *Panjanadien, I. L. R., 4 Mad., 213; Gangadhara* v. *Sivarama, I. L. R., 8 Mad., 246*; and the judgments of MAHMOOD, *J.*, in *Sirbadh Rai* v. *Ragunath Prasad, I. L. R., 7 All.,* 568, and in *Janki Prasad* v. *Sri Matra Mautangui Debia, I. L. R., 7 All.,* 577, dissented from. MAHMOOD, *J.*, *contra.*—Inasmch as a mortgagee cannot bring the mortgaged property to sale without the intervention of a Court, a private purchase by the mortgagee of the rights remaining to the mortgagor in such property, though it may be valid as against the mortgagor, can have no effect in defeating the rights of puisne and mesne incumbrancers. Moreover, where a second mortgage to a third party intervenes between the mortgage to and the purchase by the prior mortgagee of the rights of the mortgagor, such intermediate mortgage prevents the merger of the rights of the prior mortgagee as such with those which he might acquire by his purchase. The right of sale is an essential incident of a simple mortgage, and inheres as well in puisne and mesne as in prior mortgagees, subject to the rights of the prior mortgagees. The puisne or mesne mortgagee is not bound by the terms of the prior mortgage, or mortgages, but is entitled to bring the property mortgaged to sale, subject to such prior mortgage or mortgages. MATA DIN KASODHAN *v.* KAZIM HUSAIN . . . **I. L. R., 13 All., 432**

160. ——— *Prior and subsequent mortgagees—Rights of subsequent mortgagees where prior mortgage is usufructuary, and time has not arrived for redemption—Form of decree.*—*Held* that, where there exists a prior usufructuary mortgage, a subsequent mortgagee of the same property cannot bring the mortgaged property to sale in virtue of his incumbrance until such time as the usufructuary mortgage becomes capable of redemption. *Mata Din Kasodhan* v. *Kazim Husain, I. L. R., 13 All.,* 432, explained and followed. AKHRA PANCHAITI *v.* SUBA LAL
[I. L. R., 18 All., 83

161. ——— *Transfer of Property Act (IV of 1882), s. 101—Extinguishment of mortgage—Merger—Third mortgagee paying off first mortgage—Priority of charges.*—Certain land was mortgaged in 1876 to *A*, and on 10th February 1877 to *B*, and two days afterwards to *C*, the last-mentioned mortgage was effected to satisfy a decree obtained by *A* on his mortgage. In February 1882 *C* obtained a decree on his mortgage: this decree was discharged by the sale of the land to *D*, who borrowed part of the purchase-money from the plaintiff, to whom he mortgaged it on the day of the sale. *B* subsequently obtained against *D* and the mortgagor's representative a decree on his mortgage, which comprised a declaration that the sale of 1882 was subject to his lien and brought the property to sale and became the purchaser in execution. The plaintiff now sued *B* and *D* on his mortgage. *Held* that the plaintiff's mortgage was entitled to priority over the mortgage of 10th February 1877 to the extent to which the loan secured thereby had gone to discharge the mortgage of 1876. SEETHARAMA *v.* VENKATAKRISHNAKA . . **I. L. R., 16 Mad., 94**

162. ——— *Covenant that mortgagee be entitled to enter—Entry, Right of—Mortgage-deed in English form.*—*B* executed a mortgage-deed in the English form in favour of the L Bank, containing amongst other covenants one providing that, upon default, the mortgagee would be entitled to enter into possession of the mortgaged properties. *B* died leaving a widow, a daughter and a sister *S*, his heirs. According to Mahomedan law, *S* was entitled to a six-annas share of the mortgaged properties. On the 9th of May 1872, after the mortgage-money became due, the L Bank brought a suit, and, on the 13th of July 1872, obtained a decree by consent. The existence or right of *S* to a share in the properties was not known to the Bank, and she was not made a party to that suit. The Bank, in execution of their decree, caused the mortgaged properties to be sold, and themselves purchased some of them. The sale-proceeds did not satisfy the entire claim. On the 1st of December 1875 *S* sold her share of six annas in the properties to *R*. In a suit by *R* against the purchaser of two of the mortgaged properties at the aforesaid sale it was held that the share of *S* in the estate of *B* did not pass to the purchasers, though the Bank purported to have brought the whole sixteen annas in the properties to sale. *R* then brought this suit for the recovery of possession of the six-annas share of the properties, purchased at the sale by the Bank themselves, and which was now in their possession. *Held* that under the covenant in the mortgage-deed above referred to, the Bank were entitled to remain in possession as mortgagees until the proportion of the debt which might legitimately be imposed upon the six-annas share of the properties in their hands was paid. LUTCHMIPUT SINGH BAHADUR *v.* LAND MORTGAGE BANK OF INDIA . . **I. L. R., 14 Calc., 464**

163. ——— *Purchase of mortgaged property by mortgagee at judicial sale on leave obtained to bid.*—Where mortgagees executed their decree on the mortgage, and having obtained leave to bid at the judicial sale purchased the property,—*Held* that they could not be held to have purchased as trustees for the mortgagors, the leave granted to bid having put an end to the disability of the mortgagees to purchase for themselves, putting them in the same position as any independent purchasers. MAHABIR PERSHAD SINGH *v.* MACNAGHTEN . . **I. L. R., 16 Calc., 682**
[L. R., 16 I. A., 107

DAKSHINA MOHAN ROY *v.* BASUMATI DEBI
[4 C. W. N., 474

164. ——— *Civil Procedure Code, 1882, s. 294—Decree-holder, Purchase by—Satisfaction pro tanto—Mortgagee not trustee for mortgagor in sale-proceeds—Leave to bid at sale in execution when granted—Permission of the Court to decree-holder to buy—Practice.*—A mortgagee who has obtained a mortgage-decree, and after obtaining permission to bid at the sale held in execution of such decree has become the purchaser, does not stand in a fiduciary position towards his mortgagor. *Hart* v. *Tara Prasanna Mukerji, I. L. R., 11 Calc., 718,* distinguished. A mortgagee in such a position therefore is at liberty to take out further execution for any balance of the amount decreed that may be left after deducting the price for which the mortgaged property was sold, and is not bound to credit the judgment-debtor with the real value of the property to be ascertained by the Court. The permission to a mortgagee to bid should be very cautiously granted, and only when it is found after proceeding with a sale that no purchaser at an adequate price can be found, and even then only after some enquiry as to whether the sale proclamation has been duly published. SHEONATH DOSS *v.* JANKI PROSAD SINGH . . **I. L. R., 16 Calc., 132**

165. ——————— *Position of mortgagee who has purchased the mortgaged property after obtaining leave to bid.*—A decree-holder (a mortgagee) who has, after obtaining leave to bid at a sale, purchased the mortgaged premises is in the same position as an independent purchaser and is only bound to give credit to the mortgagor for the actual amount of his bid. *Mahabir Pershad Singh* v. *Macnaghten, I. L. R., 16 Calc., 682,* followed. GUNGA PERSHAD *v.* JAWAHIR SINGH

[I. L. R., 19 Calc., 4

(*b*) MONEY-DECREES ON MORTGAGES.

166. ——————— **Suit to enforce a lien on land**—*Sale of mortgaged premises—Money-decree.*—A suit to enforce a lien on land which has been mortgaged will lie, and the land as it stood at the time of the mortgage free from subsequent encumbrances may be sold, although a decree for money due upon the mortgage has been obtained, and the right, title, and interest of the mortgagor thereto has under such decree been once sold. BISWANATH MUKHOPADHYA *v.* GOSSAIN DASS BARAMADAK

[3 B. L. R., Ap., 140

167. ——————— *Right of suit against purchaser of moveable property on which there is a lien.*—A suit will not lie against the purchaser of property subject to a lien to recover from him personally the amount of the lien, but the lien is not lost by the sale, and a suit may be brought against the purchaser with the object of obtaining a decree for the realization of the lien by the sale of the hypothecated property. JUGERNATH *v.* ILAHI . . . . . . **3 N. W., 207**

168. ——————— *Mortgage-bond with covenant to repay money in default, agreement to put mortgagee in possession of land.*—Where a mortgage-bond contained an agreement to repay the money with interest by a certain day, and proceeded thus: "If I, the mortgagor, fail to pay the amount, then I will put you in possession of the land and you may enjoy it, and when I have the means I will redeem the land and pay the debt with interest, and take back the bond."—*Held* that on the mortgagor's default the mortgagee might sue for the money, and that he was not bound to accept the land and forego his right of action. ANNASVAMI *v.* NARRANAIYAN . **1 Mad., 114**

169. ——————— *Pledge of mortgage-bond—Fraudulent sale by mortgagor—Suit to enforce mortgage against bonâ fide purchaser.*—A prior encumbrancer will not be postponed to a subsequent encumbrancer, unless he has been guilty of gross negligence. *A* mortgaged land to *B*. *B*, having bought certain land from *C*, pledged his mortgage-deed to *C* to secure the unpaid purchase-money. *C* gave the bond to *A*, who was his brother-in-law. *A*, representing to *D* that the mortgage was redeemed, sold the land to him, giving him the bond as a title-deed. In a suit by *B* against *D* to recover the mortgage amount by sale of the land,—*Held* that *D*, even although a *bonâ fide* purchaser, could not resist the claim. MUTHA *v.* SAMI

[I. L. R., 8 Mad., 200

170. ——————— **Sale under money-decree**—*Lien on property mortgaged—Purchase by mortgagee.*—When a creditor who holds a bond whereby property is mortgaged elects to take a money-decree, and in execution thereof brings the mortgaged property to sale, he by that sale transfers to the purchaser the benefit of his own lien and also the right of redemption of his debtor. When therefore the decree-holder is himself the auction-purchaser, he obtains the right to have his lien on the mortgaged land satisfied. ARUTH SOAR *v.* JUGGUNNATH MOHAPATTUR . . . . . **23 W. R., 460**

171. ——————— *Suit on mortgage-bond—Transfer of lien—Third parties.*—Where a mortgagee sues on his bond and takes a money-decree, in execution of which he attaches and sells the mortgaged property, he transfers to the purchaser the benefit of his own lien and the right of redemption of his debtor; but the transfer does not include ticcadari rights, if the ticcadar was not made a party to the suit on the bond. BYJNATH SINGH *v.* GOBURDHUN LALL MOHASOHREE **24 W. R., 210**

172. ——————— *Lien on mortgaged property—Advance to save property from sale.*—A mere money-decree upon a mortgage-bond gives the judgment-creditor the power of selling the mortgaged property with the lien, in the same way as a decree with express power to sell the mortgaged property. MOHUN BAGCHI *v.* GIRISH CHUNDER BUNDOPADHYA . . . . **1 C. L. R., 152**

MUNBASI KOER *v.* NOWRUTTUN KOER

[8 C. L. R., 423

173. ——————— *Effect of, on lien.*—The fact that a money-decree has been obtained on a bond by which property has been mortgaged does not destroy the lien on that property. It is open to a plaintiff to establish his right on the bond as well as on the decree. HASOON ARRA BEGUM *v.* JAWADOONNISSA SATOODA KHANDAN [I. L. R., 4 Calc., 29

174. ——— *Lien—Priority.*—The plaintiff had lent money to a Court Ameen, who mortgaged, as security for the repayment of the amount, certain fees due to him then in deposit, and certain fees which might hereafter be deposited on his account. Those fees were subsequently attached by the defendant, who had obtained a decree for rent against the Ameen. After that, the plaintiff obtained a simple money-decree against the Ameen, and applied, in execution of his decree, to have the fees paid out to him, but his application was refused on the ground of the defendant's attachment. In a suit to recover the sums in deposit, and to have it declared that the plaintiff's lien on them was prior to that of the defendant,—*Held* that the plaintiff's mortgage gave him priority, and that he was not barred from bringing the present suit by his having already sued to recover the amount and obtained a mere money-decree. LALA TILAKDHARI LAL *v.* FURLONG . . . . 2 B. L. R., A. C., 230

S. C. LALLA TEELUCKDAREE LALL *v.* COURT OF WARDS . . . . . 11 W. R., 149

175. ——— *Lien on mortgaged property—Form of decree.*—A mortgagee by way of simple mortgage cannot assert his lien on the property mortgaged, as against a subsequent mortgagee by way of conditional sale who had foreclosed, if the decree passed in favour of the former on his mortgage bond does not provide for its satisfaction from the sale of the mortgaged property. RAM CHUNDER MISSER *v.* KALLY PROSONNO SINGH [2 Hay, 625

176. ——— *Sale in execution of decree on mortgage-bond—Lien on mortgaged property.*—In a suit for possession of property which plaintiff's vendor (*K*) had purchased from one *A*, *R K*, the defendant in possession, claimed to be entitled to retain possession as purchaser under a sale in execution of a decree against *A*, which had been obtained on bonds which pledged the property, although the mortgage was not declared in the decree. *Held* that, if *R K* could prove that by the bonds in question this property was pledged as security for the debts covered by them, he would be entitled to remain in possession. RAM KANT ROY *v.* RAJ KISHORE DEB . . 24 W. R., 94

177. ——— **Effect of taking money-decree on mortgage-bond**—*Execution of decree—Subsequent purchaser.*—When a person to whom property is pledged for a debt obtains a simple money-decree against his debtor in respect of the debt, he cannot execute that decree against the property pledged where it is in the possession of a subsequent *bonâ fide* purchaser. GOPINATH SINGH *v.* SHEO SAHAI SINGH [B. L. R., Sup. Vol., 72 : 1 W. R., 315

Distinguished in BECKWITH *v.* UMESH CHUNDER ROY . . . . 3 W. R., 110

Followed in BHUGWAN DOSS *v.* NUBBE BUKSH [7 W. R., 31

GOUREE SINGH *v.* FUZL HOSSEIN [15 W. R., 313

RADHA GOBIND SURMAH *v.* UMBER ALI [15 W. R., 27

AKBUR ALI *alias* AGA MIRZA *v.* AMEEROONISSA [11 W. R., 225

ACHUMBIT THAKOOR *v.* CHOONEE LALL CHOWDHRY . . . . . . 10 W. R., 27

FRENCH *v.* BARANASHEE BANERJEE 8 W. R., 29

BINDABUN CHUNDER SHAHA *v.* JANEE BEEBEE [6 W. R., 312

RAMNATH RAM *v.* DEEN DYAL RAM [W. R., 1864, 311

178. ——— *Right of lien—Purchasers.*—A mortgagee who obtains a simple money-decree upon a bond by which property is mortgaged to him as a collateral security does not retain his lien on the property mortgaged after it has passed into the hands of third persons. SAWRUTH SING *v.* BHEENUCK SAHOO [14 B. L. R., 422 note : 12 W. R., 522

GOLUCK MONEE DEBIA *v.* RAM SOONDUR CHUCKERBUTTY . . . . . . 9 W. R., 82

RADHA GOBIND SURMAH *v.* UMBER ALI [15 W. R., 27

179. ——— *Effect of assignment of judgment-debt—Sale on property on which there is a lien—Civil Procedure Code, 1859, s. 270.*—A simple decree for money upon a bond by which immoveable property is mortgaged carries with it a lien upon the property mortgaged, and that lien continues as an incident to the debt when it passes from a contract-debt into a judgment-debt, and it continues when such judgment-debt is subsequently assigned to a purchaser. An attachment under a money-decree on a mortgage-bond and a mortgage-lien cannot co-exist separately in the property hypothecated, and such an attachment must be treated when existing as an attachment for enforcing the lien. And if property subject to such lien is sold in execution of a decree while it is under attachment under the decree upon the mortgage-bond, the lien existing upon the property is transferred from the property to the purchase-money, and thereupon the property becomes thenceforth discharged from the lien. If after the rejection of a claim preferred by the mortgagee, or person claiming the lien, no regular suit is brought under s. 270 of Act VIII of 1859 to enforce the lien, that lien is lost, and the decree becomes thenceforth a mere money-decree discharged from any incidental lien. NADIR HOSSEIN *v.* PEAROO THOVILDARINEE [14 B. L. R., 425 note : 19 W. R., 255

RAJ CHUNDER SHAHA *v.* HUR MOHUN ROY [22 W. R., 98

180. ———— *Rights of purchaser.*—The purchaser of a simple money-decree passed on a bond hypothecating property does not merely by his purchase acquire a lien upon the property. GANPAT RAI *v.* SARUPI [I. L. R., 1 All., 446

181. ———— *Sale of property for money-decree —Lien for prior hypothecation.* —The fact that property is sold under a decree obtained by a plaintiff in respect of a debt due to him does not of itself prevent such plaintiff from insisting upon the lien to which he is entitled under a prior hypothecation to him, for another debt of the same property. A decree obtained under the summary procedure prescribed by the Registration Act can be for money only, and not for the enforcement of a lien. JUGGUN NATH *v.* KOMUL SINGH [3 N. W., 123

182. ———— *Registration Act, 1866, s. 53—Loss of lien.*—The taking a money-decree on a specially-registered mortgage-bond under s. 53, Act XX of 1866, does not extinguish the mortgagee's lien on the property mortgaged by the bond. There is no substantial difference between the effect of an ordinary money-decree on the bond and a decree on the bond for sale of the mortgaged property, so that the remedy of the mortgagee is the same, so far as the parties to the suit are concerned, whether the decree be made under s. 53 or in a regular suit. Where the property mortgaged has passed into the hands of third parties, there is nothing in the fact that the mortgagee had obtained a decree on the bond to prevent him from bringing a separate suit against the transferees. EMAM MOMTAZOODDEEN MAHOMED *v.* RAJCOOMAR DAS. HARANCHUNDER GHOSE *v.* DINOBUNDHOO BOSE [14 B. L. R., F. B., 408 : 23 W. R., 187

183. ———— *Sale of hypothecated property for money-decree—Rights of incumbrancers.*—*R N* executed in 1864 a security-bond in favour of *K L*, in 1865 a second bond in favour of the defendant, in 1866 a third bond in favour of *K L*, and in 1867 a fourth bond in favour of the defendant; all the bonds being registered and including as security the property in dispute. Both bond-holders took proceedings under Act XX of 1866, s. 53, and obtained decrees. In 1868 *K L* arranged with *R N* to be paid by monthly instalments at interest higher than was allowed by the decrees. In 1869 he put up the property to sale in execution of his decrees, and it was purchased by the plaintiff. Shortly after it was again put up to sale in execution of the defendant's decrees and purchased by the defendant, who got into possession. In a suit to recover possession,—*Held* that, although *K L* in his execution-proceedings referred to his kistbandi as well as to his decrees and irregularly included in the amount to be levied what was not given by the decrees, yet as the proceeds did not cover the decrees, the proceedings could not be held to be void, nor the plaintiff's purchase a nullity. *Held* that what passed to the plaintiff was the property hypothecated, of which he became owner and *primâ facie* entitled to possession, having purchased at the instance of a first incumbrancer, and that defendant's lien could not protect him in possession. KAMESSUR PERSHAD *v.* DOWLUT RAM . . . 19 W. R., 83

184. ———— *Sale in execution of decree on mortgage-bond—Purchaser, Right of.*—Nothing passes to the auction-purchaser at a sale in execution of a money-decree but the right, title, and interest of the judgment-debtor at the time of the sale. Where therefore a decree given under s. 53, Act XX of 1866, declared the right of the obligee of a simple mortgage-bond to bring to sale the hypothecated property, and such property was sold in execution of the decree, the auction-purchaser could not claim in virtue of the lien created by the bond to defeat a second mortgage. AKHE RAM *v.* NAND KISHORE . . I. L. R., 1 All., 236

185. ———— *Mortgagee's lien —Registration Act (XX of 1866), s. 53.*—*A* and *B*, co-mortgagees, obtained a summary decree under the Registration Act, XX of 1866, s. 53, on the 6th May 1868, in respect of certain property which was again mortgaged by the owner to *C* and *D* in March 1869. *C* and *D*, having also obtained a decree on their mortgage, brought the property to sale in execution of their decree, and purchased it themselves in December 1874. *A*, not having had the whole of his mortgage-debt satisfied, instituted a suit on the 13th December 1879 against *C* and *D*, and the representatives of *B* (*B* having meanwhile died and his representatives not joining in the suit), to enforce his lien against the mortgaged property in the hands of *C* and *D*, and to recover the share of the mortgage-debt still due to himself alone. *Held* that *A* did not acquire a better right to proceed against the property by reason of its having come into the hands of *C* and *D*, nor did *C* and *D* take subject to a greater burden than the mortgagor himself; and that, as *A* had allowed his decree against the mortgagor to be barred by limitation, he had lost all right to proceed against the property by execution were it in the hands of the mortgagor, and consequently he could not be allowed to proceed against it by suit merely because it was in the hands of third parties. *Emam Momtazooddeen Mahomed* v. *Raj Coomar Dass, 14 B. L. R., 408: 23 W. R., 187,* and *Jonmenjoy Mullick* v. *Dossmoney Dossee, I. L. R., 7 Calc., 714: 9 C. L. R., 353,* referred to. CALLY NATH BUNDOPADHYA *v.* KOONJO BEHARY SHAHA . I. L. R., 9 Calc., 651

186. ———— *Sale in execution of decree—Purchaser, Right of—Condition against alienation.*—Where the holder of a simple mortgage-bond obtained only a money-decree on the bond, in execution of which the property hypothecated in the bond was brought to sale and was purchased by him, he could not resist a claim to foreclose a second mortgage of the property created prior to its

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY
—*continued.*

attachment and sale in execution of his decree. The view of the Full Bench of the Calcutta High Court in *Emam Momtazooddeen Mahomed* v. *Rajcoomar Dass, 14 B. L. R., 408,* and the decision in *Ramu Naikan* v. *Pubbaraya Mudali, 7 Mad., 229,* dissented from. *Held* further that the holder of the money-decree in this case could not avail himself of a condition against alienation contained in his bond to resist the foreclosure. *Rajah Ram* v. *Bainee Madho, 5 N.-W., 81,* impugned. KHUB CHAND *v.* KALIAN DAS
[I. L. R., 1 All., 240

187. ——— *Lease granted by obligor, Avoidance of—Sale in execution of decree.*—An obligee under a bond giving him a charge upon land who sues for and obtains only a money-decree, under which he himself purchases the land, the sale-proceeds being sufficient to discharge the debt, cannot fall back on the collateral security for a debt which no longer exists. *Semble*—That even if the sale-proceeds were not sufficient to discharge the debt, the obligee could not, according to the principle laid down in *Khub Chand* v. *Kalian Das, I. L. R., 1 All., 240,* avail himself of his collateral security to avoid a lease granted by the obligor after the date of the bond. BULWANT SINGH *v.* GOKARAN PRASAD
[I. L. R., 1 All., 433

188. ——— *Usufructuary mortgage—Execution of decree on money-bond—Lien.*—A party who had obtained a farming lease for a period of years on the understanding that he was to repay himself the amount of a loan made to the lessor out of the surplus usufruct of the estate, not being satisfied with his security, sued on the bond executed by the lessor and obtained a decree, by executing which he realized from time to time nearly the whole sum due. *Held* that the decree substituted another means of recovery for the one previously given, and if he chose to recover the greater part of his due under a decree which, in the place of his farming lease, gave him power to sell the property leased to him, he could not retain his former status as well. ISSUR CHUNDER SEIN *v.* KENARAM GHOSE
[14 W. R., 463

189. ——— *Money-decree, Sale under—Purchaser of property subject to mortgage.*—Plaintiff and defendant No. 5 had mortgages over the same property, the mortgage of the latter being prior to that of the former. Defendant sued for the money covered by the kistbundi, and obtained a money-decree, in execution of which the rights and interests of the mortgagor were purchased, after notice of plaintiff's lien by defendant No. 5, who entered into possession. *Held* that under the circumstances the mortgagor's rights and interests sold as above amounted only to the equity of redemption, and the sale did not extinguish plaintiff's right under the subsequent mortgage; and that the purchaser could be entitled to retain possession only in case of his paying off plaintiff's lien. DEO CHAND SAHOO *v.* TEELUCK SINGH . . . . **14 W. R., 238**

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY
—*continued.*

190. ——— *Suit for possession by purchaser at sale in execution of decree on a mortgage, against mokurari tenure-holder of later date.*—At a sale in 1871, in execution of a decree upon a mortgage, dated 3rd May 1867, *A* purchased the mortgaged lands, the existence of a mokurari granted in 1868 having been notified at the sale. *Held* that a suit by *A* against the mokuraridars for possession would not lie, the existence of the mortgage being no bar to the creation of a subsequent incumbrance carrying with it the right of possession. *Emam Momtazooddeen* v. *Raj Coomar Doss, 14 B. L. R., 408: 23 W. R., 187; Gopee Bundhoo Shantra Mohapatter* v. *Bheenuck Sahoo, 12 W. R., 522; Sarawan Hossein* v. *Shahazadah Golam Mahomed, 9 W. R., 171; Gopeenath Singh* v. *Sheo Sahoy Singh, 1 W. R., 315,* discussed. KOKIL SINGH *v.* DULI CHUND. MITTERJEET SINGH *v.* DULI CHUND . . . **5 C. L. R., 243**

191. ——— *Execution of decree on mortgage—Sale in execution of mortgage-decree.*—On the 9th June 1868, *A*, the mokuraridar of a certain mouzah, mortgaged 8 annas of the mokurari to *B*, and also gave him a dar-mokurari lease of the remaining 2 annas. On the 26th November 1870 *A* mortgaged the whole 10 annas to *C*, and on the 14th December 1875 sold a 1-anna share of the mokurari to the predecessor in title of the appellants. On the 11th June 1877 *B* obtained a decree on his mortgage which he assigned to the plaintiff, who in execution of the decree sold 6 annas of the mortgaged property and himself became the purchaser. On the 2nd August 1877 *C* obtained a decree upon his mortgage, and in execution thereof he sold the remaining 4 annas of the mokurari to the plaintiff. Two annas of the 10 annas share of the mokurari mortgaged to *C* being subject to the dar-mokurari lease to *B*, the plaintiff brought a suit for the rent of the remaining 8 annas, and in that suit the appellants, who were no parties to any of the previous suits, intervened, on the ground that the plaintiff was not entitled to the 1-anna share which had been purchased by their predecessor in title on the 14th December 1875. *Held*, reversing the decision of the Court below, that the plaintiff was not entitled as against the appellants to the 1-anna share, the subject of the sale of the 4th December 1875; but that, if the lower Court on remand should find the plaintiff to be in possession of such share, then a decree for rent should be passed in the plaintiff's favour, leaving the appellants to take any steps which they might be advised. *Phool Chand* v. *Kalian Dass, I. L. R., 1 All., 240,* disapproved of. *Haran Chunder Ghose* v. *Dinobundoo Bose, 14 B. L. R., 408: 23 W. R., 187;* and *Narsidas Jitram* v. *Joglekar, I. L. R., 4 Bom., 57,* followed. MADHU SINGH *v.* ACHRAJ SINGH
[9 C. L. R., 369

192. ——— *Money-decree, Effect of sale by mortgagee of mortgaged property under—Assignment—Purchaser at sale in execution of decree, Right of—Lien.*—*A* mortgaged property to *B*, who assigned his mortgage to *U*. *U*, under an unregistered instrument, assigned his interest to the plaintiff. The plaintiff then obtained a money-decree against *A* personally and put up the property for sale, and it was purchased on the plaintiff's behalf. On going to take possession, the plaintiff was successfully obstructed by *N*, a person who had already purchased it at an auction-sale in execution of a money-decree obtained against *A* by another creditor. The plaintiff, having, before the date of his decree, obtained a second assignment duly registered from *C*, sued upon it, and, obtaining a decree against the mortgaged property, put it up for sale, and became the purchaser in his own name. On going to take possession, he was obstructed by the defendant, who had bought it in execution of a money-decree against *D*, the former successful purchaser and obstructor. *Held* that, although the mere taking of a money-decree for a mortgage-debt does not extinguish the lien, still; when the mortgagee proceeds to satisfy such decree by the sale of his security, the interests of both himself and his judgment-debtor in the said security pass to the auction-purchaser. The particular nature of the right acquired by the purchaser at a sale does not depend on the form of the decree on which the mortgagee has proceeded to satisfy his judgment-debt. What the mortgagee really seeks when he proceeds to sell, whether under a decree for sale or a simple money-decree, is to obtain satisfaction out of his security,—in fact, to enforce his lien; and although the proceeding may be in execution of a money-decree only, he cannot retain his lien for enforcement *quâ* mortgagee, if the debt be not discharged by a second sale of the same property. *Emam Momtazooddeen Mahomed* v. *Rajcoomar Doss, 14 B. L. R., 408; Bhugobutty Dossee* v. *Shama Churn Bose, I. L. R., 1 Calc., 337;* and *Ramu Naikan* v. *Subbaraya Mudali, 7 Mad., 229,* followed. *Khubchand* v. *Kaliandas, I. L. R., 1 All., 240,* dissented from. NARSIDAS JITRAM *v.* JOGLEKAR

[I. L. R., 4 Bom., 57

193. ——————— *Money-decree—Difference between execution on money-decree on a mortgage and one not on mortgage—Right of purchaser.*—Where a mortgagee is entitled to a personal decree against the mortgagor, or his heir, or representative, and takes a mere money-decree against him upon the mortgage, without any direction that the amount of the decree shall be recovered by sale or otherwise from the mortgaged property, the mortgagee has neverthless the right to attach and sell that property under the money-decree, and such sale transfers to the purchaser the interest both of mortgagor and mortgagee in the same manner as if the sale had been made under an express direction in the decree. Even though the officer of the Court should mention merely the right, title, and interest of the mortgagor as what is sold, the interest of the mortgagee who has promoted the sale passes by way of estoppel, although the mortgagee executes no conveyance to the purchaser. The only difference in execution between a money-decree upon a mortgage and one not upon a mortgage is that where the mortgaged lands are attached under the former, their sale is deferred until six months or some other reasonable period expires, in order to give the mortgagor an opportunity to redeem, which he would have in a suit for foreclosure or redemption. HARI *v.* LUCKSHMAN

[I. L. R., 5 Bom., 614

194. ——————— *Mortgage-decree—Lien—Sale in execution—Purchaser.*—Where a mortgagee obtains a decree against his mortgagor for sale of the mortgaged property to satisfy his debt, he cannot sell that property reserving his own rights over it, because it is for the very purpose of satisfying those rights that the sale is made. And if, instead of obtaining a decree for the sale of the mortgaged property, the mortgagee obtains only a simple money-decree and sells the mortgaged property under it, he is precisely in the same position as far as his own interest is concerned. In either case the purchaser at the execution sale takes the property sold free from the mortgagee's lien. But where the mortgagee puts up the mortgaged property for sale at a time when the mortgagor has no longer any interest in the property, then nothing passes by the sale, and the execution-purchaser does not get any benefit from the fact that, previously to the sale, the mortgagee had a lien on the property. *Emam Momtazooddeen Mahomed* v. *Raj Coomar Dass, 14 B. L. R., 408; Gopee Bundhoo Shantra Mohapattur* v. *Kalee Pudoo Bonerjee, 23 W. R., 338; Ramkant Roy* v. *Rajkishore Deb, 24 W. R., 94; Khub Chand* v. *Kallian Das, I. L. R., 1 All., 240;* and *Dossmoney Dossee* v. *Jonmenjoy Mullick, I. L. R., 3 Calc., 363,* discussed and explained. RAMANATH DASS *v.* BOLORAM PHOOKUN

[I. L. R., 7 Calc., 677: 9 C. L. R., 233

195. ——————— *Mortgage-decree—Sale in execution—Mortgagee's lien.*—A mortgagee who elects to take a money-decree, and becomes himself the purchaser of the property mortgaged at a sale in execution of that decree, may bring a suit to enforce his lien against a person who purchased the right, title, and interest of the same debtor in the same property at a prior sale in execution of a prior money-decree. *Dossmoney Dossee* v. *Jonmenjoy Mullick, I. L. R., 3 Calc., 363,* overruled. JONMENJOY MULLICK *v.* DOSSMONEY DOSSEE

[I. L. R., 7 Calc., 714: 9 C. L. R., 353

196. ——————— *Subsequent suit by mortgagee to enforce his lien on the property mortgaged.*—The plaintiff, a mortgagee of certain specific property, given as security for an advance, obtained a money-decree against the representatives of his debtor. A third person, having a claim against the same debtor, seized and attached the specific property mortgaged to the plaintiff, and sold it to *A*, who had notice of the plaintiff's lien. The plaintiff then brought a suit against *A* and the representatives of his debtor to have his lien declared and debt satisfied. *Held* that, notwithstanding the plaintiff's previous money-decree, he was still entitled to enforce his lien against the property pledged. RAJKISHORE SHAW *v.* BHADOO NOSHOO . **I. L. R., 7 Calc., 78**

197. —————————— *Purchase by mortgagee.*—*K D*, a Hindu widow, by deed appointed *R S* to be her general mooktear, for the conduct of certain suits in her name which were pending in respect of the estate of her deceased husband. By this deed, dated September 25th, 1858, she covenanted to repay him, within two months of the successful termination of the suits, "all moneys properly disbursed by him on her account, etc.," and also to pay him an additional sum as remuneration to himself. *R S* entered on the conduct of her business, and advanced certain moneys on her account; and in October 1859 *K D* executed in his favour a second deed, by which she mortgaged to him her share in the estate of *R H*, deceased, which was in the hands of his executors, "and my decrees, 24 and 25, in the Zillah Court, and the decree in the Supreme Court, and the right and interest of all the said decrees and all other real and personal properties belonging to the said estate." By a decree of the High Court of 28th July 1862 in one of the suits brought by *K D*, the estate of *R H* was declared to consist of a share of a certain talukh, of a share of a house in Calcutta, and of a certain sum of money; and *K D* was declared to be entitled to one moiety thereof. *K D* afterwards obtained an order for possession, and held possession of the said talukh until August 1866. *R S* continued the conduct of *K D*'s business, and advanced more money on her account, in respect of which, on May 31st, 1865, he brought a suit against her; and on September 21st, 1865, obtained a decree in his favour. Under this decree, he attached the right, title, and interest of *K D* in the estate of *R H*; and on 25th June 1866 it was put up for sale, and purchased by *R S* himself. In a suit brought by *K D* against *R S* among other things for an account, —*Held* that *R S* was a trustee for *K D* in respect of her share in the estate of *R H*, which he had purchased in execution of his decree. KAMINI DEBI *v.* RAMLOCHAN SIRKAR . . **5 B. L. R., 450**

198. —————————— *Lien of mortgagee on sale of right, title, and interest of mortgagor—Writ of fi. fa.—Purchase at Sheriff's sale at instance of mortgagee.*—*N*, *M*, and *G* borrowed from *B* a sum of R12,000, to secure repayment of which they executed in her favour a joint and several bond in May 1863 for payment of the said sum with interest on the 6th May 1864, and also a warrant to confess judgment on the bond on the 27th April 1864. *N*, *M*, and *G* executed a mortgage, in the English form, of certain property to *B*, purporting to do so in pursuance of an agreement alleged to have been entered into between them and *B* at the time the money was advanced by *B* in 1863; but the evidence was not sufficient to show that such agreement had been entered into. Under a writ of *fi. fa.* issued previously to the mortgage of 1864,—*viz.*, on the 23rd of March 1864,—in a suit against *M* and *N*, the Sheriff sold to *A*, on the 7th July 1864, the right, title, and interest of *M* and *N* in the mortgaged property. Assuming that an agreement to mortgage had been entered into in 1863, *A* had no notice of such agreement. After this a writ of *fi. fa.* was issued by the Sheriff at the instance of *B*, in execution of a decree which *B* had caused to be entered upon the bond of May 1863; and under that writ the Sheriff, on the 22nd February 1866, sold the right, title, and interest of *N*, *M*, and *G* in the mortgaged property, and *A* became the purchaser. The purchase-money at this sale was paid to *B*, and *A* entered into possession of the property. In a suit by *B* against *A* and others on the mortgage of the 27th of April 1864, for foreclosure or sale of the property, the Court below (PHEAR, *J.*) held that the *fi. fa.* issued on the 23rd of March 1864, previously to the mortgage, must be taken to have operated against the share of *M* and *N* from the date when it was issued; that even if there was an agreement to mortgage, as alleged, then, although as against *N*, *M*, and *G* themselves, a Court of Equity would treat such agreement as equivalent to an actual mortgage, yet it would not do so as against a purchaser under the *fi. fa.* without notice; and that the sale of the 7th July 1864, therefore, passed the shares of *M* and *N* to *A* free of any rights or equities of *B*. Further, that the sale by the Sheriff of the 22nd February 1866, having been effected at the instance of *B* for the purpose of realizing the mortgage-debt, was operative, as between *B* and *A*, to pass to *A* the entire shares of *N*, *M*, and *G* in the property free of *B*'s mortgage-lien. *Held* on appeal that, no agreement to mortgage being established, the sale by the Sheriff to *A* in 1864 overrode the mortgage to *B*, and passed to *A* the shares of *M* and *N*. *Held* further that the sale by the Sheriff in 1866 being of the right, title, and interest of *N*, *M*, and *G*, and made at the instance of *B*, without notice of her mortgage, and *B* having received the purchase-money, which would appear to have been estimated on the value of the unencumbered shares, and no objection having been made to the sale by the mortgagors, who had allowed *A* to hold unchallenged possession ever since, the entire equitable estate in the share of *G* must be taken to have passed to *A*. A mortgagee is not entitled by means of a money-decree obtained on a collateral security, such as a bond or covenant, to obtain a sale of the equity of redemption separately. To allow him to do so would deprive the mortgagor of a privilege which is an equitable incident of the contract of mortgage,—namely, a fair allowance of time to enable him to redeem the property. BHUGGOBUTTY DOSSEE *v.* SHAMACHURN BOSE . . . . **I. L. R., 1 Calc., 337**

199. —————————— *Priority of mortgage—Sale to enforce lien on land.*—On the 15th July 1864 two undivided brothers executed a mortgage of their joint property to the plaintiff for R500, and on the 8th January 1868 they executed another mortgage of the same property for R[illegible],000 to the defendant, who registered it under Act XX of 1866. In August 1871 a suit was brought against the brothers by the plaintiff on the mortgage of

1864, and a decree for the sum due was made in October 1871, directing that, if the sum due was not paid within two months, the mortgaged property should be sold. In March 1872 the property was sold in execution of the above-mentioned decree and bought by the plaintiff, who was duly put into possession. In 1871 a suit was brought against the brothers on the mortgage of 1868 by the defendant; a decree was made similar to that in the above-mentioned suit, a sale of property was had, and it was bought by the defendant. The plaintiff was thereupon dispossessed and referred to a regular suit, and the defendant was put into possession. This suit was then brought by the plaintiff, the first mortgagee and purchaser, to eject the defendant, the second mortgagee and purchaser, and, the lower Appellate Court making a decree in favour of the plaintiff, the defendant filed this second appeal. *Held* that, the plaintiff having bought the rights and interests of the mortgagors under a sale held prior to the sale to the defendant, the mortgagors had no right or interest to sell to defendant; but that, as the purchase by plaintiff was subject to the mortgage to the defendant, and as defendant was not a party to plaintiff's mortgage suit, defendant's right as mortgagee was not affected by the sale to the plaintiff, though effect could not be given to that right in the present suit. VENKATANARASAMMAH *v.* RAMIAH

[I. L. R., 2 Mad., 108

200. ——— *Mortgage for securing payment of rent—Decree by Revenue Court for arrears of rent—Decree time-barred—Effect of decree on mortgage—Merger—Suit for sale of mortgaged property.*—In 1874 the plaintiff leased certain immoveable property to the defendant, and the latter executed a deed by which he covenanted to pay the annual rent and fulfil other conditions of the lease and gave security in Rs. 3,000 by mortgage of landed property. In 1874 the plaintiff obtained decrees in the Revenue Court for arrears of rent, and the decrees were partially satisfied and then became barred by limitation. In 1884 the plaintiff brought a suit to recover the balance due by enforcement of the mortgaged security against the purchasers of the mortgaged property. *Held* that, when the plaintiff obtained his decrees for rent, the mortgage security did not merge in the judgment debts, nor did he lose his remedy on it; that the two rights were distinct, and the right of action on the mortgage security was not lost because the execution of the decree for rent was time-barred, the only effect of which was that the debt was not recoverable in execution, but the debt existed nevertheless so far as to enable the amount secured by mortgage to be recovered by suit in the Civil Court, so long as such suit was not barred by limitation. *Emam Mumtazooddeen Mahomed* v. *Rajcoomar Dass, 14 B. L. R., 408,* referred to. *Held* also that the amount which the plaintiff could recover by enforcement of the mortgage security was limited to 3,000. CHUNNI LAL *v.* BANASPAT SINGH

[I. L. R., 9 All., 23

(c) PURCHASERS.

201. ——— **Effect of sale of mortgaged property**—*Rights of purchaser.*—By a sale of mortgaged property in execution of a decree obtained by a mortgagee against the mortgagor upon the mortgage the interest both of the mortgagor and mortgagee passes to the purchaser. But by a sale of mortgaged property in execution of a money-decree obtained by the mortgagee against the mortgagor, the interest of the defendant (mortgagor) alone passes to the purchaser. MAGANLAL *v.* SHAKRA GIRDHAR

[I. L. R., 22 Bom., 945

See KHEVRAJ JUSRUP *v.* LENGAYA

[I. L. R., 5 Bom., 2

SHESHGIRI SHAMBAG *v.* SALVADAR VAT

[I. L. R., 5 Bom., 5

and SHYAMA CHURN BHUTTACHARJEE *v.* ANANDA CHANDRA DAS . . . . **3 C. W. N., 323**

202. ——— *Discharge of encumbrance by intending purchaser—Bonâ fides.*—*A*, having mortgaged land to *B*, agreed to sell it to *C* and then to *D*, in whose favour he executed a conveyance bearing a date prior to the contract with *C*. *C* sued *A* and *D* to have the conveyance set aside and his contract specifically performed, and a decree was passed in his favour. While the suit was pending, *D* paid off *B* and now sued *A* and *C* to recover the money paid by him. *Held* that the plaintiff occupied the position of the mortgagee whom he had paid off, and that the sum constituted a charge on the land. SYAMALARAYUDU *v.* SUBBARAYUDU

[I. L. R., 21 Mad., 143

203. ——— *Title of purchaser—Transfer of Property Act (IV of 1882), s. 99—Money-decree obtained by mortgagee.*—Prior to passing of the Transfer of Property Act, a mortgagee obtained a money-decree against his mortgagor, and in execution sold the mortgaged property. The son of the mortgagee bought it at the sale. *Held* that by his purchase at the execution-sale the son took an absolute title, and was not liable subsequently to be redeemed at the suit of the heirs of the mortgagor. *Martand* v. *Dhondo, I. L. R., 22 Bom., 624,* distinguished. *Semble*—A third person purchasing mortgaged property *bonâ fide* at a sale in execution of a money-decree obtained by the mortgagee against the mortgagor obtains a good title free from the mortgage lien, unless the sale is made subject to it. HUSEIN *v.* SHANKARGIRI

[I. L. R., 23 Bom., 119

204. ——— *Mortgaged property sold subject to right to redeem—Purchase as agent.*—When mortgaged property is sold at auction subject to a mortgagor's right to redeem, the mortgagor's equities follow the property even when it turns out that the purchaser bought as agent, and not as principal. MUNSOOR ALI KHAN *v.* OOJOODHYA RAM KHAN . . . . . **8 W. R., 399**

205. ——— *Priority of debt on sale after hypothecation.*—Land subsequently sold is liable for a debt for which the land was previously hypothecated. SADAGOPA CHARIYAR *v.* RUTHNA MUDALI . . . **5 Mad., 457**

206. ——— *Lien—Right of purchaser—Purchase by mortgagee.*—*A*, being indebted to *B*, bound himself by deed not to alienate his rights in certain property until his debt to *B* was satisfied; if he did alienate, provision was made for a decree to issue and to be executed. *A* subsequently gave a patni of the property to *C*. After the creation of the patni, *B* obtained and executed the decree provided for in the deed between himself and *A*, and purchased in execution the right of *A* in the property, and afterwards sold the same rights to the plaintiff. *Held* that, in a suit against *C* to set aside the patni, the plaintiff had no right to set it aside, it having been created prior to his purchase from *B*, and the lien possessed by *B* had not passed to him. ERSKINE *v.* DHUN KISHEN SEIN . **8 W. R., 291**

SOONEY RAM MARWAREE *v.* BYJNATH KOOER
[10 W. R., 88

See SOUJHAREE COOMAR *v.* RAMESHUR PANDA. RAMESHUR PANDA *v.* SOUJHAREE COOMAR
[4 W. R., 32

207. ——— *Effect of subsequent mortgage—Merger.*—A creditor holding a mortgage on the lands of his debtor does not necessarily surrender that mortgage, or lower its priority, by taking a subsequent mortgage, including the same lands with other lands, for the same debt. Whether the earlier mortgage becomes merged and extinguished or not is a question of intention. GOLUKNATH MISSER *v.* LALLA PREM LAL
[I. L. R., 3 Calc., 307

208. ——— *Sale in execution of decree—Purchase subject to mortgage securities—Extinguishment of lien on purchase by mortgagee.*—Defendant No. 1 (*G C*), on 9th August 1863, borrowed money from plaintiff upon a bond, hypothecating property by way of simple mortgage. On 27th August 1867, he executed a similar instrument in favour of defendant No. 2 (*G B*) on a further loan. On 13th May 1867, he executed a second bond in favour of plaintiff for the amount (principal and interest) due under the first bond. On 29th May 1869, plaintiff obtained a decree against defendant No. 1 for the money due under the bond of 13th May 1867, and on 30th July 1870 defendant No. 2 (*G B*) also obtained a decree upon his bond against the said debtor. In execution of plaintiff's decree, the property was sold and purchased by decree-holder on 25th August 1870. After this, *G B* also executed his decree and attached the property, which, notwithstanding plaintiff's objection, was put up to sale and purchased by *G B*, who obtained possession. Plaintiff sued to have the sale to the latter set aside and his own purchase upheld. *Held* that plaintiff, on purchasing at the sale in execution, took subject to the defendant's security to this extent, that the defendant by paying off the prior debt might establish his own security. *Held* that the question whether plaintiff's first security was extinguished by his taking a second security, covering the original debt with interest, would depend upon the intention of the parties, which, in this case, was shown by the original bond having remained in the possession of the creditor. GOPEE BUNDHOO SHANTRA MOHAPATTUR *v.* KALEE PUDO BANERJEE . **23 W. R., 338**

209. ——— *Extinction of charge—Intention of parties—Presumption.*—Whether a mortgage, paid off, has been kept alive or extinguished, depends upon the intention of the parties; the mere fact that it has been paid off not deciding the question whether or not it has been extinguished. Express declaration of intention will cause either the one result or the other, and in the absence of such expression the intention may be inferred, either one way or the other. A lender of money upon a mortgage, which, however, having been made by a person not having authority to charge the greater part of the property included in it, was to that extent invalid, relied upon a charge effected in a prior paid-off mortgage to another mortgagee of the same property. The balance due for the prior mortgage-debt had been paid out of the money advanced on the later, and the prior instrument had come into the possession of the present mortgagee. *Held* that it must be presumed, in the absence of any expression of intention to the contrary, that the borrower, who claimed to be the owner of the property which he attempted to charge, intended that the money should be applied in paying off and extinguishing the prior mortgage, there being no intermediate incumbrance. It being also presumable that the lender lent the money upon the security of the later mortgage, he did not become entitled to an additional security merely because that which he had taken had thus proved invalid in part. *Held* therefore that the prior mortgage had been extinguished. MOHESH LAL *v.* BAWAN DASS
[I. L. R., 9 Calc., 961: 13 C. L. R., 221
L. R., 10 I. A., 62

210. ——— *Two mortgages to same mortgagee—Merger of first mortgage—Intention—Decree on second mortgage—Other mortgagees not made parties to suit—Purchaser at auction sale—Priority—Suit by purchaser for possession—Right of other mortgagees to redeem—Form of decree.*—On the 15th of July 1870 certain lands were mortgaged by their owners (*S* and his sons) to *H*, with possession under a registered mortgage. On the 11th of June 1871 the same lands were mortgaged without possession to the defendant; on the 10th of June 1873 a second mortgage, purporting to give possession, was executed to *H*; on the 12th of June 1873 a second mortgage, also purporting to give possession, was passed to the defendant; on the 15th of November 1877 *H* obtained a decree against the mortgagors upon his mortgage of 10th June 1873, and sold the lands which were purchased by the plaintiff. The plaintiff sought to obtain possession, but was obstructed by the defendant. He thereupon brought this suit. The defendant, contended that he had not been a party to the suit by *H*, and was entitled to possession, and offered to pay to the plaintiff the amount of his purchase-money, or to vacate the lands on satisfaction of his own mortgage-lien. *Held* that the question whether *H's* mortgage of the 15th July 1870 was to be regarded as merged in his second mortgage of 10th June 1873, so as to deprive him of priority of title over the defendant, depended on the intention of the parties to the said mortgage, and there was nothing in the second mortgage-deed to show an intention to forego the benefit of the security created by the prior mortgage-deed of 15th July 1870, which was neither given up to the mortgagor nor cancelled at the time, but remained with *H* until handed over to the plaintiff with the other title-deeds. Under these circumstances, the decree passed on the 15th November 1877 conferred an absolute title on the plaintiff, who purchased at the auction-sale free from all incumbrances created by the mortgagor subsequent to the mortgage of 15th July 1870. The defendant, however, not having been made a party to *H's* suit to enforce his security, did not lose his right of redemption, which still remained to him. The plaintiff therefore purchased the property subject to the defendant's right of redemption. The High Court passed a decree ordering the defendant to deliver up possession to the plaintiff, but that he (the defendant) should be at liberty to redeem by payment to the plaintiff within six months of the amount which would be due on the mortgage of the 15th July 1870, if the same had remained unaffected by the mortgage of 10th June 1873, or, in default, should remain for ever foreclosed. DULLABHDAS DEVCHAND *v.* LAKSHMANDAS SARUPCHAND . **I. L. R., 10 Bom., 88**

211. ———— *Merger of right of suit upon a mortgage in a subsequent decree thereon—Questions as to execution between parties to a suit—Act XXIII of 1861, s. 11.*—Upon a mortgage of land made little less than sixty years before the present suit, a decree followed in 1825 to the effect that an account having been taken of what was due on the mortgage, the mortgagor might at any time make a tender of such mortgage-money with interest up to date, and require that the land should be restored. The plaintiff, representing the interest of the original mortgagor, sued for redemption of the mortgage treating the above decree as regulating the rights of the parties from the time when it was made. *Held* that the right of the plaintiff was a right to execute the above decree, subject to the law of limitation, and not a right to obtain a decree for redemption and possession; the law also providing that questions between the parties to a suit relating to execution of decree must be determined by the order of the Court executing it. HARI RAVJI CHIPLUNKAR *v.* SHAPURJI HORMASJI SHET . . . **I. L. R., 10 Bom., 461**

212. ———— *First mortgage paid off by third mortgagee in ignorance of second mortgage—Registration—Notice—Intention to keep alive first mortgage presumed.*—*S* mortgage land to *P*. *G* subsequently obtained a decree, by consent, against *S* creating a charge on the same and other land, and registered the decree. *A*, in ignorance of *G's* decree, paid off *P's* mortgage, but took no assignment thereof, and took a mortgage from *S* of all the land covered by *G's* decree. In a suit by *G* against *S* and *A* to enforce payment of his mortgage-debt,—*Held* that *A*, not having had notice of *G's* decree, was entitled to stand as first incumbrancer in respect of the money paid to discharge *P's* mortgage; and that, even if registration was legal notice, an intention to keep alive *P's* mortgage was to be presumed in favour of *A* in accordance with the ruling of the Privy Council in *Gokul Doss Gopal Doss* v. *Rambux Seochand, L. R., 11 I. A., 126.* GANGADHARA *v.* SIVARAMA

[I. L. R., 8 Mad., 246

213. ———— *Condition against alienation—Lis pendens.*—The proprietor of certain immoveable property mortgaged it in July 1875 to *K* and in September 1875 to *L*. In October 1878 he sold the property to *K*. In November 1878 *L* obtained a decree on his mortgage-bond for the sale of the property. The suit in which *L* obtained this decree was pending when the property was sold to *K*. *K* sued *L* to have the property declared exempt from liability to sale in the execution of *L's* decree, on the ground that the mortgage to *L* was invalid, it having been made in breach of a condition contained in *K's* mortgage-bond that the mortgagor would not alienate the property until the mortgage-debt had been paid. *Held* that the purchase by *K* of the equity of redemption did not extinguish his security, it being his intention to keep it alive; and that the purchase of the property by *K* while *L's* suit was pending did not prevent *K* from contesting the validity of *L's* mortgage, so far as it affected him on the ground that it was an infringement of the stipulation in the contract between him and the mortgagor. LACHMIN NARAIN *v.* KOTESHAR NATH

[I. L. R., 2 All., 826

214. ———— **Rights of parties on sale**—*Prior and puisne mortgagee—Purchase by prior mortgagee of equity of redemption at a Court-sale—Evidence of intention to keep mortgage alive.*—Where a prior mortgagee purchased the equity of redemption at a Court-sale,—*Held*, following the Full Bench ruling in *Mulchand Kuber* v. *Lallu Trikam, I. L. R., 6 Bom., 404*, that in a contest between himself and a puisne mortgagee he was entitled to fall back upon his original mortgage and to retain possession until his mortgage was paid off. Generally, slight evidence will suffice to show that the prior mortgagee intended to retain the benefit of his mortgage. The fact that the mortgage-deed remains with the mortgagee who purchases, is evidence that he intends to retain the benefit of his mortgage. SHANTAPA *v.* BALAPA . . **I. L. R., 6 Bom., 561**

215. ———— *Presumption as to person paying off a prior mortgage—Construction of stipulation in mortgage-deed.*—The

LIBR

presumption, generally speaking, in the absence of any evidence to the contrary, is that a person whose money goes to satisfy a prior mortgage intends to keep alive for his benefit that prior mortgage. Where a mortgage-bond contained the following stipulation: "And I shall redeem the mortgage-bond of *A* and deliver it to you to your satisfaction,"—*Held* that it was an indication of the intention on the part of the mortgagee to keep alive the security of *A* in his favour. AMAR CHANDRA KUNDU *v.* ROY GOLOKE CHANDRA CHOWDHRI

[4 C. W. N., 769

216. ———— *Presumption that person paying off a mortgage intends to keep the security alive.*—In 1861 *B* granted a lease of his zamindari to *A* for 30 years, *A* undertaking to pay off all debts then due by *B*. *B* died in 1882, and his successor sued *A* and obtained a decree that on payment of R1,20,000 *A* should give up possession of the zamindari. This sum having been paid into Court, *A* lost possession of the zamindari. On January 5th, 1875, *A* had mortgaged the whole zamindari, which consisted of 22 villages, to *M* to secure a loan of R1,00,000 borrowed by *A* to pay off the debts of *B* which *A* undertook to pay in 1861. On 27th June 1879 *A*, being indebted to *M* in the sum of R1,78,000, paid *M* R1,00,000 and undertook to pay the balance out of the income of the estate, *M* releasing the 22 villages from the mortgage of January 5th, 1875. On June 28th, 1879, *A* executed a mortgage of the 22 villages to *L*, to secure repayment of R1,30,000. Of this sum, R1,00,000 was borrowed to pay *M*, and R30,000 was a prior debt due by *A* to *L*. Of the R1,00,000 paid to *M*, R27,000 was specially applied to discharge so much of the charge created by the mortgage of January 5th, 1875. On January 30th, 1875, *A* borrowed from *S* R43,000, and mortgaged to her 10 of the 22 villages of the zamindari. In 1885 *S* sued *L* to have her debt declared a first charge on the money paid into Court by the zamindar. The Subordinate Judge held that *L* had a prior claim on the fund, and dismissed the suit. *Held* on appeal, following the principle of the decision in *Gokaldas Gopaldas* v. *Huranmal Premsukkdas (L. R., 11 I. A., 1226 : I. L. R., 10 Calc., 1035)*, that *L* was entitled to a first charge on the fund to the extent of R27,000 which had been applied to pay off the mortgage of January 5th, 1875. RUPABAI *v.* AUDIMULAM

[I. L. R., 11 Mad., 345

217. ———— *Extinguishment of prior mortgage—Intention—Effect of payment of prior mortgage by subsequent incumbrances.*—The mortgagor's right, title, and interest in certain immoveables in the Dekkan subject to a first and second mortgage were sold in execution of a decree to a purchaser who afterwards paid off the first mortgage. *Held* that, as he had a right to extinguish the prior charge or to keep it alive, the question was what intention was to be ascribed to him; and that, in the absence of evidence to the contrary, the presumption was that he intended to keep it alive for his own benefit. Where property is subject to a succession of mortgages, and the owner of an ulterior interest pays off an earlier mortgage, it is a matter of course, according to the English practice, to have it assigned to a trustee for his benefit, as against intermediate mortgagees, to whom he is not personally liable. But in India a formal transfer for the purpose of a mortgage is never made, nor is an intention to keep it alive even formally expressed. It was ruled in the English Court of Chancery in *Toulmin* v. *Stere, 3 Mer., 210,* that the purchaser from an owner of an equity of redemption with actual or constructive notice of another intermediate incumbrance is precluded, in the absence of any contemporaneous expression of intention, from alleging that, as against such other incumbrance, the prior mortgage paid off out of the purchase-money is not extinguished. That case was not identical with this where the prior mortgage was not paid off out of the purchase-money, but was paid off afterwards by the purchaser. The above ruling, however, is not to be extended to India, where the question to ask is, in the interests of justice, equity, and good conscience there applicable—what was the intention of the party paying off the charge. GOKALDAS GOPALDAS *v.* PURANMAL PREMSUKHDAS

[I. L. R., 10 Calc., 1035
L. R., 11 I. A., 126

218. ———— *Equity of redemption, Purchase of—Payment—Prior mortgagees, Payment to—Keeping securities alive—Attachment of mortgaged property.*—One *P* borrowed from one *L* a certain sum upon a mortgage of certain properties. He subsequently executed a second mortgage in respect of some of these properties in favour of one *S*. The legal representative of *L* obtained a decree on *P*'s mortgage. While steps were being taken for the execution of that decree, *P* entered into negotiations with one *R*, from whom he borrowed R40,000 to pay off the prior mortgages upon a mortgage of the properties included in *L*'s mortgage and other properties, and he promised to take a reconveyance of the properties and make over the mortgage-deeds to *R*. Two days before the mortgage to *R*, one of the properties comprised in *R*'s mortgage was attached in execution of a money-decree against *P*, and subsequently purchased by *D*, the defendant No. 2, with notice of *R*'s lien. *P* paid off his prior mortgages on the day following *R*'s mortgage. *R* having died, his widow instituted the present suit upon the mortgage, contending that the property purchased by *D* was subject to her claim, he purchasing only the equity of redemption. *D* contended that he purchased the property free from all encumbrances. The Subordinate Judge gave effect to the plaintiff's contention, and made the usual mortgage decree against *P* and *D*. On appeal by *D*,—*Held* that the mere fact that the mortgagor pays the money to the prior encumbrancers for his own benefit, namely, with the object of getting a reduction in the amount of the debt, cannot be taken as an indication of an intention on the part of the subsequent mortgagee not to keep alive the prior securities for his benefit; and that it was quite clear from the circumstances of the present case that, at the time of advancing the money to *P*, *R* intended to keep alive the prior securities for his benefit. *Gokuldas Gopal Das* v. *Puranmal Premsuk Das, I. L. R., 10 Calc., 1035,* relied upon. *Held* further that on the day of attachment of the property purchased by *D* nothing more could be attached than the equity of redemption belonging to *P;* and that, according to the provisions of s. 276 of the Civil Procedure Code, the subsequent discharge by *P* of the prior mortgages could not enlarge the subject of the attachment, and therefore *D* purchased only the equity of redemption in the property. DINO BANDHU SHAW CHOWDHURY *v.* NISTARINI DASI . . **3 C. W. N., 153**

219. ——————— *Second mortgage of property by original mortgagor, and first mortgagee paid off—Possession taken by new mortgagee—Suit for possession by plaintiff as purchaser in execution—Right of purchaser to recover—Right of second mortgagee to be repaid his advances by plaintiff keeping alive the first mortgage.*—On the 10th June 1885, *T* mortgaged the property in dispute to *G* along with some other property. In 1886 the plaintiff obtained a money decree against *T*, and in execution of his decree he caused the property in dispute to be sold and purchased it himself obtaining a certificate of sale on the 1st November 1886. On the 13th February 1888 *T* mortgaged the property in dispute along with other property to the defendant and paid off *G*'s mortgage. *G* thereupon returned the mortgage-deed to *T* with a receipt for payment endorsed. After payment of *G*'s mortgage, the defendant took possession of the property. In July 1888 *T* executed a further mortgage of the property to the defendant for R8,000. On the 30th August 1888 the plaintiff, having attempted to take possession, was obstructed by the defendant. Thereupon the plaintiff brought this suit for possession. *Held* that the plaintiff was entitled to possession. The mortgage to the defendant was subsequent to the plaintiff's purchase of the equity of redemption. The defendant did not know of that purchase. He took the mortgage from *T*, to whom he advanced the money to pay off the previous mortgage to *G*. There was nothing to show that there was any intention to keep *G*'s mortgage alive in favour of the defendant. *Gokaldas Gopaldas* v. *Puranmal Premsukhdas, I. L. R., 10 Calc., 1035: L. R., 11 I. A., 126,* distinguished. *Held* also that, as the plaintiff was seeking to recover property which but for the defendant's payment to *G* would have been burdened with *G*'s mortgage, and as the defendant, when he advanced the money to *T* to pay off that mortgage, did not know that *T* was no longer the owner of the equity of redemption, the plaintiff should give credit to the defendant for the sum paid by him; but as the defendant's mortgage comprised other properties besides the one in dispute, the plaintiff should recover possession on payment to the defendant of a proportionate part of *G*'s mortgage-debt, having regard to the value of the property in dispute and that of the other mortgaged properties. *Mahomed Shamsool Hoda* v. *Shewakram, 14 B. L. R., 226: L. R., 2 I. A., 7,* followed. LOMBA GOMAJI *v.* VISHVANATH AMRIT TILVANKAR

[I. L. R., 18 Bom., 86

See YADAO BABAJI SURYARAO *v.* AMBO

[I. L. R., 21 Bom., 567

220. ——————— *Sale under second of two mortgages—Payment under order of Court without jurisdiction by purchaser to first mortgagee—Extinguishment of mortgage lien.*—Where the former of two mortgagees, to whom a certain person hypothecates his estates, accepts from the auction-purchaser, who buys a portion of the estates when they are sold on foreclosure of the second mortgage, a sum of money assessed by a Civil Court as the equivalent of the former mortgagee's prior charge on the estates, no successor of the former mortgagee can again proceed to sell up the estates, even though the Court which assessed the money-value of the charge on the estates may not have had the jurisdiction to do so: for in accepting the money the former mortgagee released the estate from all further liability under his bond. JANKEE PERSHAD *v.* AJOODHYA DOSS

[25 W. R., 257

221. ——————— *Purchase by first mortgagee after second mortgage—Set-off of first mortgage against purchase-money—Priority.*—If the first mortgagee purchases the property mortgaged after a second mortgage is created upon it, he does not thereby lose the benefit of his first mortgage if the money due under the first mortgage be set off against the consideration of the sale. Accordingly, where a second mortgagee obtained a decree upon his mortgage subsequently to a sale of the mortgaged property to the first mortgagee, who had been allowed to set off the money due to him on his mortgage against the consideration, the latter is entitled, as against the auction-purchaser at the sale in execution of the decree, to priority in regard to his mortgage. BISSEN DOSS SINGH *v.* SHEO PERSHAD SINGH . . . . . . **5 C. L. R., 29**

222. ——————— *First and second mortgages—Assignment by mortgagee—Rights of assignees.*—In March 1865 the proprietors of a certain share in a certain village mortgaged the share to *R*, giving him possession of the share, and stipulating that the mortgagee should take the profits of the share in lieu of interest, and that the mortgage should be redeemed on payment of the principal sum without interest. In April 1865 *R* mortgaged his rights and interests under the mortgage of March 1865 to *S*, retaining possession of the share. In February 1869 the proprietors of the share again mortgaged it to *R* for a further loan. Under this mortgage, *R* was entitled to take the profits of the share in lieu of interest, and the mortgage was redeemable on payment both of the principal sum due thereunder and of that due under the mortgage of

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

March 1865, without interest, or the mortgagors were entitled to redeem a certain portion of the share on payment of a proportionate amount of such sums, without interest, on a particular day in any year. In August 1872 *S* obtained a decree on the mortgage of April 1865, directing the sale of *R*'s rights and interests under the mortgage of March 1865 in satisfaction of such decree. In May 1874 *R* assigned by sale to *N* his rights and interests under the mortgage of February 1869, retaining possession of the share. In April 1877 *R*'s rights and interests under the mortgage of March 1865 were sold in execution of the decree of August 1872, and were purchased by *S*, who obtained possession of the share. *Held*, in a suit by *N* against *S* to obtain possession of the share in virtue of the assignment of May 1874, that under the circumstances of the case *S* was entitled as against *N* to the possession of the share as first mortgagee. SAHAI PANDEY *v.* SHAM NARAIN

[I. L. R., 2 All., 142

223. ———— *First and second mortgagees—Purchase of mortgaged property by first mortgagee.* - The first mortgagee of certain property purchased it at an execution-sale. The second mortgagee of such property subsequently sued the mortgagor and the first mortgagee to enforce his mortgage by the sale of such property. *Held* that the first mortgagee was entitled to resist such sale, by virtue of being the first mortgagee, until his mortgage-debt was satisfied; and the fact that he had purchased the property mortgaged to him did not extinguish his mortgage, which must be held to subsist for his benefit. *Gaya Prasad* v. *Salik Prasad, I. L. R., 3 All., 682,* followed. HAR PRASAD *v.* BHAGWAN DAS . . . **I. L. R., 4 All., 196**

224. ———— *First and second mortgagees—Purchase of mortgaged property by mortgagee.*—*G*, the mortgagee of certain property, having purchased a portion thereof, sued (i) the mortgagor; (ii) *P*, to whom another portion of such property had been mortgaged before such property had been mortgaged to *G*, and who had purchased such portion subsequently to the mortgage of such property to *G* and *G*'s purchase; and (iii) *M* who had purchased a third portion of such property subsequently to G's purchase, for the enforcement of his lien on such property. *Held* by STUART, *C.J.*, OLDFIELD, *J.*, and STRAIGHT, *J.* (PEARSON, *J.*, dissenting), that, inasmuch as it was the manifest intention of *P* to keep his incumbrance alive, and for his benefit to do so, *P*'s purchase did not extinguish his incumbrance, and he was entitled, as prior incumbrancer, to resist *G*'s claim to bring to sale the portion of the mortgaged property purchased by him. *Held* also by OLDFIELD, *J.*, and STRAIGHT, *J.* (PEARSON, *J.*, dissenting), that *G*, notwithstanding he had purchased a portion of the mortgaged property, might throw the whole burden of his mortgage-debt on the portions of the mortgaged property in the mortgagor's possession and in *M*'s possession, but he could not have thrown it on the portion of such property in *P*'s possession. GAYA PRASAD *v.* SALIK PRASAD. GAYA PRASAD *v.* GAYA PRASAD

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225. ———— *Condition against alienation—First and second mortgagees—Purchase by mortgagee of mortgaged property.*—A transfer of mortgaged property in breach of a condition against alienation is valid except in so far as it encroaches upon the right of the mortgagee, and, with this reservation, such a condition does not bind the property so as to prevent the acquisition of a valid title by the transferee. *Chunni* v. *Thakur Das, I. L. R., 1 All., 126; Mul Chand* v. *Balgobind, I. L. R., 1 All., 610;* and *Lachmin Narain* v. *Koteshar Nath, I. L. R., 2 All., 826,* observed on. A mortgage is not extinguished by the purchase of the mortgaged property by the mortgagee, but subsists after the purchase, when it is the manifest intention of the mortgagee to keep the mortgage alive, or it is for his benefit to do so. *Gaya Prasad* v. *Salik Prasad, I. L. R., 3 All., 682,* and *Ramu Naikan* v. *Subbaraya Mudali, 7 Mad., 229,* followed. It is not absolutely necessary for the first mortgagee of property, when suing to enforce his mortgage, to make the second mortgagee a party to the suit. If the second mortgagee is not made a party to the suit, he is not bound by the decree which the first mortgagee may obtain for the sale of the property, but can redeem the property before it is sold; but if he does not redeem, and the property is sold in execution of the decree, his mortgage will be defeated, unless he can show some fraud or collusion which would entitle him to defeat the first mortgage or to have it postponed to his own. The ruling of TURNER, *J.*, in *Khub Chand* v. *Kalian Das, I. L. R., 1 Mad., 240,* followed. In July 1874 a usufructuary mortgage of certain immoveable property was made to *D*. In July 1875 a portion of such property was again mortgaged to *D*. The instrument of mortgage on this occasion contained a condition against alienation. In July 1877 the whole property was mortgaged to *N*. In October 1877 it was again mortgaged to *D*. *N* sued the mortgagor on his mortgage in July 1877, and on the 29th September 1879 obtained a decree against him for the sale of the property. In October 1879 the mortgagor sold the property to *D* in satisfaction of his mortgages of July 1875 and October 1877. *D* did not offer to redeem *N*'s mortgage, and on the 20th November 1880 the property was put up for sale in execution of *N*'s decree (*D*'s objection to the sale having been previously disallowed), and was purchased by *A*. *D*, who was still in possession under his mortgage of July 1874, then sued *A* for a declaration of his proprietary right to the property, claiming by virtue of his mortgages and the sale of October 1879. *Held*, applying the rules stated above, that *N*'s mortgage of July 1877 could not affect *D*'s right under his mortgage of July 1875, but *N* took subject to such mortgage; nor could the auction-sale of the 20th November 1880, which took place in enforcement of *N*'s mortgage, affect *D*'s prior mortgages; and therefore the condition against alienation made in *D*'s favour had no prejudicial effect on the right of *A* under his auction-purchase: that the purchase by *D* of October 1879 did not extinguish his prior mortgages, but such mortgages were still subsisting, and *A* purchased subject to them: that there having been no fraud or collusion on *N*'s part, *A* must be held to have purchased subject only to *D*'s prior mortgages and not subject to *D*'s mortgage of October 1877. *Held* also that, as *D*'s purchase of October 1879 was made without *N* having had an opportunity of redeeming *D*'s prior mortgages, *D*'s purchase was subject to *N*'s mortgage of July 1877, and therefore could not deprive *A* of what he had purchased at the auction-sale of the 20th November 1880. *Held* therefore that all the relief that *D* was entitled to was a declaration that, as prior mortgagee under the mortgages of July 1874 and July 1875 he was entitled, as against *A*, to retain possession of the property, until such mortgages were satisfied. ALI HASAN *v.* DHIRIA

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226. ———————— *First and second mortgages—Payment by purchaser of mortgaged property of first mortgage—Right of purchaser to benefits of first mortgage—Right of second mortgagee to bring to sale mortgaged property.*—The purchasers of the equity of redemption of land which had been mortgaged in 1866 and 1874 to different persons paid off the prior mortgage. The second mortgagee sued to bring the property to sale in satisfaction of his mortgage. *Held* that the prior mortgage was not extinguished, and that the purchasers of the equity of redemption had, by paying off that mortgage, acquired an equitable right to its benefits, which they could use against the second mortgage. *Gokaldas Gopaldas* v. *Puranmal Premsukhdas, I. L. R., 10 Calc., 1035,* followed. *Per* OLDFIELD, *J.* (MAHMOOD, *J.*, dissenting), that the prior mortgage afforded a defence against the claim of the second mortgagee seeking to bring the property to sale. *Gokaldas Gopaldas* v. *Puranmal Premsukhdas, I. L. R., 10 Calc., 1035,* followed. *Per* MAHMOOD, *J.*, that the ruling of the Privy Council in *Gokaldas Gopaldas* v. *Puranmal Premsukhdas I. L. R., 10 Calc., 1035,* did not go beyond laying down the proposition that when the purchaser of the equity of redemption pays off a prior mortgage, which carries with it the right of possession of the mortgaged property, the mortgage is not extinguished for all purposes, but such purchaser, acquiring the benefits of the usufructuary mortgage, is entitled to remain in possession, and can successfully resist a suit by a subsequent usufructuary mortgagee seeking to disturb such possession. Also *per* MAHMOOD, *J.*, that although the persons who had paid off the prior mortgage were entitled to claim its benefits, they could not be understood to have acquired rights greater than those which the prior mortgagee himself possessed; that as holders of the equity of redemption they could not resist the suit which aimed at enforcing a valid security, and, as persons entitled to the benefits of the prior mortgage, they were at best in the position of assignees of that mortgage; that the union of the two capacities could not confer upon them rights higher than those which the mortgage they had paid off created; that a puisne incumbrancer is not prevented by the mere fact of the existence of a prior mortgage from enforcing his security without paying off the prior mortgage so long as such enforcement does not clash with the right secured by the prior mortgage; and that therefore the purchaser of the equity of redemption held that right subject to the plaintiff's mortgage of 1874, and the fact of their having redeemed the prior mortgage did not place the equity of redemption on a better footing, though it entitled them to the benefits of that mortgage secured to them in the same manner as to the original mortgagee whose rights they had acquired by subrogation. *Gaya Prasad* v. *Salik Prasad I. L. R., 3 All., 682; Ramu Naikan* v. *Subbaraya Mudali, 7 Mad., 229;* and *Mul Chand Kuber* v. *Lallu Trikam, I. L. R., 6 Bom., 404,* referred to. SIRBADH RAI *v.* RAGHUNATH PRASAD . . . . **I. L. R., 7 All., 568**

227. ———————— *First and second mortgages—Payment by purchaser of mortgaged property of first mortgage—Right of purchaser to benefits of first mortgage—Right of second mortgagee to bring to sale mortgaged property—Registered and unregistered instruments—Optional and compulsory registration—Act III of 1877, s. 50.*—At a sale in execution of a decree, *J* purchased certain property which was at that time subject to two mortgages,—the first under an unregistered deed in favour of *M* and dated in 1872, and the second under a registered deed in favour of *L* and dated in 1880. The registration of both deeds was optional, the former under Act VIII of 1871 and the latter under Act III of 1877. *J* subsequently satisfied the mortgage under the registered deed of 1880, which was delivered to him. *M* then brought a suit to recover the money due to him under the mortgage-deed of 1872 by sale of the mortgaged property. *Held* by OLDFIELD, *J.*, that, applying the rule laid down by the Privy Council in *Gokaldas Gopaldas* v. *Puranmal Premsukhdas, I. L. R., 10 Calc., 1035, J,* having paid off the mortgage under the registered deed of 1880, should have the benefits of that mortgage, and was entitled to set up the deed which he held against the unregistered deed of 1872, against which, under s. 50 of the Registration Act (III of 1877), it would take effect, as regards the property comprised in it. *Lachman Das* v. *Dip Chand, I. L. R., 2 All., 851,* referred to. *Per* MAHMOOD, *J.*, that the word "unregistered" in s. 50 of the Registration Act must, in reference to the circumstances of the present case, be read as "not registered under Act VIII of 1871," and that, so reading the section, the registered mortgage-deed of 1880 was entitled to priority over the unregistered mortgage-deed of 1872 *Lachman Das* v. *Dip Chand, I. L. R., 2 All., 851,* and *Sri Ram* v. *Bhagirath Lal, I. L. R., 4 All., 227,* distinguished. Also *per* MAHMOOD, *J.*, that the position of *J* by reason of his having paid off the registered mortgage of 1880 could at best be that of an assignee of that mortgage having priority over the mortgage-deed on which the plaintiff was suing; that such priority could not enable him to place the equity of redemption upon a higher footing than it would have been had he not paid off the registered mortgage of 1880; and that, as a consequence, the sale of the property in enforcement of the mortgage of 1872 should be allowed to take place, but subject to the rights of priority which *J* had acquired by reason of his having paid off the registered mortgage of 1880. *Sirbadh Rai* v. *Raghunath Prasad, I. L. R., 7 All., 568,* and *Gokaldas Gopaldas* v. *Puranmal Premsukhdas, I. L. R., 10 Calc., 1035,* referred to. JANKI PRASAD *v.* MAUTANGUI DEBIA

[I. L. R., 7 All., 577

228. ———— *First and second mortgages—Payment by purchaser of mortgaged property of first mortgage—Right of second mortgagee to bring to sale mortgaged property subject to first mortgage.*—In 1874 a plot of land No. 111, which in 1866 had been mortgaged to *L*, was with other property mortgaged to *R*. In 1878 the equity of redemption in plot No. 111 was purchased by *J*, who paid off the mortgage of 1866. *R* brought a suit against *J* to bring to sale the whole of the property included in the mortgage of 1874. The Court of first instance decreed the claim in part exempting from the decree plot No. 111, on the ground that the defendant, by reason of having purchased the equity of redemption in that plot and having paid off the mortgage of 1866, stood in the position of a first mortgagee of that plot, and his mortgage had priority over the plaintiff's mortgage of 1874. The Full Bench modified the decree of the Court of first instance by inserting after the words "land No. 111 be exempted from the hypothecation lien" the words "in that property the interest of the plaintiff as second mortgagee only to be sold." *Per* OLDFIELD, *J.*, that the second mortgagee could not bring the land to sale so as to oust the first mortgagee, whose mortgage was usufructuary, and get rid of the first mortgage without satisfying it; but that he had a right to sell such interest as he possessed as second mortgagee. *Per* STRAIGHT, *J.*, that the plaintiff was entitled to bring to sale the property charged to him under his mortgage of 1874, subject to the rights existing in favour of the first mortgagee of 1866: in other words, that a purchaser at a sale in execution of the decree would have no further right than a right to take the property subject to the right of the first mortgagee to possession of the property included in his instrument, and his other rights under that instrument, so long as it enured. RAGHUNATH PRASAD *v.* JURAWAN RAI

[I. L. R., 8 All., 105

229. ———— *Suit by mortgagee purchasing part of property—Sale by first mortgagee in execution of decree upon second mortgage held by him—Interest acquired by purchaser at such sale—Sale of portions of mortgaged property—Mortgagee not compelled to proceed first against unsold portions—Enforcement of mortgage against purchaser not having obtained possession.*—At a sale in execution of a decree for enforcement of a hypothecation-bond, the decree-holder, by permission of the executing Court, made bids, but the property was purchased by another. At that time the decree-holder held a prior registered incumbrance which he did not personally announce. In a suit brought by him subsequently to enforce this incumbrance,—*Held* that it could not be said that under the circumstances the plaintiff must be taken to have sold, in execution of his decree, the interest which he held under the bond now in suit; that he could not be compelled to proceed first against those portions of the mortgaged property which had not been sold; and that the bond was enforceable against a purchaser of part of the mortgaged property who had never obtained possession. BANWARI DAS *v.* MUHAMMAD MASHIAT . . **I. L. R., 9 All., 690**

230. ———— *Sale of equity of redemption—Suit by mortgagee for sale of mortgaged property—Purchaser not a party to suit—Sale of mortgaged property in execution of decree obtained by mortgagee—What passed—Right of purchaser of equity of redemption—Redemption.*—On the 21st December 1871, three of the defendants in this suit mortgaged four groves to *H*. In 1872 the plaintiffs obtained a money-decree against one *D*, and in August 1872, in execution of that decree, sold the said groves, and at the sale purchased them and also two mills which were not in dispute in this suit. The decree against *D* had been found to have the same effect as if it were had and obtained against all the mortgagors. Of this sale *H* had notice; in fact, he opposed it. Subsequently *H*, the mortgagee, sued the mortgagors on their mortgage, and obtained a decree on it, and under the decree brought the said groves to sale in 1877, and purchased them himself. In May 1880 *H* sold the groves to two of the defendants. The plaintiffs, who were not parties to the suit which resulted in the decree under which the groves were sold in 1877, instituted this suit for possession of the groves. *Held* that, notwithstanding the sale of 1872, what was sold under the decree of 1877 was the right, title, and interest of the mortgagors, as they existed at the date of the mortgage of 21st December 1871, with which would go the rights and interest of the mortgagee; and although at a sale under a decree for sale by a mortgagee the right, title, and interest of the mortgagor which is sold is his right, title, and interest at the date of the mortgage, and any right, title, and interest he may have acquired between the date of mortgage and of the sale, still any puisne incumbrancer or purchaser from the mortgagor prior to the date of the mortgagee's decree, and who was not a party to the suit in which the mortgagee obtained his decree, would have the right to redeem the property which the mortgagor would have had but for the decree. This view is consistent with the principles of equity and recognized by the Transfer

MORTGAGE—*continued.*

5. SALE OF MORTGAGED PROPERTY —*continued.*

of Property Act. *Muhammad Sami-ud-din* v. *Man Singh, I. L. R., 9 All., 125,* followed. GAJADHAR *v.* MUL CHAND . . **I. L. R., 10 All., 520**

231. ——— *Sale in execution of decree of mortgaged land—Purchase of equity of redemption by decree-holder under s. 294 of the Code of Civil Procedure—Execution of decree in respect of balance—Nature of price paid by purchaser on the purchase of the equity of redemption.*—*A* mortgaged certain land to *B*, but remained in possession thereof. Subsequently *A* sold a portion of the said land to *C* in consideration of her paying off the mortgage-debt due to *B*. *C* entered into possession, but was unable to satisfy the debt. *C* died, and *A* sued *C*'s daughter and legal representative, for damages sustained by him from the non-payment of the purchase-money by *C*. *A* obtained a decree, and, the money not being paid as therein decreed, applied for execution and brought to sale the equity of redemption vested in *C* by virtue of the sale. By leave of the Court *A* bid at the Court-sale and bought the right of redemption and recovered back possession of the land sold to *C*. Subsequently he again applied for execution of the decree in respect of the balance by attachment of certain moveable property, and contended that he was bound to give the defendant credit only for the price which he actually paid at the Court-sale for the equity of redemption. The defendant contended that *A* was bound to give credit for the full value of the land under mortgage. *Held* that, having obtained leave of the Court to bid under s. 294 of the Code of Civil Procedure, *A*'s position was that of an independent purchaser, and that the price, which an independent purchaser must be taken to pay when he buys property under mortgage for a cash payment made to the mortgagor on account of his equity of redemption, is the cash payment for the equity of redemption *plus* the debt, *i.e.*, the amount undertaken to be paid to the mortgagee, and that for these amounts *A* was bound to give credit. KRISHNASAMI AYYAR *v.* JANAKIAMMAL, . . **[I. L. R., 18 Mad., 153**

232. ——— *Purchase of equity of redemption by subsequent mortgagee—Priority of mortgage—Merger of former mortgage in decree—Right of subsequent mortgagee to keep the prior incumbrance alive—Intention.*—Where there is a subsisting prior incumbrance, and a subsequent mortgagee advances money for the purpose of discharging it, but it is for his benefit still to keep it alive, his right to keep it alive is not affected by the fact that the prior incumbrance had at the time taken the form of a decree. *Adams* v. *Angell, L. R., 5 Ch. D., 645,* followed. PURNAMAL CHUND *v.* VENKATA SUBBARAYALU **I. L. R., 20 Mad., 483**

233. ——— *Sale in execution of mortgage-decree—Sale-certificate—Confirmation of sale—Sale for arrears of Government revenue—Civil Procedure Code (Act XIV of 1882), s. 316—Act XI of 1859, ss. 13, 14, 54—Transfer of Property Act (Act IV of 1882), s. 73.*—*D*, having obtained a decree on a mortgage of a 5½-anna share of an estate paying revenue to Government, caused the share to be put up for sale in execution of that decree on the 17th August 1883, and purchased it herself. The sale was not confirmed till the 18th September 1883. In the meantime a 14-anna share of the estate, including the 5½-anna share, which was separately liable for its own share of Government revenue, was on the 26th September 1883 sold for arrears of the June kist of Government revenue under s. 13, Act XI of 1859, and purchased by one *G*, who sold it again to *P*, who obtained possession on the 6th August 1884. In a suit by *D* against *P* and the judgment-debtor to obtain possession of the 5½-anna share so purchased by her,—*Held* that the mortgage-debt was not extinguished nor the mortgage merged in the decree on the 17th August 1883, but having regard to the provisions of s. 316 of the Code of Civil Procedure, the mortgagee's rights were kept alive and remained in existence until the property vested in her by virtue of the granting of the sale-certificate, and that between the date of the sale, 17th August 1883, and the date of its confirmation, 18th December 1883, the mortgage lien was fully preserved; that *P*'s purchase being governed by s. 54 of Act XI of 1859, he acquired the share subject to all encumbrances, including the mortgage lien of *D*; that s. 73 of the Transfer of Property Act does not in such a case deprive a mortgagee of his lien over the property and confine him to proceeding against the surplus sale-proceeds; that as the judgment-debtor had the right, at any time between the 17th August 1883 and the 18th December 1883, to redeem the property upon payment of principal, interest, and costs to *D*, *P*, having acquired the rights of the judgment-debtor by virtue of his purchase on the 26th September 1883, was equally entitled to redeem between that date and the 18th December 1883, but, not having availed himself of that right, the property became absolutely vested in *D* on the 18th December 1883, and that consequently *D* was entitled to the relief claimed. PREM CHAND PAL *v.* PURNIMA DASI . **I. L. R., 15 Calc., 546**

234. ——— *Mortgaged land subsequently sold by mortgagee in execution of a money-decree—Purchaser at such sale without notice of mortgage—Mortgagee estopped from subsequently enforcing his mortgage as against purchaser—Fraudulent concealment of lien—Registration not equivalent to notice in case of fraud—Civil Procedure Code (VIII of 1859), s. 213.*—Where a judgment-creditor in execution of a money-decree sells property as belonging to his judgment-debtor, he is afterwards estopped from enforcing, as against the purchaser, a previous mortgage of the property which has been created in his own favour, but of which he has given no notice at the time of the sale, and in ignorance of which the purchaser has bid for the property and paid the full price. This principle applies even though the mortgage-deed has been registered. In 1867 *R* and *G* mortgaged certain lands to *G R* by a registered deed of that date. In 1870 *G R* obtained a money-decree against *R* and *G*, and in execution put up the mortgaged land for sale. The plaintiff purchased it without notice of the mortgage, and in February 1872 obtained possession through the Court. In the meantime, *G R* brought another suit upon his mortgage against his mortgagors. He obtained a decree, and in April 1872 ejected the plaintiff and obtained possession. In 1883 the plaintiff filed the present suit against *R*, *G*, and *G R* to recover the lands. *Held* that the plaintiff was entitled to recover. *G R* (the mortgagee), when bringing the land to sale in execution of his decree, was bound by s. 213 of the Civil Procedure Code (VIII of 1859) to disclose the limited interest of his judgment-debtors in it. By concealing his lien he had induced the plaintiff to pay full value for the property, and he could not therefore retain his lien. By his omission he was estopped from disputing the plaintiff's title. The rule, that registration of a mortgage amounts to notice to all subsequent purchasers of the same property, does not apply to a case where there has been a fraudulent concealment by a judgment-creditor of the extent of his judgment-debtor's interest in the property brought by the judgment-creditor to sale. AGARCHAND GUMANCHAND *v.* RAKHMA HANMANT **[I. L. R., 12 Bom., 678**

235. ——— *Subsequent sale by mortgagor of a part of the property mortgaged—Suit on the mortgage—Satisfaction of the decree in such suit partly by a second mortgage—Suit on second mortgage and decree for sale—Title of the purchaser at sale in execution of such decree as against the private prior purchaser of the part—Merger.*—On the 4th October 1864 *N* mortgaged, without possession, a house to *K*. On the 25th June 1868 *N* sold the eastern half of that house to the defendant, who forthwith entered into possession. *K* sued *N* upon the mortgage, and obtained a decree on the 28th November 1868. *N* made certain payments to *K* under the decree until 1875. On the 27th July 1875 *N* passed to *K* an instalment bond for the balance due on the decree, together with R25 on account of savai profits, and as security executed a new mortgage of the house. Satisfaction of the decree was entered up and certified, and the new mortgage-bond registered. In 1882 *K* sued *N* upon this mortgage-bond and obtained a decree directing the debt to be realized by the sale of the mortgaged house, and on the 20th July 1883 the plaintiff purchased the house at the execution-sale. In 1885 the plaintiff sued to recover the eastern half of the house which was in the possession of the defendant. The lower Courts rejected the plaintiff's claim. On appeal by the plaintiff to the High Court,—*Held*, confirming the decree of the lower Courts, that the plaintiff, by his purchase in July 1883, did not acquire a title paramount to that of the defendant. All rights under the mortgage of 1864 had merged in the decree obtained in November 1868, but satisfaction of that decree had been entered up and certified when the second mortgage of 1882 was passed. The mere circumstance that the debt secured by the second mortgage was the balance of the old debt was not sufficient to justify the inference that it was intended to keep the decree alive. There were therefore no rights under the old mortgage which the plaintiff could assert as against the defendant in possession. RAMKRISHNA SADASHIV *v.* CHOTHMAL . . **I. L. R., 13 Bom., 348**

236. ——— *Purchase by a mortgagor at a judicial sale of interest under a second mortgage—Rights against the mortgagor of purchaser at a sale in execution of a consent decree upon the first mortgage.*—The same property, with other, was mortgaged, first to one mortgagee and secondly to another. Decrees were obtained upon both mortgages: the terms of the first decree giving effect to a compromise between the mortgagor and the first mortgagee. Sales in execution followed; but before the sale under the decree upon the first mortgage was effected, the sale under the decree upon the second took place, the possession remaining with the purchaser at the first sale, who was acting benami for the mortgagor. At the subsequent sale under the decree upon the first mortgage, the plaintiff purchased, and now sued for possession. The High Court decided that the plaintiff was entitled to the first mortgage lien, in consequence of his purchase at the second sale; and, all persons interested in the matter being before the Court, that the proper course was to direct an inquiry as to how much of the mortgage-debt was chargeable upon that portion of the property which formed the subject of the appeal; and to direct that so much of the mortgage-debt should be realized by the sale of that property. *Held* that this judgment incorrectly treated the plaintiff as mortgagee, refusing him a charge for the full amount of his purchase-money. The case depending upon its own circumstances, it would be contrary to equity to allow the mortgagor to set up any right to possession as required by his purchase; and that the plaintiff as against him was entitled to a decree for possession as purchaser. LUTF ALI KHAN *v.* FUTTEH BAHADUR . . . . **I. L. R., 17 Calc., 23**
[L. R., 16 I. A., 129

237. ——— *Purchaser of mortgagor's interest—Redemption—Successive mortgages on family property—Assignment of equity of redemption.*—Two brothers constituted an undivided Hindu family. The eldest mortgaged half of certain family lands to *P* and the other half to the father (since deceased) of the contending defendants, and placed the mortgagees respectively in possession. Neither mortgage was binding on the younger brother, who mortgaged his share of the same land to the plaintiff. The plaintiff obtained a decree on his mortgage and attached and brought to sale in execution and himself purchased the half share of his mortgagor, and having afterwards purchased the share of the elder brother and come to a settlement with *P*, now brought a suit for a moiety of the land in the possession of the contending defendants as forming part of the half share of his mortgagor. *Held* that the plaintiff, being the assignee of the elder brother, could not deprive his mortgagees of a portion of their security without asking for an account and offering to pay whatever might be due on the footing of the mortgage. SUBBARAZU *v.* VENKATARATNAM . I. L. R., 15 Mad., 234

238. ———— *Interest acquired by purchaser—Previous sale in execution of a money-decree—Suit to recover possession by mortgagee purchaser—Right of previous purchaser to redeem.*—A purchaser at a sale in execution of a decree on a mortgage acquires the estate of the mortgagor as it existed when he executed the mortgage. *K* and others mortgaged a certain property to *D A* and *V*. Subsequently to the mortgage, the property was sold in execution of a money-decree, and was purchased by *D R* and others, who were put in possession. Afterwards *D A* and *V* upon their mortgage obtained a decree to which *D R* and others, the purchasers under the money-decree, were not made parties. In execution of the mortgage-decree, the property was purchased by *D A*, to whom symbolical possession was given. In a suit brought by *D A* against *D R* and others to recover actual possession,—*Held* that *D R* and others were entitled to have an opportunity of redeeming the property from *D A*. *Held* further that, had *D R* and others been made parties to the mortgage-suit, they would have been entitled to redeem on payment of what was then due on the mortgage, and that therefore these were the terms on which they must now be allowed to redeem. DADOBA ARJUNJI *v.* DAMODAR RAGHUNATH . . . I. L. R., 16 Bom., 486

239. ———— *Right of—Redemption and terms on which redemption is allowed—Person not parties to suit on mortgaged.*—*A* mortgaged lands X, Y and Z to *B* for R5,000. Lands X and Y were sold and the proceeds applied towards the discharge of the mortgage. Land Z was sold to *C* for R990, which was not so applied. *C* transferred his rights to the present defendants. *B* brought a suit on the mortgage joining *A* and *C*, but not *C*'s transferees as defendants. *C* did not appear, and a decree was passed by consent for R1,050, and land Z was brought to sale and purchased for R270 by the plaintiff, who now sued the defendants separately for possession. *Held* that the defendants, not having been joined in the previous suit, were entitled to redeem on payment of R1,050 and interest. SIVATHI ODAYAN *v.* RAMASUBBAYYAR

I. L. R., 21 Mad., 64

240. ———— *Mortgage of joint property—Subsequent mortgage of unascertained shares—Partition—Rights of purchasers in execution of decrees of the two mortgages—Form of decree.*—Joint property belonging to an undivided Hindu family constituted of five branches was mortgaged to *A* in 1876, and the share of one branch was mortgaged to *B* in 1880. A partition took place in 1881 when the mortgagors of *B* had their share allotted to them. In 1888 *A* sued on his mortgage not joining *B* as a defendant, and obtained a decree, in execution of which he brought to sale the property comprised in his mortgage and purchased it in September 1889. In 1889 *B* sued on his mortgage not joining *A* as a defendant, and obtained a decree, in execution of which he brought his mortgagors' share to sale and purchased it and obtained possession in August 1889. *A*, in taking possession of the property purchased by him, was obstructed by *B*, but an order was made in his favour. *B* now sued for the cancellation of this order and for an injunction restraining *A* for taking possession of the property from him. The lower Courts decreed that the plaintiff might redeem the land on payment of one-fifth of the amount of the defendant's decree. The defendant appealed against this decree, the plaintiff taking no objections to it. *Held* on second appeal that the decree was wrong, and that a decree as asked for by the plaintiff should be substituted for it. Such decree, however, was not to affect the right of the plaintiff to sue for redemption; nor of the defendant to enforce his rights as prior mortgagee. *Venkatanarasammah* v. *Ramiah, I. L. R., 2 Mad., 108; Nanack Chand* v. *Teluckdye, I. L. R., 5 Calc., 265;* and *Dirgopal Lal* v. *Bolakee, I. L. R., 5 Calc., 269,* referred to. RAMANADHAN CHETTI *v.* ALKONDA PILLAI . I. L. R., 18 Mad., 500

241. ———— *Sale in execution of decree on prior unregistered mortgage—Right of purchaser—Claim of subsequent mortgagee in possession under registered mortgage—Rights of such subsequent mortgagee where he was not a party to the suit on prior mortgage—Right of redemption—Transfer of Property Act (IV of 1882), s. 75.*—In October 1887 the plaintiff purchased certain lands at a sale held in execution of a decree passed on an unregistered mortgage effected in 1862. The defendant was in possession as mortgagee under a subsequent registered mortgage of 1867. He was not a party to the suit and decree of 1827. The plaintiff sued for possession. The defendant claimed that the plaintiff could not recover possession without paying off his (the defendant's) claim. *Held* that at the execution sale the plaintiff bought the property in dispute free from all subsequent incumbrances, subject only to the right of the defendant, if he so desired, to retain possession. *Held* also that the plaintiff as purchaser stood in the place of the prior mortgagee and had a right to possession; that the defendant as subsequent mortgagee could not compel the plaintiff to pay off his (the defendant's) mortgage, but that the defendant, not having been a party to the suit on the prior mortgage, had a right, if he wished to retain possession, to pay off the plaintiff's claim. *Mohan Manor* v. *Togu Uka, I. L. R., 10*

Bom., 224, referred to and followed. DESAI LALLUBHAI JETHABHAI *v.* MUNDAS KUBERDAS **[I. L. R., 20 Bom., 390**

242. ———— *Purchase by first mortgagee—Right of, as against a subsequent one.*—A prior mortgagee, having purchased, may still use his mortgage as a shield against the claims of subsequent mortgagees. RAMU NAIKAN *v.* SUBBARAYA MUDALI . . . . **7 Mad., 229**

243. ———— *Sale subject to mortgage—Prior mortgage redeemed—Liability of purchaser.*—*S* mortgaged his land to *B* in 1875, then to *M* in 1879, and then sold it to *K* in order to pay off the mortgage to *B*. The purchase-money was paid to *B*, but *K* took no steps to keep *B's* mortgage outstanding. *Held* that *K* could not use *B's* mortgage as a shield against *M*. KRISHNA REDDI *v.* MUTTU NARAYANA REDDI **[I. L. R., 7 Mad., 127**

244. ———— *Bonâ fide purchase of property subject to mortgage without notice.*—*A*, after mortgaging his property to *B*, conveyed it by sale as unincumbered to *C*, who took proceedings against the mortgagor, *A*, and obtained a decree for possession. Meantime *B* brought a suit upon his mortgage, and obtained a decree under which he sold the property to *D*. *B* then sued *D* for possession. *Held* that the Judge was right in finding that the defendant, being a *bonâ fide* purchaser for value without notice, was entitled to hold the property as against the plaintiff. MAHOMED ASHRUF *v.* KUREEMOODDEEN . . . . **24 W. R., 468**

245. ———— *Purchase of equity of redemption by first mortgagee—Priority—Notice—Merger.*—On the 20th of August 1870 *M*, the owner of a house in Gujarat, mortgaged it to the defendant's father with possession. On the 2nd of December 1871 he made a san-mortgage of the same house to the plaintiff. On the 20th of April 1872 *M* sold the equity of redemption to the defendant's father, who became the purchaser without cancelling his first mortgage. The plaintiff subsequently sued *M* to enforce his san-mortgage, and, obtaining a decree, placed an attachment on the house, which attachment, however, was removed on the application of the defendant's father. The plaintiff now sued to establish his right to levy the amount due on his san-mortgage. He claimed priority to the defendant on the authority of *Toulmin* v. *Steere, 3 Mer., 210,* where it was held that a purchaser of the equity of redemption could not set up a prior mortgage of his own against subsequent incumbrances of which he had notice. *Held* that, the intention of the defendant's father when purchasing the equity of redemption having been to retain the benefit of all his rights, his son, the defendant, might properly require the redemption of his first mortgage as the condition of the plaintiff's enforcing the decree upon his mortgage against the property. A mortgagee purchasing the equity of redemption may indicate his intention to keep his charge upon the property alive otherwise than by express words. *Per* WEST, *J.*—The successive charges created by the owner of an estate may be regarded as fractions of the ownership, which embraces the aggregate of advantages that can be drawn from it. Each charge in its turn constitutes a deduction from the original aggregate, and the nominal ownership may itself then be reduced to a small fraction of what it once was. Still, be it small or great, it is a possible object of sale or purchase, and there is no ground or reason for saying that an incumbrancer who is already owner of one fraction of the property may not buy this other fraction without forfeiting the former fraction in favour of other fractional owners in the remainder left after deduction of his prior share. MULCHAND KUBER *v.* LALLU TRIKAM . . **I. L. R., 6 Bom., 404**

246. ———— *Revival of lien—Priority of lien among mortgagees.*—Where an estate had been mortgaged in 1863, and a second mortgage to the same person in 1867 had resulted in a re-adjustment of the old debt, under which the old mortgage had determined, but the original relations between mortgagor and mortgagee had been renewed; and where a fresh lien had been created on the same property by a new mortgage in 1864 to a third person, who also entered upon possession of the said property on a zur-i-peshgi lease, and who, on the sale of the property, sought to set aside the lien of the first mortgagee,—*Held* that the first and second mortgagees were entitled to priority in the following order: first, the first mortgagee for the amount outstanding from the first mortgage of 1863, and revived in the second mortgage of 1867; second, the second mortgagee for the amount stipulated in the mortgage of 1864; third, the first mortgagee for the residue (if any) after satisfying the above-mentioned claim of first mortgage; fourth and lastly, the second mortgagee for any residue. *Held* also that, having failed to call for restricted proof of the fairness of the first mortgagee's claims in the Court below, the second mortgagee could not urge in appeal that fair consideration had not been received. *Held* also that the second mortgagee, having enjoyed possession of the estate under the zur-i-peshgi lease, was not entitled to interest on the amount decreed. WOSEEUN *v.* BYJNATH SINGH . . . . **25 W. R., 171**

247. ———— **Possession under mortgage**—*Priority of mortgagee with possession.*—As a general rule, by Hindu law, a mortgagee in possession is entitled to have his claim satisfied in preference to the claim of the holder of a mortgage of prior date unaccompanied by possession. HARI RAMCHANDRA *v.* MAHADAJI VISHNU **[8 Bom., A. C., 50**

KRISHNAPPA VALAD MAHADAPPA *v.* BAHIRU YADHAVRAV . . . **8 Bom., A. C., 55**

There are cases, however, which the Courts treat as exceptions to that general rule. Thus, where a prior mortgagee sued to recover possession of certain mortgaged premises from the mortgagor, and before judgment was given in that suit a subsequent mortgagee filed another suit against the mortgagor and obtained judgment, under which possession was made over to him (the subsequent mortgagee), it was held that possession so obtained pending the earlier suit would not avail to give the subsequent mortgagee priority over the prior mortgagee. KRISHNAPPA VALAD MAHADAPPA *v.* BAHIRU YADAVRAV [8 Bom., A. C., 55

248. ———— *Registration of mortgage-deed.*—A mortgage-deed is, when registered, valid without possession. BALAJI NARAYAN KOLATKAR *v.* RAMCHANDRA GANESH KELKAR [11 Bom., 37

249. ———— *Law in Guzerat —Rights of prior and puisne mortgagees—Purchaser of equity of redemption with notice of incumbrances.*—The rule of Hindu law that a mortgage with possession takes precedence of a mortgage of a prior date, but unaccompanied by possession, does not apply to Guzerat. Where in Guzerat the defendant, a puisne mortgagee in possession, had notice of plaintiff's prior mortgage, the defendant was held not entitled to claim the benefit of the above rule of Hindu law. Registration could not of itself alter this rule of Hindu law except so far as effect may be given to it by statute, and registration secures the same object which the Hindu law intended to secure by requiring possession, *viz.*, notice to subsequent incumbrancers of the existence of a prior incumbrancer. The purchaser of an equity of redemption, with notice of subsequent incumbrances, stands in the same situation, as regards such subsequent incumbrances, as if he had been himself the mortgagor: he cannot set up against such subsequent incumbrances either a prior mortgage of his own or a mortgage which he or the mortgagor may have got in. ITCHARAM DAYARAM *v.* RAIJI JAGA . . . . 11 Bom., 41

250. ———— *Subsequent purchase.*—The mortgagee without possession of certain lands in the Dekkan (under a mortgage-deed of the 1st of August 1864), on the 16th of April 1867, obtained a decree awarding to him possession of the mortgaged premises. On the 11th of July following the mortgagor sold the mortgaged premises to the plaintiff, who had distinct notice of the mortgage. The deed of sale was duly registered. The plaintiff thereupon claimed to hold the premises free from the mortgage. *Held* that, though a mortgage in the Dekkan must be accompanied by possession to give it validity against third parties, it is not absolutely void for want of such possession, and that the plaintiff, having notice of it, should not be allowed to hold the premises free from the mortgage. GOPAL YADAVRAV KESKAR *v.* KRISHNAPPA BIN MAHADAPPA [7 Bom., A. C., 60

See CHINTAMAN BHASKAR *v.* SHIVRAM HARI [9 Bom., 304

251. ———— *Purchase by mortgagee—Priority.*— *Held* that a mortgagee in possession, who also became purchaser of the property for the amount secured by the mortgage under a deed of sale which was neither stamped nor registered, could fall back upon his mortgage and recover the amount thereof, in preference to a subsequent purchaser of the same property whose deed of sale was both stamped and registered. HIRACHAND BABAJI *v.* BHASKAR ABABHAT SHENDE . 2 Bom., 198

252. ———— *Possession of title-deeds—Priority—Rights of second mortgagees.* —The mere possession of the title-deeds by a second mortgagee, though a purchaser for value without notice, will not give him priority. There must be some act or default of the first mortgagee to have this effect. SOMASUNDARA TAMBIRAN *v.* SAKKARAI PATTAN . . . . . 4 Mad., 369

253. ———— *Decree for possession—Sale in execution of money-decree—Priority—Estoppel.*—Plaintiff claimed under a mortgage, dated the 27th November 1871, for R50, which was neither registered nor accompanied with possession. Defendant claimed under a mortgage, dated the 17th March 1873, for R150, which was both registered and accompanied with possession. Defendant had no notice, express or constructive, of the plaintiff's previous mortgage. In 1873 plaintiff sued the mortgagor for a money-claim unconnected with the mortgage, and on the 20th February 1874 obtained a decree for R100. In execution of this money-decree, the mortgaged property was attached and sold by the Court at the plaintiff's instance, the defendant becoming the purchaser for R86 on the 17th September 1874. An unregistered certificate of the Court's sale, bearing date the 29th October 1874, was issued to defendant. In 1874 plaintiff brought a suit on his mortgage (to which suit defendant was not a party), and obtained a decree (the date of which did not appear in evidence) for possession of the mortgaged property against the mortgagor. In endeavouring to enforce that decree, plaintiff was obstructed by defendant on the 15th January 1875. *Held* that, if it was passed subsequent to the Court's sale of the mortgaged property to defendant on the 17th September 1874, the decree for possession was valueless, as neither the title to, nor the possession of, the mortgaged property was then vested in the mortgagor. *Held* further that, as defendant had no notice of the plaintiff's mortgage when plaintiff caused the Court's sale to be made under his money-decree, or that the sale was made subject to the plaintiff's mortgage, it was incumbent on plaintiff, as such money judgment-creditor, to inform defendant, when bidding for the right, title, and interest of the judgment-debtor in the mortgaged property, that the judgment-creditor (plaintiff) held a mortgage on the same property, and intended to enforce it, especially as the mortgage was neither registered nor accompanied with possession; and that the plaintiff, having omitted so to inform the defendant, was estopped from enforcing his own mortgage against the defendant. *Itcharam Dayaram* v. *Raiji Jaga, 11 Bom.,* *41,* distinguished. TUKARAM BIN ATMARAM *v.* RAMACHANDRA BUDHARAM **I. L. R., 1 Bom., 314**

254. ———— *Mortgage without title—Priority of mortgagee's right.*—*P* and his partners mortgaged certain immoveable property to plaintiff on the 11th October 1869. They had then no title to the property, but they subsequently acquired one by purchase on the 29th June 1871. On plaintiff demanding that *P* and his partners should make good the contract of mortgage out of the interest they had acquired, the matter was referred to arbitrators, who, on the 26th December 1873, made an award empowering plaintiff to sell the mortgaged property in satisfaction of his debt. The award was presented in Court by plaintiff on the 23rd January 1874, and was filed by the Court on the 23rd February 1874. Meanwhile on the 14th February 1874 the property was attached in execution of a money-decree obtained by a creditor of *P* and his partners against them. On the 15th April 1874 it was sold by auction and purchased by defendant. In a suit brought by plaintiff to recover possession of the property, both the lower Courts rejected his claim, on the ground that *P* and his partners had no right to the property when they mortgaged it to plaintiff. *Held* by the High Court on second appeal, reversing the decrees of the lower Court, that the defendant, as purchaser under a money-decree, could not defeat the plaintiff's right as mortgagee to sell the property in satisfaction of his debt. PRANJIVAN GOVARDHONDAS *v.* BAJU . **I. L. R., 4 Bom., 34**

255. ———— *Mortgage of property already sold in execution—Subsequent mortgagee with notice of previous sale—Assignment—Rejection of application under s. 269 of Act VIII of 1859—Suit within one year.*—On the 17th October 1866, *K* (defendant No. 1), one of the three sons of *B*, mortgaged certain immoveable property to one *N* with possession. On the 19th December 1866, *A* (plaintiff No. 1) obtained a money-decree against *K* and the estate of his deceased father. In execution of that decree, the property was sold by the Court and purchased by *A* himself, who obtained a certificate of sale, dated the 30th January 1868. He subsequently sold and conveyed the property to *D* and *C* (plaintiffs Nos. 2 and 3). On applying to the Court for possession, the plaintiffs were resisted by *N*. The Court rejected the plaintiffs' application on the 11th July 1868. On the 31st May 1871, *K* and his two brothers mortgaged the property to *M* (defendant No. 2), who took the mortgage with full notice of the Court-sale to the plaintiff *A*. *K* and his brothers paid off the mortgage of *N* out of the money borrowed by them from *M* (defendant No. 2) on the mortgage of the property. *N* returned his mortgage-deed to *K* and his brothers, who made it over to *M*. In 1878 the plaintiffs brought a suit against *K* and *M* for possession of the property. The Subordinate Judge held the plaintiffs entitled to recover it, on payment of the amount due to *M* on his mortgage, being of opinion that *M* was in the same position as *N*. On appeal, the District Judge dismissed the plaintiffs' suit on the ground that it was not brought within one year from the date when the application for possession was rejected. On appeal to the High Court,—*Held* that the mortgage by *K* and his brothers to *M*, dated the 31st May 1871, was a mortgage of property which did not then belong to them,—their estate and interest in it having passed to the plaintiff *A* at the Court-sale. *Held* also that the order of the 11th July 1868, rejecting the plaintiff's application for possession under s. 269 of the Civil Procedure Code (Act VIII of 1859), did not affect the right to bring a redemption suit against *N*. *Held* further that there was nothing to show any assignment, by *N*, of his mortgage, or any intention on his part to assign it to *M*, or to keep it on foot for *M*'s benefit. The High Court accordingly reversed the decree of the Courts below, and made a decree in favour of the plaintiffs. APAJI BHIVRAV *v.* KAVJI **I. L. R., 6 Bom., 64**

256. ———— *Right to redeem—Parties—Registration Act, XX of 1866, s. 50—Priority—Notice of prior unregistered mortgage.*—On the 24th September 1869 *G* mortgaged certain land to *H*. Subsequently, on the 14th June 1870, he mortgaged the same land to *P*. Both the mortgages were for sums less than R100. The mortgage to *H* was unregistered, but the subsequent mortgage to *P* was registered. On the 21st June 1873, in a suit to which *P* was not a party, *H* obtained a decree on his mortgage, and at the execution sale he himself became the purchaser, and was put into possession of the land under his certificate of sale. On the 21st September 1874, *P* assigned his mortgage to the plaintiff. The deed of assignment was not registered; neither *P* nor his assignee, the plaintiff, ever had possession under the mortgage of 1870. The plaintiff brought this suit to obtain possession of the land. Both the lower Courts dismissed the plaintiff's claim. On special appeal to the High Court,—*Held* that, in order to bind *P* by the decree passed in 1873 and thus make a good title to the purchaser under that decree, *H* should have made *P* a party to his suit, thereby giving *P* an opportunity of redeeming *H*'s mortgage. *H* having neglected to do this, the plaintiff in the present suit, as the assignee of the rights and equities of *P*, was entitled to redeem the mortgage of *H* in case it was proved that *P* had notice of that mortgage. SHIVRAM *v.* GENU **I. L. R., 6 Bom., 515**

See NARAN PURSHOTAM *v.* DALATRAM VIRCHAND
[I. L. R., 6 Bom., 538

257. ———— *Registration—Notice—Sale of mortgaged property in execution of a money-decree without express notice of mortgage—Right of mortgagee to enforce mortgage against the property in hands of purchaser—Civil Procedure Code, 1882, s. 287.*—A mortgagee under a registered mortgage-deed obtained a money-decree against the mortgagors in some matter other than the mortgage, and sold the mortgaged property in execution of the decree. The mortgage lien was not announced in the proclamation of sale as required by s. 287 of the Civil Procedure Code (Act XIV of 1882), and the auction-purchaser had no actual knowledge of the mortgage. In a suit brought by the mortgagee against the mortgagors and the auction-purchaser to recover the mortgage-debt by sale of the mortgaged property,—*Held* that, except in a case of fraudulent concealment, the registration of the mortgage was notice to subsequent purchasers. The property was therefore liable under the mortgage, and the auction purchaser was bound by it. DHONDO BALKRISHNA KANITKAR *v.* RAOJI

[I. L. R., 20 Bom., 290

258. ———————— *Mortgage, purchase of the equity of redemption—Suit for confirmation of possession and declaration of title, whether maintainable by such purchaser—Parties—Purchaser from a mortgagor, whether bound by a decree passed in his absence.*—Defendant No. 4, after having mortgaged a certain property to defendants Nos. 1 and 2, sold the same to the plaintiffs; subsequently defendants Nos. 1 and 2, although aware of plaintiffs' purchase, brought a suit upon the mortgage-bond against defendant No. 4 only without making the plaintiffs a party, and after having obtained a decree sold the property in execution thereof and purchased it themselves. In a suit by the plaintiffs for confirmation of possession and declaration of title,—*Held* that, inasmuch as the plaintiffs were not made parties to the mortgage suit, the mortgage-decree was not binding upon them, but at the same time the plaintiffs did not acquire by the purchase any other right than to redeem the mortgage, and that the plaintiffs were not entitled to the decree prayed for by them. PROTAP CHANDRA MANDAL *v.* ISHAN CHANDRA CHOWDHRY **4 C. W. N., 266**

259. ———————— *Suit for recovery of possession by the purchaser of the equity of redemption who is not a party to the mortgage suit, whether maintainable.*—Where the plaintiff purchased a mortgaged property from the mortgagor, and subsequently the mortgagee brought a suit against the original mortgagor without making the purchaser a party, and in execution of the mortgage-decree the mortgaged property was put up to sale and the auction-purchaser rejected the plaintiff, —*Held* that the plaintiff was not bound by the mortgage-decree, and he was entitled to recover possession of the mortgaged property. GRISH CHUNDER MONDUL *v.* ISWAR CHUNDER RAI . . . . **4 C. W. N., 452**

260. ———————— *Purchase of mortgaged property—Parties—Right of purchase to possession—Right of redemption.*—Plaintiffs are the representatives of one *H* in whose favour defendants 1 to 4 and one *K*, ancestor of defendants 8 to 10, executed a mortgage-bond on the 4th August 1882; defendant No. 16 is the mortgagee under a bond executed by the same persons on the 3rd June 1883; the money borrowed on this bond was partly employed in paying off a prior bond executed by the same persons in favour of *H* on the 11th November 1878. Defendants 17 and 18 are the assignees under another bond executed by *K* on the 22nd September 1882. The 1st bond, 1878, was sued on and the decree obtained on the 31st October 1881. The decree on the plaintiffs' bond was obtained on the 31st July 1883; the decree on defendant No. 16's bond was obtained on the 19th February 1891; the sale certificate obtained by the defendants 25, 33 and another person *R*, who were the purchasers at the sale in execution of the decree on account of the 4th bond, was dated the 13th February 1894. Plaintiffs purchased the mortgaged properties at the sale held in execution of their decree on the 2nd June 1884, and the plaintiffs took symbolical possession on the 16th October 1884; defendant No. 16 purchased the property in execution of her decree on the 29th February 1892. Plaintiffs now brought the present suit for possession, or in the alternative for possession after the defendants have had an opportunity of redeeming the property. *Held* that the decree obtained by the plaintiffs on the 31st July 1883 and their subsequent purchase could not affect the defendants, but the fact of their omitting to make them parties to their suit did not extinguish their right. That by the purchase of the rights of the mortgagor the plaintiffs acquired the ownership of the property, subject to the incumbrances existing in favour of the defendants, and they are entitled to possession subject to the defendants' rights of redemption. The plaintiffs did not lose their right to possession, although they were parties to the suits brought upon the bonds of September 1882 and June 1883, inasmuch as they were sued as subsequent, instead of prior, mortgagees, and that they were called on to redeem which they were not bound to do. DHAPI *v.* RASHAM DEO PARSHAD

[4 C. W. N., 297

261. ———— **Purchaser of property mortgaged from grantee of mortgagor—** *Decree and sale by mortgagee—Auction-purchaser—Priority of latter over purchaser from grantee of mortgagor.*—In the year 1869 *A* mortgaged her share in a zamindari to *B*. In 1870 she granted a patni lease of the property to *C*, who transferred it to *D* Subsequently, *A* made a gift of the property to *E*, and in 1872 *E* sold the land so given to *F*, who thus became the owner of the patni and zamindari rights of the property formerly belonging to *A*. In 1873 *B* brought a suit against *E* (to which *F* was not a party) on his mortgage-bond, and obtained a decree for the sale of the mortgaged property. At the sale the property was purchased by *G* (the son of *D*). *F* then brought a suit for rent against *G* and obtained a decree. *G* then brought this suit against *F* to have it declared that he was no longer liable to pay rent, and to establish his zamindari rights, claiming a refund of the money paid under the rent-decree. *Held* that *G* had bought the entire interest which *A* and *B* could jointly sell, and not merely the right and interests of *A* as they stood at the time of the sale, and that he was therefore entitled to a decree declaring that he was no longer liable to pay rent to *F*. MUTHORA NATH PAL *v.* CHUNDERMONEY DABIA . . . . **I. L. R., 4 Calc., 817**

262. ———— **Purchaser, Assignee of—** *Ejectment by assignee of purchaser at sale in execution of decree against puisne mortgagee—Rights* *of parties.*—Where immoveable property mortgaged has been sold by a Court in execution of a decree obtained by the mortgagee to enforce his lien against the mortgagor, a puisne mortgagee who has not been made a party to the suit is not bound by the decree or sale, and is entitled to redeem the first mortgage. The assignee of the purchaser of land sold in execution of a mortgage-decree obtained by a mortgagee in a suit against the mortgagor alone is not entitled to eject a puisne mortgagee; but where such a suit is brought and the puisne mortgagee does not object to a decree ordering him to pay the amount realized at the Court-sale within a certain time, or else to deliver up possession to the plaintiff and be for ever foreclosed, he is entitled, on payment of the sum decreed, to retain possession as mortgagee both in respect of his original debt and of the sum required to be paid by him for its protection. The ruling in *Mathora Nath Pal* v. *Chundermoney Dabia, I. L. R., 4 Calc., 817;* and dictum of WEST, *J.*, in *Shringarpure* v. *Pethe, I. L. R., 2 Bom., 663,* dissented from. VENKATA *v.* KANNAM . . . . **I. L. R., 5 Mad., 184**

263. ———— **Suit by purchaser for possession**—*Priority—Equity of redemption—Registration—Notice—Parties to suit brought by a first mortgagee—Practice—Amendment of plaint.*—*A*, the owner of certain land, mortgaged it to *S* for ten years for R1,500 by a deed dated the 27th November 1867. The deed was registered, but *S* was not put into possession of the mortgaged land. On the 17th January 1868, *A* mortgaged the same land to the defendant *R* for R250. The mortgage-deed was registered in May 1868, and recited that the mortgagee (defendant) was put in possession. The lower Courts found as a fact that the defendant had obtained possession of the mortgaged property. *S* sued *A* on her mortgage, and obtained a decree against him, dated the 8th December 1869, directing satisfaction of the mortgage-debt by the sale of the mortgaged property. The defendant was not a party to that suit. On the 10th March 1870 the land was sold in execution of that decree, and purchased by the plaintiff for R99-12, with notice of the defendant's mortgage. On the 28th April 1870 the defendant *R* instituted a suit in ejectment against *N* (the mother of *A*), who was in occupation of the land as tenant and had failed to pay the rent. On the 7th July 1870 the plaintiff, as purchaser at the above-mentioned sale, was put into possession, but on the 24th August 1870 the defendant obtained a decree in ejectment against *N* (the mother of *A*) as her tenant. In execution of that decree, the defendant recovered possession of the land, dispossessing the plaintiff, though he had not been a party to the ejectment suit. The plaintiff thereupon brought the present suit to recover the land under s. 230 of Act VIII of 1859. His claim was rejected by the Subordinate Judge, but allowed by the Joint Judge in appeal. On special appeal to the High Court,—*Held* that the claim of *S* against the land was prior to that of the defendant, inasmuch as her mortgage was prior in date to the defendant's mortgage, and was registered. *S* had a right to maintain a suit for the sale of land to satisfy her mortgage, but she ought to have made the defendant (as subsequent mortgagee) a party to it, inasmuch as the equity of redemption was vested in the defendant to the extent of her (defendant's) mortgage, and she (defendant) would have been entitled to redeem the land by payment of the amount which might have been found due to *S* in her suit. The defendant being in possession of the land at the time of the institution of the suit of *S*, and her (defendant's) mortgage being registered, *S* must be regarded as having had notice of the defendant's claim, and was bound to make defendant a party to that suit in order to give a good title to a purchaser under such decree as might be made in that suit. *S*, by her omission to do so, did not afford to the defendant the opportunity of redeeming to which the defendant was entitled. The plaintiff, notwithstanding notice of the defendant's claim, became the purchaser, although the defendant was not a party to the suit of *S*, and therefore not bound by the decree in it. The plaintiff accordingly was fully aware of the infirmity of the title which he was acquiring. No doubt, the decree in the suit of *S* bound the mortgagor *A*, who was a party to it, so far as his right to redeem was concerned. The plaintiff therefore had a good title to the interest of *A*, and was entitled to redeem the land from the defendant's mortgage. The utmost relief which the Court could afford to the plaintiff under the above circumstances was to permit him to amend his plaint by praying a redemption of the land from the defendant's mortgage, and to treat his suit, which was in the nature of an ejectment suit, as one for redemption. The High Court accordingly reversed the decree of the Joint Judge, and made a decree for an account on the defendant's mortgage, allowing the plaintiff to redeem within a certain time on payment of the balance that might be found due to the defendant, or, in default, ordering the plaintiff to be for ever foreclosed from recovering the land. *Itcharam Dayaram* v. *Raiji Jaga, 11 Bom., 41,* and *Shringarpure* v. *Pethe, I. L. R., 2 Bom., 633,* referred to and followed. RADHABAI *v.* SHAMRAV VINAYAK

[I. L. R., 8 Bom., 168

264. ———————— *Execution—Sale of equity of redemption—Purchaser at execution-sale—Sale in execution of decree on mortgage prior in date—Priority—Possession—Notice—Certificate of sale.*—On the 18th January 1877 the father of the plaintiffs purchased the interest of *M* in two houses at a sale in execution of a money-decree against *M*. The purchaser, however, never obtained possession, and he did not obtain the certificate of sale until the 31st July 1878. Subsequently to the sale of the 18th January 1877, two suits were filed against *M* on mortgages executed prior to that date and decrees in both were obtained against *M*. In execution of these decrees, both the houses were sold and the respective purchasers were represented by two of the defendants. The purchasers got possession and both obtained sale-certificates, one prior to the sale to the father of the plaintiffs, *viz.*, on 5th February 1878, and the other subsequently, *viz.*, 1st November 1878. The plaintiffs now sued to recover the houses. *Held* that the plaintiffs were not entitled to recover as against the defendants. The plaintiffs, not having either got possession or obtained a certificate of sale at the date of the sale in execution of the decrees on the mortgages, had only an inchoate title. The purchasers in execution had no notice of the plaintiff's incipient right, and having been left to buy what, so far as they knew, was a complete title, they ought not to be disturbed at the instance of the plaintiffs who failed to assert their dormant right. Had the plaintiffs got into possession or obtained a certificate and registered, there would have been notice sufficient to put all persons interested on inquiry as to their rights; but while they chose to keep their rights wholly in the dark, they invited others to act as if those rights were not in existence, and they could not look to the Courts to extend and complete such rights in a way which would render the defendants victims, not of their own negligence, but of the negligence of those who would gain by it. NANJUNDEPA *v.* HEMAPA . **I. L. R., 9 Bom., 16**

265. ———————— *San-mortgage —Mortgage with possession—Sale in execution of decree obtained by first mortgagee—Purchase by first mortgagee at such sale—Suit by purchaser against second mortgagee for possession—Rights of second mortgagee—Redemption.*—In 1866 *R* executed a san-mortgage of certain land to the plaintiff, and four years afterwards mortgaged the same land with possession to the defendant. In 1875 the plaintiff brought a suit against *R* alone upon the mortgage, obtained a decree, and he himself purchased the property at the Court-sale held in execution of that decree. In attempting to take possession he was obstructed by the defendant, who was in possession of the property as mortgagee. The plaintiff now sued the defendant for possession. Both the lower Courts held that the plaintiff should satisfy the defendant's subsequent mortgage before he could recover possession. On appeal by the plaintiff to the High Court, —*Held*, reversing the lower Court's decree, that the plaintiff's claim should be allowed. The plaintiff having brought to sale, in execution of his decree, the estate as it stood at the date of his mortgage free from all subsequent incumbrances, the fact that he himself was the purchaser could not affect the estate which passed by that sale. As the defendant had not been a party to the plaintiff's suit against *R*, he was entitled to redeem the property if he wished. MOHAN MANOR *v.* TOGU UKA

[I. L. R., 10 Bom., 224

266. ———————— *Suit by mortgagee for possession of mortgaged property—Pre-emption—Purchaser for value without notice.*—Under a registered deed of mortgage, dated in May 1869, the mortgagee had a right to immediate possession; but by arrangement between the parties the mortgagors remained in possession, the right of the mortgagee to obtain possession as against them being, however, kept alive. In October 1869 the mortgagors sold the property, and thereupon one *R* brought a suit to enforce the right of pre-emption in respect of the sale and obtained a decree, and got the property and sold it in 1871 to *D*. In 1883 the mortgagee brought a suit against *D* to obtain possession under his mortgage. *Held* also that, although it would be material to show that the defendant had in any way by fraud been kept out of knowledge of the mortgage, his not having notice of it would not otherwise affect his liability, inasmuch as the principle on which Courts of Equity in England refuse to interfere against *boná fide* purchasers for a valuable consideration, without notice, when clothed with the legal title, had no applicability in the Courts of British India. *Held*, under these circumstances, that there was no equitable ground why the plaintiff's right under the mortgage, which had priority, should be defeated by the defendant's purchase. DURGA PRASAD *v.* SHAMBHU NATH . **I. L. R., 8 All., 86**

6. MARSHALLING.

267. ———— **Mode of satisfaction of mortgage lien**—*Sale by third party in execution.* —The plaintiff had a lien on three estates belonging to his debtor, and a third party, having obtained a decree for money due from the same debtor, recovered his money by the sale of one of the three estates mortgaged to the plaintiff. *Held* that the sale did not release that estate from the mortgage, but that it forced the plaintiff to take measures in the first place to recover the amount due to him from the remaining estates included in his mortgage-deed; and that, if a balance remained after he had realized all he could from these two remaining estates, he could then return to the third estate to recover the balance. NOWA KOOWAR *v.* ABDOOL RUHEEM

[W. R., 1864, 374

268. ———— ———— *Charge on several properties.*—In a suit to establish a claim against three properties mortgaged to the plaintiff, but situate in different districts, where one of the defendants (the appellant) was interested in one only of the properties, the appellant having asked that plaintiff might be compelled to resort first to the two other properties for the satisfaction of his demand before touching the third, but having given no evidence to show that he was a *boná fide* subsequent mortgagee without notice of the prior mortgage, the Court declined to accede to the prayer lest they should be prejudicing the plaintiff's rights or improperly controlling his remedies. *Quære*—Should the doctrine of marshalling of securities be introduced into this country? KHETOOSEE CHEROORIA *v.* BANEE MADHUB DOSS . . . . . **12 W. R., 114**

269. ———————— *Charge on several properties.*—*Per* SETON-KARR, *J.*—Case remanded for the lower Court to find whether, when property hypothecated for a bond has passed to a *boná fide* purchaser, the same can be declared liable to satisfy such part of a money-decree on the bond as cannot

MORTGAGE—*continued.*

6. MARSHALLING—*continued.*

be satisfied from any other source. *Per* NORMAN, *J.* —If *A* has a mortgage on two different estates for the same debt, and *B* has a mortgage on one only of the estates for another debt due from the same party, *B* has a right in equity to throw *A* in the first instance for satisfaction upon the security which he, *B*, cannot touch, where it will not prejudice *A's* right or improperly control his remedies. A purchaser of one of the estates has the same equity as a mortgagee. BISHONATH MOOKERJEE *v.* KISTO MOHUN MOOKERJEE . . . . **7 W. R., 483**

270. ———————— *Priority—Marshalling of securities—Purchaser for value.*—Where the owner of certain property mortgages it to *A*, and afterwards sells a portion of the mortgaged property to *B*, it is not incumbent on *A* in suing to enforce his mortgage to proceed first against that portion of the property which has not been sold by the mortgagor. LALA DILAWAR SAHAI *v.* DEWAN BOLAKIRAM . . . **I. L. R., 11 Calc., 258**

271. ———————— *Money-decrees —Doctrine of marshalling—Mortgage-decree—Surplus sale-proceeds.*—The doctrine of marshalling does not apply as between a mortgagee and attaching creditors of the mortgagor who hold mere money-decrees. A mortgagee brought a suit against the mortgagor to have a declaration of his lien over the mortgaged properties, and obtained a decree. He afterwards brought another suit against certain attaching creditors of his mortgagor to have a declaration of his lien over certain surplus moneys in the hands of the Collector, who, previously to the institution of the first suit, had sold certain of the mortgaged properties free of all incumbrances for arrears of Government revenue. *Held* that the mortgage-decree declaring the lien over all the mortgaged properties covered the surplus sale-proceeds then in the hands of the Collector, because these moneys must, as between the mortgagee and attaching creditors of the mortgagor, be taken to represent the mortgaged properties. *Heera Lall Mookerjee* v. *Janokeenath Mookerjee, 16 W. R., 222,* followed. KISTODAS KUNDOO *v.* RAMKANTO ROY CHOWDHRY

[I. L. R., 6 Calc., 142 : 7 C. L. R., 396

272. ———————— Apportionment of debt—*Right of mortgagee to sell any portion of his security.*—A mortgagee's right to realize his debt by sale of any portion of the land mortgaged to him cannot be curtailed by the fact that the portion of the land he elects to sell has been sold by the mortgagor subsequent to the date of the mortgage and the purchase-money has been applied to liquidate a prior mortgage on the land sold. RAMA RAJU *v.* SUBBARAYUDU . . **I. L. R., 5 Mad., 387**

273. ———————— *Purchaser of part of mortgaged property without notice—Suit for sale of whole property in satisfaction of mortgage — Marshalling — Apportionment.* — The equities which apply to a puisne incumbrancer in the marshalling of securities apply also to a *bonâ fide* purchaser for value, without notice, of a portion of property

MORTGAGE—*continued.*

6. MARSHALLING—*continued.*

the whole of which was subject to a prior incumbrance. *Tulsi Ram* v. *Munnoo Lal, 1 W. R., 353; Nowa Koowar* v. *Abdool Ruheem, W. R., 1864, 374; Bishonath Mookerjee* v. *Kisto Mohun Mookerjee, 7 W. R., 483;* and *Khetoosee Cherooria* v. *Banee Madhub Doss, 12 W. R., 114,* referred to. The mortgagees of two properties, one of which had, subsequently to the mortgage, been purchased for value *bonâ fide* by one who had no notice of the incumbrance, brought a suit to enforce their lien against both the properties originally owned by the mortgagor, impleading as defendants both the mortgagor and the purchaser. *Held* that, while there was no doubt that, if the purchaser was compelled to pay more than the share of the mortgage-debt apportioned on the property purchased by him, he would be entitled to contribution, yet, in a suit so framed and having regard to the array of parties, such an apportionment could not be made at the stage of second appeal. RODH MAL *v.* RAM HARAKH

[I. L. R., 7 All., 711

274. ———————— *Right of creditor to realize entire debt from one parcel of land mortgaged.*—*T*, in execution of a money-decree, brought to sale and purchased certain land of *S* in 1875 and remained in possession till 1879. In 1874 *V* obtained a decree against *S*, whereby the lands purchased by *T* and other lands of *S* were declared liable for a mortgage-debt of R1,802-8-0. In 1879 *V*, in execution of this decree, attached and brought to sale and purchased the lands in *T's* possession. *Held* in a suit by *V* to eject *T* that *V* was entitled to recover the lands unless *T* paid the whole of *V's* decree-debt. TIMMAPPA *v.* LAKHSMAMMA

[I. L. R., 5 Mad., 385

275. ———————— *Right to proceed against several properties—Suit on mortgage-bond —Purchase of one property by mortgagee at inadequate price where it was supposed to be subject to mortgage lien.*—In a suit to recover principal and interest on a bond which mortgaged the obligee's share in three villages, K, S, and P, the defence was that plaintiff had paid himself by becoming the purchaser at a sale in execution of another decree of the obligee's rights in K at a price inadequate to the fair value. It was found that, at the sale in question, the bids were made on the understanding that the property was burdened with the plaintiff's bond-debt. *Held* that, as plaintiff chose to give out to the world of buyers that he intended to burden the village K with the payment of the whole sum due to him, and took advantage of the lowness of the bids to buy the property himself, he could not now be allowed to proceed against the other properties. BYJONATH SAHOY *v.* DOOLHUN BISWANATH KOOER

[24 W. R., 83

276. ———————— *Charge on various properties—Mortgagee as purchaser of equity of redemption in part of mortgaged property.*—Property which is the subject of a mortgage when sold in satisfaction must be sold as a whole, and not piecemeal at the pleasure of the mortgagee, especially

MORTGAGE—*continued.*

6. MARSHALLING—*continued.*

when he has become owner of the equity of redemption in part. The proper course is to make an enquiry into the relative values of the properties included in the mortgage and to burden each with a proportionate share of the debt. It must not be assumed that the Government assessment represents the true value of estates. Kishen Pertab Sahee Bahadoor *v.* Lalla Nund Coomar Singh Parray **[25 W. R., 388**

277. ———— *Charges on mortgages of different shares of same property—Priority—Form of decree.*—In certain lands *A* held an 8-annas share and *B* and *C* each a 4-annas share. *A* having mortgaged his share to *G*, the respondent took a mortgage of the whole estate, and afterwards the appellant took a mortgage of *B's* share and half of *A's* share. Subsequently, the respondent purchased the equity of redemption of the entire estate, the amount of the purchase-money being more than sufficient to pay off the first and second mortgages. *Held* that the appellant was entitled to have an apportionment of the amounts covered by the different mortgages made, and to have an 8-annas share in the land put up for sale, unless the respondent was willing to pay off his mortgage-debt. Rule of apportionment and form of decree set out. Gunga Narain Sen *v.* Hurris Chunder Changdars . . . . . . **6 C. L. R., 336**

278. ———— *Apportionment prejudicing third parties—Transfer of Property Act (IV of 1882), s. 81.*—The principle of marshalling cannot be exercised to the prejudice of third parties. *Burnes* v. *Racster, 1 Y. & C. C. C., 401*, and *Bugden* v. *Bignold, 2 Y. & C. C. C., 377*, followed. S. 81 of the Transfer of Property Act is applicable only where the second mortgagee has no notice of the prior mortgage. The principle of apportionment laid down in *Gunga Narain Sen* v. *Hurrish Chunder Changdars, 6 C. L. R., 336*, referred to. Satish Chunder Mukerji *v.* Gopal Chunder Chuckerbutty . **2 C. W. N., 397**

279. ———— *Charges on several properties.*—It appearing that the mortgagee deliberately abstained from executing his decree against eleven properties which still remained in the possession of the mortgagor, but proceeded against the one property which had passed out of the mortgagor's possession, the mortgage-debt was directed to be apportioned between the 12 properties, and the mortgagee was not to be allowed to take out execution against the property which had passed out of the mortgagor's possession, except for the amount which should be apportioned to such property, without satisfying the Court that he had made every possible effort to execute the remainder of his decree against the other eleven properties. Ram Dhun Dhur *v.* Mohesh Chunder Chowdhry

. **[I. L. R., 9 Calc., 406 : 11 C. L. R., 565**

280. ———— *Charges on separate mortgaged properties.*—One of two mouzahs upon a mortgage of which *A* had obtained a decree with an order for sale of the mortgaged properties was attached in execution of another decree and sold subject to the first decree. *A* became the purchaser, and now sought to execute his decree by the sale of the second mouzah, claiming to charge his entire debt upon that village. *Held* that he was bound to give credit for the proportionate share of the debt assignable to the first mouzah, and entitled only to execute his decree against the second village for the amount chargeable thereon. *Azimut Ali Khan* v. *Jowahir Singh, 13 Moore's I. A., 404*, cited. Gossyen Luchmee Narain Poori *v.* Ficram Singh **[4 C. L. R., 294**

Yakoob Ali Chowdhry *v.* Ram Doolal **[13 C. L. R., 272**

281. ———— By a mortgage-deed, dated the 24th January 1878, *S* and *V*, two of three brothers constituting an undivided family, jointly mortgaged to the plaintiff *B* a part of the family property. On the 28th July 1878, *S* alone further mortgaged to the plaintiff for a fresh advance a portion of the property already mortgaged. Subsequently the three brothers effected a partition among themselves of all the undivided property, and the property jointly mortgaged by *S* and *V* fell, along with other property, to the share of *V* and the third brother *N*. In 1881 the plaintiff *B* sued *S* on the second of the above mortgages, *viz.*, that of the 28th July 1878. He obtained a decree, and at the sale held in execution of that decree himself purchased the property comprised in that mortgage. In the meantime, on the 27th January 1882 and on the 6th December 1883, *V* and *N* respectively mortgaged, with possession to the defendant *M*, portions of the land comprised in the first mortgage of the 24th January 1878. In 1883 the plaintiff filed the present suit upon his first mortgage of the 24th January 1878, claiming to recover R316-14-0 from *S* and *V* personally. He also prayed that the defendant *M*, who had been in possession of the property in dispute, should be prevented from obstructing him in selling the property. *S* and *V* did not appear. The third defendant *M* alone appeared and contended (*inter alia*) that the plaintiff, having purchased part of the lands comprised in the mortgage now sued upon in execution of the decree obtained by him upon his second mortgage, could not now seek to burden the remaining lands included in the mortgage with the whole of the mortgage-debt, but that a proportionate part of that debt must be satisfied. *Held* that the plaintiff could not recover the first mortgage-debt from the remaining lands without deducting a proportionate part of that debt. A mortgagee will not be allowed without special reason deliberately to execute his decree exclusively against one of the owners of the equity of redemption for the whole debt. *Ram Dhun Dhur* v. *Mohesh Chunder Chowdhry, I. L. R., 9 Calc., 406*, approved. Moro Raghunath *v.* Balaji Trimbak **[I. L. R., 13 Bom., 45**

282. ———— *Transfer of Property Act, s. 81—Marshalling—Creditors of co-parcenary and separate creditors.*—Suit by the adopted son of the obligee (deceased) of a hypothecation-bond to recover principal and interest due on the bond against the land comprised in the hypothecation. Defendant No. 1, the obligor of the bond, had executed it as manager of a joint Hindu family of which defendant No. 2 was a member and for the rightful purposes of the family. The family subsequently became divided, and the hypothecated property was divided between defendants Nos. 1 and 2. Defendant No. 1 afterwards hypothecated part of his share for a private debt to defendant No. 3, who having sued on his hypothecation and brought the land to sale in execution became the purchaser. The District Munsif passed a decree for the plaintiff against which defendants Nos. 2 and 3 preferred separate appeals. The District Judge on appeal passed a decree directing that the plaintiff should first proceed against all the property which was not subject to the hypothecation to defendant No. 3, including the share of defendant No. 2. Defendant No. 2 preferred a second appeal. *Held* that, as the plaintiff and defendant No. 3 were not creditors of the same person having demands against the property of that person, no case for marshalling arose, and consequently that the direction of the District Judge was wrong. GOPALA *v.* SAMINATHAYYAN . . **I. L. R., 12 Mad., 255**

283. ——— *Transfer of Property Act (IV of 1882), s. 78—Priority of mortgages—Gross negligence—Registration.*—A mortgagee at the request of the mortgagors returned to them their certificate of title to the mortgaged premises to enable them to raise money to pay off his mortgage. This mortgage was duly registered. The mortgagors, who remained in possession of the mortgage premises throughout, having shown the certificate to a third person whom they informed of the existence of the first mortgage and borrowed R400 from him, subsequently informed him that the first mortgage was paid off, delivered the certificate to him, and executed to him a mortgage of the same premises to secure the sum of R400 and a further sum of R800, *Held* that, though the second mortgagee had been wanting in caution, yet since he had been thrown off his guard by the conduct of the first mortgagee in returning to the mortgagors their certificate of title, the second mortgagee was entitled to priority in respect of his security over the first mortgagee. DAMODARA *v.* SOMASUNDARA

[I. L. R., 12 Mad., 423

284. ——— *Transfer of Property Act (IV of 1882), s. 78—Priority of mortgages—Gross negligence—Registration.*—On the 20th of February 1888 defendant No. 1 executed a mortgage in favour of the plaintiff company. Defendant Nos. 2 and 3 bound themselves as sureties for the due payment of the mortgage amount on default by the mortgagor. This mortgage had not been registered at the date of the execution of the mortgages next referred to. On the 27th of April 1888 the secretary of the plaintiff company handed over to defendant No. 1 most of the title-deeds which had been delivered to the plaintiff company on the execution of the mortgage, and defendants Nos. 1 and 3 undertook that they would raise a loan thereon and discharge the debt due to the plaintiff company, or return the title-deeds if they failed in raising the loan. On the 20th April 1888 defendant No. 1 deposited the title-deeds with defendant No. 4, and executed a mortgage to her for R4,000; and on the 7th May 1888 he executed an instrument creating a further charge in her favour for R1,000. These two sums were applied by defendant No. 1 to his own use, and not in discharge of the prior mortgage. The mortgages to defendant No. 4 described the mortgaged premises as being then free from incumbrances. *Held* that the plaintiff company had been guilty of gross negligence in letting the title-deeds out of their possession, and that the mortgages of defendant No. 4 had accordingly priority over the mortgage to the plaintiff company. MADRAS HINDU UNION BANK *v.* VENKATRANGIAH . . **I. L. R., 12 Mad., 424**

285. ——— *Transfer of Property Act (IV of 1882), ss. 3, 78, 101—Priority of mortgages—Gross negligence—Extinguishment of charges—Registration Act (III of 1877), ss. 17 (d), 48—Notice by registration—Merger.*—In a suit for the declaration of the priorities of mortgages and for foreclosure, it appeared that the mortgaged premises had been purchased by the mortgagor from the second defendant and others in 1878, under a conveyance containing a covenant that they were free from incumbrances, and the mortgagor then received, *inter alia*, a Collector's certificate which was recited in another title-deed also handed over to her. The premises were mortgaged to defendant No. 2, who was an experienced sowcar in 1879, and to the plaintiff company in 1883, and again in 1884, and were conveyed absolutely by the mortgagor to defendant No. 2 in 1886. The mortgagor executed a rent agreement to the plaintiff company on the occasion of each of the mortgages of 1883 and 1884. The above mortgages were registered, but the plaintiff company and defendant No. 2 had no notice at the respective dates of their mortgages and conveyance of any previous incumbrance. The plaintiff company received the title-deeds of the estate from the mortgagor (but not the Collector's certificate) on the execution of the mortgage of 1883; the second defendant alleged that he had held them under a prior incumbrance which was consolidated in the mortgage of 1879, and that before the execution of that mortgage the mortgagor had obtained them from him for the purpose of obtaining a Collector's certificate, and had told him that the Collector had retained them, in order to account for their not being replaced in his custody. *Held* by the lower Court (SHEPHARD, *J.*), apart from the question whether the mortgage of 1879 had been extinguished by the conveyance of 1886, that the conduct of defendant No. 2 in permitting the title-deeds to remain in the possession of the mortgagor amounted to gross negligence within the meaning of the Transfer of Property Act, s. 78, and that the registration of the mortgage to defendant No. 2 did not affect the plaintiff company

MORTGAGE—*continued.*

6. MARSHALLING—*continued.*

with constructive notice of its existence, and that accordingly the subsequent mortgages to the plaintiff company were entitled to priority. *Held,* on appeal, COLLINS, *C.J.*, and HANDLEY, *J.*, (1) that the plaintiff company were not affected with constructive notice of the mortgage of the second defendant by reason of its registration or of their failure to search the registry or to inquire after the Collector's certificate; (2) that the second defendant, not having given a reasonable explanation of his conduct in leaving the title-deeds with the mortgagor four years after his mortgage, lost his priority by reason of his gross neglect under the Transfer of Property Act, s. 78, apart from the circumstances raising a suspicion of fraud on his part. *Quære*—Whether the case might not have been decided against the second defendant on the ground that his mortgage was merged in the conveyance of 1886. SHAN MAUN MULL *v.* MADRAS BUILDING COMPANY . **I. L. R., 15 Mad., 268**

Affirming the decision in MADRAS BUILDING COMPANY *v.* ROWLANDSON **I. L. R., 13 Mad., 383**

286. ———————— *Notice of prior mortgage to subsequent mortgagee — Doctrine of marshalling, Applicability of, to mortgages in the mofussil.*—Before the extension of the Transfer of Property Act, 1882, to the Bombay Presidency, where two properties had been mortgaged to one person, and one of them was subsequently mortgaged to another person with notice of the former mortgage,—*Held* (JARDINE, *J.*, dissenting) such subsequent mortgagee had an equity to call for a marshalling of the securities in his favour so as to require the first mortgagee to proceed to realize his security in the first instance out of the property not mortgaged to the second mortgagee. The English doctrine of marshalling of securities applies to mortgages in the mofussil. CHUNILAL VITHALDAS *v.* FULCHAND . **I. L. R., 18 Bom., 160**

287. ———————— *Transfer of Property Act (IV of 1882), s. 81—Notice of mortgage — Registration.* — Mere registration is not "notice" within the meaning of s. 81 of the Transfer of Property Act (IV of 1882). *Shan Maun Mull* v. *Madras Building Company, I. L. R., 15 Mad., 268,* approved. *Lakshman Das Sarupchand* v. *Dasrat, I. L. R., 6 Bom., 168,* dissented from. It is a notice at or before the time of mortgage, which under the terms of s. 81 alone negatives the right conferred by that section. A purchaser at an execution sale under the second mortgage, whether he be the original mortgagee or not, purchases, not only the right of the mortgagor, but all the rights of the mortgagee acquired up to the sale, including the right to insist upon the plaintiff marshalling his securities, and there is nothing in s. 81 or elsewhere to destroy the right of marshalling by a notice given subsequent to the mortgage. INDERDAWAN PERSHAD *v.* GOBIND LALL CHOWDHRY **[I. L. R., 23 Calc., 790**

288. ———————— *Mortgage—Subsequent mortgage to another person of part of the mortgaged property — Notice to puisne incumbrancer—Transfer of Property Act (IV of 1882).*

MORTGAGE—*continued.*

6. MARSHALLING—*concluded.*

—Defendants Nos. 1 and 2 mortgaged three properties, *viz.*, A, B, and C, to the plaintiff, and afterwards mortgaged one of them (A) only to one *P.* Subsequently the plaintiff obtained a money-decree against defendants Nos. 1 and 2 in respect of another debt, and in execution attached and sold their equity of redemption in C and purchased it himself, thus becoming full owner of C, which he then sold to another person for R100. *P* sued on his mortgage and obtained a decree, and in execution property A was sold to defendant No. 3. Subsequently the plaintiff sued to recover his debt by the sale of properties A and B only. Defendant No. 3 claimed that the securities should be marshalled, and that the debt should be apportioned, and that property C should bear its proportion of the debt. *Held* that the third defendant was entitled to have the debt apportioned, and that property C should bear its proportion of the debt. When the plaintiff purchased the equity of redemption in C, he purchased it subject to its due proportion of the mortgage-debt due to himself. On his purchase the debt to that extent ceased to exist, and the debt due to him on his mortgage was reduced by that amount. The proportion of the debt thus wiped out depended on the proportion of the value of property C to the rest of the mortgaged property. *Held* also that the third defendant had a right to have the securities marshalled. That right extends to a purchaser, and is not confined to a puisne incumbrancer. *Rodh Mal* v. *Ram Harakh, I. L. R., 7 All., 711,* followed. *Held* also that the fact that the third defendant had notice of the plaintiff's mortgage did not affect his right to have the securities marshalled. The question of notice was immaterial prior to the passing of the Transfer of Property Act. *Chunilal Vithaldas* v. *Fulchand, I. L. R., 18 Bom., 160,* followed. LAKHMIDAS RAMDAS *v.* JAMNADAS SHANKARLAL . . **I. L. R., 22 Bom., 304**

289. ———————— *Transfer of Property Act (IV of 1882), s. 82—Purchase by mortgagee at auction of portion of the mortgaged property—Effect of such purchase in reducing the mortgage-debt.*—When a mortgagee buys at auction the equity of redemption in a part of the mortgaged property, such purchase has, in the absence of fraud, the effect of discharging and extinguishing that portion of the mortgage debt which was chargeable on the property purchased by him, that is to say, a portion of the debt which bears the same ratio to the whole amount of the debt as the value of the property purchased bears to the value of the whole of the property comprised in the mortgage. *Lakhmidas Ramdas* v. *Jamnadas Shankar Lal, I. L. R., 22 Bom., 304,* followed. *Nand Kishore* v. *Hariraj Singh, I. L. R., 20 All., 23*; and *Sumera Kuar* v. *Bhagwant Singh, Weekly Notes, All. (1895), 1*; and *Chunna Lal* v. *Anandi Lal, I. L. R., 19 All., 196,* considered. *Mahabir Prasad Singh* v. *Macnaghten, I. L. R., 16 Calc., 682; Azmat Ali Khan* v. *Jawahir Singh, 13 Moore's I. A., 404*; and *Mahtab Singh* v. *Misri Lal, 2 Agra, 88*; referred to. BISHESHUR DIAL *v.* RAM SARUP . . . **I. L. R., 22 All., 284**

MORTGAGE—*continued.*

7. TACKING.

290. ———— **Principle of tacking**—*Purchase of equity of redemption—English law.*—In 1840 *A* mortgaged certain lands to *B*, which he had granted in patni at a rent of R145. Subsequently in September 1844 *A* granted a fresh patni at a reduced rent of R90; and on the 9th October 1844 *A* mortgaged the same lands to *C*. In 1856 *C* obtained a decree for the redemption of the mortgage to *B*, and he paid off the debt to *B*; but it did not appear that he took an assignment of the mortgage for the purpose of keeping it on foot as a security against incumbrances created by *A* subsequently to the date of that mortgage, and prior to that of the mortgage to himself; and in 1862 he obtained a final decree for foreclosure against *A*. In a suit by *C* to set aside the lease of September 1844,—*Held* that it was valid and binding upon him. *Semble*—The English principle of tacking does not apply to mortgages of land in the mofussil. GAUR NARAYAN MAZUMDAR *v.* BRAJA NATH KUNDU CHOWDHRY .

[5 B. L. R., 463 : 14 W. R., 491

291. ———— *English law.*—The English law of tacking is not recognized in the Courts of this country. UDAYA CHANDRA RANA *v.* BHAJAHARI JANA . . **2 B. L. R., Ap., 45**

ODOY CHURN RANA *v.* BROJOHURY JANA

[11 W. R., 310

292. ———— *Redemption.*—The owner of a house in 1861, in consideration of R190, mortgaged it to the defendant, and put him into possession. The mortgage-deed needed no registration, and was not registered. The mortgagor next mortgaged the house in 1873 to the plaintiff for R300 by a deed duly registered. He again in 1874 borrowed on the same security a further sum of R500 from the defendant, and executed in his favour a deed of mortgage which was duly registered. The plaintiff in 1876 sued the mortgagor for possession, and obtained a decree, the execution of which the defendant resisted. The plaintiff now sued the defendant to eject him, and to obtain possession of the mortgaged property until payment of the amount due on his mortgage. The defendant denied the plaintiff's mortgage and set up his own two mortgages, and claimed to be paid the amount due on both of them before he could be called upon to render up possession. *Held* that the English doctrine of tacking was of so special and technical a character, and so little founded on general principles of justice, that it ought not to be held applicable to the mofussil of Bombay, but that the obligations arising out of successive mortgages should be discharged in the order of their date. *Held* consequently that the defendant's right as against the plaintiff was either to redeem the plaintiff's intermediate mortgage, or else to hold the mortgaged property until his own first mortgage was redeemed by the plaintiff; but that the defendant could not claim to retain possession, as against the plaintiff, until his second mortgage, as well as his first, was paid off, since plaintiff's mortgage was prior in date to, and therefore was to be preferred before, the second mortgage of the defendants. NARAYAN VENKOBA *v.* PANDURANG KAMAT

[I. L. R., 7 Bom., 526

293. ———— *Redemption.*—The mortgagor of an estate gave the mortgagee four successive bonds for the payment of money, in each of which it was stipulated that, if the amount were not paid on the due date, it should take priority of the amount due under the mortgage, and redemption of the mortgage should not be claimed until it had been satisfied. The representative in title of the mortgagor subsequently sued the mortgagee for possession of such estate on payment merely of the mortgage-money. *Held* that, although such bonds did not in so many words create charges on such estate, yet inasmuch as it appeared from their terms that it was the intention of the parties that the equity of redemption of such estate should be postponed until the amount of such bonds had been paid, the representative in title of the mortgagor was not entitled to possession of such estate on payment merely of the mortgage-money. ALLU KHAN *v.* ROSHAN KHAN . . **I. L. R., 4 All., 85**

294. ———— *Redemption*—*Further charge.*—The mortgagor of an estate gave to the mortgagee, subsequently to the date of the mortgage, two successive money-bonds, in each of which it was stipulated that, if the amount were not paid on the due date, it should take priority of the amount due under the mortgage, and that redemption of the mortgage should not be claimed until the bond had been satisfied. The assignee of the equity of redemption sued for possession of the estate on payment merely of the mortgage-money. *Held* that the two subsequent bonds did not create a further charge on the mortgaged premises, although they would prevent the original mortgagor from redeeming without paying their amounts. HARI MAHADAJI SAVARKAR *v.* BALAMBHAT RAGHUNATH KHARE

[I. L. R., 9 Bom., 233

295. ———— *Subsequent agreement—Covenant to pay an additional sum—Charge—Compromise.*—In a suit on a mortgage, dated 1878, it appeared that the premises had been mortgaged in 1874, but the mortgagor had been left in possession under a lease; and that a suit brought by the mortgagee (on the rent reserved by the lease falling into arrears) was compromised in 1877 on the terms that R3,680 should be paid together with the amount secured by the mortgage of 1874. The instrument of compromise was not registered, and the amount was not paid. *Held* that the plaintiff's mortgage was subject to the mortgage of 1874 only, and not to the arrangement comprised in the compromise. *Quære*—Whether the compromise would, if registered, have charged the land with R3,680, or whether its effect was merely to make the equity of redemption conditional on payment of that amount, in such a manner as not to affect the rights of the subsequent mortgagee. UNNI *v.* NAGAMMAL

[I. L. R., 18 Mad., 368

MORTGAGE—*continued.*

8. REDEMPTION.

(*a*) Right of Redemption.

296. ——— **Essential characteristic of mortgage**—*Agreement waiving right to redeem.*—Where a document is, on its face, a mortgage, the right to redeem is so much an essential as not to be variable by agreement. The question of intention extra the document does not therefore arise. Samathal *v.* Mathoosri Kamatchi Amma Boyi Saib Avergul . . . . . **7 Mad., 395**

297. ——— *Usufructuary mortgage—Alteration of original transaction.*—When the original transaction is an usufructuary mortgage, the mortgagee is entitled to nothing beyond the repayment of his principal and interest from the usufruct of the property. The Court will not allow additional advantages to be obtained through the necessity of the debtor, by the conversion of a mortgage into a transaction of a different nature. Once a mortgage always a mortgage, is a principle not to be departed from. Consequently an estate mortgaged is always redeemable. Kaseenauth *v.* Bheekaree Loll. Tewaree Loll *v.* Kasseenauth **[W. R., F. B., 79**

Asapal Singh *v.* Nunkoo Singh . **3 Agra, 216**

298. ——— **Right to get back land on deposit in usufructuary mortgage**—*Beng. Reg. I of 1798—Demand of land in excess.*—The mortgagor under a zur-i-peshgi is entitled, under s. 2, Regulation I of 1798, to demand back his land immediately after making his deposit. If by mistake or otherwise he demands more land than is comprised in the mortgage, that is not a matter which can justify the mortgagee in keeping possession of land which is in fact comprised in it. Mohun Lal *v.* Ali Afzul . . **W. R., 1864, 219**

299. ——— **Objection to redemption**—*Purchaser who has not paid purchase-money.*—In a suit brought to redeem the purchased property, the mortgagee cannot avail himself of the objection that the full amount of purchase-money has not been paid. The mortgagee has only the right to be satisfied that the person claiming redemption is not a stranger, but one to whom the equity of redemption has been transferred by a *bonâ fide* sale. Heera Singh *v.* Ragho Nath Suhai. Bhurth Singh *v.* Ragho Nath Suhai . . . . **3 Agra, 30**

300. ——— **Deposit giving no right to redeem**—*Beng. Reg. I of 1798—Beng. Reg. XVII of 1806, s. 7.*—Where money was paid into Court by a person alleged to be a mortgagor of certain property after notice of foreclosure, without any actual restriction being placed on its being paid over to the alleged mortgagee, but the payment was made with a notice in these words: "I have shown the mortgage to be false and fraudulent, and to set aside the kobala and to get back the money I shall hereafter institute a regular suit;" it was held that Regulations I of 1798 and XVII of 1806, s. 7, did not apply to such a case. Such payment gave no right to redeem. Abdool Rahaman *v.* Kistolal Ghose **[B. L. R., Sup. Vol., 598: 6 W. R., 225**

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

301. ——— **Mortgage by conditional sale**—*Sale of land and agreement for repurchase—Right to redeem—Intention—Beng. Reg. I of 1798 and XVII of 1806.*—A deed of sale of land for value was accompanied by a deed of agreement between the parties for purchase back by the vendor of the land on payment by him of money to the vendee on a future date fixed. The deeds were followed by transfer of possession to the vendee, and his receipt of the profits. The vendor did not exercise his right of repurchase, but, after many years, gave notice of his intention to redeem, and brought this suit to enforce his right of redemption as upon a mortgage by conditional sale. It was held that oral evidence for the purpose of ascertaining the intention of the parties to the deeds was not admissible, being excluded by s. 92 of the Evidence Act, and the case had to be decided on a consideration of the documents themselves with only such extrinsic evidence of circumstances as might be required to show the relation of the written language to existing facts. *Held* (1) that there were contained in the deeds indications that the parties intended to effect a mortgage by conditional sale. In such a mortgage it is not necessary that the mortgagor should make himself personally liable for the repayment of the loan. (2) The equity of redemption was rendered applicable to a mortgage of this class by the effect of the Regulation XVII of 1806. The Transfer of Property Act, 1882, s. 58, defines a mortgage of this character, stating the already existing law and practice regarding it, but owing to its date did not apply in this instance. (3) Redemption had been rightly decreed in the Courts below. (4) Whether such a mortgage would be redeemable under the Regulation law independently of intention indicated in the instrument was not a point calling for decision. Indications in this case appearing in the deeds were—(*a*) words in the agreement for repurchase similar to those in Regulation I of 1798, relating to the deposit of mortgage money in the Treasury, giving the like power to deposit; (*b*) the inclusion in the present security of a sum due on an account, open to be increased, other than the price fixed for the repurchase; and other matters. *Bhagwan Sahai* v. *Bhagwan Din, I. L. R., 12 All., 387: L. R., 17 I. A., 98*, distinguished. Balkishen Das *v.* Legge . **I. L. R., 22 All., 149**
[L. R., 27 I. A., 58
4 C. W. N., 153

Affirming decision of the High Court in **[I. L. R., 19 All., 430**

302. ——— *Beng. Reg. XVII of 1806, ss. 7, 8.* In the part of India where Bengal Regulation XVII of 1806 is in force, the right to redeem a mortgage by conditional sale depends entirely upon it, whatever may be the true construction of the terms of the condition in regard to payment of interest. Within a year after notification of a petition for foreclosure a mortgagor deposited the principal debt, and interest for the last year of the mortgage term, which had expired. Interest for prior years of the term had not been paid; but this, according to the mortgagor's contention, was,

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

by the terms of the condition, treated as a separate debt. *Held* that, as the mortgagor had not deposited the interest due on the sum lent, required, according to s. 7 of the Regulation, where, as here, the mortgagee had not obtained possession, and as the year of grace had expired, the conditional sale had become conclusive under s. 8, involving the dismissal of the mortgagor's suit for redemption. MANSUR ALI KHAN *v.* SARJU PRASAD . . **I. L. R., 9 All., 20**
[L. R., 13 I. A., 113

303. ——— *Mortgage by conditional sale before Transfer of Property Act.*—Suit, in 1889, to redeem a mortgage of 1880, which contained a provision that, if the mortgage-money was not paid in March 1882, the mortgage premises should become the absolute property of the mortgagee. *Held* that the plaintiff was entitled to redeem. *Ramasami Sastrigal* v. *Samiyappanayakan, I. L. R., 4 Mad., 179,* explained and followed. VENKATASUBBAYYA *v.* VENKAYGA . **I. L. R., 15 Mad., 230**

304. ——— **Mortgage becoming sale if not redeemed in certain time**—*Madras law of mortgage—Beng. Reg. XVII of 1806.*—In a suit instituted in 1853 to redeem a mortgage containing a clause making it an absolute sale in default of redemption by a certain date,—*Held* that, in the Madras Presidency, effect must be given to that clause, the Regulation XVII of 1806 not being applicable. PATTABHIRAMIER *v.* VENKATAROW NAICKEN
[7 B. L. R., 136: 15 W. R., P. C., 35
13 Moore's I. A., 560

305. ——— **Right to redeem by deposit of principal**—*Possession of mortgagee.*—On a question of a right of a mortgagor to redeem by deposit of the principal sum due only, the length of possession by the mortgagee is immaterial. ABDULLA KHAN *v.* UPENDRA CHANDRA **6 B. L. R., Ap., 53**

S. C. ABDOOL KHAN *v.* UPENDRA CHUNDER BHUTTACHARJEE . . . . . **14 W. R., 278**

306. ——— **Time for redemption**—*Stipulation for payment by instalments.*—A mortgage-deed stipulated for the liquidation of a moiety of the debt by the usufruct of certain land for seven years, and, as to the other moiety, stipulated for its repayment by instalments in five years, and, in default, for its liquidation by the possession and the usufruct of the same land being continued and enjoyed after the expiry of the seven years' term, but no further term was created. *Held* that the mortgagor was entitled to redeem at any time after the expiry of the seven years' term. MARANA AMMANNA *v.* PENDYALA PERUBOTULU . **I. L. R., 3 Mad., 230**

307. ——— *Decree for redemption—Execution barred by limitation—Second suit to redeem.*—In a suit for redemption of a mortgage a decree was passed by consent to the effect that the land was redeemable upon payment of a certain sum on a certain date, but there was no direction in the decree that in default of payment the mortgage be foreclosed. This decree was not executed. After three years the right, title, and interest of the mortgagors in the land was purchased in execution of a decree by the plaintiff, who thereupon sued the mortgagees to redeem the land. *Held* that the plaintiff was entitled to redeem. PERIANDI *v.* ANGAPPA . . . **I. L. R., 7 Mad., 423**

308. ——— **Omission to execute decree for redemption in time**—*Effect of fresh suit for redemption.*—Where a decree for redemption is obtained, but is not executed within the prescribed period for execution, the mortgagee does not, by omission of the mortgagor to execute the decree, cease to be the mortgagee, but the mortgagor or his representative may still maintain a fresh suit for redemption. CHAITA *v.* PURUM SOOKH
[2 Agra, 256

309. ——— **Suit for redemption**—*Conditional decree—Failure of mortgagor to pay in accordance with decree—Subsequent suit for redemption—Act IV of 1882 (Transfer of Property Act), s. 93.*—In a suit for redemption of a usufructuary mortgage, a decree for redemption was passed conditional upon the plaintiff paying the defendants, within a time specified, a sum which was found still due to the latter, and the decree provided that, if such sum were not paid within the time specified, the suit should stand dismissed. The plaintiff failed to pay, and the suit accordingly stood dismissed. Subsequently he again sued for redemption, alleging that the mortgage-debt had now been satisfied from the usufruct. *Held,* having regard to the distinction between simple and usufructuary mortgages, that the decree in the former suit only decided that, in order to redeem and get possession of the property, the mortgagor must pay the sum then found to be due by him to the mortgagee, and did not operate as *res judicata* so as to bar a second suit for redemption, when, after further enjoyment of the profits by the mortgagee, the mortgagor could say that the debt had now become satisfied from the usufruct. Having regard to s. 93 of the Transfer of Property Act (IV of 1882), in a suit brought by a usufructuary mortgagor for possession on the ground that the mortgage-debt has been satisfied from the usufruct, and in which the plaintiff is ordered to pay something because the debt has not been satisfied as alleged, the decree passed against such a mortgagor for nonpayment has not the effect of foreclosing him for all time from redeeming the property. The decision in *Gulam Hossein* v. *Alla Rukhee Beebee, 2 N. W., 62,* treated as not binding since the passing of the Transfer of Property Act. *Chaita* v. *Purun Sookh, 2 Agra, 256,* and *Anrudh Singh* v. *Sheo Prasad, I. L. R., 4 All., 481,* referred to. MUHAMMAD SAMIUDDIN KHAN *v.* MANU LAL
[I. L. R., 11 All., 386

310. ——— *Omission to set aside decree and sale of mortgaged property under it—Refusal of redemption.*—Redemption of a mortgage was refused, as it appeared that the mortgaged property had been sold in execution of a decree against the mortgagor, and that the plaintiff had neglected and refused to pray that it might be

set aside. MALKARJUN BIN SHIDRAMAPPA PASARE *v.* NARHARI BIN SHIVAPPA . **L. R., 27 I. A., 216**

311. ——— Redemption of mortgaged land subsequently assessed with revenue.—A mortgagor of lakhiraj land subsequently assessed with Government revenue is not entitled to redeem, except on payment of the amount paid by the mortgagee to Government for revenue, with interest in addition to the money due under the mortgage. But in a suit for redemption, in which the mortgagor deposited before suit the amount of the principal sum borrowed by him, he is entitled to a decree on payment into Court of the further sum paid for Government revenue. JOYPROKASH ROY *v.* OORJHAN JHA . . . . . . **3 W. R., 174**

312. ——— Attaching creditors, Right of, to redeem—*Civil Procedure Code (Act X of 1877), ss. 276, 282, 295.*—An attaching creditor has not, as such, any right to redeem a mortgage subsisting prior to his attachment. SOOBHUL CHUNDER PAULE *v.* NITYE CHURN BYSACK

[I. L. R., 6 Calc., 663 : 7 C. L. R., 201

313. ——— Patnidar, Right of, to redeem.—Terms upon which a patnidar was let in to redeem stated. KASIMUNNISSA BIBEE *v.* NILRATNA BOSE . . . . . **I. L. R., 8 Calc., 79**

[9 C. L. R., 173 : 10 C. L. R., 113

314. ——— Heir of mortgagor, Right of, to redeem—*Right of purchaser—Limitation.*—Suit to redeem against transferee, or (in alternative) to enforce terms of purchase. The form of mortgage was the usual indigo planter's mortgage, with power of sale. After heavy losses, the agents (mortgagees) stopped the factories, and sold them, informing the planter (mortgagor) of the sale, and suggesting his concurrence. He, in a written acknowledgment, gave reluctant assent: he was not called on for any formal confirmation or act; the mortgagees wrote off the greater part of the debt to profit and loss, credited the purchase-money, and closed the account. The purchaser took and retained possession. After two years the mortgagor died, leaving a will, in which he described his property, but did not mention the mortgaged factories. The conveyance to the purchaser was produced, in which the mortgagor was made a party, but which was dated and executed after the mortgagor's death. It purported to be, not an exercise of the power of sale, but a transfer of the legal estate by the mortgagees at the request of the mortgagor: it was executed by the mortgagees and purchaser. *Held,* firstly, that the mortgagor's heir was not entitled to redeem (see also *Sreemulmoney Bebee* v. *Goberdhone Bermono, 2 Ind. Jur., N. S., 319*); also that, on dismissal of the redemption suit, no terms or conditions could be imposed on the defendant, who in this case held under the original contract of sale to which the mortgagor assented. *Held,* secondly, that even had the contract included (as argued for appellant) an undertaking to indemnify from liabilities, the payments sought to be reimbursed were beyond six years, and no fraud was proved; therefore as to these the suit was barred. DOUCETT *v.* WISE . **2 Ind. Jur., N. S., 280**

315. ——— *Conditional sale—Surety, Assignment to, from mortgagee—Right of redemption.*—On a mortgage of land with a proviso that in default of repayment of the money advanced the mortgage should be turned into a sale, a third party joined as surety, undertaking to repay the amount advanced if the mortgagor made default in payment at the stipulated time. Default was made and the surety paid the money, and took an assignment of the land from the mortgagee. *Held* that the heir of the mortgagor was entitled to redeem, and that as against him the surety could not claim to hold the lands as purchaser. GORAKI KANAJI *v.* NATHU BIN APPAJI . **1 Bom., 135**

316. ——— Assignee of mortgagor, Right of, to redeem—*Razinamah—Gatkuli tenure—Extinguishment of equity of redemption.*—A mortgage-deed of gatkuli land contained a clause by which the mortgagor agreed, at the expiration of the period for which the mortgage was made, to give a razinamah of the mortgaged land. In accordance with this stipulation, the mortgagor gave a razinamah to Government by which he gave up all claim to the land, which was then granted to the mortgagee. *Held* that the equity of redemption of the mortgagor was thereby extinguished. RANEE VALAD AVAJI MALI *v.* RAMA BAI KOM MAHADU MALI . . . . . **6 Bom., A. C., 265**

317. ——— Puisne mortgagee, Right of, to redeem—*Prior mortgagee.*—A puisne mortgagee is entitled to redeem from the prior mortgagee who obtains a foreclosure decree in a suit to which the puisne mortgagee is not made a party or from the purchaser in the foreclosure suit; and it is immaterial whether the puisne mortgage is or is not registered, or whether the prior mortgagee at the date of the suit had or had not notice of the puisne mortgage. The plaintiff charging the defendants with collusion sued to eject them, but the Court found he was only a puisne mortgagee, and one of the defendants a prior mortgagee. The Court, however, allowed the plaintiff to change his case, and in the same suit permitted him to redeem the defendant. SANKANA KALANA *v.* VIRUPAKSHAPA GANESHAPA

[I. L. R., 7 Bom., 146

318. ——— *Redemption of first mortgage by further mortgage.*—*Held* that a mortgage contract received as a security for a repayment of loan does not incapacitate the mortgagor from any other dealing with the property, except in defeasance of the right of the mortgagee. Where therefore a zur-i-peshgi lease had been granted to the defendant for nine years containing a stipulation that the mortgagor should not alienate or mortgage the land,—*Held* that a second zur-i-peshgi to the plaintiff made after the expiration of the nine years' term, for the *bonâ fide* purpose of paying off the debt due on the first mortgage, was not voidable as contravening the terms of the first mortgage lease, and the plaintiff was entitled to sue to redeem the

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

first mortgage. DOOKHCHORE RAI *v.* HIDAYUTOOLLAH . . **Agra, F. B., 7: Ed. 1874, 5**

See MAHOMED ZAKAOOLLA *v.* BANEE PERSHAD [**1 N. W., Ed. 1873, 135**

SHEOPAL *v.* DEEN DYAL . **5 N. W., 145**

319. ———— **Purchaser of equity of redemption, Right of, to redeem**—*Usufructuary mortgage followed by sale—Revival of mortgage by cancelment of sale—Attachment in execution of decree.*—*Z* mortgaged in 1859 certain immoveable property, being joint ancestral property, for a term of five years, giving the mortgagee possession of the mortgaged property. In 1861 *Z* sold this property to the mortgagee, whereupon the sons of *Z* sued their father and the mortgagee, purchaser, to have the sale set aside as invalid under Hindu law, and in August 1864 obtained a decree in the Sudder Court setting aside the sale. The mortgagee, purchaser, remained, however, in possession of the property as mortgagee. In May 1867, *Z* having sued the mortgagee for possession of the property on the ground that the sale had been set aside as invalid, the High Court held that *Z* could not be allowed to retain the purchase-money and to eject the mortgagee, purchaser, but must be held estopped from pleading that that sale was invalid. In November 1867, one *K* having caused the property to be attached and advertised for sale in the execution of a decree which he held against *Z* and his sons, the mortgagee objected to the sale of the property on the ground that *Z* and his sons had no saleable interest in the property. This objection was disallowed by the Court executing the decree, and the rights and interests of *Z* and his sons were sold in the execution of the decree, *K* purchasing them. In 1878 *K* sued as the purchaser of the equity of redemption, for the redemption of the mortgage of 1859. *Held* that *K* was entitled to redeem the property. *Held* also that, the mortgagee not having contested in a suit the order dismissing his objection to the sale of the property in execution of *K's* decree, he could not deny that *K* had purchased the rights and interests remaining in the property to *Z* and his sons. *Held* also that the mortgagee had no lien on the property in respect of his purchase-money. *Held* also that, it being stipulated in the deed of mortgage that the mortgagee should pay the mortgagor a certain sum annually as "malikana," and the mortgagee not having paid such allowance since the date of the sale, the plaintiff was entitled to a deduction from the mortgage-money of the sum to which such allowance amounted. BASANT RAI *v.* KANAUJI LAL [**I. L. R., 2 All., 455**

320. ———— **Purchaser of property, Right of, to redeem**—*Suit for ejectment where there is an equitable lien on the property.*—In 1848 *B L* obtained a decree against *R C* and *R L*, and in 1863, at a sale in execution of that decree, the plaintiffs' ancestor purchased the property now in dispute and took possession. In 1861 one *K R* sued the representatives of *R C* on a mortgage-bond under which a sum of money was alleged to have been secured upon the said property, and obtained a decree against the defendants personally which did not direct sale of the mortgaged property. The plaintiff's ancestor bought the property with the knowledge of the mortgage. *K R* in 1868, in execution, sold the right, title, and interest of her judgment-debtors in the property to the defendants who paid R5,000 as consideration-money and obtained possession. In a suit to eject the defendants on the ground that the latter obtained no title to the property by their purchase,—*Held* that, so far as the defendants' money had gone to pay off the charge which *K R* had on the land to that extent, they were entitled to stand in her shoes as an incumbrancer; and that the suit, as far as regards the land covered by the mortgage-bond, must be taken to be a redemption suit, and the plaintiff ought not to be allowed to recover the property without paying the defendants so much as on a proper taking of accounts might appear to be due to them. RAMESSUR PERSHAD NARAIN SINGH *v.* DOOLEE CHAND . . . **19 W. R., 422**

321. ———— **Right to redeem sub-tenures purchased by mortgagee**—*Acquisitions by mortgagor and mortgagee.*—*Semble*—Under the English law, which, in so far as it rests on principles of equity and good conscience, may properly be applied in India, it is recognized as a general rule that most acquisitions by a mortgagor enure for the benefit of the mortgagee; and conversely, that many acquisitions by a mortgagee are, in like manner, to be treated as accretions to the mortgaged property, or substitutions for it, and therefore subject to redemption. But *semble*—It cannot be affirmed that every purchase by a mortgagee, of a sub-tenure existing at the date of the mortgage, must be taken to have been made for the benefit of the mortgagor so as to enhance the value of the mortgaged property, and make the whole, including the sub-tenure, subject to the right of redemption on equitable terms, *e.g.*, where there is a mortgage of a zamindari in Lower Bengal, out of which a patni tenure has been granted, the mortgagee in possession might buy the patni with his own funds and keep it alive for his own benefit. An Oudh talukhdar granted an usufructuary mortgage of a portion of his talukh, in respect of which there existed certain subordinate birt tenures. The mortgagee, having subsequently acquired these birt tenures by purchase, did not, as he might have done, keep them alive as distinct sub-tenures, but treated them as merged in the talukh. The mortgagor, many years after, brought a suit for redemption, when the question arose, whether upon repaying the sum expended by the mortgagee in the purchase of the birts, in addition to the amount due on the face of the mortgage-deed, the plaintiff was entitled to the possession of the estate as then enjoyed by the mortgagee; or whether the latter was entitled to retain the birt rights and interests purchased by him as an absolute under-proprietary tenure in subordination to the talukhdar, and to have a sub-settlement on that basis. *Held* that the plaintiff, on repayment of the original mortgage-debt and on reimbursing the defendant the sum expended in purchasing the birts, was entitled to re-enter on the

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

estate with all the rights and privileges enjoyed by the latter. KISHENDATT RAM *v.* MUMTAZ ALI KHAN
[I. L. R., 5 Calc., 198 : 5 C. L. R., 213
L. R., 6 I. A., 145

322. ———— **Right where mortgagee has purchased equity of redemption**—*Act VI of 1855, Construction of—Sale of legal and equitable rights of judgment-debtors.*—Cl. 1, s. 1, Act VI of 1855, shows that the statute was designed for the benefit of creditors, and that it authorized sale of both the legal and equitable rights of judgment-debtors. Under this clause, therefore, an equity of redemption was a kind of property that might be seized and sold. *A*, a mortgagee who takes from *B* as security an existing mortgage from *C* to *B*, stands in the same position towards, and is subject to the same equities in respect of, the mortgagor *B*, who has assigned that mortgage to him by way of sub-mortgage, as *B* himself, a mortgagee, does to the original mortgagor *C*. A mortgagee, at a Sheriff's sale held under a writ of *fi. fa.* sued out by him upon his mortgagor's bond and warrant to confess the mortgage-debt, purchased his mortgagor's equity of redemption and obtained a conveyance thereof from the Sheriff under cl 3, s. 1, Act VI of 1855. *Held*, in a suit by the mortgagor against the mortgagee for redemption of the mortgage, that the latter was entitled under that Act to hold the mortgaged estate against the mortgagor freed from the equities existing in him previous to sale and conveyance of his rights and interests under the mortgage. TOYLUCKOMOHUN TAGORE *v.* GOBIND CHUNDER SEN
[1 Ind. Jur., O. S., 128 : 1 Hyde, 289

323. ———— **Redemption where mortgagee has partitioned property**—*Interference with right to redeem.*—A mortgagor's right to redeem what he has mortgaged is indefeasible, and cannot be interfered with by unauthorized acts of the mortgagees, *e.g.*, a batwara entered into by the latter. MUZHUR HOSSEIN *v.* HUR PERSHAD ROY . 15 W. R., 353

324. ———— **Alienation by mortgagee pending foreclosure suit**—*Effect of, on right of redemption.*—Where a mortgagee alienates the mortgaged property while the foreclosure suit brought by him is pending, such alienation cannot be allowed to stand between the mortgagor and those rights to redeem which that suit in its ultimate issue may have left open and affirmed to him. MUNSOOR ALI KHAN *v.* OJOODHYA RAM KHAN . . 8 W. R., 399

325. ———— **Right of purchaser to redeem**—*Effect of sale by mortgagor.*—Where a mortgagor before the expiry of the year of grace and after sale to a purchaser agreed with the mortgagee that of the two villages conditionally mortgaged one should be given to him and a decree of foreclosure for the other should be obtained by the mortgagee,—*Held* that such an agreement could not bind the purchaser or take away his right to redeem. JYRAM GIR *v.* KRISHAN KISHORE CHUND 3 Agra, 307

326. ———— **Clause for conditional sale**—*Effect of, on right of redemption.*—A clause of conditional sale contained in a mortgage-deed does not prevent the redemption of the mortgage. KANAYALAL *v.* PYARABAI I. L. R., 7 Bom., 139

327. ———— **Settlement with mortgagee**—*Effect of, on right of redemption.*—The mere settlement of a resumed maafee estate with the mortgagee does not destroy the mortgagor's right to redeem, nor does it necessarily make the holding by the mortgagee a holding adverse to the mortgagor's right. OOMRAO BEGUM *v.* NIZAMOONNISSA
[1 Agra, 224

328. ———— **Bar of right of redemption**—*Foreclosure—Accounts.*—In a suit for redemption of a mortgage the Zillah Court declared the mortgagors (appellants) entitled to redemption, the mortgagees in possession (respondents) having fully paid themselves by receipt of rents and profits. In a special appeal, the Sudder Court reversed the Zillah Court's decision, on the ground that certain proceedings, taken by the mortgagees with a view to foreclosure, had effectually barred the equity of redemption. *Held* by the Privy Council that the Sudder Court ought not to have decided the case on the question of foreclosure, because that question, though raised upon the pleadings, had not been made one of the issues settled in the Court of first instance, where alone evidence could be taken; that the Court was wrong in treating the proceedings as an effectual bar to the appellant's right of redemption; and that the question of foreclosure ought therefore to be further fully tried upon an issue to be regularly settled. MOHUN LALL SOOKUL *v.* GOLUCK CHUNDER DUTT
[1 W. R., P. C., 19 : 10 Moore's I. A., 1

329. ———— **Condition preventing effect of right of redemption**—*Onerous condition in mortgage-deed—Condition that after redemption the mortgagee should continue in possession as perpetual tenant not enforceable.*—A condition in a mortgage, that if the mortgagor redeems the property, the mortgage right should be extinguished, but that the property should for ever remain in the possession of the mortgagee on his paying a fixed rent, is a condition which cannot be enforced in a Court of Equity. MAHOMED MUSE *v.* JIJIBHAI BHAGVAN
[I. L. R., 9 Bom., 524

330. ———— **Decree for redemption within six months**—*Transfer of Property Act (IV of 1882), proviso to s. 93—Mortgage—Expiration of six months without payment—Application after expiration of six months to extend the time for redemption.*—In redemption suits the original decree (passed under s. 92 of the Transfer of Property Act, is only in the nature of a decree *nisi*, and the order passed under s. 93 is in the nature of a decree absolute. Under the proviso to s. 93 of that Act, an application to extend the time for redemption fixed by the original decree may be made at any time before the decree absolute is made. NANDRAM *v.* BABAJI . . . I. L. R., 22 Bom., 771

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

331. ———— **Mortgage with proviso that in case of non-redemption in a prescribed time it should become a sale**—*Razinama by mortgagor declaring sale to mortgagee—Transfer of possession to mortgagee — Execution of equity of redemption—Subsequent sale by mortgagor of equity of redemption.*—In 1848 *B* and *R* mortgaged a piece of land to *V*. It was to be redeemed in eight years, or else to become the absolute property of the mortgagee. It was not redeemed; and in 1859 *B*, in whose name the land was entered in the Government records, executed a razinama in favour of *V*, and *V* passed a kabuliat accepting the land. *B* and *R* then became *V's* tenants, and were, as such, successfully sued by him for rent in 1863. In 1872 *V* sold the land to *N*, who again sold it to the defendant. The plaintiff, as purchaser from the original mortgagors (*B* and *R*) of their alleged equity of redemption, filed the present suit to redeem the property. *Held* that, as the razinama given by *V* contained no reservation, and as it was accompanied by a transfer of possession, it had the effect of a conveyance of all the mortgagor's rights to the mortgagee. It operated to extinguish the equity of redemption, notwithstanding any misconception or ignorance on *V's* part of his rights as mortgagor. Under the Indian Contract Act (IX of 1872, s. 21), error of law does not vitiate a contract; much less will it annul a conveyance after the lapse of many years, unless there has been some fraud or misrepresentation and an absence or negligence. VISHNU SAKHARAM PHATAK *v.* KASHINATH BAPU SHANKAR . . . **I. L. R., 11 Bom., 174**

332. ———— **Redemption of mortgage before order absolute**—*Foreclosure decree—Order absolute—Transfer of Property Act (IV of 1882), s. 87.*—In a foreclosure action the mortgagor can redeem at any time until the order absolute is made under s. 87 of the Transfer of Property Act, 1882. PORESH NATH MOJUMDAR *v.* RAMJODU MOJUMDAR . . **I. L. R., 16 Calc., 246**

SOMESH *v.* RAMKRISHNA CHOWDHRY

I. L. R., 27 Calc., 705
4 C. W. N., 699

NARAYANA REDDI *v.* PAPUYYA

I. L. R., 22 Mad., 133

333. ———— **Right to redeem at any time prior to the passing of the order absolute under s. 87**—*Transfer of Property Act (IV of 1882), s. 87.*—A mortgagor who has obtained a decree for redemption of his mortgage can pay in the redemption money and obtain redemption at any time until an order absolute under s. 87 is made against him. *Poresh Nath Mojumdar* v. *Ramjodu Mojumdar, I. L. R., 16 Calc., 246*, and *Raham Ilahi Khan* v. *Ghasita, I. L. R., 20 All., 375*, referred to. NIHALI *v.* MITTAR SEN

I. L. R., 20 All., 446

334. ———— **Unregistered agreement by mortgagor to sell to mortgagee**—*Subsequent assignment of equity of redemption to third person for value, but with notice of agreement.*—In a suit for redemption filed by an assignee for value of the equity of redemption against a mortgagee in possession, it was found that the mortgagor had agreed with the defendant to sell the mortgaged premises to him, that part of the purchase-money had been acknowledged as paid, and that the balance had been tendered in pursuance of the agreement. It was further found that the plaintiff had taken his assignment with notice of the above agreement and tender. *Held* that the plaintiff, having purchased the equity of redemption with notice as above, was not entitled to redeem. *Per cur.*—The plaintiff having knowledge of the agreement was put upon enquiry to ascertain whether the tender had been made, and whether there was any objection to his purchase on that ground. ADAKKALAM *v.* THEETHAN

I. L. R., 12 Mad., 505

335. ———— **Time fixed for redemption**—*Transfer of Property Act, ss. 92, 93—Application to execute the decree.*—In a suit to redeem a kanam a redemption decree was passed which provided that the kanam amount and the value of improvements be paid in three months. The decree amount was not paid within that period, but the decree-holder applied to execute the decree at a later date. *Held* that the application did not fall under the proviso of s. 93 of the Transfer of Property Act, and that the decree-holder was not then entitled to have the decree executed. *Poresh Nath Mojumdar* v. *Ramjodu Mojumdar, I. L. R., 16 Calc., 246*, dissented from. Ss. 92 and 93 of the Act ought to be read together, and the proviso of the latter section has no application where the mortgagee does not apply for foreclosure or where the original decree does not contain the last clause mentioned in s. 92. ELAYADATH *v.* KRISHNA . **I. L. R., 13 Mad., 267**

336. ———— **Limitation**—*Date of accrual of cause of action—Mortgage—Transfer of Property Act (IV of 1882), ss. 86 and 87.*—*Held* that, where a right of pre-emption arises on the foreclosure of a mortgage under the Transfer of Property Act, 1882, the right to sue for pre-emption accrues, not from the date fixed in the decree under s. 86 as the date upon which the payment is to be made by the mortgagor, but from the date on which the mortgagee obtains an order absolute under s. 87 of the said Act. *Raghubir Singh* v. *Nandu Singh, Weekly Notes, All., 1891, 134; Ali Abbas* v. *Kalka Prasad, I. L. R., 14 All., 405*; and *Poresh Nath Mojumdar* v. *Ramjodu Mojumdar, I. L. R., 16 Calc., 246*, referred to. ANWAR-UL-HAQ *v.* JWALA PRASAD

I. L. R., 20 All., 358

See BATUL BEGAM *v.* MANSUR ALI KHAN

I. L. R., 20 All., 315

and RAHAM ILAHI KHAN *v.* GHASITA

I. L. R., 20 All., 375

337. ———— **Adverse possession**—*Possession obtained by mortgagee from Mamlatdar—Non-payment of assessment by mortgagor—Payment by mortgagee—Bombay Land Revenue Code (Bom.*

Act V of 1879), ss. 56, 57, 153.—In a suit for redemption of land mortgaged to the defendant in 1870, the defendant pleaded adverse possession. In 1876 he had obtained a decree for sale which he had not executed. In 1877, the Mamlatdar being about to sell the land for arrears of assessment, the defendant paid the amount, and was thereupon put into possession by the Mamlatdar. He had retained possession ever since and had continued to pay the assessment. *Held* that the plaintiff was entitled to redeem. It did not appear that the land had been declared to be forfeited by the Collector under ss. 56, 57, and 153 of the Land Revenue Code (Bombay Act V of 1879). The fact that the defendant prevented proceedings under s. 56 by himself paying the arrears of assessment did not make his possession adverse and did not affect the original relationship of mortgagee and mortgagor between himself and the plaintiff. The defendant not having exercised his right to sell under the decree of 1876, the plaintiffs were now entitled to redeem, the sum found due by the decree at its date being taken as *res judicata* between the parties. DASHARATHA *v.* NYAHALCHAND . . . **I. L. R., 16 Bom., 134**

338. ——— **Undertaking not to alienate the equity of redemption**—*Right of assignee of mortgagor—Assignment of the equity of redemption—Repayment of mortgage-debt.*—Where a mortgagor undertook that he would not alienate the equity of redemption, and that the mortgagee should not be obliged to receive the money from any one but the original mortgagor,—*Held* that, as the undertaking absolutely forbade alienation, and thus deprived the mortgagor of a right which was an essential incident of the estate he had in the property by virtue of his equity of redemption, it could not be given effect to. When a mortgage-debt is contracted in a particular currency, it should be repaid in that currency. TRIMBAK JIVAJI DESHAMUKHA *v.* SAKHARAM GOPAL . **I. L. R., 16 Bom., 599**

339. ——— **Prior and puisne incumbrances**—*Puisne incumbrancer not made a party to suit upon prior incumbrance.*—If a prior incumbrancer, having notice of a puisne incumbrance, does not, when he puts his mortgage into suit, join the puisne incumbrancer as a party, that puisne incumbrancer's right to redeem will not thereby be affected. *Mohan Manor* v. *Togu Uka, I. L. R., 10 Bom., 224*; *Muhammad Sami-uddin* v. *Man Singh, I. L. R., 9 All., 125*; and *Gajadhur* v. *Mul Chand, I. L. R., 10 All., 520,* referred to. NAMDAR CHAUDHRI *v.* KARAM RAJI . **I. L. R., 13 All., 315**

340. ——— **Right to redeem first mortgage independently of later mortgage**—*Mortgage to a firm—Subsequent mortgage to one member of the firm for personal loan, with stipulation for payment of new debt before prior mortgage-debt.*—On the 13th July 1877 a firm, of which defendants Nos. 1 to 4 were members, lent money to *N* on mortgage of certain property. Subsequently defendant No. 2 personally made a further loan to *N*, who executed two san-mortgage-deeds to him of the same property containing stipulations that these bonds should be paid before the mortgage of July 1877. *N* died, and his widow and heirs assigned the equity of redemption of the mortgage of July 1877 to the plaintiff, who sued the defendants to redeem. The defendants contended that the plaintiff was bound to pay off the two later bonds as well as the original mortgage-debt. *Held* that the later loan by defendant No. 2 being a personal loan by him, the firm, as such, had no equity to insist on its being paid before the mortgage was redeemed, whatever right defendant No. 2 in his personal capacity might have. But in this suit, which was one to redeem the mortgage, he was a party as member of the firm, and not in his individual capacity, and he could not therefore resist the plaintiff's right to redeem on any ground based on the promise of the two bonds executed to himself. CHHOTALAL GOVINDRAM *v.* MATHUR KEVALRAM **[I. L. R., 18 Bom., 591**

341. ——— **Right to redeem made conditional on payment by mortgagor of another debt as well as mortgage-debt**—*Effect of that other debt becoming barred by limitation—Right to redeem mortgage still subject to condition.*—A mortgage-bond contained a clause stipulating that the mortgagors were not to redeem the mortgaged property without paying not merely the amount of the mortgage-debt and interest, but also the amount due on a certain bond executed at the same time as the mortgage in respect of money due under a decree, and that, "unless the whole was paid off, neither the mortgagor nor any one else should have a claim." The mortgagee subsequently obtained a decree on the instalment bond and made several attempts to execute it, but failed, his darkhast being eventually rejected as time-barred. *Held* that the right of redemption was made conditional on the payment of what was due on the instalment bond—a condition which was unsatisfied as long as such sum remained unpaid, although in contemplation of law there might be no longer a bond debt still in existence owing to a decree having been passed on the bond, and that decree having become barred by limitation. SUNDAR MALHAR PATEL *v.* BAPUJI SHRIDHAR **[I. L. R., 18 Bom., 755**

342. ——— **Decree for redemption omitting to state consequence of non-payment of mortgage-money within time specified**—*Limitation—Transfer of Property Act (IV of 1882), s. 92.*—Where a Court gave plaintiff a decree for redemption of a mortgage conditioned on payment by him of the mortgage-money within a specified time from the date of the decree, but omitted to state in such decree what would be the consequence of the plaintiff's default in so paying in the mortgage-money,—*Held* that such omission could not operate to extend the period available to the plaintiff for payment beyond the maximum term provided for by s. 92 of Act IV of 1882. *Jai Kishen* v. *Bhola Nath, I. L. R., 14 All., 529,* referred to.

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

Bandhu Bhagat v. *Muhammad Taji, I. L. R., 14 All., 350,* dissented from. WAZIR *v.* DHUMAN KHAN [I. L. R., 16 All., 65

343. ——— Two mortgages between the same parties over the same property —Right to redeem one without the other—*Tacking—Transfer of Property Act (IV of 1882), ss. 61 and 62—Stat. 44 & 45 Vict., c. 41, s. 17.* —A mortgagee held two mortgages over the same property from the same mortgagor, the one being a usufructuary mortgage in respect of interest only, and the other being a simple mortgage. The mortgagor sued to redeem the usufructuary mortgage. The mortgagee objected that the mortgagor was bound to redeem both mortgages. *Held* that the mortgagor had the right to redeem one mortgage without redeeming the other, and that, in the absence of special contract to redeem both mortgages simultaneously, he could not be compelled to redeem them both lost. *Vithal Mahadev* v. *Daud valad Muhammad Husen, 6 Bom., A. C., 905,* dissented from. *Shuttleworth* v. *Laycock, 1 Vern., 245,* and *Jennings* v. *Jordan, L. R., 6 Ap. Cas., 698,* referred to. TAJJO BIBI *v.* BHAGWAN PRASAD [I. L. R., 16 All., 295

344. ——— Right of mortgagor making default in payment of mortgage-money at time fixed by decree for redemption—*Transfer of Property Act (IV of 1882), ss. 87, 89, 92 and 93.*—A mortgagor who has made default in payment of the mortgage-money within the time limited by the decree in a suit for redemption is not entitled to apply for execution of the decree after the time limited. VALLABHA VALIYA RAJA *v.* VEDAPURATTI [I. L. R., 19 Mad., 40

345. ——— Decree for foreclosure—*Transfer of Property Act (IV of 1882), s. 87—Mortgagor's application for extension of time.*—In a suit on a mortgage a decree for foreclosure was passed, a period of three months being fixed for the discharge of the mortgage-debt. The motgagor having made default, the decree-holder applied for and was placed in possession of the property. The mortgagor, to whom no notice had been given of the decree-holder's application, then applied for and obtained an extension of time for payment, and he made the payment and recovered possession. *Held* that the order was right since no order absolute of foreclosure had been made after notice to the mortgagor NARAYANA REDDI *v.* PAPAYYA . . . I. L. R., 22 Mad., 133

346. ——— Mortgage with possession—*Sale for arrears of revenue caused by default of mortgagee—Subsequent suit by mortgagor for redemption where mortgagee has become the purchaser.*—Where mortgaged property was sold at a Government sale for arrears of revenue,—*Held* that, if the sale took place owing to the mortgagee's default, it would not affect the mortgagor's right to redeem. The general rule, that a Government sale for arrears of revenue gives a title against all the world, is subject to the exception that, if it is caused by the default of a mortgagee, it does not take away the mortgagor's right to redeem the mortgage to recover the land. KALAPPA *v.* SHIVAYA [I. L. R., 20 Bom., 492

347. ——— Rights of redemption and foreclosure—*Power expressly given to the mortgagee to call in his money before the expiry of the term, Effect of, on right to redeem—Limitation put on right to redeem—Agreement restraining the right of redemption.*—The right of redemption and the right of foreclosure are always co-extensive, and from the postponement of the former the Court will infer an intention to postpone the latter in the absence of express provision on the point; where there is such express provision, giving the mortgagee power to foreclose at any time, any stipulation postponing the mortgagor's right to redeem is unilateral and void of consideration A Court of equity will not enforce any agreement in restraint of the right of redemption which is oppressive and unreasonable as giving the mortgagee an advantage not belonging to the contract of mortgage. A mortgagor cannot, by any contract entered into with the mortgagee at the time of the mortgage, give up his right of redemption or fetter it in any manner by confining it to a particular time or a particular description of persons. ABDUL HAK *v.* GULAM JILANI [I. L. R., 20 Bom., 677

348. ——— Right of lessee from ottidar to redeem—*Transfer of Property Act (IV of 1882), s. 91.*—A verumpattom tenant in Malabar claiming under a lease from the ottidar is entitled to redeem the prior kanam. PAYA MATATHIL APPU *v.* KOVAMEL AMINA . . I. L. R., 19 Mad., 151

349. ——— Suit by legitimate son of illegitimate member of the family to redeem a mortgage made by a previous legitimate owner.—The right, of an illegitimate son in a Hindu family to receive maintenance from the family property is a purely personal right, and does not descend to his son. *Held* that the legitimate son of an illegitimate member of a Hindu family, who, as such illegitimate son, might have had right to maintenance from the property of his father, had no such interest in the estate belonging to the family as would entitle him to redeem a mortgage made by a previous rightful and legitimate owner of the estate. BALWANT SINGH *v.* ROSHAN SINGH . I. L. R., 18 All., 253

On appeal to the Privy Council—ROSHAN SINGH *v.* BALWANT SINGH . I. L. R., 22 All., 191 [4 C. W. N., 353

where, however, this point was not decided.

350. ——— Decree giving a defendant, second mortgagee, a right to redeem a prior mortgage within a fixed period—*Effect of appeal—Limitation.*—When a decree gives a right of redemption within a certain specified period with a certain specified result to follow, if redemption is not made within such period, the mere fact of an appeal being preferred against it will not suspend the operation of such decree, and, unless the Appellate Court extends the period limited by the original

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

decree, the right of redemption will be barred if not exercised within the period so limited. The principle in *Jappar Nath Pande* v. *Jokhu Tewari, I. L. R., 18 All., 223,* applied. CHIRANJI LAL *v.* DHARAM SINGH . . . **I. L. R., 18 All., 455**

351. ——— **Execution of decree for redemption**—*Transfer of Property Act (IV of 1882), ss. 87, 89, and 92—Extension of time limited for payment of decretal amount.*—In the case of a decree for redemption or for foreclosure under the Transfer of Property Act, 1882, both of which decrees stand in this respect upon the same footing, no extension of the time limited by the decree for payment of the decretal amount can be made except for good cause shown, whether the order under s. 87, in a suit for foreclosure, or the order under s. 93, in a suit for redemption, has been applied for or not. *Poresh Nath Mojumdar* v. *Ramjodu Mojumdar, I. L. R., 16 Calc., 246,* dissented from. *Kanara Kurup* v. *Govinda Kurup, I. L. R., 16 Mad., 214,* distinguished. RAM LAL *v.* TULSA KUAR **[I. L. R., 19 All., 180**

See RAJARAM SINGHJI *v.* CHUNNI LAL **[I. L. R., 19 All., 205**

HARJAS RAI *v.* RAMESHOR **I. L. R., 20 All., 354**

But *see* KEDAR NATH RAUT *v.* KALI CHURN RAUR **[I. L. R., 25 Calc., 703**

352. ——— **Stipulation postponing the right to redeem beyond the time when the mortgagee can require payment of the mortgage-debt.**—A stipulation postponing the mortgagor's right to redeem beyond the time when the mortgagee can call in his money is inoperative. *Abdul Hak* v. *Gulam Zilani, I. L. R., 20 Bom., 677,* followed. SARI *v.* MOTIRAN MAHADU **[I. L. R., 22 Bom., 375**

But *see* KRISHANEAJI *v.* MAHESAVAR LAKSHMAN GONDHALEKAR . . **I. L. R., 20 Bom., 346**

353. ——— **Fetter on the equity of redemption**—*Agreement by mortgagor to sell the mortgage premises to the mortgagee.*—A stipulation in a mortgage, that if the mortgage-money is not paid on the due date the mortgagor will sell the property to the mortgagee at a price to be fixed by umpires, is unenforceable as constituting a fetter on the equity of redemption. KANARAM *v.* KUTTOOLY **[I. L. R., 21 Mad., 110**

354. ——— **Covenant fettering right of redemption**—*Covenant for pre-emption of mortgaged property in favour of mortgagee—Collateral advantage—Transfer of Property Act (IV of 1882), s 60.*—A provision in a mortgage which has the effect of preventing redemption of the mortgaged property on payment of principal, interest, and costs, in accordance with the terms of the mortgage, is a void provision which cannot be enforced; but a covenant conferring on the mortgagee a collateral advantage is enforceable, provided that it is not objectionable on the ground of unfairness or unreasonableness. *Held* that a covenant giving the mortgagee a right of pre-emption in respect of the mortgaged property at a price fixed by reference to another share in the same village was *primâ facie* a good covenant and enforceable by the mortgage. *Biggs* v. *Hoddinott, L. R., 1898, 2 Ch., 307; Santley* v. *Wilde, L. R., 1899, 2 Ch., 474;* and *Orby* v. *Trigg, 9 Mad., 2,* referred to. BIMAL JATI *v.* BIRANJA KUAR . . **I. L. R., 22 All., 238**

355. ——— **Right of mortgagor to redeem land so taken in exchange**—*Mortgagee taking other land in exchange for mortgaged land—Fraud—Forest Act (VII of 1878), s. 10, cl. (d)—Bombay Land Revenue Code (Bom. Act V of 1879), s. 56.*—In 1876 *B* mortgaged certain land (Survey Nos. 51 and 52) to *S*, who died, and his brother *G* succeeded him. The Forest Department, being desirous of acquiring the mortgaged land, entered into negotiations with *G*, who admitted that he was only a mortgagee. *B* (the mortgagor) had left the village, and could not be found. Under these circumstances, it was arranged that *G* should allow the assessment to fall into arrear; upon which Government would forfeit the holding, and that *G* should receive other land (Survey No. 105) in exchange. This arrangement was actually carried out. *G* received Survey No. 105 in exchange for the mortgaged land. In the order giving the land in exchange, *G* was styled mortgagee. The heir of *B* (the mortgagor) subsequently brought this suit to redeem Survey No. 105 from the mortgage of 1876. The defendant contended that this land was not subject to the mortgage, and that by the exchange *G* had acquired the full ownership in it. *Held* that the plaintiff was entitled to redeem Survey No. 105. The mortgagee, *G*, had lost the mortgagor's equity of redemption in the mortgaged land by fraud, and the land (Survey No. 105) which he obtained in exchange was therefore subject to the mortgage. He held the equity of redemption in this land as trustee for the mortgagor. BABAJI *v.* MAGNIRAM . . . **I. L. R., 21 Bom., 396**

356. ——— **Second suit for redemption**—*Transfer of Property Act (IV of 1882), ss. 92 and 93—Decretal money not paid within the time limited—Civil Procedure Code, s. 13—Res judicata—Right of suit.*—*Held* that a mortgagor, whether under a simple or a usufructuary mortgage who has obtained a decree for redemption and allows such decree to lapse by reason of his not paying in the decretal amount within the time limited for payment by the decree, cannot subsequently bring a second suit for redemption of the mortgage in respect of which such infructuous decree was obtained. *Golam Hoosein* v. *Alla Rukhee Beebee, 3 N. W., 62,* and *Maloji* v. *Sagaji, I. L. R., 13 Bom., 567,* followed. *Hari Ravji Chiplunkar* v. *Shapurji Hormasji Shet, I. L. R., 10 Bom., 461,* referred to. *Muhammad Samiuddin Khan* v. *Mannu Lall, I. L. R., 11 All., 386; Sami Achari* v. *Somasundram Achari, I. L. R., 6 Mad., 119; Periandi* v. *Angappa, I. L. R., 7 Mad., 423;* and *Ramunni* v. *Brahma Datton, I. L. R., 15 Mad., 366,* dissented from. HAY *v.* RAZI-UD-DIN . . **I. L. R., 19 All., 202**

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

357. ———— **Right of member of family to redeem**—*Mortgage by manager of undivided family—Sale of mortgaged property under money-decree obtained by mortgagee in respect of other debts—Purchase without leave of Court by mortgagee at Court-sale—Transfer of Property Act (IV of 1882), s. 99—Civil Procedure Code (Act XIV of 1882), s. 294.*—*S*, his son *S D* and his grandson the plaintiff *D* (son of a predeceased son) were undivided. In 1875 *S* mortgaged the property in dispute to *H* with possession. After *S*'s death in 1877, *S D* managed the whole estate. In 1878, during *D*'s absence from his native village, *H* sued *S D* as the heir and representative of *S* in respect of other debts, and, obtaining a money-decree against him, attached the mortgaged property in execution of the decree. After the attachment, *H*, without notifying or disclosing his mortgage-lien, caused several of the properties to be sold and, without obtaining leave from Court to bid at the sale, purchased some of them in the names of his defendants at an under-value and benami for himself. In 1892 *D* brought his suit against *H*, *S D* and the benami purchasers to redeem the properties so bought by *H*. The lower Courts found that the money-decree which *H* obtained and the execution-proceedings thereon bound the estate. It was contended that the execution-sales had not been objected to under s. 294 of the Civil Procedure Code and were therefore valid, and that the plaintiff consequently could not redeem. *Held* that the plaintiff might redeem, although he had not taken proceedings under s. 294. The fact that the mortgagee *H* had sold the property in execution of a money-decree did not free him from the liability to be redeemed as mortgagee. The sale was rendered nugatory, not by the provisions of s. 294 (though permission to bid granted under that section might have validated the purchase), but by the impossibility of a mortgagee by such sales and purchases freeing himself from the liability to be redeemed. MARTAND BALKRISHNA BHAT *v.* DHONDO DAMODAR KULKARNI . . . **I. L. R., 22 Bom., 624**

See MAYAN PATHUTI *v.* PAKURAN **[I. L. R., 22 Mad., 347**

358. ———— **Money decree obtained by mortgagee**—*Execution—Sale of mortgaged property in execution—Purchaser at such sale—Title of such purchaser—Transfer of Property Act (IV of 1882), s. 99.*—Prior to the passing of the Transfer of Property Act, a mortgagee obtained a money-decree against his mortgagor, and in execution sold the mortgaged property. The son of the mortgagee bought it at the sale. *Held* that by his purchase at the execution-sale the son took an absolute title, and was not liable subsequently to be redeemed at the suit of the heirs of the mortgagor. *Martand Balkrishna Bhat* v. *Dhondo Damodar Kulkarni, I. L. R., 22 Bom., 624,* distinguished. *Semble* A third person purchasing mortgaged property *bonâ fide* at a sale in execution of a money-decree obtained by the mortgagee against the mortgagor obtains a good title free from the mortgage-lien, unless the sale is made subject to it. HUSEIN *v.* SHANKARGIRI GURU SHAMBHUGIRI . . . . **I. L. R., 23 Bom., 119**

359. ———— **Impossibility of mortgagee freeing himself by such purchase from liability to be redeemed**—*Transfer of Property Act (IV of 1882), s. 99—Purchase by mortgagee holding decree for sale, of portion of mortgaged property, subject to mortgage—Trust Act (II of 1882), s. 88.*—A mortgagee having obtained a decree against his mortgagor for the sale of the mortgaged property, a portion of the latter was subsequently sold, subject to the said decree, in execution of a money-decree obtained by a third party against the mortgagor. The mortgagee purchased the portion so sold, whereupon the mortgagor presented a petition under s. 258 of the Code of Civil Procedure, claiming that the mortgagee was bound to discharge his mortgage-debt, and should be called upon to certify satisfaction of his decree. *Held* that petitioner was not entitled to the relief prayed for, but only to proceed upon the footing that the portion of the mortgaged property which had been purchased by the mortgagee remained, notwithstanding such purchase, redeemable by petitioner together with the remainder of the property. On the question whether the purchase by a mortgagee of a portion of the mortgaged property at a Court-sale in execution of the money-decree of a third party involves a taking advantage by the mortgagee of his fiduciary position as mortgagee,—*Held* that the principle of the impossibility of a mortgagee freeing himself from his liability to be redeemed as affirmed in *Martand* v. *Dhondo, I. L. R., 22 Bom., 624,* and *Mayan Pathuti* v. *Pakuran, I. L. R., 22 Mad., 347,* was applicable, even in the absence of fraud or collusion between the mortgagee and the third party in execution of whose decree the purchase of the equity of redemption had been made, and that such a purchase contravened the principle underlying s. 99 of the Transfer of Property Act and expressed in s. 88 of the Indian Trusts Act. ERUSAPPA MUDALIAR *v.* COMMERCIAL AND LAND MORTGAGE BANK **[I. L. R., 23 Mad., 377**

360. ———— **Right of son not party to suit to redeem his share**—*Mortgage of annuity—Sale of attached property at instance of mortgagee—Civil Procedure Code, s. 244—Transfer of Property Act (IV of 1882), s. 99, Sale contrary to provisions of.*—In 1848 an annuity had been settled on plaintiff's ancestor and his heirs in consideration of his withdrawal from a suit for partition then pending. In 1878 plaintiff's father and others then enjoying the annuity executed a bond for money due by them, mortgaging their rights under the said annuity. Instalments due under the bond having fallen into arrears, a suit was brought in 1889 in respect of them, and a decree obtained, which contained a provision that the right to the annuity should be liable to be proceeded against for the amount so due. Plaintiff was born in 1891. In 1893 an application was made for the issue of a proclamation of sale, and a sale ensued and a certificate was given to the purchaser, who was the decree-holder. Plaintiff having instituted this suit to set aside the said sale or to have it declared that it did not affect his right under the said annuity, *Held* (1) that, if there was in fact a decree for sale, plaintiff, as son of the judgment-debtor, born after the date of the decree, though before the sale, could not question the sale, nor would any right of redemption be left to the plaintiff; (2) that inasmuch as the decree was, on its true construction, not a decree for sale, the case was one of attached property being sold at the instance of the mortgagee in execution of a money-decree, and so within the prohibition of s. 99 of the Transfer of Property Act. The conditions under which a sale of mortgaged property is permissible under that section are not satisfied unless there is a decree for sale; and in the absence of such decree, the sale is prohibited; (3) that although a sale in contravention of the section is not absolutely void for all purposes, it is at least void against all persons who were not parties to the suit in which the decree for money was obtained; (4) that the rights of a Hindu debtor's son may be concluded by a proper mortgage-decree and sale thereunder, or, if there is no mortgage, by a decree for money and sale of the attached property, but they are not affected by a sale brought about in defiance of s. 99; (5) that the suit was not barred by s. 244 of the Code of Civil Procedure; and that plaintiff was entitled to decree for the redemption of his share. MATHURAMAN CHETTI *v.* ETTAPPASAMI . . . **I. L. R., 22 Mad., 372**

361. ——— **Right of redemption**—*Involuntary alienation—Execution proceedings—Revenue Sale Law (Act XI of 1859), ss. 13, 54—Sale for arrears of Government revenue—Mortgage—Sale in execution of mortgage-decree.*—A decree was obtained for the sale of a mortgaged property, being a share of an estate, on the 31st August 1889. In execution of that decree, the property was purchased by the plaintiffs on the 11th December 1891, and the sale was confirmed on the 5th March 1892. Meanwhile, pending the execution-proceedings, a larger share of the estate, including the share mortgaged, was purchased by the defendants at a revenue sale on the 30th September 1891, which sale was confirmed on the 11th March 1892. In a suit instituted by the plaintiffs for the possession of the property purchased by them, the defendants having questioned the validity of the mortgage-decree and contended that they were not bound by it, not being parties thereto, and having in the alternative claimed the right to redeem the mortgaged property,—*Held* that the defendants, having purchased a share of an estate at a revenue sale, held under the provisions of ss. 13 and 54 of the Sale Law, acquired it subject to the mortgage which they were bound in law to discharge before the sale in execution of the mortgage-decree had actually taken place, or before at any rate, that sale had been confirmed on the 5th March 1892; and that having failed to do so, and there being no equities to the contrary, their right of redemption was extinguished. HAR SHANKAR PRASAD SINGH *v.* SHEW *GOBIND* SHAW . **I. L. R., 26 Calc., 966**
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(*b*) REDEMPTION OF PORTION OF PROPERTY.

362. ——— **Division of liability under mortgage.**—Where money is advanced on a mortgage-debt, the liability cannot be divided. MUJEEDOONISSA *v.* DILDAR HOSSEIN . . **14 W. R., 216**

333. ——— **Right to redeem share of property where part has been sold for arrears of revenue.**—A mortgagor cannot redeem a share of the mortgaged property. This rule is not affected by the sale of part of the mortgaged lands for arrears of revenue. HASHIM *v.* AUJEET SINGH **[W. R., 1864, 217**

RAM BALUK SINGH *v.* RAM LOLL DOSS **[21 W. R., 428**

364. ——— **Payment of proportionate amount of debt**—*Right to retain property till whole is paid.*—A zur-i-peshgidar is entitled to retain the whole property pledged to him until the whole debt has been paid to him. It is optional with him to relinquish any portion either on receiving a proportionate amount of what is due to him or otherwise. HUREEHUR SINGH *v.* DABEE SAHOY **[W. R., 1864, 260**

365. ——— **Redemption of separate share**—*Right to retain possession till whole debt paid.*—A mortgagee is entitled to hold possession till the mortgage-debt is fully paid, and no person representing the original mortgagor, and claiming any portion of the mortgaged property, can sue to redeem his separate share, without proof of the satisfaction of the entire debt. RAZEEODDEEN *v.* JHUBBOO SINGH **[W. R., 1864, 75**

366. ——— *Redemption of whole estate by one of several mortgagors.*—Mortgage-debts are indivisible except where there is a distinct notice on the face of the mortgage-deed of the separate shares of the mortgagors. One co-mortgagor or his representative may redeem the entire estate, if joint and undivided, by payment of the whole of the mortgage-money. RAM KRISTO MANJHEE *v.* AMEEROONISSA BIBEE . . . **7 W. R., 314**

ALI REZA *v.* TARASOONDEREE . **2 W. R., 150**

367. ——— *Transfer of Property Act (IV of 1882), ss. 60, 82—Partial redemption—Contribution.*—*A* mortgaged two houses to *B* for R200. *C* purchased at a Court-sale *A*'s interest in one of the houses, and sold it to the plaintiff. The plaintiff sued to redeem the house, and prayed that the mortgagee be ordered to convey it to her on payment of R100. *Held* that the suit should be dismissed. KUPPUSAMI CHETTI *v.* PAPATHI AMMAL . . . **I. L. R., 21 Mad., 369**

368. ——— *Payment of proportionate part of debt.*—Where moneys were advanced to several mortgagors, who owned the mortgaged land in certain defined shares, and the mortgagee, by purchasing the interest of some of the mortgagors in such land, broke up the joint security, the remaining mortgagors were held to be entitled to

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

redeem on payment of a just proportion of the moneys advanced. KESREE *v.* SETH ROSHUN LAL **[2 N. W., 4**

369. ——— *Payment of proportionate part of debt.*—The mortgagors in a joint mortgage transaction are jointly liable to the mortgagees for the whole of the mortgage-debt, and some out of the number cannot bring a suit to redeem their own shares of the mortgaged property by payment of a proportional amount of the mortgage-debt. SALIG RAM SINGH *v.* BARUN RAI . **4 N. W., 92**

370. ——— *Suit to redeem land in possession of co-owner of equity of redemption.*—Where a mortgagee in possession acquires a right to a share in the property mortgaged, he cannot be compelled to surrender the mortgaged property on payment of the debt, or any part of it on payment of a proportionate amount of the debt, until the mortgagor has, by a proper suit for partition, ascertained definitely the shares of the co-owners. MARAKAR AKATH KONDARAKAYIL MAMU *v.* PUNJAPATATH KUTTU . . . **I. L. R., 6 Mad., 61**

371. ——— *One of several joint mortgagors before partition—Mortgagee who has acquired a share in the equity of redemption.*—The owner of a share in the equity of redemption need not obtain partition before suing for redemption. He is entitled to redeem the whole mortgage, and the fact that the mortgagee has himself purchased a portion of the equity of redemption does not defeat that right. *Marakar Akath Kondarakayil Mamu* v. *Punjabatath Kuttu, I. L. R., 6 Mad., 61,* dissented from. MORA JOSHI *v.* RAMCHANDRA DINKAR JOSHI . . . **I. L. R., 15 Bom., 24**

BHIKAJI DAJI *v.* LAKSHMAN BALA **[I. L. R., 15 Bom., 27 note**

372. ——— *Mortgage by three sharers—Partition of equity of redemption—Redemption by two sharers—Excess payment—Suit for redemption by the third sharer—Set-off.*—Three undivided brothers mortgaged certain land to the defendant. They afterwards separated and partitioned their property. Two of them redeemed their respective shares of the mortgaged land. Besides paying the defendant two-thirds of the sum due on the mortgage, they paid him R189-13-4, being two-thirds of a sum of R284-12-0, which he alleged he had been obliged to pay as assessment in respect of the mortgaged lands. Subsequently the plaintiff purchased the whole of the lands comprised in the mortgage, and he now sued to redeem the one-third share which remained in mortgage. The defendant claimed to charge the plaintiff with the remaining one-third of the sum which he alleged he had paid as assessment. The Subordinate Judge disallowed the defendant's claim, and ordered redemption on payment by the plaintiff of R570-10-[illegible], being one-third of the sum due on the mortgage. In appeal, the District Judge found that the defendant had not proved the alleged payment of assessment, and he allowed the plaintiff to deduct from the sum due on the mortgage R189-13-4 which had been paid to the defendant by the other two mortgagors. On second appeal by defendant,—*Held,* varying the decree of the District Judge, that the plaintiff was not entitled to this deduction. The three mortgagors had severed their interests. The plaintiff's right to redeem his one-third was perfectly distinct from the redemption by the other two mortgagors, and there was no longer any joint account to which the sums previously paid could be credited. LAKSHUMAN GIRIRAYA NAIK *v.* MADHAV KRISHNA SHENVI **[I. L. R., 15 Bom., 186**

373. ——— *Mortgage to co-sharer—Right of one or more co-owners to redeem in absence of partition.*—When several owners of an undivided share in immoveable property mortgage their share with possession to another undivided sharer, a smaller number than the whole body of co-mortgagors cannot sue to redeem the whole mortgage until there has been a partition of the property mortgaged among the several co-owners. *Marakar Akath Kondarakayil Mamu* v. *Punjapatath Kuttu, I. L. R., 6 Mad., 61,* followed. *Naro Hari Bhave* v. *Vithalbhat, I. L. R., 10 Bom., 648,* distinguished. THILLAI CHETTI *v.* RAMANATHA AYYAN . . . **I. L. R., 20 Mad., 295**

374. ——— *Purchase of equity of redemption of part of property by one of several mortgagees—Right of redemption of purchaser of another part.*—Where one of several mortgagees has purchased the equity of redemption as to a part of the mortgaged property, the purchaser of another part is not thereby entitled to redeem, unless he discharges the whole mortgage-debt. SOBHA SAH *v.* INDERJEET . . . . **5 N. W., 148**

375. ——— *Purchaser of estate jointly and separately mortgaged by co-sharers.*—The purchaser of a share in an estate which had been jointly mortgaged by the several shareholders, and subsequently further charged by all by deeds to which one or more were parties, sued for the redemption of the whole estate by payment of the original mortgage-debt. *Held* that, representing the whole of the co-sharers, he must, if he desired to redeem, discharge all the debts with which they had jointly or severally charged the property. BHUGWAN DASS *v.* MAHOMED JAFER . **4 N. W., 161**

376. ——— *Purchase by mortgagee of a share in mortgaged property—Redemption of mortgage.*—Where all the proprietors of an estate joined in mortgaging it, and the mortgagee subsequently purchased the share in such estate of one of the mortgagors, thereby breaking the joint character of the mortgage, and one of the mortgagors sued to redeem his own share and also the share of *B*, another of the mortgagors,—*Held* that he was entitled to redeem his own share, but he could not redeem *B's* share against the will of the mortgagee. KURAY MAL *v.* PURAN MAL **[I. L. R., 2 All., 565**

377. ——— *Division of mortgagee-security—Acquisition by mortgagee of*

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8. REDEMPTION—*continued.*

ownership of mortgaged property.—The rule of law against breaking up the integrity of a mortgage-security is a rule aiming at the protection of the mortgagee, and is not applicable to cases where the mortgagee himself has acquired the ownership of a portion of the mortgaged property. KUDHAI *v.* SHEO DAYAL . . . . **I. L. R., 10 All., 570**

378. ———— *Transfer of Property Act (IV of 1882), s. 60—Suit to redeem entire mortgage by purchaser of equity of redemption of a portion—Indivisibility of mortgage.*—The mortgagors of four items of property originally mortgaged for an entire sum sold the equity of redemption of one item to the plaintiff who now sued the mortgagee to redeem the whole of the four items. *Held* that he was entitled so to do. A mortgage for an entire sum is from its very purpose indivisible; and that character of indivisibility exists with reference not only to the mortgagee, but also to the mortgagor; save by special arrangement between all the parties interested, neither mortgagor nor mortgagee, nor persons acquiring a partial interest through either, can obtain relief under the mortgage except in consonance with that principle of indivisibility. HUTHASANAN NAMBUDRI *v.* PARAMESWARAN NAMBUDRI

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379. ———— *Purchase by one of several mortgagees of a portion of the mortgaged property—Redemption by one of the mortgagors of his own share.*—The fact that one of several mortgagees has acquired the equity of redemption of the share of one of the mortgagors in the mortgaged property does not give another of the mortgagors the right to redeem his share in the mortgaged property. *Sobha Shah* v. *Inderjeet, 5 N. W., 148,* distinguished. *Kuray Mal* v. *Puran Mal, I. L. R., 2 All., 565,* and *Azimut Ali Khan* v. *Jawahir Singh, 13 Moore's I. A., 404,* referred to. MAHTAB RAI *v.* SANT LAL . **I. L. R., 5 All., 276**

380. ———— *Usufructuary mortgage—Satisfaction of mortgage-debt from usufruct—Suit for whole mortgaged property by some of several mortgagors.*—In a suit by some of several co-mortgagors to redeem the entire property mortgaged, on the ground that the mortgage-debt had been satisfied out of the usufruct,—*Held* that the plaintiffs could only claim their own shares, and the Court of first instance should determine the extent of the shares after making the other co-mortgagors parties. FAKIR BAKHSH *v.* SADAT ALI

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381. ———— *Destruction of indivisible character of property.*—Where the equity of redemption of different plots of land in the possession of a usufructuary mortgagee under one entire contract has been sold to two different persons and the mortgagee has abandoned his possession of one plot, and taken a lease from the purchaser of that plot, and thereby destroyed the indivisibility of the original contract, the purchaser of the other plot is entitled to redeem his land on payment of a proportionate amount of the mortgage-debt. MARANA AMMANNA *v.* PENDYALA PERUBOTULU

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382. ———— **Redemption of whole property by owner of portion**—*Proportional contribution.*—The owner of a part of the equity of redemption can redeem the whole property mortgaged from the mortgagee after paying the whole of the money due on the mortgage, and has a lien on the share of the co-owner for the proportional contribution of that share to the sum expended in redemption, and this right or interest is as capable of transfer as the aggregate group of interests called the ownership. *B* in one transaction mortgaged two fields (Nos. 20 and 22) to *J*. On the 16th January 1869, in execution of a decree against *B*, his interest in one of them (No. 22) was sold, and *R* became the purchaser. *R*, however, did not take possession. On the 25th April 1877, *B* paid off *J's* mortgage with money borrowed from the defendant *V*, to whom *B* again mortgaged the two fields as security. *R* died, leaving a son *A*, whose interest in field No. 22 was conveyed by his grandfather (*R's* father) to the plaintiff. *A* was not a party to the conveyance, but attested it with an expression of assent. The plaintiff now sued the defendant *V* to eject him from No. 22. *Held* that the defendant *V* had a lien on No. 22, and that the plaintiff could not eject him without paying him the amount of such lien. When *R* purchased No. 22, he and *B* stood in equal positions towards the mortgagee, *J*. *J* might enforce his rights under the mortgage against both together, or against either of the two, leaving that one, if forced to pay the whole sum, to recover the proper rateable contribution from the other. On the other hand, *R* might redeem the whole and seek contribution from *B*, or *B* might redeem the whole and seek contribution from *R*. Whichever of the two redeemed, he would have a lien on the share of the other for the proportional contribution of that share to the sum expended in redemption. *B* did, in fact, redeem the mortgage to *J*, and thereupon became entitled to a lien on *R's* share of the property, *viz.*, field No. 22. He then mortgaged his whole interest to the defendant *V*, including his lien on No. 22. *R*, who had not yet obtained possession of No. 22, was entitled to get it only on paying off the amount of the lien which had passed to the defendant *V*. VITHAL NILKANTH PINJALE *v.* VISHVASRAV BIN BAPUJIRAV

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383. ———— *Purchaser of equity of redemption of part of an estate.*—The purchaser of the equity of redemption of part of an estate under mortgage is entitled to redeem the whole of the mortgaged estate if the mortgagee insists on his right to have it so redeemed. When the former elects to pay the entire mortgage-debt, he puts himself in the place of the mortgagee redeemed, and acquires a right to treat the original mortgagor as his mortgagor, and to hold that portion of the estate in which he would have no interest but for the payment as a security for any surplus payment he may have made. Asansab Ravuthan *v.* Vamana Rau . . . **I. L. R., 2 Mad., 223**

384. ——— *Assignee of portion of equity of redemption—Suit for redemption.*—In a suit by a person to whom seven-eighths of the equity of redemption had been assigned for redemption, it was held that the plaintiff was entitled to redeem the whole mortgage, although he was assignee of only seven-eighths of the equity of redemption, as the owner of the remaining one-eighth was joined as defendant, and did not apply to be made plaintiff. Nainappa Chetti *v.* Chidambaram Chetti **[I. L. R., 21 Mad., 18**

385. ——— *Mortgage of property owned by co-sharers—Subsequent severance of interests—Suit by one co-sharer to redeem more than his share—Time of taking objection.*—In 1805 a two annas share in certain property held by co-sharers was mortgaged to the defendant. The mortgage was effected by the mortgagor as manager of all the co-sharers in union. In 1848 one of the co-sharers redeemed his share of two pies in the mortgaged property, and a further share of two pies therein was redeemed by a second co-sharer in 1867. The plaintiff was admittedly the owner of another two pies share; but he now sued the defendant to redeem the whole of the property still unredeemed, *viz.*, a one anna eight pies share of the original mortgage. The defendant objected that the plaintiff could only redeem his own two pies share, which had become separated from the rest. The plaintiff denied that the estate had been divided. *Held* that the plaintiff's claim being to redeem all that remained of the estate in the mortgagee's possession, the suit could not be maintained, unless all the other persons interested in the equity of redemption were before the Court either as co-plaintiffs or as defendants. Without their presence, the suit could not be properly disposed of, and the excuse, that the defendant did not take objection at the right time, had, under such circumstances, no validity. As owner of a two pies share, which by consent of all interested had become an estate wholly separated from the other parts of the original aggregate, the plaintiff would have been bound to set forth the transactions on which his right rested. Ragho Salvi *v.* Balkrishna Sakharam . . . . **I. L. R., 9 Bom., 128**

386. ——— **Partial redemption**—*Beng. Reg. I of 1798, s. 5.*—Where the contract between a mortgagor and a mortgagee provides for the payment of the principal sum on a specified date, and for the payment in the meantime of interest thereon, the mortgagor cannot have a partial redemption of the property under Regulation I of 1798, which was not intended (s. 5) to alter the terms of a contract settled between the parties except as regards illegal interest. Should the mortgagee consent to allow the principal sum, or part of it, to be paid off before the time fixed, he would be entitled, when agreeing to this, to make the payment of interest a condition of such redemption. Burno Moyee Dossee *v.* Benode Mohinee Chowdhrain . **20 W. R., 387**

387. ——— *Property redeemable on payment of two separate amounts.*—Where a certain quantity of land was the subject of one zur-i-peshgi mortgage redeemable on payment of R225 to *K* and R275 to *M*, the mortgagees taking possession in moieties, it was held that the mortgagor could not recover any portion of the land until he had paid up all the money due upon the mortgage,—*e.g.*, as long as he had not paid up the amount due to *M*, he could not claim even the land allotted to *K*, whose portion had been liquidated. Imam Ali *v.* Oograh Singh . . . **22 W. R., 262**

388. ——— *Purchase of portion of equity of redemption by mortgagees—Apportionment of mortgage-debt.*—The plaintiffs in this suit were purchasers of the equity of redemption in a portion of certain mortgaged premises which were sold in lots, and they brought this suit against the mortgagees, who were also purchasers of the equity of redemption of several of the lots. They made the purchasers of the other lots parties to the suit, and sought to redeem their own portion of the estate and to recover possession of their own portion and the portion purchased by the purchasers other than the mortgagees, on payment into Court of a sum sufficient to cover the proportion of the mortgage-debt attributable to the said parcels. The mode of applying the whole of the mortgage-debt between the different mouzahs of the mortgaged estate in such a case pointed out. Azimut (Ajimut) Ali Khan *v.* Jowahir Singh

[14 W. R., P. C., 17 : 13 Moore's I. A., 404

Beekon Singh *v.* Deen Dyal Lall **[24 W. R., 47**

389. ——— *Mortgage of one estate consisting of several villages—Purchase by mortgagee of part of equity of redemption.*—Where sixteen villages were included in one mortgage and the equity of redemption in one village was sold to the plaintiffs,—*Held* that they were entitled to sue the mortgagee, who had purchased the equity of redemption in twelve of the villages, for redemption of their own and three other villages; a previous suit for redemption of their one village having been dismissed on the objection of the mortgagee that they were not entitled to sue to redeem their one village alone. Ahmed Ali Khan *v.* Jawahir Singh **[1 Agra, 3**

390. ——— *Purchase of equity of redemption of part of village.*—The entire village was mortgaged to the defendants, who subsequently obtained by purchase the equity of redemption as to a portion of it. The equity of redemption in another portion was sold to two other persons jointly, one of whom (the plaintiff) claimed to represent by purchase, the other by descent. The plaintiff having sued to redeem the whole share, the defendants questioned the validity of the sale to the persons through whom the plaintiff claimed, and impugned the plaintiff's right as heir. *Held* that the mortgagees, who, on the occasion of the sale impugned, had sued to establish their claim to preemption, were not now entitled to question the sale; and, secondly, inasmuch as the estate, or the portion of it held by the persons whom the plaintiff claimed to represent, was a joint estate, the plaintiff, having established his right to one moiety by purchase, was entitled to redeem the whole, whether his title to the other moiety by heirship was proved or not. BITHAL NATH *v.* TOOLSEE RAM . . **1 Agra, 125**

391. ——— *Purchase of portion of equity of redemption.*—The equity of redemption in two mouzahs (the mortgage being joint) was sold in satisfaction of a decree by a third party, and purchased partly by plaintiff and partly by the mortgagee himself. *Held*, on plaintiff's claim for redemption of the part of the mortgaged property purchased by him, that under such circumstances the whole burden of the mortgage-debt could not be thrown on a portion of the equity of redemption, and the plaintiff would be entitled to redeem the portion of the property purchased by him on payment, not of the whole, but of such portion of the debt as was proportionate to the relative value of the mortgaged properties. MAHTAB SINGH *v.* MISREE LALL **[2 Agra, 88**

392. ——— *Purchase of portion of equity of redemption.*—An entire mouzah had been mortgaged by way of usufructuary mortgage. The plaintiff subsequently purchased a four annas share from the heirs of some of the mortgagors, and sued for possession of his purchased share on the averment that the whole of the mortgage-debt and interest had been satisfied. *Held* that he was not precluded from suing on the ground that he claimed only a portion of the mortgaged property. LALLA DABEE PERSHAD *v.* BEHAREE LALL **3 Agra, 33**

393. ——— *Suits heard together brought by co-sharers of whole estate.*—*A* granted a zur-i-peshgi lease of certain lands to the defendants for a fixed term of years, which was to continue after the expiry of the term so long as the money advanced remained unpaid. Shortly afterwards *A* evicted the defendants, and sold the land to *C* and *D* in the proportion of twelve annas and four annas. The defendants sued all the three, and obtained a decree for possession and mesne profits. They never got back possession, but recovered the mesne profits from *A*. On the expiry of the term of the lease, *C* and *D* each brought a suit to redeem his own share of the estate after payment into Court of the money advanced, in amounts proportionate to the share of the land purchased by each. The two suits were heard together. *Held* they were entitled to redeem. WUZUROONNESSA *v.* SAEEDUN. JOYMUNGUL SINGH *v.* SAEEDUN **[B. L. R., Sup. Vol., 613: 6 W. R., 240**

394. ——— *Deposit of proportionate share of debt—Purchase of portion of equity of redemption by mortgagee.*—*R* mortgaged to *N* certain property, of which *N* caused a moiety to be sold in execution of a money-decree against *R*, and himself became the purchaser. The moiety was sold subject to *N*'s mortgage in satisfaction of another decree, and purchased by *L*. *N*, in exercise of his rights as mortgagee, attached and proceeded to sell the share of *L* in the portion purchased by him; and *L* thereupon, with a view to stay the sale, deposited an amount proportionate to the share held by him. The sale, however, was allowed to proceed. *Held* in a suit brought by *L* against *N* to set aside the sale, he was entitled to a decree. NATHOO SAHOO *v.* LALAH AMEER CHAND **[15 B. L. R., 303: 24 W. R., 24**

395. ——— *Equity of redemption, Attachment of—Payment of proportionate share of mortgage-debt.*—*A*, the holder of a decree upon a mortgage-bond, attached in execution a one-third share of a certain mouzah, one of seventeen mouzahs included in the mortgage, and the equity of redemption in which one-third share had been purchased by *B*. *Held* that although, as laid down in *Azimut Ali Khan* v. *Jowahir Sing, 13 Moore's I. A., 404*, *B* would have been at liberty to insist that his one-third share should be burthened with no more than a proportionate amount of the original mortgage-debt, and might claim to redeem such share upon payment of that quota, yet, as he had not shown what that proportion was, nor paid it into Court, that *A* under the circumstances was entitled to enforce his attachment. HIRDY NARAIN *v.* ATTAOOLLAH **[I. L. R., 4 Calc., 72: 2 C. L. R., 580**

396. ——— *Contribution—Suit for redemption of share of property sold in execution of decree for mortgage-debt.*—*M*, *B*, and *N* held mouzah D in equal one-third shares, and *M* also held a share in mouzah A. On the 3rd January 1863 *M* and *B* mortgaged their shares in mouzah D to *L* to secure a loan of certain moneys. On the 16th March 1870, *M*, *B*, and *N* mortgaged mouzah D to *R* to secure a loan of R600, and on the same day, by a separate deed, they mortgaged mouzah D, and *M* mortgaged his share in mouzah A to *R*, to secure a loan of R1,600. On the 8th December 1875 *L* obtained a decree for the sale of the shares of *M* and *B* in mouzah D for the satisfaction of the mortgage-debt due to her. On the 18th April 1876 *R* obtained a decree for the realization of the mortgage-debts due to him by the sale of mouzah D and *M*'s share in mouzah A. On the 23rd October 1876 the shares of *M* and *B* in mouzah D were sold in execution of *L*'s decree, and were purchased by *R*. A portion of the purchase-money was applied to satisfy *L*'s decree, and the balance of it was deposited in Court. Instead of applying to the Court to pay him this balance in execution of his decree dated the 18th April 1876, *R* attached and obtained payment of such balance in execution of a decree for money which he held against *M* and *B*. On the 20th June 1877, *R*, in execution of his decree dated the 18th April 1876, brought to sale *N*'s one-third share in mouzah D and became its purchaser. On the 20th July 1877 *R*, in execution of a decree for money against *M*, brought to sale his share in mouzah A and became its purchaser. *Held*, in a suit by *N* against *R*, in which he claimed that the sum due by him under the two mortgages dated the 15th March 1870, and the decree dated the 16th April 1876, might be ascertained, and that, on payment of the amount so ascertained, the sale of his one-third share in mouzah D might be set aside, and such share declared redeemed. *Held* that the sale of *N*'s share in mouzah D could not be set aside. *Held* also that, if it were shown that the sum realized by the sale of his one-third share in mouzah D exceeded the proportionate share of his liability on the two mortgages, he was entitled to recover one moiety of such excess as a contribution from mouzah A. As it appeared that there was such an excess, the Court gave *N* a decree for a moiety of such excess, together with interest on the same from the date of the sale of *N*'s share at the rate of 12 per cent. per mensem; and further directed that, if such moiety, together with interest, were not paid within a certain fixed period, *N* would be at liberty to recover it by the sale of the share in mouzah A, or so much thereof as might be necessary to satisfy the debt. BHAGIRATH *v.* NAUBAT SINGH

[I. L. R., 2 All., 115

397. ———— *Sale of equity of redemption of two parcels—Second mortgage of six parcels and redemption of one by mortgagor—Transfer of Property Act, s. 60—Redemption by purchaser of two parcels on payment of proportionate amount of debt decreed.*—In 1873 *R* mortgaged to *S* seven parcels of land (items 1-7) for R300. In 1880 *M* purchased *R*'s rights in items 1 and 2. In 1881 *R* redeemed item 5 on payment of R20, and executed a second mortgage of the rest to *S* for R200. *Held* that *M* was entitled to redeem items 1 and 2 on payment of a proportionate amount of the first mortgage-debt. SUBRAMANYAN *v.* MANDAYAN . . . **I. L. R., 9 Mad., 453**

398. ———— *Breaking up security—Mortgagee allowing mortgagor to pay a portion of the mortgage-debt and releasing part of the mortgaged property—Transfer of Property Act (IV of 1882), s. 60.*—A mortgagee, by allowing his mortgagor to pay a portion of the mortgage-debt and releasing a proportionate part of the mortgaged property, does not thereby entitle the mortgagor or his representative to redeem the rest of the mortgaged property piecemeal. *Marana Ammanna* v. *Pendyala Perubotulu, I. L. R., 3 Mad., 230,* and *Subramanyan* v. *Mandayan, I. L. R., 9 Mad., 453,* not followed. LACHMI NARAIN *v.* MUHAMMAD YUSUF

[I. L. R., 17 All., 63

399. ———— *Subsequent mortgage of same land—Decree on first mortgage—Effect of sale in execution of some of mortgaged land and purchase by subsequent mortgagees subject to their own mortgage—Subsequent suit by mortgagors for redemption of lands other than those sold—Apportionment of mortgage-debt.*—In 1874 plaintiffs mortgaged to one *S* seven fields, of which four were Survey Nos. 22, 23, 40, and 41. In 1876 they mortgaged these same four fields with other lands to the defendants. In 1877 *S* obtained a decree upon his mortgage, and in execution sold only Nos. 22, 23, and 41, which realized sufficient to satisfy his decree. These three fields were, on the application of the defendants, sold subject to their mortgage, and they themselves purchased them at the sale. The plaintiffs now sued to redeem the remaining lands comprised in the mortgage of 1876, exclusive of those which had been sold in execution. *Held* that they were entitled to redeem this part of the mortgaged property, as the mortgagees had themselves acquired the plaintiffs' (mortgagors') interest in the other part and so severed their claim under the mortgage. *Held* also that the plaintiffs were entitled to redeem on payment of such portion of the mortgage-debt as remained after deducting the portion of it to which the lands purchased by defendants were liable. PIRJADA AHMADMIYA PIRMAYA *v.* SHA KALIDAS KANJI

[I. L. R., 21 Bom., 544

400. ———— *Hindu law—Widow's estate—Mortgage by two co-widows—Sale of equity of redemption in execution of decree against one widow—Suit to redeem by other widow—Decree for redemption of moiety on payment of moiety of mortgage amount.*—A mortgage of ancestral estate having been made by *A* and *B*, two Hindu co-widows, the equity of redemption of the said estate was sold in execution of a decree for money against *B* only and purchased by the mortgagee. *Held* that *A* was entitled to redeem only a moiety of the estate during the lifetime of *B*. ARIYAPUTRI *v.* ALAMELU **I. L. R., 11 Mad., 304**

401. ———— *Transfer of Property Act (IV of 1882), s. 60—Effect of purchase by mortgagee of portion of the mortgaged property.*—The purchase of a part of the mortgaged property by a mortgagee, subject to his mortgage, has not necessarily the effect of fully discharging the mortgage, without regard to the value of the property purchased and the price paid for it, whether such purchase be made in execution of a simple decree for money or in execution of a decree obtained by the mortgagee himself upon a subsequent mortgage, although it is possible that under some circumstances such purchase may have the effect of extinguishing the mortgage. *Ahmad Wali* v. *Bakar Husain, Weekly Notes All., 1883, p. 91,* overruled. *Azimut Ali Khan* v. *Jowahir Sing, 13 Moore's I. A., 404; Nilakant Banerji* v. *Suresh Chandra Mullick, I. L. R., 12 Calc., 414; Mahtab Singh* v. *Misree Lall, 2 Agra, 88; Bitthul Nath* v. *Toolsee Ram, 1 Agra, 125; Kesree* v. *Seth Roshun Lal, 2 N. W., 4; Kuray Mal* v. *Puran Mal, I. L. R., 2 All., 565; Mahtab Rai* v. *Sant Lal, I. L. R., 5 All., 276; Sumera Kuar* v. *Bhagwant Singh, Weekly Notes, All., 1895, p. 1; Chunna Lal* v. *Anandi Lal, I. L. R., 19 All., 196; Khwaja Bakhsh* v. *Imaman, Weekly Notes, All., 1895, p. 210; Ballam Das* v. *Amar Raj, I. L. R., 12 All., 537;* and *Bisheshar Singh* v. *Laik Singh, I. L. R., 5 All., 257,* referred to. NAND KISHORE *v.* HARI RAJ SINGH

[I. L. R., 20 All., 23

402. ———————— *Purchase by third parties of mortgagee's interest in portions of mortgaged property—Redemption and apportionment of liability of purchasers for the mortgage charge—Joinder of parties—Mortgage account—Form of decree.*—Purchasers of the right, title, and interest of a mortgagor in certain portions of the mortgaged property, sold in execution of a prior decree against the mortgagor, were added as co-defendants in a mortgagee's suit against the mortgagor for foreclosure on failure to redeem. As against these purchasers, the suit was dismissed with costs, on the ground that their claims to portions of the mortgaged property, under titles prior to, and independent of, the mortgagee's title, could not be decided therein. A decree was then made against the mortgagor, and on his subsequent failure to redeem or to pay the debt, his equity of redemption was sold, and was bought by the mortgagee. In a suit brought by the mortgagee against the representatives of one of the said purchasers, who refused to deliver possession of the portion,—*Held* that (*a*), as this purchaser had disclaimed the right to redeem the portion, and had alleged a paramount title, causing the dismissal of the suit as against him, he and those claiming under him were precluded from afterwards claiming to redeem; and (*b*) the proportion of mortgage charge for which he was liable could not be apportioned by the taking an account as between him and the mortgagee alone, in the absence of the purchasers of the other portions. *Azimut Ali Khan* v. *Jowahir Singh, 13 Moore's I. A., 404,* referred to. A decree which ordered that the defendants, without any account being taken at all, should retain possession of the portion purchased as above stated, clear of the proportion of mortgage-debt chargeable thereon, on payment to the mortgagee of the sum for which he had bought the equity of redemption, was held to be incorrect, and was accordingly reversed. NILKANT BANERJI *v.* SURESH CHANDRA MULLICK

[I. L. R., 12 Calc., 414 : L. R., 12 I. A., 171

403. ———————— *Right of one of several joint mortgagors to redeem the whole estate—Parties to a redemption suit.*—In the case of joint-family property, which, though held in certain shares by the several coparceners, is mortgaged as a whole and redeemable upon payment of the entire sum, each and every one of the mortgagors has a right to redeem the whole estate, seeking his contribution from the rest. The rule is the same as regards any persons, other than the original mortgagors, who have acquired any interest in the lands mortgaged by the operation of law, or otherwise in privity of title. The plaintiffs sued to redeem a sixteen pies takshim of the khoti village of Shirbe, which had been jointly mortgaged by *S*, the owner of one-half share of the takshim, and *H*, the eldest of the four sons of *P*, the owner of the remaining half share. The plaintiffs were the owners, by purchase at two Court-sales, of the equity of redemption of two out of the eight pies share belonging to *S*, and of one quarter of the eight pies share belonging to *P*. One of these sales was in execution of a decree against *R*, the eldest of the five sons of *S* and the other in execution of a decree against *H*. After the institution of the suit, the defendants purchased privately the shares in the equity of redemption belonging to Bala, the fifth son of *S*, and to Saya and Devji, two of the sons of Baba, the fourth son of *S*. Under these sales, they claimed to be owners of a four pies share in the takshim. Pending the appeal in the District Court, the defendants allowed *L*, the grandson of *P*, to redeem a two pies share, and *L's* brother, *R*, to redeem a pie share. *Held* that, as the sixteen pies takshim of the khoti village, though held in certain shares by the original mortgagors, was undivided family property, which was mortgaged as a whole and for an entire sum, the plaintiffs, as owners by purchase of a part of the equity of redemption, had a right to redeem the whole of the sixteen pies takshim; and this right could not be affected by the conduct of the defendants *post litem motam*, either by their purchase of a share in the equity of redemption pending the suit, or by the partial redemption allowed by them pending the appeal. *Held* also that the defendants had no power to permit partial redemption, as before partition none of the co-sharers could redeem any particular share. NARO HARI BHAVE *v.* VITHALBHAT

[I. L. R., 10 Bom., 648

SAKHARAM NARAYAN *v.* GOPAL LAKSHUMAN

[I. L. R., 10 Bom., 656 note

ALIKHAN DAUDKHAN *v.* MAHOMADKHAN SHAMSHERKHAN DESMUKH

[I. L. R., 10 Bom., 658 note

404. ———————— *Sale by mortgagor of part of mortgaged property pending redemption suit—Sale by mortgagor of rest of mortgaged property after decree for redemption—Application by purchasers for execution of decree—Subsequent suit for redemption by one purchaser—Sale pendente lite.*—One *M* sued the defendant *R* for partition. The defendant pleaded a prior partition, and alleged that the property which *M* now sued to recover had been mortgaged by *M* to him (the defendant). Pending the suit, *M* sold to the plaintiff a portion of the property claimed from the defendant. Subsequently to this sale, a decree was passed in the suit, by which it was declared that the mortgage alleged by the defendant had been proved, and that *M* should redeem within six months from the date of the decree. Subsequently to this decree, —*viz*, on 25th November 1879,—*M* sold the remainder of the mortgaged property to one *H S*. The two purchasers (*viz.*, the plaintiff and *H S*) then made a joint application for execution of the decree for redemption. The Subordinate Judge held, as to the plaintiff, that the plaintiff having purchased *pendente lite*, and having become *M's* assignee prior to the decree, was not entitled to come in under s. 232 of the Civil Procedure Code (Act X of 1877) to get the decree enforced; and on 6th March 1880 an order was made that *H S* should redeem the whole property on payment of R100 and costs. *H S* subsequently sold his interest to the mortgagee, *R*. In

MORTGAGE—*continued.*

8. REDEMPTION—*continued.*

1880 the plaintiff brought the present suit for redemption against *M* (the mortgagor) and the defendant *R* (the mortgagee), alleging (*inter alia*) that *M*, having sold the property, had not sought to execute the former decree for redemption. The defendant *R* in his written statement alleged that the sale by *M* to the plaintiff was fraudulent; that the plaintiff as purchaser from *M* had not applied to be made a party to the former suit; that *M* having failed to redeem as ordered by the said decree within the period specified, neither he nor the plaintiff was now entitled to sue. *Held* that the plaintiff's suit was unsustainable. By the sale to the plaintiff the rights of *M* came to the plaintiff subject to the result of the suit then pending in which he did not choose to get himself made a co-plaintiff. When the decree was passed, it was only through a right derived from *M* that the plaintiff could have a *locus standi* in the further proceedings, and he applied for execution as assignee, and therefore as representative of *M* under s. 244 of the Code of Civil Procedure (X of 1877). As such representative, he might have appealed, but did not, against the order of the 6th March 1880, passed on the application made by him jointly with *H S*. He had this right of appeal as representative of *M*, but he could not bring a fresh suit. If he was not a representative of *M*, then he was a stranger to the proceedings under the decree; and as *M* took no steps to fulfil the decree, the right to redeem was foreclosed in six months from the date of the decree,—*i.e.*, in May 1881. The plaintiff could not, by any step, prevent the right of the defendant as mortgagee against *M* from growing and perfecting itself during the six months allowed for redemption. RAMCHANDRA KOLATKAR *v.* MAHADAJI KOLATKAR

[I. L. R., 9 Bom., 141

405. ——— *Right to redeem share coming to person by inheritance.*—The plaintiff recognized the validity of a mortgage for a term of twenty years of her deceased father's estate made in 1854 by her two brothers, nor did she dispute the sale in 1863, after the death of the brothers, of the estate to the mortgagees by *M*, her mother, describing herself as sole owner, as a transfer of *M's* rights. She claimed to have a right to redeem from the mortgage in 1854, in due course of time, the share in the estate which devolved upon her by right of inheritance from her father and brothers, the sale-deed of 1863 notwithstanding. The purchase-money under the sale-deed represented personal debts of *M* and *N*, one of the brothers. The plaintiff did not claim as an heir of *M*, whose death was not known for certain. *M* did not profess in the sale-deed to be acting for her daughter either as guardian or as one of *N's* heirs managing for them all. The plaintiff was apparently not a minor at the time, and *M* was not an heir of *N*, being his step-mother. Under Mahomedan law, she could not have disposed of her daughter's property as her guardian, and not being one of *N's* heirs she could not deal with his estate on behalf of his real heirs. At the time of sale half the mortgage term had not expired, the mortgage-debt was not claimable at the time, and the sale with a view to its liquidation was unnecessary. Under these circumstances, the plaintiff's claim was decreed. IMAMAN *v.* LALTA BUKSH . . . . **7 N. W., 343**

406. ——— *Redemption of a share of mortgaged property upon payment of proportionate debt—Parties—Transfer of Property Act (IV of 1882), s. 60—Interest.*—Where a suit was brought upon a mortgage against the original mortgagor, and upon the latter's death all his heirs were not brought on the record and in execution of the decree thus obtained the mortgaged property was sold,—*Held* that, in a suit by the heirs not on the record, they were entitled to redeem their share of the mortgaged property upon payment of a proportionate share of the mortgage-debt. SURYA BIBI *v.* MONINDRA NATH ROY . **4 C. W. N., 507**

(*c*) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM.

407. ——— **Redemption after expiry of time**—*Mortgage becoming absolute on default of redemption – Security for repayment of loan.*—Where an instrument of mortgage, though in terms it transfers an estate on failure to repay the mortgage-money on a fixed day, yet appears clearly to have been entered into by the parties for securing repayment of a loan, the mortgagor, making the security subservient for the purpose for which it was created, may in equity and good conscience redeem the property by paying off the principal debt and interest, though the stipulated time for payment has been allowed to pass by. RAMJI BIN TUKARAM *v.* CHINTO SAKHARAM . . . . **1 Bom., 199**

MUHAMMAD VALAD ABDUL MULNA *v.* IBRAHIM VALAD HASAN . . . **3 Bom., A. C., 160**

408. ——— *Conditional sale —Dhristabandhaka.*—A dhristabandhaka, or Hindu instrument by which visible property is mortgaged, which names a time for payment of the money borrowed, and stipulates that on default the mortgagee shall be put into exclusive possession and enjoyment of the property, will not be treated strictly as a conditional sale, even though the instrument expressly provides that on default the transaction shall be deemed an outright sale; and in a suit by the mortgagee for possession, the Court, in decreeing the right thereto, will give the mortgagor a day for redeeming. VENKATA REDDI *v.* PARVATI AMMAL **1 Mad., 460**

409. ——— *Mortgage for fixed term.*—*R* mortgaged certain land to *A* in 1844, stipulating that, if he (*R*) failed to pay a moiety of the mortgage-money within three years or wholly redeem within five years from the date of the mortgage, the property mortgaged should be considered as sold to *A*. The property remained in the possession of *R* till 1847, at the end of which he gave it into the possession of *A*, *R* then believing that he had thereby lost all right to the property. Subsequently to 1847, the property changed hands. The absolute right was first sold in 1855, and then on two occasions in 1862. At this time *R* did not raise any objection to the property being sold, although he was fully aware of the fact. *R* had also admitted, in a suit brought against him in 1850 by *A*, that he had sold the land to *A*. In a suit brought by *R* against *A* in 1867 to redeem the mortgaged property,—*Held* (following the decision in *Ramji bin Tukaram* v. *Chinto Sakharam, 1 Bom., 199*) that *R* was entitled to redeem the property. RAMSHET BACHASHET *v.* PANDHARINATH [8 Bom., A. C., 236

See KRISHNAJI *alias* BABAJI KESHAV *v.* RAVJI SADASHIV . . . . . 9 Bom., 79

410. ———————— *Gahan lahan clause.*—Since the decision of the case of *Ramji bin Tukaram* v. *Chinto Sakharam, 1 Bom., 199*, it has been the practice of the High Court on its appellate side and of the inferior Courts in the Bombay Presidency to treat "gahan lahan" mortgages (mortgages containing a proviso that, if not redeemed within a certain fixed time, they will be considerd as converted into absolute sales) as redeemable, notwithstanding that such fixed time has expired. Such practice has proved beneficial, and should be adhered to. *Ramji bin Tukaram* v. *Chinto Sakharam, 1 Bom., 199*, and the cases decided in accordance with it, referred to and followed. SHANKARBHAI GULABBHAI *v.* KASSIBHAI VITHALBHAI . . . . . 9 Bom., 69

411. ———————— *Mortgage with clause of conditional sale.*—The plaintiff sought to redeem two mortgages executed by his father in 1839 in favour of the defendant. The mortgages contained gahan lahan clauses, in virtue whereof the defendant denied the plaintiff's right to redeem, and contended that the lands mortgaged had become his absolute property, which contention the lower Courts disallowed, holding the lands redeemable. *Held* that the lower Courts were right in recognizing the plaintiff's right to redeem as still in existence, the rule laid down in the case of *Ramji* v. *Chinto, 1 Bom., 199*, being in force in the Presidency of Bombay with regard to mortgages containing clauses of conditional sale. RAMCHANDRA BABA SATHE *v.* JANARDHAN APAJI [I. L. R., 14 Bom., 19

412. ———————— *Mortgage with clause of conditional sale—Gahan lahan—Merger—Admissions in depositions or pleadings—Estoppel.*—The land in dispute was mortgaged with possession to the father of the defendant by the father of the plaintiffs in 1854, on condition that the same was to be considered as sold to the mortgagee if R240 were not paid to the mortgagee within five years from the date of the mortgage. No such payment, however, was made. In 1860 the plaintiffs' father executed to defendant's father another deed respecting other land, which deed mentioned the land in dispute as being in the possession and enjoyment of the same mortgagee as purchaser thereof. In 1866 the defendant-mortgagee brought a suit on the mortgage of 1854, as also on other mortgages, and claimed R721 as due upon the mortgage after deducting R240 as the price of the land mortgaged. The mortgagor objected to the claim, but his objection was overruled, and the account was taken, allowing R240 as the consideration for the sale of the land under the conditional sale clause, and the claim was decreed accordingly. In 1884 the present suit was brought to redeem the mortgage. The defendant contended that under the conditional sale clause the mortgage did not subsist, and that the present suit was barred by the suit of 1866. The lower Courts held the plaintiff's claim to be too stale for admission, and the mortgage of 1854 to be merged in the decree of 1866, and rejected the claim. On appeal by the plaintiff to the High Court,—*Held*, reversing the decree of the lower Courts, that the mortgage in question still subsisted, regard being had to the rule in *Ramji* v. *Chinto, 1 Bom., 199*, which is still in force in the Presidency of Bombay with regard to mortgages containing clauses of conditional sale, whether executed before or after 1864. *Held* also that the mortgage had not merged in the decrees of 1866, which was in a suit to recover a different mortgage-debt secured by different property. It was contended that the understanding of the parties up to 1866 was that the mortgage had been converted into a sale, and that the property had passed to the defendant by purchase, and therefore the plaintiffs were prevented from redeeming it. *Held* that such understanding (being similar to an admission in a deposition or pleading) did not operate as an estoppel or prevent the mortgagors (plaintiffs) from redeeming their property. ABDUL RAHIM *v.* MADHAVRAV APAJI . . . I. L. R., 14 Bom., 78

413. ———————— *Agreement in a subsequent deed to postpone redemption until payment of another debt.*—An agreement contained in a deed executed for a fresh consideration subsequent to a mortgage-deed to postpone redemption of the mortgage until the payment of another debt which has not been made a charge on the land is valid. KRISHNAJI *v.* MAHESHVAR LAHSHMAM GONDHALEKAR . . . I. L. R., 20 Bom., 346

But *see* ABDUL HAK *v.* GULAM JILANI [I. L. R., 20 Bom., 677

and SARI *v.* MOTIRAM MAHADU [I. L. R., 22 Bom., 375

414. ———————— *Conditional sale*—A mortgagor stipulated by an instrument in writing that if he failed to repay the sum lent on mortgage within three years, the property mortgaged was to be held an absolute sale. *Held* that the mortgagor was entitled to redeem, although the amount lent had not been repaid within three years. NALLANA GAUNDAN *v.* PALANI GAUNDAN . 2 Mad., 420

415. ———————— *Usufructuary mortgage.*—The plaintiff executed an usufructuary mortgage of certain land for a term of twenty-two years to the first defendant, for the considerations stated in a written instrument of mortgage, dated the 21st of January 1863. The mortgage instrument contained a stipulation that possession should be given to the plaintiff upon his paying the principal and interest due to the first defendant within two months from the date of the execution. *Held* that

the plaintiff was entitled to redeem, although the amount of principal and interest had not been paid or tendered within two months. DORAPPA *v.* KUNDIKURI MALLIKARJUNUDU . . **3 Mad., 363**

416. ———— *English law—Construction.*—The decisions of the Sudder Court at Madras carried the doctrine of relief after the time named in the conveyance so far as to say that wherever the security for money is an object of the transaction, no sale can become absolute. The High Court have followed the English rule, and have held the question one of construction – admitting, however, for the purpose of the construction, other documents and oral evidence. LAKSHMI CHELLIAH GARU *v.* SRIKRISHNA BHUPATI DEVU MAHARAJ GARU, ZAMINDAR OF MADUGULU . **7 Mad., 6**

417. ———— *Power of sale by mortgagor—Reasonable time—Suit to remove attachment.*—Claim by a mortgagee to remove an attachment, placed by a judgment-creditor of the mortgagor, on the ground that the entire ownership of the property had passed to him at the date of attachment. The mortgagee had never had possession of the mortgaged property; and by the stipulations of the deed the mortgagor had a power of sale after the expiration of the time fixed for the payment of the debt, and it was only on the failure to exercise this power that the proprietary title would pass to the mortgagee. *Held* that, under a condition of this character, a reasonable time must be allowed for the exercise of the power of sale, and that the fact that no sale had taken place within an interval of twenty-three days from the date fixed for payment could not equitably be held to divest the mortgagor of the equity of redemption; that consequently at the time of attachment the defendant was only a mortgagee, and the suit to remove the attachment could not be maintained. KONER MANOHAR MAHAJAN AMBEKAR *v.* NARO HARI DASPUTRE **[1 Bom., 167**

418. ———— **Redemption before expiry of time**—*Suit for redemption of zur-i-peshgi mortgage.*—A mortgagor who has granted a zur-i-peshgi lease can sue to recover possession of his lands before the expiry of the term fixed by the lease, on the ground that the mortgage-debt has been satisfied by the mortgagee's receipts while in possession. PUNJUM SINGH *v.* AMEENA KHATOOM **[6 W. R., 6**

419. ———— *Mortgagor entitled to redeem before expiration of term unless mortgagee can show that the term binds mortgagor—Usufructuary mortgage.*—No such general rule of law exists in India as would preclude a mortgagor from redeeming a mortgage before the expiry of the term for which the mortgage was intended to be made unless the mortgagee succeeds in showing that by reason of the terms of the mortgage itself, the mortgagor is precluded from paying off the debt due by him to the mortgagee. Where parties agree that possession of any property shall be transferred to a mortgagee by way of security and repayment of the loan for a certain term, it may be inferred that they intended that redemption should be postponed until the end of the term, though the creation of a term is by no means conclusive on the point. The term fixed for payment of a debt should be presumed to be a protection only for the debtor till a contrary intention is shown. BHAGWAT DAS *v.* PARSHAD SING . . **I. L. R., 10 All., 602**

420. ———— *Transfer of Property Act, ss. 60, 62 (a)—Mortgage with possession—Time for redemption of mortgage—Provision for discharge of debt out of income.*—In 1885 the plaintiffs mortgaged certain land to the defendants, and placed them in possession under a mortgage-deed, which provided that the profits of the land should be taken towards the discharge of the mortgage-debt, and that, when it was so discharged, possession should be surrendered to the mortgagor. In a suit in which the plaintiffs asked for an account and for a decree for redemption on payment by them of the balance that might be found due on the mortgage, it appeared, on accounts being taken of the proceeds of the land, that the principal and interest had not been discharged thereby. *Held* that the right to redeem had not accrued to the plaintiffs, and that the suit should be dismissed. TIRUGNANA SAMBANDHA PANDARA SANNADHI *v.* NALLATAMBI **[I. L. R., 16 Mad., 486**

421. ———— *Mortgage for fixed period—Act XXVIII of 1855.*—*Held* that a mortgage effected for a fixed period subsequent to Act XXVIII of 1855 coming into operation, is not redeemable until the period for which it was effected has expired, and that under the circumstances the mortgagor's remedy was to sue for the balance of the mortgage-loan which had not been paid to them. MUN PEARY *v.* SHIVA DEEN . **1 Agra, 91**

422. ———— *Hindu and English law.*—The same principle exists both in the English and the Hindu law that the right of the mortgagor to redeem does not, in the absence of any circumstances or language indicating a contrary intention, arise any sooner than the right of the mortgagee to foreclose, and therefore a suit for redemption of a Hindu mortgage cannot be brought before the time fixed by the mortgage for the payment of the mortgage-money. SAKHARAM NARASIMHA SARDESAI *v.* VITHU LAKHA GOUDA

[1 Ind. Jur., N. S., 250: 2 Bom., 237
2nd Ed., 225

423. ———— *Cause of action—Mortgage for fixed term.*—The general principle as to redemption and foreclosure is that, in the absence of any stipulation, express or implied, to the contrary, the right to redeem and the right to foreclose are co-extensive. A mortgage-deed, dated the 30th April 1870, stipulated that the mortgagor would pay the debt, with interest, within ten years and redeem the mortgaged property. In a suit instituted on the 30th July 1877 for the redemption of the property the mortgagee contended that the time ha not expired. *Held* that the suit was unsustainable, because prematurely instituted, the mere use of the word "within" not being a sufficient indication of the intention of the parties that the mortgagor might redeem in a less period than ten years. VADJU *v.* VADJU . . . . **I. L. R., 5 Bom., 22**

424. ———— *Transfer of Property Act (IV of 1882), ss. 60, 62—Mortgage containing covenant to repay "within" a given time—Mortgagee's right to foreclose.*—Certain premises were mortgaged with possession in 1896, the mortgagor, in the instrument of mortgage, covenanting to repay the mortgage-money "within 20th of April 1904." In 1898 the mortgagor sold the mortgaged premises, and called upon the mortgagee to receive the principal and interest due and to deliver up possession. On the mortgagee refusing on the ground that the mortgage was not redeemable till 1904,—*Held* that the mortgagor was entitled to redeem. A stipulation for the postponement of payment of mortgage-money is *primâ facie* intended for the benefit of the mortgagor; the parties to an instrument of mortgage may, however, by the language of their contract, show their intention that redemption may take place only at the end of a given term. The covenant as worded, so far from showing an intention to preclude the mortgagor from redeeming, reserved the liberty to redeem at pleasure. *Vadju* v. *Vadju, I. L. R., 5 Bom., 22,* and *Tirugnana Sambandha Pandara Sannadhi* v. *Nallatambi, I. L. R., 16 Mad., 486,* considered. ROSE AMMAL *v.* RAJARATHNAM AMMAL **[I. L. R., 23 Mad., 33**

425. ———— *Usufructuary mortgage.*—Plaintiff borrowed a sum of money for defendant, and executed what he called a "usufructuary mortgage," taking from defendant a lease of nine years, under which the lessee, after paying the Government revenue and a certain rent (claiming no abatement), was to retain the rest of the jumma as interest and principal of the loan until the term of the lease expired, when the balance was to be repaid in a lump sum, the lessor not being at liberty to alienate the property until the debt was paid. The present suit was brought to redeem the property by payment of the principal and interest due, although the term of the lease had not expired. *Held* that the document leasing the property was partly "ticca" and partly "zur-i-peshgi," and the plaintiff was not entitled to enter into possession before the expiry of the term of the lease, nor could he then enter even if the transaction were viewed as a zur-i-peshgi. LOTF ALY *v.* GUJRAJ THAKOOR . . **11 W. R., 408**

426. ———— *Usufructuary mortgage—Suit for redemption on deposit of balance due.*—*A* executed an ikrar by way of mortgage, whereby it was stipulated that *B*, the mortgagee, was to remain in possession of the mortgaged premises for a period of eight years; that the amount due was to be paid off from the usufruct; and that, if at the expiry of that period any sum should remain due under the ikrar, *A* was to pay the same. In a suit for redemption brought before the expiry of the period mentioned in the ikrar on deposit of the amount due thereunder,—*Held* that the suit would not lie. CHANDRA KUMAR BANERJEE *v.* ISWUR CHANDRA NEWGI

[6 B. L. R., 562: 14 W. R., 455

BUT *see* DINDOYAL SHAH *v.* GANESH MAHATUN **[6 B. L. R., 56 note: 12 W. R., 528 note**

which, however, was decided on the supposition that the mortgage was executed previously to Act XXVIII of 1855. SURJAN CHOWDHRY *v.* IMAMBANDI BEGUM . . **6 B. L. R., 566 note [12 W. R., 527**

427. ———— *Mortgage for fixed term.*—A mortgage-deed, which was executed in March 1858, provided for the redemption of the mortgaged property after the expiration of fifteen years from date. In a suit brought in 1867 to recover part of this property, the Appellate Court held the plaintiff entitled to recover, because on the 29th November 1873, when that Court passed its decision, the time fixed for redemption in the mortgage-deed had already expired. *Held* on special appeal, in reversal of the decree of the lower Court, that in 1867, when the suit was brought, the right even to redeem the mortgaged property as a whole had not accrued, and that therefore the action was premature. LILA MORJI *v.* VASUDEV MORESHVAR GANPULE . . . . **11 Bom., 283**

428. ———— *Mortgage for fixed term.*—Where money was lent on mortgage without a stipulated rate of interest, and it was mutually agreed that the mortgagee was to retain possession for a given period precisely calculated, the stipulation was held to involve a condition that the property was not to be taken out of the hands of the mortgagee before the expiration of that time. SREEMUNT DUTT *v.* KRISHNANATH ROY **25 W. R., 10**

429. ———— A mortgage-deed, dated the 15th March 1883, stipulated that the mortgagor would "pay the interest every year, and the principal in ten years;" that "the principal shall be paid at the promised time, and the interest every year," and that upon failure by the mortgagor to pay the principal and interest "at the stipulated period," the mortgagee should be at liberty to realize the debt from the mortgaged property, and from the other property and against the person of the mortgagor. The mortgagor instituted a suit for redemption on the 15th July 1884. *Held* upon a construction of the mortgage-deed that the advance by the mortgagee to the mortgagor was for a period of ten years certain; that the case was essentially one in which, looking to the merits of the matter between the parties, their obligations were mutual and reciprocal, and there was nothing in the terms of the deed to take it out of the ordinary rules applicable to documents of the kind; and that, while on the one hand the mortgagee could not enforce his rights during the period of ten years, on the other hand the mortgagor was not entitled, before that period had

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expired, to redeem the property. *Vadju* v. *Vadju, I. L. R., 5 Bom., 22,* referred to. RAGHUBAR DAYAL v. BUDHU LAL . . **I. L. R., 8 All., 95**

430. ———— *Mortgage for a term—Intention of parties.*—When the continuance of the enjoyment of property mortgaged for a prescribed period forms a material part of the contract, the mortgagee cannot be deprived of his right to enjoyment on the mere ground that the contract is one of mortgage. The creation of a term is not conclusive evidence that redemption should not take place before the end of the term. But where there was no agreement for payment of interest at an annual rate, but a lump sum equal to the principal was to be accepted as interest for the term, and a small balance of rent was to be paid at the end of the term when the land was returned, and, taking the net annual usufruct at a fixed sum, a term of years was created, during which the debt and interest were to be liquidated by that usufruct, the risk of seasons and payment of quit-rent falling on the mortgagee,—*Held* that the basis of the contract was the enjoyment of the property by the mortgagee for the term fixed. SETRUCHERLA RAMABHADRA RAJU BAHADUR v. VAIRICHERLA SURIANARAYANA RAJU BAHADUR **[I. L. R., 2 Mad., 314**

431. ———— *Dekkan Agriculturists' Relief Act, XVII of 1879.*—The rule of law that the right to redeem is co-extensive with the right to foreclosure, and is consequently postponed until the time fixed for the payment of the mortgage-debt, does not apply to cases falling under the Dekkan Agriculturists' Relief Act. BABAJI v. VITHU **[I. L. R., 6 Bom., 734**

432. ———— **Suit for redemption**—*Question of title.*—In a suit for redemption the mortgagee cannot dispute the mortgagor's title to the land comprised in the mortgage, on the ground that a claim to it is asserted by other proprietors. MAHOMED ABDOOL RUZZAK v. SADIK ALI **3 Agra, 142**

433. ———— *Dekkan Agriculturists' Relief Act (XVII of 1879), ss. 15 (b) and 20—Instalment decree—Mortgagee in possession under the decree for a specified time—Right to redeem before the specified time.*—Where under a decree passed in a redemption suit brought under the provisions of the Dekkan Agriculturists' Relief Act (XVII of 1879) a mortgagee is continued in possession of the mortgaged property for a definite time, he is entitled to retain possession until the expiration of the specified period, and is not liable to be redeemed before then at the wish of the mortgagor. RAMCHANDRA RAGHUNATH KULKARNI v. KONDAJI . . **I. L. R., 22 Bom., 221**

(*d*) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE.

434. ———— **Payment of mortgage-debt**—*Tender or deposit of debt—Beng. Reg. XVII of 1806, s. 7.*—Under s. 7, Regulation XVII of 1806, if a mortgagee has obtained possession at any time before a final foreclosure of the mortgage, the mortgagor's payment or tender of the principal sum due under the mortgage-debt saves his equity of redemption. *Held* that the section applies where the mortgagee has obtained a decree for possession and wasilat, whether he executes it or not. SAKRIMAN DICHUT v. DHARAM NATH TEWARI **3 B. L. R., A. C., 141**

435. ———— *Tender of portion of mortgage-debt.*—A mortgagor cannot ask for a decree for possession without tendering the whole of the mortgage-debt. JOY GOBIND ROY *alias* BHOJRAJ ROY v. BUNDHOO SINGH . . **17 W. R., 342**

436. ———— *Tender by one of several mortgagors.*—A tender by one or more of several mortgagors is not such as a mortgagee is bound to accept, unless it is made conjointly by the whole of the mortgagors, or on their behalf and with their consent. RAMBAKSH SINGH v. RAM LALL DOSS . . . . **21 W. R., 428**

437. ———— *Deposit in Court by mortgagor—Legal tender—Right to mesne profits.*—Where a mortgagor deposits the amount of the mortgage for the express purpose of preventing a foreclosure, he is entitled to wasilat, of which the mere fact of his having put in a petition, which refers to some other suit between him and the mortgagee, but does not prevent the latter from taking out the deposit, cannot deprive him. Where a mortgagor is liable for only a portion of the mortgaged property, but pays in the whole amount to secure himself against his co-sharers, he is entitled to wasilat for the whole. DABI DUTT SINGH v. GOBIND PERSHAD **[25 W. R., 259**

438. ———— *Time for payment—Year of grace.*—The year of grace counts from the date of issue of notice of application for foreclosure, and not from the date of service of the notice. GHAZEEOOD-DEEN v. BHOOKUN DOOBEY **[2 Agra, 301**

439. ———— *Time for payment—Year of grace—Holiday—Beng. Reg. XVII of 1806.*—The year of grace allowed to a mortgagor by Regulation XVII of 1806 to tender or deposit the amount due to the mortgagee includes authorized holidays, the mortgagor not being entitled to the deduction of any holidays which may occur when that year expires. KUMOLA KANT MYTEE v. NARAINEE DOSSEE . . . . . **9 W. R., 583**

440. ———— *Time for payment—Beng. Reg. XVII of 1806, s. 8—Extension of time.*—A Judge has no discretion to extend the time allowed to a mortgagor under s. 8, Regulation XVII of 1806. MAHOMED GAZEE CHOWDHRY v. ABDOOL MAHOMED AMEEROODEEN **[5 W. R., Mis., 31**

441. ———— *Time for payment—Deposit—Tender of mortgage money.*—Where a mortgagee extended the time for payment to the 25th November, and the mortgagor was prevented by the closing of the Court from depositing the mortgage-money in the Judge's Court on that day,—*Held* that the mortgagor saved his estate from foreclosure by depositing the money in Court on the first day after the 25th November on which the Court was open. The mortgagor having the option either of depositing the money in the Judge's Court or of tendering it if there is sufficient excuse for not depositing in the Judge's Court, he is not bound to tender the money and prove that tender. DABEE RAWOOT *v.* HERAMUN MUHATOON . **8 W. R., 223**

442. ———— *Time for payment—Tender of mortgage-money—Notice of deposit to mortgagee.*—Where a decree declared plaintiffs' right to redeem a mortgage whenever within the month of Jeth they paid the mortgage-money, but did not direct that the money should be paid into Court, and plaintiffs brought the money into Court, on the first day of the following month, the last day of Jeth falling on a Sunday; but did not, however, take out execution for some months, nor apprise the defendant that they had paid the money into Court. *Held* that such payment was not a proper tender, and that to make it a proper tender the plaintiffs should not only have paid the money into Court in the month of Jeth, but were bound to see that the mortgagee in possession had due notice of such payment. NITIA NUND *v.* MYA RUN . . . **3 N. W., 80**

443. ———— *Right of purchaser to redeem usufructuary mortgage—Limitation.*—A zur-i-peshgi lease, being nothing but a simple mortgage, may be cancelled on proof of discharge of the advance, with interest from the usufruct, or on payment of the money in cash. The purchaser of the proprietary rights in a zur-i-peshgi is not barred from suing to redeem, because he, or those through whom he claims, did not sue for an account within twelve years from the expiry of the term, or from discharge of the debt by the usufruct. PULTUN SINGH *v.* RESHAL SINGH . . . . **1 W. R., 7**

NUND LALL *v.* BALUK . . **2 Agra, 122**

444. ———— *Deposit of mortgage-money—Tender—Notice of deposit.*—A deposit of the mortgage-money by a mortgagor, accompanied by a protest against the validity of the mortgage itself and a threat to sue for its cancelment, imposes no condition upon the acceptance of the money so as to render the tender invalid. A deposit being once duly made, the mortgagor's equity of redemption is saved, quite irrespective of whether the mortgagee has received notice of the deposit or not. HETHAN SINGH *v.* NURKOO SINGH, HETHAN SINGH *v.* LOKRAJ SINGH . . . . . **3 W. R., 184**

445. ———— *Suit by purchaser from mortgagor for redemption—Tender of mortgage-money.*—A purchaser of the right of redemption of a mortgagor may sue without tender out of Court of the mortgage-debt to the mortgagee. The tender of the money out of Court only affects the purchaser's right to recover his costs. DINONATH BUTOBYAL *v.* WOMACHURN ROY . **3 W. R., 128**

446. ———— *Tender of payment—Bye-bil-wafas—Foreclosure—Beng. Reg. III of 1795, s. 14; Beng. Reg. II of 1805, s. 3; and Beng. Reg. XVII of 1806, s. 8.*—Bye-bil-wafas or kut-kobalas are redeemable like ordinary mortgages, and subject to foreclosure. It cannot be laid down as a rule, universally true, that under s. 14, Regulation III, 1793, a mortgagee's proceeding for a foreclosure under a mortgage of the class of bye-bil-wafa simply cannot be preferred after twelve years from the expiration of the time which the instrument fixes as the period of redemption of payment, and on the expiration of which the conditional sale will become absolute; for this indiscriminating ground of decision would include alike adverse occupations and those which had not the semblance even of such a character, and would establish a bar arising from simple occupation, and not from the laches of the demandant or of others before him. When a mortgagee not only seeks the assistance of a Court to give him possession of his pledge, but also to foreclose the mortgage, he must effect that object in the mode prescribed by s. 14, Regulation III of 1895; s. 3, Regulation II, 1805; and s. 8, Regulation XVII, 1806. Mere words in the form of a protest which may accompany a tender will not defeat it when they can reasonably be regarded as idle words. But the payment into Court of the mortgage-money, accompanied by a petition disputing the mortgagee's title to foreclose, and expressing an intention amounting to a notice to sue the mortgagee to recover back the very money tendered, is not a valid tender. PRANNATH CHOWDHRY *v.* RAMRUTTON ROY **4 W. R., P. C., 37**

S. C. PRANNATH ROY CHOWDRY *v.* ROOKEA BEGUM . . . . **7 Moore's I. A., 323**

447. ———— *Payment into Court of redemption-money—Costs.*—It is sufficient to bar a foreclosure suit that the principal money and interest due on the mortgage have been paid into Court within the year of grace, or an extended time agreed upon by the parties without costs incurred by the mortgagor in the matter of the mortgage. ZALEM ROY *v.* DEB SHAHEE

[**Marsh., 167 : 1 Hay, 373**

448. ———— *Beng. Reg. XVII of 1806, s. 8—Mode of payment.*—The mortgagors of certain landed property not having paid the money due on the mortgage within the stipulated period, the mortgagees, considering it unnecessary to proceed under s. 8, Regulation XVII of 1806, *i.e.*, without waiting to foreclose the mortgage, brought a suit, obtained a decree, and took possession. *Held* that, as the mortgagees took possession before final foreclosure, the mortgagors were in a position to redeem, and might do so by payment of the advance made on the mortgage, whether such payment was made in cash or realized by the mortgagees from the usufruct of the estate. ISHAN CHUNDER BANERJEE *v.* JUGGUT CHUNDER DOSS . . **13 W. R., 44**

449. ———— *Payment by order of Judge into Collector's treasury.*—The payment by order of the Judge into the Collector's treasury, before the expiration of the year of grace, of a debt due to a mortgagee, was held to be a deposit

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in Court entitling the borrower to redeem. ABDOOL HUQ *v.* MYAH BEWAH . **W. R., 1864, 184**

450. ——— *Acceptance of payment—Subsequent objection.*—A mortgagee who once takes the mortgage-money as deposited by the mortgagor within time cannot afterwards sue for possession, on the ground that the deposit was made after the expiry of the year of grace, and that he had applied for the money under wrong information from his agent. KHONDHAR NOWAZUSH HOSSEIN *v.* WOOSULOONISSA BIBEE . **6 W. R., 249**

451. ——— *Payment into Court of redemption-money—Legal tender.*—The defendant in a foreclosure suit paid into Court the amount due in respect of principal and interest of the mortgage. This payment was made after the day on which, according to the mortgage, the sale was to become absolute, but within a few days of the expiration of the year of grace. The payment into Court was accompanied by a petition praying that the fund might be retained in Court, until the decision of certain objections made by the defendant, disputing the amount due under the mortgage-money. *Held* that such payment into Court was not a tender of the mortgage-money, and that the mortgagee was entitled to foreclosure. NUBUNGO MOONJURREE DABEA *v.* GOLUCKMONEE DABEA . **Marsh., 45: 1 Hay, 76**

S. C. GOLUCKMONEE DABEA *v.* NABUNGO MOONJUREE DABEA . . . **W. R., F. B., 14**

452. ——— *Beng. Reg. XVII of 1806—Stipulated period—Notice.*—In a suit by a mortgagee for possession after foreclosure proceedings under Regulation XVII of 1806, on the ground that the mortgagor had failed to pay the money within one year from the notice, the defence was that the notice had been issued before the lapse of the time stipulated for repayment. The period stipulated for the payment of the principal sum was 3rd July 1866; but the deed contained a proviso that, if the mortgagor paid the interest every half-year during the continuance of the security, the mortgagee would not enforce his security until the 3rd January 1871. *Held* that the time for redemption expired with the period stipulated for the payment of the principal sum, *i.e.*, the 3rd July 1866. WOOMA CHURN CHOWDHRY *v.* BEHAREE LALL MOOKERJEE [**21 W. R., 274**

453. ——— *Beng. Reg. XVII of 1806, ss. 7, 8—Tender of mortgage-money—Unconditional tender.*—Where, in a suit for foreclosure of a mortgage by conditional sale, a notice of foreclosure had been issued under Regulation XVII of 1806, and the mortgagors deposited in Court the money due on the mortgage before the expiry of the year of grace, but at the same time denied the mortgagee's right to receive the money, and threatened them with legal proceedings if they took it from the Court,—*Held* that the deposit was not an unconditional tender of the money due on the mortgage; that it was vitiated by the conditions under which it was made; that the mortgagees were not bound to accept a deposit so vitiated; and that therefore it was not valid to prevent foreclosure. *Prannath Roy Chowdhry* v. *Ram Rutton Rae, 7 Moore's I. A., 323,* and *Abdoor Ruhman* v. *Kisto Lall Ghose, B. L. R., Sup. Vol., 598,* followed. MAKHAN KUAR *v.* JASODA KUAR . . . **I. L. R., 6 All., 399**

454. ——— *Mortgage prior to Beng. Reg. XVII of 1806—Beng. Reg. I of 1798.*—When the time fixed for payment of a mortgage, in the nature of a bye-bil-wafa, was the end of 1802, and there was no allegation of tender or deposit of the money prior to that date,—*Held* that the mortgagor had, under Regulation I of 1798, lost his right of redemption, and that the benefit of Regulation XVII of 1806 could not be applied to mortgages made prior to the passing of that enactment. RUHMUN *v.* SHUMSOODDEEN HYDER [**W. R., 1864, 183**

455. ——— *Deed without provision for interest—Payment only of principal money.*—When a deed of mortgage is silent as to interest, payment of the bare principal within the year of grace is sufficient to bar foreclosure. RADHANATH SEIN *v.* BUNGO CHUNDER SEIN [**W. R., 1864, 157**

456. ——— *Payment of interest—Interest exceeding principal.*—*Held* that the deposit of the principal due, and a sum equal to the principal by way of interest, was sufficient under the law applicable to the case, and that no sum could legally accrue due as interest during the year of grace, as the law prohibited the recovery of interest beyond the principal. SHEOBURTS *v.* DHAREE THAKOOR . . . . **2 Agra, Pt. II, 194**

457. ——— *Mortgage not providing for interest—Usufruct—Payment only of principal money.*—In an usufructuary mortgage, where there is no stipulation for interest, the mortgagee is not entitled to it, the usufruct going in lieu of interest, and the payment of only the principal sum is a bar to foreclosure. GUNGA PERSHAD ROY *v.* ENAYET ZAHEERA . . . **16 W. R., 251**

458. ——— *Payment within a year—Reg. XVII of 1806, s. 7—Interest.*—Where interest is not reserved by the mortgage-deed, but it provides for repayment of the principal only, a payment into Court within a year after the institution of a foreclosure suit of the principal only without interest satisfies the 7th section of Regulation XVII of 1806, and entitles the mortgagor to the redemption of the property. ROOPNARAIN SINGH *v.* MADHO SINGH . . . . **Marsh., 617**

459. ——— *Mortgage with condition that mortgagor should remain in possession until default in payment of interest—Relief from forfeiture.*—The defendant mortgaged certain premises to the plaintiff by a deed of mortgage, which contained a condition that the mortgagor should remain in possession so long as the interest was regularly paid. Default in payment of the interest was made, and the mortgagee sued for possession of the mortgaged premises. *Held* that the mortgagor was entitled to equitable relief against the entry of the mortgagee on payment of all arrears of rent, together with interest upon each instalment and costs ; and three months' time was allowed to the mortgagor to make such payment. SITARAM DANDEKAR *v.* GANESH GOKHALE . **6 Bom., A. C., 121**

460. ———————— *Interest, Non-payment of—Right of assignee of mortgagee to foreclose in default of payment.*—Where the mortgagor covenanted to pay to the mortgagee the principal sum at a given date and interest in the meantime, and in default of payment of the principal on the date mentioned, interest on so much as should remain due at the same rate, the mortgagee covenanting to reconvey on payment on the given date, and in default of payment of principal or interest at their respective due dates the whole sum to become due,—*Held* that the assignee of the mortgagee had a right to foreclose on default of payment of an instalment of interest before the date on which the principal was made payable. PROSADDOSS DUTT *v.* RAMDHONE MULLICK . **1 Ind. Jur., N. S., 255**

461. ———————— *Default in payment of interest—Action on covenant before principal sum is due.*—Where, by a proviso in a mortgage, it is agreed that, " in case of default in payment by the mortgagor of the principal sum, or any one instalment of interest thereon," etc., " then and in any such case the whole of the money so secured by these presents shall immediately thereupon become due and payable with a power of sale on such default," and where the principal sum and interest thereon was also secured by a bond and warrant of attorney to confess judgment thereon, the condition of which was in the same words as the covenant for repayment in the mortgage,—*Held* that, in an action on the covenant contained in the proviso, and on the bond, brought on default of payment of an instalment of interest, but before the date on which the principal was payable, the plaintiff could only recover on either the covenant or the bond in respect of the interest unpaid. FOOL CHUND JOHUBRY *v* RAMKRISTO BOSE . . **1 Ind. Jur., N. S., 425**

462. ———————— *Breach of condition in mortgage—Relief against forfeiture.*—In November 1873 *M* sued for the cancelment of a deed of usufructuary mortgage executed by her in November 1856, and for the ejectment of the mortgagees on the ground of the breach of a condition in the deed that the mortgagees should pay her a life annuity of R15 during the term of the mortgage (twenty years) and also after foreclosure, otherwise, on any failure, they would be liable to ejectment and to the forfeiture of the mortgage. No payments of annuity had been made, and each failure to pay was held to be a separate breach of the condition. *Held* that, if there had not been so many successive breaches, and if the defendants had at any time brought into Court the arrears with interest, or had offered to do so, the Courts below, although they could not have passed a decree for the money, might have withheld a decree for enforcing the forfeiture. SADHA *v.* BHAGWANI [**7 N. W., 53**

463. ———————— *Mortgage by conditional sale—Beng. Reg. XVII of 1860, ss. 7, 8—Redemption.*—In the part of India where Bengal Regulation XVII of 1806 is in force, the right to redeem a mortgage by conditional sale depends entirely upon it, whatever may be the true construction of the terms of the condition in regard to payment of interest. Within a year after notification of a petition for foreclosure a mortgagor deposited the principal debt, and interest for the last year of the mortgage term, which had expired. Interest for prior years of the term had not been paid; but this, according to the mortgagor's contention, was, by the terms of the condition, treated as a separate debt. *Held* that, as the mortgagor had not deposited the interest due on the sum lent, required, according to s. 7 of the Regulation, where, as here, the mortgagee had not obtained possession, and as the year of grace had expired, the conditional sale had become conclusive under s. 8, involving the dismissal of the mortgagor's suit for redemption. MANSUR ALI KHAN *v.* SARJU PRASAD . **I. L. R., 9 All., 20**
[**L. R., 13 I. A., 113**

464. ———————— *Conditional sale—Interest—Mesne profits—Foreclosure—Beng. Reg. XVII of 1806, s. 7.*—A deed of conditional sale, after reciting that the vendor had received the sale-consideration (R199) and had put the vendee in such possession of the property as the vendor himself had, proceeded as follows: " I (vendor) shall not claim mesne profits nor shall the vendee claim interest: in case the vendee does not obtain possession, he shall recover mesne profits for the period he is out of possession: and when, after the expiry of the term fixed, I repay the entire sale-consideration in a lump sum, I shall get my share redeemed: in case of default in payment of sale-consideration, the sale shall be deemed to become absolute." The vendee did not get possession of the property for some years, and, on the expiry of the term, took proceedings under Regulation XVII of 1806 to foreclose. The legal representative of the vendor deposited the sale-consideration mentioned in the deed of conditional sale (R199) within the year of grace. In a suit by the vendee for possession of the property, the sale having been declared absolute, the question arose whether or not the legal representative of the vendor should have deposited, by way of interest, in order to prevent the sale from becoming absolute, in addition to the sale-consideration, the amount of mesne profits for the period the vendee was out of possession of the property. *Held* (SPANKIE, *J.*, dissenting), on the construction of the deed of conditional sale, that the deposit of the sale-consideration (R199) was sufficient for the redemption of the property. RAMESHAR SINGH *v.* KANHIA SAHU . **I. L. R., 3 All., 653**

465. ———————— *Lease of mortgaged property by mortgagee to mortgagor—Intention of parties as to mode of payment and default—Remedies of mortgagee under mortgage.*—On the 16th March 1874 *L* gave *M* a mortgage on certain land for R24,000 for a term of ten years, by which it was provided, *inter alia*, that the mortgagee should take the profits of the land in lieu of interest; that the mortgagee should grant a lease of the land to the mortgagor, the latter paying the former the profits of the land every harvest in lieu of interest; that if the mortgagor failed to pay the mortgagee the profits of the land by the end of any year, he should pay interest on the principal amount of the mortgage at the rate of one per cent. calculated from the date of the mortgage, and in such case the mortgagee should have no claim to the profits; and that, if the mortgagor failed to pay the mortgagee the profits by the end of any year, the mortgagee should be at liberty to cancel the lease and to enter on the land, and collect the rents thereof and apply the same to payment of interest. On the 21st March 1874 *M* gave *L* a lease of the land, under which R1,980 was the sum agreed to be payable annually as profits in lieu of interest. In 1879 *M*, who had not been paid any profits, sought to enforce in the Revenue Courts the condition as to entry on the land, but was successfully resisted by *L*'s widow. On the 16th January 1880 *M* sued *L*'s widow for interest on the principal amount of the mortgage at the rate of one per cent. calculated from the date of the mortgage to the date of suit, claiming the same by virtue of the provisions of the mortgage, on the ground that he had not been paid any profits. *Held* that the mortgage and lease transactions must be regarded as one and indivisible, and the questions at issue between the parties be dealt with *quâ* mortgagor and mortgagee; that so regarding such transactions and dealing with such questions, *M* and *L* did not stand in the position of "landlord" and "tenant" and the proceedings of 1879 in the Revenue Courts were had without jurisdiction; also that, although looking at the terms of the contract of mortgage it was the intention of the parties that, on the mortgagor failing to pay the mortgagee the profits by the end of any year, the latter should in the first place seek possession of the land, yet as *M* had never obtained possession, but on the contrary had been resisted when he sought to obtain it, his present claim for interest was maintainable. The Court directed that so much of the interest as was due at *L*'s death should be recoverable from such property of his as had come into his widow's hands; and as to the rest, which related to the period during which the widow had been in possession and in receipt of the profits, that it should be recoverable from her personally. BHAGHELIN *v.* MATHURA PRASAD . . . . . **I. L. R., 4 All., 430**

466. ——————— *Usufructuary mortgage—Interest, Payment of—Beng. Reg. XXXIV of 1803, ss. 9, 10—Act XXVIII of 1855—Act XIV of 1870—Transfer of Property Act, IV of 1882, ss. 2, 62.*—A deed of usufructuary mortgage executed in 1846, under which the mortgagee had obtained possession, contained the following conditions: "Until the mortgage-money is paid, the mortgagee shall remain in possession of the mortgaged land, and what profits may remain after paying the Government revenue are allowed to the mortgagee, and shall not be deducted at the time of redemption. At the end of any year, the mortgagors may pay the mortgage-money and redeem the property. Until they pay the mortgage-money, neither they nor their heirs shall have any right in the property." In 1884 a representative in title of one of the original mortgagors sued to redeem his share of the mortgaged property, upon the allegation that the principal amount and interest due upon the mortgage had been satisfied from the profits, and that he was entitled to a balance of R45. It was found that from the profits, after deducting Government revenue, the principal money with interest at the rate of 12 per cent. per annum had been realized, and that the surplus claimed by the plaintiff was due to him. The lower Appellate Court dismissed the suit, on the ground that under s. 62 (*b*) of the Transfer of Property Act (IV of 1882), and with reference to the terms of the deed of mortgage, the plaintiff was not entitled to recover the property until he paid the mortgage-money. *Held* that, although the word "interest" was not specifically used, the natural and reasonable construction of the deed was that it was arranged that the mortgagee should have possession of the property and enjoy the profits thereof, until the principal sum was paid, in lieu of interest. *Held* that the provisions of ss. 9 and 10 of Regulation XXXIV of 1803, which was in force when the deed of mortgage was executed, were not affected or abrogated by Act XXVIII of 1855 or Act XIV of 1870 or Act IV of 1882; that these provisions were incidents attached to the mortgagor's rights of which he was entitled to have the benefit; and that the contract of mortgage being subject to these provisions, the charge would have been redeemed as soon as the principal mortgage-money with 12 per cent. interest had been realized by the mortgagee from the profits of the property. SAMAR ALI *v.* KARIM-UL-LAH . . . . . **I. L. R., 8 All., 402**

467. ——————— *Usufructuary mortgage—Interest—Waiver.*—By a deed of usufructuary mortgage dated in 1875, a sum of R30,000, with interest at R1 per cent. per mensem, was advanced on the security of certain property, for a period of ten years. The deed contained various provisions for securing the payment of interest to the mortgagee, and among these a provision that he should have possession of the property and take the profits on account of interest, the profits being fixed at a certain amount yearly, leaving an agreed balance of interest to be paid yearly in cash. There was also a provision that in the event of possession not being given, the mortgagee might treat the principal money as immediately due, and recover it at once with interest at the rate of R1-6 per cent. per mensem. The mortgagee did not take possession of the mortgaged property, and took no steps to obtain such possession, or to recover the money for nine years, during which no interest was paid. In November 1884 the mortgagee brought a suit against the mortgagors to recover the mortgage-money, claiming interest from the date of the mortgage-deed to the date of the suit at R1-6 per cent. per mensem. *Held* that the fair inference of fact from the circumstances above described was that the mortgagee waived the provisions for securing and recovering the interest, and that the transaction must be looked at as simply one of a loan for the specified period at the agreed rate, *i.e.*, R1 per cent. per mensem. GANGA SAHAI *v.* LACHMAN SINGH

[I. L. R., 8 All., 194

468. ——————— *Interest—Suit for redemption—Transfer of Property Act, s. 84.*—In February 1883 a decree for pre-emption was obtained in respect of a mortgage by conditional sale executed in August 1882. On the 23rd August 1883 the decree-holder executed his decree by depositing the principal amount of the mortgage-money and obtained possession of the property in substitution for the original mortgagee. In June 1884 the mortgagor, proceeding under s. 83 of the Transfer of Property Act, deposited in Court the sum of R699, claiming the same to be adequate for redemption. The case was, however, struck off in consequence of the pre-emptor's objection to receiving the deposit on the ground that it did not include the interest due on the mortgage. The deposit remained in Court, and on the 21st August 1884 the mortgagor deposited a further sum on account of interest, but this also the pre-emptor refused to receive, for the same reason as before. In a suit by the mortgagor for redemption of the mortgage, it was found that the amount deposited was all that was due on the mortgage on the 21st August 1884. *Held* that until the 23rd August 1883, when the defendant enforced his pre-emptive decree by depositing the consideration for the conditional sale of August 1882, he had no interest in the subject of pre-emption as would entitle him to any benefits arising therefrom, and that the defendant was not entitled to claim any interest on the mortgage-money for the period antecedent to the 23rd August 1883. *Semble*—That the proper person entitled to receive the interest for that period was the original conditional vendee, and the Court which passed the decree for pre-emption should have allowed him the amount of such interest in addition to the principal mortgage-money. *Ashik Ali* v. *Mathura Kandu, I. L. R., 5 All., 187,* referred to. *Held*, with reference to s. 84 of the Transfer of Property Act (IV of 1882), that the Courts below were right in not allowing interest to the defendant after the 21st August 1884 when the plaintiff, to his knowledge, deposited the whole money due on the mortgage. DEO DAT *v.* RAM AUTAR

[I. L. R., 8 All., 502

469. ——————— *Mortgage by conditional sale—Interest—Foreclosure.*—A deed of mortgage by conditional sale executed in 1872, giving the mortgagee possession, contained a stipulation that the principal money should be paid within ten years from the date of execution of the deed, and that, in default of such payment, the conditional sale should become absolute. It contained the following condition as to interest: "As to interest, it has been agreed that the mortgagee has no claim to interest and the mortgagor has none to profits." The mortgagee, however, did not obtain possession. In 1878 the mortgaged property was purchased by the appellant at a sale in execution of decree. In 1884 the mortgagee brought a suit for foreclosure against the purchaser and the heirs of the mortgagor, claiming the principal money with interest at 8 annas per cent. per mensem. The defendants pleaded that the plaintiff was not entitled to claim interest. *Held* that whatever claim the mortgagee might have against his mortgagors for compensation or damages by way of interest in consequence of the failure to get possession under the contract, he had none enforceable in this respect against the land, which had passed free from charge for interest to the purchaser. *Rameshur Singh* v. *Kanahia Sahu, I. L. R., 3 All., 653,* referred to. ALLAH BAKHSH *v.* SADA SUKH

[I. L. R., 8 All., 182

470. ——————— *Usufructuary mortgage—Covenant by the mortgagor to pay the mortgagee arrears of rent due at the time of redemption—Payment by mortgagee of arrears of revenue—Right of mortgagee to reimbursement before redemption.*—On the 27th August 1883 *M* and *B* jointly executed two usufructuary mortgages for the sums of R3,000 and 5,000 respectively in favour of the defendants. On the 24th March 1886 the mortgagors executed another usufructuary mortgage in favour of the plaintiffs for R15,000, entitling them to possession of the property mortgaged. The second mortgagee instituted a suit to redeem the prior mortgages by depositing in Court the principal sum of R8,000. The defendants urged that a sum of R4,000 was due to them besides the principal amount, without payment of which the property in suit could not be redeemed. The Court found that a sum of R498-15-9 only, composed of certain arrears of rent and an item of arrears of Government revenue paid by the defendants, was due to them, and decreed redemption of the property on condition of payment of the aforesaid sum. Both the parties appealed. *Held* that the items of arrears of rent were recoverable under the covenant contained in that behalf in the mortgage-deeds; as to the item for arrears of Government revenue, it was clear that, unless this revenue was duly paid, the whole estate might have been sold to realize it, thereby putting an end to all the rights of the mortgagors and mortgagees; and therefore upon the general principles of law upon which the doctrine of salvage and subrogation proceeds, persons in the position of mortgagees in possession are entitled to claim that sum before the property which they saved from sale for arrears of revenue could be redeemed. S. 72 of the Transfer of Property Act only reproduces the rules of law which Courts of Justice in India have uniformly adopted. GIRDHAR LAL *v.* BHOLA NATH . . . **I. L. R., 10 All., 611**

471. ——————— *Redemption claimed under terms of mortgage—Insufficient tender of mortgage-money—Transfer of Property Act (IV of 1882), ss. 60, 83, and 84.*—According to the judgment of the Appellate Court below, a mortgagor, having liberty by the terms of his mortgage to redeem at the end of its second year, on payment of the whole of the principal and interest, was not entitled to a decree for redemption, in a suit brought after the close of the second year, on showing only that in the first half of the second year the principal money had been deposited in Court, and that for the interest, for both years, decrees had been obtained by the mortgagee against him, before his suit was instituted. The above not showing payment or tender of the interest, of which payment was secured by the mortgage, an appeal was dismissed. HEWANCHAL SINGH *v.* JAWAHIR SINGH **I. L. R., 16 Calc., 307**

472. ———— *Decree for redemption without proviso for foreclosure or payment within a fixed time—Effect of not executing decree for redemption—Limitation.*—A decree for redemption which does not provide for payment of the mortgage-debt, within a fixed time, or for foreclosure in case of default, operates of itself as a foreclosure decree, if not executed within three years. On 12th November 1888 *A* obtained a decree for redemption on payment of a certain sum of money to *B* (the mortgagee). The decree contained no direction as to foreclosure, or as to the time within which the payment was to be made. On 26th November 1884, *B*, the mortgagee, sued to recover the mortgage-debt by sale of the property mortgaged. On 8th April 1885 *A* paid into Court the sum directed to be paid by the redemption decree. *B* refused to accept the payment, and insisted upon his right of sale. *Held* that no time having been fixed by the decree for redemption, *A* had three years within which to execute the decree; and as he had paid the money within the three years, *A* was entitled to recover the property. *Held* also that the decree for redemption would, if not executed within three years, operate as a foreclosure decree, and therefore effectually determine the rights under the mortgage both of the mortgagee and the mortgagor. MALOJI *v.* SAGAJI . . . **I. L. R., 13 Bom., 567**

473. ———— *Decree for redemption – Absence of clause as to time of payment or foreclosure—Execution of the decree after three years—Darkhasts presented from time to time —Limitation Act (XV of 1877), art. 179.*—Where a redemption decree contained no clause as to the time for payment of the mortgage-debt, or foreclosure in default of payment,—*Held* that the mortgagor could still, after the expiration of three years from the date of the decree, execute it by paying the mortgage-money, having regard to various darkhasts presented by him from time to time, provided the darkhasts complied with the conditions of the Limitation Act (XV of 1877). Dicta to the contrary in *Gan Savant Bal Savant* v. *Narayan Dhond Savant, I. L. R., 7 Bom., 467,* and *Maloji* v. *Sagaji, I. L. R., 13 Bom., 567,* disapproved of. NARAYAN GOVIND *v.* ANANDRAM KOJIRAM . . **I. L. R., 16 Bom., 480**

474. ———— *Decree directing payment of mortgagee's costs on a certain date, or, in default, foreclosure – Effect of such default—Enlargement of the time fixed for redemption.*—In a redemption suit the Court of first instance found that the mortgage-debt had already been paid off out of the rents of the mortgaged property, and it accordingly awarded possession to the plaintiff, directing that each party should bear his own costs. In execution of this decree, the mortgagor took possession of the property in dispute. On appeal by the mortgagee, the District Court amended the decree by directing the mortgagor to pay the mortgagee's costs of the suit by a certain day, or, in default, to stand for ever foreclosed. The mortgagor failed to pay the costs as directed. Thereupon the mortgagee applied, in execution, to have the property restored to his possession. The Subordinate Judge granted this application. The District Judge, in appeal, held that the decree did not provide for delivery of the property by the mortgagor to the mortgagee. He, however, directed the mortgagor to pay the mortgagee's costs with interest. On appeal to the High Court,—*Held* that, as the mortgagee's costs, which became a part of the mortgage-debt, were not paid on the due date, the mortgagor was finally foreclosed, and the property thereupon passed to the mortgagee. It was therefore not competent to the Court, in execution, to practically enlarge the time for redemption, by allowing the mortgagor further time to pay the mortgagee's costs. SUBHANA *v.* KRISHNA . . . **I. L. R., 15 Bom., 644**

475. ———— *Decree for redemption—Absence of clause for foreclosure on non-payment in three months—Default in payment in time allowed.*—In a suit for redemption the mortgagors obtained a decree on 1st March 1886, whereby they were directed to pay the mortgagee the sum of R649 within three months, whereupon they were to get possession of the mortgaged property. The decree contained no clause for foreclosure in the event of non-payment. On 19th April the mortgagees appealed to the High Court against the decree. On 12th October 1886 the mortgagor paid the R649 into Court and applied for execution of the decree, which, though the three months had expired, the Court allowed holding that it had power to enlarge the time for execution: this order was set aside on appeal, the High Court holding that there was no power in the Court executing a decree to enlarge the time for execution. On 15th July 1890 the mortgagee was allowed to withdraw his appeal, and the mortgagor's application to be allowed to execute the decree was rejected, the Court holding that the time could not be computed from the withdrawal of the appeal, but that it ran from the date of the original decree. *Quære*—Whether, there being no foreclosure clause in the decree, the mortgagor could file another suit to redeem. CHUDASAMA MANABHAI MADARSANG *v.* ISHWARGAR BUDHAGAR

[**I. L. R., 16 Bom., 243**

476. ———— *Decree for redemption on payment of a certain amount, and in default, mortgagee to recover possession—Suit for an account by mortgagor—Right of suit.*—A mortgagee having obtained possession of mortgaged property under a decree, which directed the mortgagor to redeem on payment of a certain amount, and in default the mortgagee to recover and retain possession until payment,—*Held* that a subsequent suit

MORTGAGE—*continued.*

8. REDEMPTION—*concluded.*

by the mortgagor against the mortgagee for an account and possession would not lie. The mortgagor could recover possession only on payment of the amount mentioned in the mortgage-decree. *Dattatraya Ravji* v. *Anaji Ramchandra, P. J., 1886, p. 237,* distinguished. RAMBHAT *v.* RAGHO KRISHNA DESHPANDE . . . **I. L. R., 16 Bom., 656**

TANI BAGAVAN *v.* HARI **[I. L. R., 16 Bom., 659 note**

477. ——————— *Transfer of Property Act (IV of 1882), s. 93—Redemption decree—Time for and manner of redemption.*—In a suit on a kanom or usufructuary mortgage brought by the mortgagor a decree was passed on 16th March 1889, whereby it was only directed that on payment by the plaintiff of a certain sum within six months the defendant should surrender the mortgage premises to him. Against this decree an appeal was filed objecting both to the direction for surrender of the mortgaged premises and also to the sum fixed as the amount payable by the mortgagor. On 21st August 1889 the appeal was withdrawn so far as concerned the first of these matters: as to the second, the Appellate Court heard the appeal in June 1890, and merely confirmed the original decree. In February 1890 the plaintiff applied for execution and tendered the amount mentioned in the decree stating that he would have paid it before but for the appeal. The Court of first instance made an order as prayed, and the money was paid to the mortgagees, and the mortgage premises were surrendered to the plaintiff. On appeal by the mortgagees against this order,—*Held* that the appeal should be dismissed on the grounds that the mortgagee had never obtained an order for sale under the Transfer of Property Act, s. 93, and the mortgagor's equity of redemption had not become extinct, and that the necessity for a sale was obviated by payment before any order was made under that section. KANARA KURUP *v.* GOVINDA KURUP . . . **I. L. R., 16 Mad., 214**

478. ——————— *Decree for foreclosure giving future interest, Effect of, as charging mortgaged property—Transfer of Property Act (IV of 1882), s. 86—Civil Procedure Code, s. 209.*—Where in a decree for foreclosure interest subsequent to the decree was included in the amount made payable to the plaintiff, it was *held* that such future interest, supposing it could be properly awarded, concerning which no opinion was expressed, could not be treated as a charge upon the land; but the judgment-debtor was entitled to resist foreclosure on payment within the prescribed period of the mortgage-money and interest up to date of decree, the decree-holder being at liberty to recover the future interest only from the judgment-debtor personally. BHAWANI PRASAD *v.* BRIJ LAL **[I. L. R., 16 All., 269**

See RAJ KUMAR *v.* BISHESHAR NATH **[I. L. R., 16 All., 270**

MORTGAGE—*continued.*

9. FORECLOSURE.

(*a*) RIGHT OF FORECLOSURE.

479. ——————— **Right in mortgage by conditional sale.**—A mortgagee under an instrument creating a conditional sale has the right of foreclosure. The decisions of the Sudder Court that no mortgagee could ever foreclose the mortgagor's equity of redemption overruled. VENKATCHELLAM PILLAY *v.* TIRUMALA CHARY . . . **2 Mad., 289**

480. ——————— *Forfeiture of priority.*—The power of foreclosure is incidental to a mortgage in the form of a conditional sale, and the mortgagees by availing themselves of that power do not forfeit the priority they possess. BHIROOGEE MISSER *v.* OOLFUT ALI . . **2 N. W., 311**

481. ——————— *Beng. Reg. XVII of 1806—Agreement of parties.*—*Held* that a conditional sale may, by agreement and acts of the parties, become absolute without formal foreclosure proceedings taken under Regulation XVII of 1806. GOORDYAL *v.* HUNSKOONWER . . **2 Agra, 176**

RUGHONATH DASS *v.* RAM GOPAL . **5 N. W., 29**

482. ——————— *Title of purchaser by conditional sale.*—The right of a purchaser by conditional sale, who has duly taken proceedings under Regulation XVII of 1806, becomes absolute on the expiry of the year of grace, and he is entitled to claim mesne profits from that date without bringing a suit for possession. JEORAKHUN SINGH *v.* HOOKUM SINGH . . . . **3 Agra, 358**

483. ——————— *Beng. Reg. XVII of 1806—Expiration of year of grace.*—On the expiration of the year of grace allowed by Regulation XVII of 1806, the ownership of the mortgaged property vests absolutely in the mortgagee, even though he may not have obtained a decree establishing or declaring his right. *Khoob Chund* v. *Leela Dhur, 3 Agra, 103; Jeorakhun Singh* v. *Hookum Singh, 3 Agra, 358; Suroop Chunder Roy* v. *Mohender Chunder Roy, 22 W. R., 539;* and *Lotf Hossein* v. *Abdool Ali, 8 W. R., 476,* followed. TAWAKKUL RAI *v.* LACHMAN RAI. TAWAKKUL RAI *v.* SHEO GHULAM RAI . **I. L. R., 6 All., 344**

484. ——————— *Right at expiration of year of grace—Suit to confirm title.*—The title of a mortgagee is not complete upon the expiry of the year of grace allowed by the Regulation, but it is necessary for him to bring a regular suit and obtain a decree in order to confirm his title. GAISUDDIN CHOWDHRY *v.* KHODA NEWAZ CHOWDHRY **[12 C. L. R., 479**

485. ——————— *Agreement to pay amount to co-sharer or in default to forfeit share.*—Where certain arbitrators, summoned by the revenue authorities under the Regulations, investigated ancestral debts, and ascertained the amounts to be contributed by the other co-sharers to one who paid the revenue, and they, accepting the award, promised to pay principal and interest on a certain date; and also further agreed that, if they failed to pay on the specified day, their shares should thenceforward

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

become his absolute property,—*Held* that such an agreement amounted to a conditional sale, and was liable to the incidents which under the Regulations attach to such sales, and the suit for possession, without summary process of foreclosure, was not maintainable. GHOSEE LALL *v.* GAIND LALL

[3 Agra, 184

486. ——— *Beng. Reg. XXXIV of 1802—Mahomedan mortgagor.*—In 1832 a Mahomedan mortgaged certain land with possession on condition that, if the money lent was not repaid within eight years, the land should be enjoyed by the mortgagee after that period as if conveyed by sale. In 1883 a suit was brought to redeem. *Held* that the title of the mortgagee became absolute by virtue of the terms of the contract on default of payment within the time specified. The obligation cast by Regulation XXXIV of 1802 upon a mortgagee to account for profits does not prevent a mortgage by way of conditional sale from becoming, after the period for redemption has elapsed, an absolute sale where no account has been rendered by the mortgagee. The rule laid down in *Pattabhiramier's case, 13 Moore's I. A., 560,* applies to a mortgage executed by a Mahomedan. MALLIKARJUNUDU *v.* MALLIKARJUNUDU

[I. L. R., 8 Mad., 185

487. ——— *Parol conditional mortgage—Beng. Reg. XVII of 1806.*—*K* made over to *G*, from whom he had borrowed certain moneys, certain land, on the oral condition that, if such moneys were not repaid within two or three months, such land should become *G's* absolutely. *Held* that, as there was no deed of conditional mortgage, the provisions of Regulation XVII of 1806 were not applicable to *G*, and he became the owner of such land after the expiry of three months from the date on which it was made over to him, in consequence of the amount of the loan not having been repaid to him. GOBAR DHAN DAS *v.* GOKAL DAS

[I. L. R., 2 All., 633

488. ——— *Mortgage in English form.*—A mortgage in the English form between Hindus of lands in the mofussil, outside Calcutta, has always been treated by the Courts as a mortgage by conditional sale. SHURNOMOYEE DASI *v.* SRINATH DAS . I. L. R., 12 Calc., 614

489. ——— *Beng. Reg. XVII of 1806, s. 7—Foreclosure of equity of redemption—"Stipulated period."*—By a mortgage in the English form, the defendants conveyed certain property to the plaintiff, subject to the proviso that, in the event of the defendants paying to the plaintiff the principal sum on the 4th September 1868, and in the meantime paying interest on that sum half-yearly, with annual rests, in case of default of such payment, then the plaintiff should re-convey the property. The defendants failed to pay interest; and on the 4th December 1866 the plaintiff applied to the Judge of Chittagong for foreclosure: thereupon notice, under s. 8 of Regulation XVII of 1806, was issued, and served on the defendants. On the 15th April 1868 this suit was instituted by the plaintiff for the establishment and confirmation of absolute purchase, and to obtain possession of the mortgaged premises. *Held* that the suit was not maintainable. Regulation XVII of 1806 applied to this mortgage; and, under that Regulation, the mortgagee could not apply for foreclosure until the time agreed upon for repayment by the mortgagor,—that is, the "stipulated period" referred to in s. 7;—and the mortgagor was entitled to one year's grace from notification of the application for foreclosure made after that date. SARASIBALA DEBI *v.* NAND LALL SEIN

[5 B. L. R., 389

S. C. SCHOROSHEE BALA DABEE *v.* NUND LAL SEN

[13 W. R., 364

490. ——— *Beng. Reg. XVII of 1806, s. 8—Conditional sale.*—An instrument of conditional sale provided that the conditional vendor should retain possession of the property to which it related, paying interest on the principal sum lent annually at twelve per cent., and should repay the principal sum lent within seven years; that (by the fourth clause thereof), in the event of default of payment of interest in any year, the term of seven years should be cancelled, and the conditional sale should at once become absolute; and that (by the fifth clause thereof) in the event of the principal sum lent not being repaid at the end of seven years, the conditional sale should become absolute. Default having been made in the payment of interest annually as stipulated, the conditional vendee, the term of seven years not having expired, took proceedings to foreclose, in pursuance of the condition contained in the fourth clause of the deed, and the conditional sale was declared absolute. The conditional vendee then sued for possession of the property. *Held* that the fifth clause of the deed did not dispense with the necessity of complying with the provisions of s. 8 of Regulation XVII of 1806 and was compatible with them, and on or after the expiry of the stipulated period application for the foreclosure of the mortgage and rendering the conditional sale absolute in the manner prescribed by that Regulation might and must be made; that the condition contained in the fourth clause of the deed in effect defeated and violated the provisions of that Regulation, and summarily converted a conditional into an absolute sale in disregard and defiance thereof, and the foreclosure proceedings taken by the conditional vendee before the expiry of the period stipulated for the repayment of the principal sum lent were irregular, and the sale could only be rendered conclusive in the manner prescribed by that Regulation in pursuance of the fifth clause of the deed; and that accordingly such suit was not maintainable. IMDAD HUSAIN *v.* MANNU LAL

[I. L. R., 3 All., 509

491. ——— *Beng. Reg XVII of 1806, s. 8—Stipulated period—Mortgage by conditional sale.*—The term "stipulated period," as used in s. 8 of Bengal Regulation XVII of 1806, means the full term on the expiry of which the mortgage-money is payable, notwithstanding that under the strict terms of the mortgage the mortgagee might

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

be entitled to foreclose at an earlier period. *Sarasibala Debi* v. *Nand Lal Sen, 5 B. L. R., 389,* and *Imdad Husain* v. *Mannu Lal, I. L. R., 3 All., 509,* referred to. KUBRA BIBI *v.* WAJID KHAN

[I. L. R., 16 All., 59

492. ———— *Beng. Reg. XVII of 1806, s. 8 – Mortgage by conditional sale—Meaning of stipulated period—Petition for foreclosure prematurely filed—Continuance of right to redeem—Construction of clause accelerating payment.*—Under s. 8 of Bengal Regulation XVII of 1806, the right of the mortgagee by conditional sale to petition for foreclosure does not arise until the period stipulated in the proviso for redemption has expired. That period is not affected or altered by a contract in the deed of mortgage, making, without reference to redemption, the whole principal lent become due upon failure to pay interest at a certain time. In a mortgage by conditional sale in the English form, the proviso for redemption was that, on repayment of the principal lent, with interest, in three years from the date of the mortgage, the land should be reconveyed to the mortgagor. The deed also contained a covenant that, upon any default in payment of the interest half-yearly, the whole principal and interest should become due. Upon such default made the mortgagee filed his petition, under s. 8, for foreclosure, before the three years had passed; and payment not having been made during the year of grace, the mortgagor's objection was disregarded by the Court, and the conditional sale treated by the mortgage as having become conclusive. *Held* that the covenant accelerating, for other purposes, the time at which the principal should become due, making no provision for the payment of the principal by the mortgagor in order to prevent foreclosure, nor referring to the proviso for redemption, could not be taken into account in determining what was to be regarded as the "stipulated period" which remained as stated in the proviso. Thus the petition had been prematurely filed. The 8th section of the Regulation had not been called into operation, and the right to redeem remained. *Sarasibala Debi* v. *Nand Lal Sen, 5 B. L. R., 389: 13 W. R., 364,* and *Hooma Churn Chowdhry* v. *Beharee Lall Mookerjee, 21 W. R., 274,* referred to and approved. KISHORI MOHUN ROY *v.* GANGA BAHU DEBI . . . **I. L. R., 23 Calc., 228**

[L. R., 23 I. A., 183

493. ———— **Rights of mortgagee**—*Clause for recovery of mortgage-money before expiry of term.*—*M*, a Hindu widow, executed a deed of usufructuary mortgage in *J*'s favour the property hypothecated being the separate property of her husband in which she had only a life-interest. On *J* applying for mutation of names, *B* objected that he was in proprietary possession under a deed of gift executed by *M*. and the objection was allowed. In virtue of a clause in the deed of mortgage, that in case any demand was made in respect of the rest of the property within the mortgage term the mortgagee was entitled to sue for the mortgage-money notwithstanding the term had not expired, *J* sued to recover the money by the sale of the hypothecated property. *B*, in addition to an objection to the validity of the mortgage based on the deed of gift, pleaded that it was invalid as against him, the next reversioner, there being no legal necessity for the alienation. The lower Appellate Court held that the mortgage was valid as against the deed of gift, but invalid as against the reversioner. *Quære*—Whether, on reference to that ruling, there was any such danger or weakness in *J*'s title so as to entitle him to enforce the mortgage-debt before the expiry of the term. BULAKI SINGH *v.* JAI KISHEN DAS

[7 N. W., 203

494. ———— *Extension of term of grace after notice of foreclosure.*—A mortgagee, under a conditional sale, caused notice of foreclosure to be issued, and subsequently by an agreement securing certain advantages to him he extended the term of grace. The terms of that agreement not having been complied with, the mortgagee was held to be entitled to revert to the foreclosure proceedings before instituted. LALL DHUR RAE *v.* GUNPUT RAE

[1 N. W., Ed. 1873, 81

495. ———— *Agreement between mortgagor and mortgagee—Breach by mortgagor—Right of mortgagee to fall back on mortgage rights.*—The mortgagee of certain shares of certain villages applied for foreclosure under Regulation XVII of 1806. While the year of grace was running and shortly before its expiration, the mortgagor and the mortgagee came to a compromise in the matter of the mortgage. It was agreed by the mortgagor to transfer by sale to the mortgagee the shares of three of the villages in lieu of the mortgage-money, and that he should not assert his rights under s. 7 of Act XVIII of 1873, as ex-proprietor, to retain the sír lands appertaining to such shares. The mortgagee agreed to relinquish his claim on the remaining shares arising out of the mortgage and the foreclosure proceedings. It was further agreed that, if the mortgagor asserted the right mentioned above, the mortgagee should be entitled to assert his right in respect of all the shares as a mortgagee who had foreclosed. The mortgagor subsequently, in breach of his agreement, asserted his right under s. 7 of Act XVIII of 1873 to the sír lands appertaining to the shares transferred to the mortgagee. Thereupon the mortgagee sued the mortgagor for possession of all the shares by virtue of the foreclosure proceedings. *Held*, following *Lal Dhur Rae* v. *Gunput Rae, 1 N. W., Ed. 1873, 81,* that on the failure of the mortgagor to give effect to the compromise transaction the mortgagee was entitled to fall back on his equities under his mortgage and the foreclosure proceedings taken thereunder. DHONDHA RAI *v.* MEGHO RAI

[I. L. R., 4 All., 332

496. ———— *Compromise during proceedings—Intention of parties.*—A mortgage-debt not having been paid off at due date, notice of foreclosure was issued and served. During the currency of the year of grace the parties came to an arrangement and filed petitions in Court in the foreclosure proceedings, setting forth that part payment

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

had been accepted and that the rest of the debt would be paid with interest on the date of the expiry of the year of grace, failing which the sale should become absolute. *Held* that it was not the intention of the parties to substitute a new contract for the one under which the notice of foreclosure issued or that the proceedings should be allowed to drop. GOONOMONEE DOSSIA *v.* PARBUTTY DOSSIA . . . **10 W. R., 326**

497. ——— *Usufructuary mortgage—Position of mortgagee in possession.*—Where, in proceedings held before the issue of Circular Order of 22nd July 1813, a mortgagor had the opportunity in a Court competent to decide the matter, to contest, as against the mortgagee, all questions of fact necessary to give a good and absolute title to the mortgagees, and, though called upon, did not show that the mortgage was a bad one, but admitted that the mortgagees were not paid off, and that an extension of the year of grace had elapsed without his performing any of the conditions which would have saved the property from being foreclosed, it was held that, even if the proceedings did not possess the character of a regular suit, they were sufficient in themselves to effect a foreclosure, if such was their purpose. Where a party, originally a mortgagee out of possession, has been put into possession by the act and permission of the mortgagors, he has really (inasmuch as a parol contract is sufficient in this country to pass immoveable property) obtained a new title altogether different from that which he possessed before, and having its foundation in the act of the parties themselves when they put him into possession. RUNJEET NARAIN SINGH *v.* SHUREEFOONISSA **[10 W. R., 478**

498. ——— *Agreement for fresh consideration, between mortgagee and third person for release of property from mortgagee—Release not required to be in writing and registered.*—The mortgagee of immoveable property under a hypothecation bond entered into an agreement with one who was not a party to his mortgage to release part of the property from liability under his mortgage. This agreement was not in writing and registered. The mortgagee subsequently sought to enforce the hypothecation against the whole of the mortgaged property. *Held* that the agreement, being a new contract for a fresh consideration between persons who were not parties to the mortgage, was not, as between the parties to the mortgage, a release which the law required to be in writing and registered. *Held* also that the party to the agreement with the mortgagee might have come into Court as a plaintiff to enforce the same, and that it was equally competent for him to plead it in avoidance of the mortgagee's claim to bring to sale the property referred to therein. *Nash v. Armstrong, 30 L. J., C. P., 286,* referred to. GURDIAL MAL *v.* JAUHRI MAL **I. L. R., 7 All., 820**

499. ——— *Effect of foreclosure—Purchaser from mortgagor.*—Foreclosure proceedings in the Supreme Court as to mofussil property, to which a purchaser from the mortgagor is not made a party, cannot affect that purchaser. BRAJANATH KUNDU CHOWDRY *v.* KHILAT CHUNDRA GHOSE . . . . . **8 B. L. R., 104**
[14 Moore's I. A., 144: 16 W. R., P. C., 38

S. C. in Court below. KHELUT CHUNDER GHOSE *v.* TARA CHAND KOONDOO CHOWDHRY . **6 W. R., 269**

500. ——— *Foreclosure, Effect of—Deed of conditional sale.*—Until foreclosure, the vendee, under a bond of conditional sale, holds the lands, the subject of the bond, only as security for the money lent. *Semble*—The effect of foreclosure is to put an end to the original conditional sale and to make the property *ab initio* the immoveable property of the person who advanced the money. SHAM NARAIN SINGH *v.* ROGHOOBUR DYAL
[I. L. R., 3 Calc., 508: 1 C. L. R., 343

501. ——— *Effect of foreclosure—Sale for arrears of revenue—Fraud of mortgagee—Act I of 1845.*—The effect of a foreclosure decree in the Supreme Court in a mortgage suit between Hindus is equivalent to a decree establishing proprietary right in the mofussil Courts, in similar suits on the like instruments. The mortgagee in possession and another having sought to deprive the mortgagor of his title to redeem by means of a secret purchase of the mortgaged estate between them, including the fraudulent device of a sale by auction for arrears of revenue, such arrears being designedly incurred by the mortgagee in possession, it was held that a suit for redemption and for possession instituted many years after the sale for arrears was not barred by s. 24 of Act I of 1845. If a mortgagee in possession fraudulently allows the Government revenue to fall into arrears with a view to the land being put up for sale and his buying it in for himself, and he does in fact become the purchaser of it at the Government sale for arrears, such a purchase will not defeat the equity of redemption. NAZIR ALI KHAN *v.* OJOODHYARAM KHAN
[5 W. R., P. C., 83 : 10 Moore's I. A., 540

502. ——— *Usufructuary mortgage—Profits paying the interest—Suit by mortgagee to recover mortgage-money after time for redemption.*—Certain property was mortgaged for a term of years, and possession given to the mortgagee. The mortgagor covenanted in the mortgage-deed that he would redeem the property after the term had expired, and that the mortgagee should take the profits in lieu of interest until redemption. After the expiry of the term, the mortgagee sued to recover the mortgage money. *Held* that the mortgage was security for the repayment of the mortgage-money after the term had expired, and that during the term the mortgagor could not redeem nor could the mortgagee recover his money, but that, when the term had expired, either party could bring the transaction to a close. GANESH KOOER *v.* DEEDAR BUKSH . **5 N. W., 128**

DYA RAM *v.* JWALA NATH . **5 N. W., Ap., 2**

503. ——— *Suit for possession—Covenant to pay—Conditional sale—Damages Measure of—Costs.*—Two out of several co-sharers mortgaged as their own, by way of conditional sale, a portion of the joint family property. The mortgagee foreclosed, and then instituted a suit for possession, which he withdrew with liberty to bring a fresh suit. He afterwards brought a suit for possession against the mortgagors and their co-sharers, on the suggestion of the mortgagors that it would be undefended. It was, however, defended by the co-sharers, and the suit was dismissed. The mortgage-deed contained no covenant to repay the money lent. In an action for damages brought by the mortgagee against his mortgagors,—*Held* that the plaintiff was entitled to recover the money lent and interest, and the costs of the second suit. BHUGWAN ACHARJEE *v.* GOBIND SAHOO

[I. L. R., 9 Calc., 234: 11 C. L. R., 355

504. ——— **Partial foreclosure**—*Foreclosure in respect of share of property.*—Where several parties have an interest in a mortgage, it is not competent for one of them to foreclose in respect of his fractional share. A party suing for possession of a share of mortgaged property (after its release has been effected by an arrangement made between the mortgagees and mortgagor) on the ground that he had an interest in the mortgage and in the funds advanced by the mortgagees, must show that the mortgagor had notice of such interest. BHORA ROY *v.* ABILACK ROY . . . **10 W. R., 476**

505. ——— *Joint mortgagors—Foreclosure of portion of property—Suit for possession of portion of property after foreclosure.*—Where the whole of a mortgage-debt was due to the persons claiming under the mortgage jointly and not severally, and a person entitled only to one moiety of the debt foreclosed the mortgage as to that moiety, and sued the different mortgagors for possession of a moiety of their interests in the mortgaged property, in virtue of the mortgage and foreclosure,—*Held* that the foreclosure was invalid and the suit was not maintainable. BISHAN DIAL *v.* MANNI RAM . . . **I. L. R., 1 All., 297**

506. ——— *Joint mortgage by conditional sale of two villages—Sale of the equity of redemption—Foreclosure in respect of one village.*—*B* mortgaged by conditional sale two villages to *L* for a certain sum. He subsequently sold one village to *L* and the other to *S*. *L*, having foreclosed the mortgage in respect of the village sold to *S* for a proportionate amount of the mortgage-money, sued *S* for possession of that village. *Held* that the suit was maintainable. *Chandika Singh* v. *Pokhar Singh, I. L. R., 2 All., 906,* distinguished. BISHESHAR SINGH *v.* LAIK SINGH **I. L. R., 5 All., 257**

507. ——— *Foreclosure of portion of joint property.*—Where a mortgage of an estate is a joint one and there is no specification in it that any individual share or portion of a share of such estate is charged with the repayment of any defined proportion of the mortgage-money, but the whole estate is made responsible for the mortgage-money, it is not competent for the mortgagee to treat a sum paid by one of the mortgagors as made on such mortgagor's own account in respect of what might be calculated as his reasonable share of the joint debt and to release his share from further liability. Where therefore in the case of such a mortgage the mortgagee, in taking foreclosure proceedings, exempted the person and share of the mortgagor so paying and proceeded only against the other mortgagors, and the mortgage having been foreclosed sued the other mortgagors for the possession of their shares of such estate,—*Held* that, the foreclosure proceedings being irregular, the suit was not maintainable. CHANDIKA SINGH *v.* PHOKAR SINGH

[I. L. R., 2 All., 906

508. ——— *Purchaser of share of mortgaged property.*—A mortgagee sold part of the mortgaged property and then foreclosed, his purchaser being no party to the foreclosure proceedings. The mortgagee and purchaser afterwards sued for recovery of possession of the mortgaged property after foreclosure. *Held* that the purchaser could maintain his suit, although he had not been a party to the foreclosure proceedings for the recovery of the mortgaged property, which had been purchased by him. The foreclosure conferred an absolute title to the whole property mortgaged on the mortgagee and anybody claiming under him. RAJ CHANDRA PODDER *v.* MANORAMA

[3 B. L. R., Ap., 148: 12 W. R., 353

509. ——— *Merger—Foreclosure proceedings on the first of two mortgages of the same property to the same mortgagee.*—On the 26th of March 1872 *A* mortgaged to *B* certain properties for R12,000. On the 9th of May 1872 *A*, to secure a further advance of R24,000 made to him by *B*, executed a second mortgage to *B* of the same and certain other property. On the 29th of July 1873 *B* served *A* with notice to foreclose the properties mortgaged by the first deed. On the 23rd March 1874 and before the expiration of the year of grace, a portion of the properties subject to both mortgages was sold at an auction-sale subject to existing incumbrances, and *C* became the purchaser. *C* thereupon, to protect the interests he had bought at the sale, purchased in the name of *D*, a trustee, all the interest of *B* in both mortgages, and after the expiration of the year of grace, filed, in the name of himself and *D*, a suit to declare his absolute right to the foreclosed properties, and afterwards filed another suit against *A* for a money-decree on the bond in the second mortgage. *Held* that *C*, being owner of portion of the property subject to both mortgages, and as such liable to contribute proportionately to the payment of both, could not foreclose the first mortgage, and then sue *A* for the whole debt due upon the second. *Quære*—Whether it would be equitable for *C* to foreclose the first mortgage? *Held* further that the bringing of the second suit had the effect of re-opening the foreclosure proceedings, and that the Court could now make a decree in the whole case. KALIPROSONNO GHOSE *v.* KAMINI SOONDURI CHOWDHRAIN

[I. L. R., 4 Calc., 475: 3 C. L. R., 184

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

510. ——— *Second mortgage of the same property to the same person—Foreclosure decree on the first mortgage—Second suit on second mortgage—Practice—Foreclosure, Re-opening of.*—On the 8th August 1864 the defendant *B* mortgaged certain property to the plaintiff *R*, and on the 8th April 1873 he further mortgaged the same to secure a further advance from the plaintiff. In 1877 the plaintiff brought a foreclosure suit on the first mortgage and obtained the usual foreclosure decree; and the defendant having made default in payment, his right in the property was foreclosed. The plaintiff sued in 1882 on his second mortgage, which fell due in 1878. The lower Courts allowed his claim. On appeal by the defendant to the High Court,—*Held,* reversing the decree of the Court below, that the plaintiff could not foreclose in 1877 so as to vest the property absolutely in himself without treating the entire mortgage-debt as satisfied. The defendant might have pleaded in 1877 that the plaintiff could not foreclose, unless he abandoned his claim to be repaid the second advance when due. His omission to do so could not deprive him of his right to insist that the foreclosure decree passed in 1878 either precluded the plaintiff from suing on the second debt, or that the foreclosure should be re-opened. BAPU RAVJI *v.* RAMJI SVARUPJI

[I. L. R., 11 Bom., 112

511. ——— **Foreclosure of property in two districts**—*Beng. Reg. XVII of 1806, s. 8.*—According to s. 8, Regulation XVII of 1806, where mortgage-property is situate in two districts, an order of foreclosure relating to the whole property may be obtained in the Court of either district. RASMONEE DEBEA *v.* PRANKISHEN DAS

[7 W. R., P. C., 66

S. C. RAS MUNI DIBIAH *v.* PRAN KISHEN DAS

[4 Moore's I. A., 392

PROSONNO COOMAR ROY *v.* HARAN CHUNDER CHATTERJEE . . . . . 5 C. L. R., 599

512. ——— **Foreclosure of property partly in Calcutta and partly in mofussil**—*Beng. Reg. XVII of 1806.*—The High Court, in a suit for foreclosure of property partly in Calcutta and partly in the mofussil, has no power to follow the procedure prescribed by Regulation XVII of 1806, which relates to the foreclosure of property in the mofussil; but it is bound to see that the defendant is not, by reason of the suit being brought in the High Court, deprived of any substantial advantage which he would have had if the suit had been instituted in the mofussil Court. BANK OF HINDUSTAN, CHINA, AND JAPAN *v.* NUNDOLOLL SEN

[11 B. L. R., 301

513. ——— **Foreclosure of property situated partly in Oudh and partly in the North-Western Provinces**—*Beng. Reg. XVII of 1806, s. 8.*—Where a mortgage of land situated partly in the district of Shahjahanpur in the North-Western Provinces and partly in the district of Kheri in the province of Oudh was made by conditional sale, and the mortgagee applied to the District Court of Shahjahanpur to foreclose the mortgage and render the conditional sale conclusive in respect of the whole property, and that Court granted such application,—*Held,* with reference to the ruling of the Privy Council in *Ras Muni Dibiah* v. *Pran Kishen Das, 4 Moore's I. A., 392,* that, where mortgaged property is situated in two districts, an order of foreclosure relating to the whole property may be obtained in the Court of either district, that the circumstance that Oudh was in some respects a distinct province from the North-Western Provinces did not take the case out of the operation of that ruling, inasmuch as Regulation XVII of 1806 was in force in Oudh as well as in the North-Western Provinces at the time of the foreclosure proceedings. SURJAN SINGH *v.* JAGAN NATH SINGH

[I. L. R., 2 All., 313

(*b*) DEMAND AND NOTICE OF FORECLOSURE.

514. ——— **Demand from mortgagor**—*Beng. Reg. XVII of 1806, s. 8—Foreclosure, Right of.*—Under the terms of Regulation XVII of 1806, a demand from the mortgagor or his representative is a condition precedent to the right to take foreclosure proceedings. GONESH CHUNDER PAL *v.* SHODANUND SURMA . . . I. L. R., 12 Calc., 138

515. ——— **Demand for payment of mortgage-debt**—*Power of a minor to take a mortgage—Beng. Reg. XVII of 1806, s. 8.*—A conditional mortgagee applied for foreclosure omitting previously to demand from the mortgagor payment of the mortgage-debt. On foreclosure of the mortgage, he sued for possession of the mortgaged property. The lower Appellate Court dismissed the suit on the ground that the foreclosure proceedings were invalid and ineffective by reason of such omission, and in so doing directed that the demand which the mortgagee should make prior to a fresh application for foreclosure should be limited to a certain amount. *Held* that the foreclosure proceedings were invalid and ineffective by reason of such omission and the suit had been properly dismissed; and that it was not competent for the lower Appellate Court to put any limitation on the amount to be demanded by the mortgagee prior to a fresh application for foreclosure. BEHARI LAL *v.* BENI LAL

[I. L. R., 3 All., 408

516. ——— *Beng. Reg. XVII of 1806, s. 8.*—S. 8 of Regulation XVII of 1806 contemplates a previous demand of payment of the mortgage-money, and non-compliance therewith is a kind of cause of action for commencing foreclosure proceedings, and such demand must therefore necessarily be made before the mortgagee has the right of applying for foreclosure, and the omission to make such demand vitiates the foreclosure proceedings altogether. *Behari Lal* v. *Beni Lal, I. L. R., 3 All., 408,* followed. KARAN SINGH *v.* MOHAN LAL . . . . . I. L. R., 5 All., 9

517. ——— **Notice of foreclosure**—*Issue of notification—Beng. Reg. XVII of 180*

MORTGAGE—*continued.*

9. FORECLOSURE—*continued.*

ss. 7 and 8.—A mortgagee's "application" for foreclosure, as the term is used in s. 7, Regulation XVII of 1806, means the whole transaction contemplated in s. 8, ending with the notification to the mortgagor; thus the year of grace for payment, and the year necessary for completion of foreclosure, commence to run from the date of the notification. By the "date of the notification" is meant not the date on which it is served on the mortgagor, nor the date on which the purwannah or document of notification is signed and sealed, but the date of its issue by the Court. The purwannah is first issued when it is handed to the peon for delivery. SUROOP CHUNDER NAG *v.* BONOMALEE PUNDIT **[9 W. R., 116**

518. ———— *Beng. Reg. XVII of 1806—Form of notification to mortgagor.*—In order to obtain a decree for foreclosure against a mortgagor, the purwannah to be issued by the Judge under s. 8 of Regulation XVII of 1806 must distinctly notify to the mortgagor that if he shall not redeem the property mortgaged in the manner provided for by the preceding section within one year from the date of notification, the mortgage will be finally foreclosed and the conditional sale will become conclusive. BHEEKUN KHAN *v.* BECHUN KHAN . . . . . . **3 N. W., 35**

519. ———— *Omission to give mortgagor copy of application to foreclose.*—A mortgagee failing to fulfil one of the two conditions prescribed by Regulation XVII of 1806, s. 8, *i.e.*, furnishing the mortgagor or his legal representative with a copy of his application to foreclose, cannot be said to be in a position to foreclose. SANTEE RAM JANA *v.* MODOO MYTEE . **20 W. R., 363**

520. ———— *Service of notice—On whom to be served.*—The only person on whom effectual service of notice of foreclosure can be made is the person really interested in protecting the estate. KALEE KOOMAR DUTT *v.* PRAN KISHOREE CHOWDHRAIN . . . . . **22 W. R., 168**

521. ———— *Right to notice—Beng. Reg. XVII of 1806, s. 8—Purchaser of equity of redemption.*—The purchaser of the equity of redemption is not entitled to notice in a foreclosure suit, especially if the purchase has not been made until after the institution of the suit. GOOROOPERSAUD JANAH *v.* BIPPROPERSAUD BERRAH **[Marsh., 292; 2 Hay, 152**

KURMOFOOL *v.* BISSESSUR SINGH **Marsh., 337**

S. C. BISSESSUR SINGH *v.* KURMOFOOL **[2 Hay, 408**

See KISHEN BULLUBH MUHTA *v.* BELASOO COMMUR . . . . . **3 W. R., 230**

Where, however, the Judges (BAYLEY and PHEAR, *JJ.*) differed, the former holding notice was not necessary.

See BISSONATH SINGH *v.* BROJONATH DOSS **[6 W. R., 230**

522. ———— *Right to notice—Purchaser from mortgagor.*—A purchaser from a mortgagor, as one of his legal representatives, is entitled to notice of foreclosure. MADHUB THAKOOR *v.* JHOONUCK LALL DOSS . . **12 W. R., 105**

MITTERJEET SINGH *v.* MOOKH LALL SINGH **[25 W. R., 139**

523. ———— *Right to notice—Purchaser from mortgagor—Legal representative—Beng. Reg. XVII of 1806, s. 8.*—The purchaser from a mortgagor is his legal representative; and when the mortgagee takes out foreclosure proceedings, the notice enjoined by s. 8, Regulation XVII of 1806, must be served on such purchaser if it is used after the sale; fresh notice to the purchaser would not be necessary if the sale took place after notice to the mortgagor. ACHUMBIT MISSER *v.* LALLA NUND RAM . . . **11 W. R., 544**

524. ———— *Right to notice—Transferees in possession.*—Transferees in possession are entitled to notice of foreclosure. TAZUN BIBEE *v.* SHIB CHUNDER DHUR . **19 W. R., 170**

525. ———— *Assignee of mortgagor—Beng. Reg. XVII of 1806, s. 8—Legal representative.*—A purchaser of the rights and interests of the mortgagor is a legal representative within s. 8, Regulation XVII of 1806, and notice of application for foreclosure must be served on him. GOLAM DUSTAGIR KHAN *v.* JOGAI SINGH **[1 B. L. R., S. N., 3: 10 W. R., 86**

526. ———— *Right to notice—Beng. Reg. XVII of 1806, s. 8—Conditional sale—Purchaser—Second mortgagee—Legal representative.*—Where land which has been conditionally sold is subsequently mortgaged, the second mortgagee, being the mortgagor's "legal representative" within the meaning of that term in s. 8 of Regulation XVII of 1806, is entitled, on foreclosure proceedings being taken by the conditional vendee, to the notice required by that section, and cannot be deprived by the conditional vendee of the possession of the land notwithstanding foreclosure, where no such notice has been given to him. DIRGAJ SINGH *v.* DEBI SINGH . . . **I. L. R., 1 All., 499**

527. ———— *Right to notice—"Legal representative" of mortgagor—Beng. Reg. XVII of 1806, s. 8.*—The holder of a decree for money does not, merely because he has attached land belonging to his judgment-debtor while it is subject to a conditional mortgage, become the "legal representative" of the mortgagor within the meaning of s. 8 of Regulation XVII of 1806, and entitled to notice of the foreclosure of such mortgage; neither is the holder of a prior lien on land which is conditionally mortgaged the "legal representative" of the mortgagor and entitled to notice of foreclosure proceedings. RADHEY TEWARI *v.* BUJHA MISR **[I. L. R., 3 All., 413**

528. ———— *Right to notice—Purchaser of mortgagor's interest.*—Where a person mortgages his property by deed of conditional sale and afterwards the right, title, and interest of the mortgagor is sold in execution of a money-decree

MORTGAGE—*continued.*

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previously obtained against him, the purchaser at such sale is entitled to due notice of foreclosure proceedings instituted subsequently to the sale, but before the confirmation thereof. See *Bhyrub Chunder Bundopadhya* v. *Soudamini Dabee, I. L. R., 2 Calc., 141.* RAMESWAR NATH SINGH *v.* MEWAR JUGJEET SINGH . . . . **I. L. R., 11 Calc., 341**

529. ——— *Right to notice—Assignee of mortgagor—Beng. Reg. XVII of 1808, s. 8.*—Under s. 8, Regulation XVII of 1806, a mortgagee is bound to serve notice of foreclosure upon the assignee of the mortgagor, whether such assignee be of the whole or a portion of the mortgage premises, and whether notice of the assignment has been given to the mortgagee or not. GANGA GOBIND MANDAL *v.* BANI MADHAB GHOSE

[3 B. L. R., A. C., 172 : 11 W. R., 548

530. ——— *Right to notice—Assignee of mortgagor—Beng. Reg. XVII of 1806, s. 8.*—The assignee of a mortgagor, though purchaser of only a portion of the mortgaged property, is his "legal representative" within the meaning of s. 8, Regulation XVII of 1806, and as such entitled to notice of foreclosure. SHEO GOLAM SINGH *v.* RAMROOP SINGH

[15 B. L. R., 34 note : 23 W. R., 25

531. ——— *Right to redeem—Mokuraridar—Beng. Reg. XVII of 1806, s. 8.*—The holder of a maurasi mokurari pottah under the mortgagor is not a "representative" within the meaning of s. 8 of Regulation XVII of 1806, and is therefore not entitled to notice of foreclosure under that section. *Lalla Doorga Pershad* v. *Lalla Luchmun Sahoy, 17 W. R., 272,* followed. SRIPOTI CHURN DEY *v.* MOHIP NARAIN SINGH

[I. L. R., 9 Calc., 643 : 13 C. L. R., 119

532. ——— *Beng. Reg. XVII of 1806.*—A second mortgagee under a mortgage-bond is entitled to notice of foreclosure under Regulation XVII of 1806. NUDYAR CHAND CHUCKERBUTTY *v.* ROOP DOSS BANERJEE

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533. ——— *Right to notice—Second mortgagee—Prior foreclosure of a second mortgage—Legal representative—Beng. Reg. XVII of 1806, s. 8.*—In the case of the prior foreclosure of a subsequent mortgage,—*Quære*—Whether the second mortgagee is the mortgagor's legal representative for the purpose of the notice of foreclosure under s. 8, Regulation XVII of 1806. When the first mortgagee had no knowledge or cognizance of the second mortgage, or of the foreclosure proceedings taken under it, the second mortgage had no just ground of complaint that the notice of foreclosure was served, not on him, but on the mortgagor. KALEE KISHORE CHATTERJEE *v.* TARA PERSHAD ROY . . . . **4 W. R., 1**

534. ——— *Right to notice—Purchaser from mortgagee.*—Property in the mofussil which had been mortgaged in 1862 to *C* by a deed in the English form containing the usual power of sale on default of payment, and again in 1864 to *T* by deed of conditional sale, was sold by *C* under the power of sale and purchased by *N*. Previously to the sale, *T* had foreclosed. In a suit for possession of the property brought by the widow of *T* against *N* and the mortgagor, it appeared that no notice of foreclosure had been served on *N*. *Held* that *N* was entitled to such notice by the fact of his purchase, whether he had obtained possession or not, and that no notice having been served upon him, the suit was not maintainable against him. BHANOOMUTTY CHOWDRAIN *v.* PREMCHAND NEOGEE

[15 B. L. R., 28 : 23 W. R., 96

MOHUN LALL SOOKUL *v.* GOLUCK CHUNDER DUTT **[1 W. R., P. C., 19 : 10 Moore's I. A., 1**

535. ——— *Sufficiency of notice—Foreclosure of share of mortgaged property.*—Two persons jointly held a mortgage, each having an equal share in it. The equity of redemption subsequently became vested solely in one of these persons. *Held* that, under the circumstances, a notice of foreclosure confined to a one-half share only of the mortgage (issued by the mortgagee, who had no interest in the equity of redemption) was sufficient, and that the foreclosure proceedings were not bad, although they related only to a part and not to the whole of the mortgaged property. HUNOOMANPERSAUD SAHOO *v.* KALEEPERSAUD SAHOO . **W. R, 1864, 285**

536. ——— *Sufficiency o notice—Effect of service of second notice of foreclosure.*—Where the notice of foreclosure was duly served on the mortgagor, no subsequent transfer of the property, whether voluntary or involuntary, could affect the validity of the notice, or impose on the mortgagee any new obligation in the way of causing a fresh notice to be served on the purchaser. The notice having been duly served on the mortgagor, his right and interest were subsequently sold in execution, and the mortgagee caused a second notice to be served on the purchaser. The foreclosure took place after the expiry of a year from the first, but within a year from the date of second notice. *Held,* under the circumstances of the case, that, as the second notice was merely for greater caution to bring to the knowledge of purchaser that notice had already been issued, and did not supersede the first notice, the foreclosure proceedings were regular, and the suit for possession was maintainable. ZEMIN ALI *v.* HOSSEIN ALI . . . **2 Agra, Pt. II, 187**

537. ——— *Fresh notice—Allowance of time by mortgagee beyond year of grace.*—A mortgagee, having issued notice of foreclosure on the mortgagor, allowed him six months' time in which to redeem, shortly before the expiry of the year of grace. The mortgagor died, and the mortgagee sued to recover the property. *Held* that fresh notice of foreclosure on the legal representative of the mortgagor was not necessary, the requirements of the law in the issue of the notice and the expiry of the year of grace having been complied with. BAZLOOR RAHIM *v.* ABDULLAH

[2 B. L. R., S. N., 5 : 10 W. R., 359

538. ———— *Extension of time for payment—Fresh notice.*—Where a mortgage becomes foreclosed and the mortgagee abstains from enforcing his right and allows the mortgagor an extension of time, it is not necessary that a fresh notice should be served. BRIJO MOHUN SUTPUTTY *v.* RADHA MOHUN DEY . . **20 W. R., 179**

539. ———— *Service of notice—Proof of service—Beng. Reg. XVII of 1806—Duty of Judge.*—Under Regulation XVII of 1806, the Zillah Judge is judicially required to see it proved before him that the notice of foreclosure has been duly served, and to record a proceeding certifying that the requirements of that Regulation have been duly carried out, and also any elucidating facts necessary to be recorded as occurring within the year of grace. ABBAS ALY *v.* NUND COOMAR GHOSE **[7 W. R., 123**

540. ———— *Service of notice—Proof of service—Beng. Reg. XVII of 1806, s. 8.*—The provisions of s. 8 of Regulation XVII of 1806, that a copy of the mortgagee's application to foreclose is to be served with the Judge's purwannah referred to in that section, are imperative and not merely directory. Where the evidence fell short of proof that a copy of such application was served with the purwannah of the Judge,—*Held* that such failure of proof was fatal to the plaintiff's suit to recover possession of the mortgaged premises after the expiration of the year of grace. When the plaintiff's second mortgagees, who had foreclosed their mortgagor's equity of redemption, sued for possession of the mortgaged property, and alleged that their mortgagor's equity of redemption had been finally foreclosed by the first mortgagee after due proceedings and expiry of the year of grace without redemption, and that they were therefore entitled to absolute possession, and failed on the ground that notice of foreclosure had not been duly served,—*Held* they were not entitled to a decree as mortgagees for possession, subject to their accounting to the mortgagors, that being relief different from that prayed for in their plaint. BANK OF HINDUSTAN, CHINA, AND JAPAN *v.* SHOROSHIBALA DEBEE **[I. L. R., 2 Calc., 311**

541. ———— *Service of notice—Proof of service—Beng. Reg. XVII of 1806, s. 8.*—The notice of foreclosure under s. 8, Regulation XVII of 1806, is not merely a preliminary proceeding leading up to a judgment of foreclosure to be subsequently pronounced in Court. It not only fixes the date from which the period during which the mortgagor is to retain the right to redeem is to be computed, but it is of itself the operative act in the foreclosure proceeding. The service of the notice therefore should be evidenced by the clearest proof, and should be in all cases, if not personal, at least such as to leave no doubt in the mind of the Court that the notice itself must have reached the hands or come to the knowledge of the mortgagors. EUSUF ALI *v.* AZUMTOONISSA . . . . **W. R., 1864, 49**

542. ———— *Service of notice—Proof of service.*—The regulation as to service of a notice of foreclosure does not provide for any mode of service in substitution for personal service, though in some cases it has been held that personal service is not absolutely necessary; but to justify resort to any other mode of service it must be shown that in spite of efforts made for that purpose the notice cannot for some reason be personally served. A copy of the report of the Nazir of the Civil Court, copies of the depositions of witnesses not taken in the presence of the parties to the suit, and a copy of the final foreclosure proceeding, are not legal evidence to prove the service of a notice of foreclosure. MADHO SINGH *v.* MAHTAB SINGH . . **3 N. W., 325**

543. ———— *Service of notice—Mode of service.*—Where notice of foreclosure issues, and the serving officer finds that the mortgagor is not at home, it is sufficient if he affixes the notice on the door of the mortgagor's house, personal notice on the mortgagor not being essential. SOORJOO KANT BANERJEE *v.* KRISTO KISHORE PODDAR . . . . . **14 W. R., 423**

544. ———— *Service of notice—Mode of service—Sufficiency of service—Beng. Reg. XVII of 1806, s. 8.*—Where notice of foreclosure was shown to have been served according to the usual course of business in the Sheriff's office, the Court presumed that a copy of the application had been duly served therewith; but where it appeared that according to the practice of the High Court, mention of the application would have been made in the order if it had accompanied the notice, and no such mention was made, the Court refused to make such presumption. DENONATH GANGOOLY *v.* NURSING PROSHAD DASS . . . . . . **[14 B. L. R., 87 [22 W. R., 90**

545. ———— *Service of notice—Mode of service—Beng. Reg. XVI of 1806—Minor.*—Regulation XVII of 1806 giving no special direction as to the person on whom notice of foreclosure is to be served, when the person for the time being entitled to the equity of redemption is a minor and no guardian of such minor has been appointed under Act XL of 1858, service of such notice of foreclosure upon the minor and his mother will be deemed sufficient service. DABEE PERSHAD *v.* MAN KHAN . . . . . **2 N. W., 444**

546. ———— *Service of notice—Sufficiency of service—Beng. Reg. XVII of 1806—Representative.*—The order of foreclosure having been served on the widow of the deceased mortgagor who had a life-interest, and also was the guardian of the minor adopted son and legal representative of the deceased, the service was held to be sufficient. RASMONEE DEBIA *v.* PRAN KISSEN DAS **[7 W. R., P. C., 66**

S. C. RAS MUNI DIBIAH *v.* PRANKISHEN DAS **[4 Moore's I. A., 392**

547. ———— *Service of notice—Sufficiency of service.*—It cannot be said that, if a notice of foreclosure addressed to a deceased mortgagor has reached the hands of his representatives,

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they have not had the notice nor that they were debarred from paying or were not required to pay the amount of the mortgage upon receiving that notice. RAM CHUNDER HALDER *v.* JONAB ALI KHAN

[17 W. R., 230

548. ———————— *Service of notice —Sufficiency of service.*—Where the defendant denied having received notice of foreclosure, and the witnesses called to prove service denied all knowledge of the matter,—*Held* that the report of the peon in the formal proceedings before another Court was inadmissible as evidence in the case, and the acquiescence of one mortgagor was not binding on the other. Transferees in possession are entitled to have notice of foreclosure. TAZUN BIBEE *v.* SHIB CHUNDER DHUR . . . . . . **19 W. R., 170**

549 ———————— *Service of notice —Proof of service—Suit by conditional vendee for possession.*—Where in a suit by a conditional vendee for possession after foreclosure service of notice is denied by the mortgagor or his representative, it is incumbent on the former to prove such service independently of the copy of the foreclosure proceedings. SOOKHMUN *v.* CHOORAMAN . . **1 Agra, 172**

550. ———————— *Service of notice —Fresh notice, Necessity of—Purchase from mortgagor after notice served.*—Where the mortgagor sells his equity of redemption after foreclosure proceedings had been applied for and notices duly served on him, it is not necessary for the mortgagee to issue fresh notice on the purchaser; the requirements of the Regulation are satisfied by the service of the notice on the person who at the time of service is entitled to redeem. JYRAM GIR *v.* KRISHAN KISHORE CHUND . . . **3 Agra, 307**

551. ———————— *Service of notice—Proof of service—Beng. Reg. XVII of 1806, s. 8.*—The condition of foreclosure required by s. 8, Regulation XVII of 1806, is that the mortgagor should be furnished with a copy of the petition referred to in the section, and should have a notification from the Judge in order that he may, within a year from the time of such notice, redeem the property. In an action brought to recover possession as upon a foreclosure, it is essential for the plaintiff to satisfy the Court that the above condition has been complied with. In such a case, the service of the notice must be established by evidence. The mere return of the Nazir on the back of the Judge's purwannah to the effect that the mortgagor had been duly served, is not legal evidence of service. The functions of the Judge under s. 8 are merely ministerial. The year during which the mortgagor may redeem, runs, not from the date of the purwannah, or the issuing of it by the Judge, but from the time of service. Where there are several mortgagors, and it is not sought to foreclose the individual shares of each as against each but to foreclose the whole estate as upon one mortgage, one debt, and one entire right against all, service of the notice upon some only of the mortgagors is insufficient to warrant the foreclosure of the whole estate or of any part of it. *Quære*—Whether there may not be cases of mortgages of separate shares, in which by proceedings properly framed foreclosure may take place in respect of some of such shares only. The mortgagee, when he seeks to foreclose, must discover and serve notice on those who are the then owners of the estate. NORENDER NARAIN SINGH *v.* DWARKALAL MUNDUR . **I. L. R., 3 Calc., 397**

[1 C. L. R., 369 : L. R., 5 I. A., 18

552. ———————— *Sufficiency of notice—Reg. XVII of 1806, s. 8—Service of copy of petition and of purwannah.*—The provisions of s. 8 of Regulation XVII of 1806 are not merely directory, but imperative, prescribing conditions precedent to the right of the mortgagee to enforce forfeiture of the estate of the mortgagor, and have for their object the protection of mortgagors from fraud. The prescribed procedure must be strictly followed. *Norender Narain Singh* v. *Dwarka Lal Mundur, L. R., 5 I. A., 18 : I. L. R., 3 Calc., 397,* referred to and followed. *Held* that, although the mortgagor at the hearing of the foreclosure suit in the Court of first instance had not insisted on the insufficiency of the notification of the mortgagee's application to foreclose, but had relied on another defence, this could not be construed as a binding admission that notice had been duly given; that service of the copy petition for foreclosure, and of the purwannah signed by the Judge, was essential; and that the mortgagor was not precluded from questioning the regularity of the proceedings in his subsequent appeal. MADHOPERSAD *v.* GAJADHAR

[I. L. R., 11 Calc., 111 : L. R., 11 I. A., 186

553. ———————— *Beng. Reg. XVII of 1806, s. 8—Procedure—Mortgage by conditional sale—Demand of payment—Purwannah—"Official signature"*—In proceedings for foreclosure of a mortgage under Bengal Regulation XVII of 1806, it is not necessary that the fact that a demand for payment was made before the petition for foreclosure was presented should appear on the face of the proceedings; it is sufficient if the plaintiff in his suit for possession shows that the demand was so made. A purwannah issued under the provisions of s. 8 of the abovementioned Regulation is not signed as required by that section with the "official signature" of the Judge when it bears merely the initials of that officer. *Madho Persad* v. *Gajudhar, I. L. R., 11 Calc., 111,* referred to. KUBBA BIBI *v.* WAJID KHAN .

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554. ———————— *Sufficiency of notice—Mortgage by conditional sale—Suit for possession of mortgaged property—Beng. Reg. XVII of 1806, s. 8—Conditions precedent—Demand for payment of mortgage-money—Proof of service of notice—Proof of notice being signed by the Judge—Proof of forwarding copy of application with notice—Transfer of Property Act (IV of 1882).*—The provisions as to the procedure to be followed in taking foreclosure proceedings under Regulation XVII of 1806 are not merely directory, but strict satisfaction of the prescribed conditions therein laid down precedes the right of the conditional vendee to claim the forfeiture of the conditional vendor's right, and the various requirements of that section have to be strictly observed in order to entitle a mortgagee to come into Court, and, upon the basis of the observance of those requirements, to assert an absolute title to the property of the mortgagor. *Norender Narain Singh* v. *Dwarka Lall Mundur, I. L. R., 3 Calc., 397,* and *Madho Pershad* v. *Gajadhar, I. L. R., 11 Calc., 111,* followed. In a suit for possession of immoveable property by a conditional vendee under a deed of conditional sale, alleged to have been foreclosed under Regulation XVII of 1806, it appeared that, except a recital in the application for foreclosure itself, there was nothing to show that any preliminary demand was ever made upon the mortgagors for payment of the mortgage-debt; that there was no proof of the "notice" itself having been served upon the mortgagors, which it lay upon the plaintiff to establish; that there was nothing to show that the notice which was issued was signed by the Judge to whom the application was made; and that it was not proved that a copy of the application was forwarded along with the notice to the mortgagors, or that its terms were ever brought to their knowledge. *Held,* applying to the case the principles stated above, that the provisions of Regulation XVII of 1806 had not been satisfied, and that the plaintiff had not fulfilled his obligation, namely, to prove affirmatively that those provisions were strictly followed. *Held* also that to treat the suit as one instituted under the Transfer of Property Act, and to allow the plaintiff to obtain such relief as he would be entitled to by that Act, would be to countenance an entire change in the nature and character of the suit as it was originally instituted, and that this was a course not sanctioned by the law. SITLA BAKHSH *v.* LALTA PRASAD

[I. L. R., 8 All., 388

555. ———————— *Sufficiency of notice – Foreclosure proceedings under Reg. XVII of 1806, and subsequent procedure under Transfer of Property Act — Mortgage — Conditional sale – Suit for possession on foreclosure —Beng. Reg. XVII of 1806, ss. 7, 8 — Act IV of 1882 (Transfer of Property Act), ss. 2, cl. (c), and 86.*—The procedure laid down in the Transfer of Property Act may be applied to the case of foreclosure of a mortgage executed before the Act came into operation, provided it be so applied as not to affect the rights saved by s. 2, cl (c), of the Act. Where therefore under the provisions of Regulation XVII of 1806 notice of foreclosure had been served on a mortgagor by conditional sale, the mortgage having been executed, and the foreclosure proceedings taken before the Transfer of Property Act came into force, and after the expiry of the year of grace the money not having been paid, the mortgagee instituted a suit for possession on foreclosure, and when such suit was defended by a third party who had purchased the mortgaged property at an execution-sale and obtained possession before the commencement of the foreclosure proceedings and the necessary notice had not been served upon him,—*Held* that it was competent to the Court to apply the procedure prescribed by the Transfer of Property Act and grant the mortgagee a decree in the terms of s. 86, substituting the period of "one year" for the period of "six months" therein mentioned. *Ganga Sahai* v. *Kishen Sahai, I. L. R., 6 All., 622,* referred to. PERGASH KOER *v.* MAHABIR PERSHAD NARAIN SINGH . . . . **I. L. R., 11 Calc., 582**

556. ———————— *Reg. XVII of 1806, s. 8—Provision as to the year of grace—Extension of time by mutual agreement—Transfer of Property Act, s. 2, cl. (c).*—The year of grace allowed by s. 8, Regulation XVII of 1806, is a matter of procedure, which it was open to the parties to extend by mutual agreement without prejudice to the proceedings already had under the section, and upon the expiration of such extended period the mortgagee acquired an immediate right to have a decree declaring the property to be his absolutely. The right so acquired by the mortgagee while the Regulation was in force is a right which falls within the meaning of cl. (c), s. 2 of the Transfer of Property Act. Proceedings under s. 8 had come to a close by the expiration of the stipulated period of extension while the Regulation was still in force, and the mortgagee brought his suit for possession in pursuance thereof after the passing of the Transfer of Property Act. *Held* that the mortgagee was entitled to a decree such as he would have had if the Regulation had been still in force. BAIJ NATH PERSHAD NARAIN SINGH *v.* MOHESWARI PERSHAD NARAIN SINGH **I. L. R., 14 Calc., 451**

557. ———————— *Conditional sale—Reg. XVII of 1806, s. 8—Transfer of Property Act (IV of 1882), s. 2, cl. (c), and ss. 86, 87—Procedure.*—A suit was brought on the 24th January 1885 by a mortgagee upon a mortgage by conditional sale asking for a declaration that the mortgagor's right to redeem had been extinguished, and that he was entitled to possession of the mortgaged properties. The mortgage was dated the 6th April 1881, and the mortgage-money was repayable on the 13th May 1881. On the 9th July 1881 the mortgagee caused a notice to be served on the mortgagor in compliance with the provisions of ss. 7 and 8 of Regulation XVII of 1806. The year of grace expired on the 10th July 1882. It was contended by the mortgagor that, as the Transfer of Property Act came into force on the 1st July 1882, the proceedings taken by the mortgagee should be regulated by the procedure laid down in ss. 85 and 87 of that Act, and not by the procedure prescribed by Regulation XVII of 1806. *Held* that the procedure laid down by the Transfer of Property Act could not be applied to the case. Although the year of grace had not expired when that Act came into force, and the full and complete right of the mortgagee had not accrued, he had acquired the right to bring a suit under the provisions of Regulation XVII of 1806, at the expiration of the year of grace, and the mortgagor was under a liability to part with this property upon a suit being brought at the expiration of that year, and such right and liability came within the

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meaning of these terms as used in cl. (*c*), s. 2 of the Transfer of Property Act. MOHABIR PERSHAD NARAIN SINGH *v.* GUNGADHUR PERSHAD NARAIN SINGH [I. L. R., 14 Calc., 599

558. ———— *Suit for foreclosure—Conditional sale—Reg. XVII of 1806, s. 8—Transfer of Property Act (IV of 1882), s. 2—General Clauses Consolidation Act (I of 1868), s. 6—"Proceedings."*—In a suit for foreclosure under a deed of conditional sale, where the due date of the deed expired, and notice of foreclosure was served while Regulation XVII of 1806 was in force, but before the expiration of the year of grace that Regulation had been repealed by the Transfer of Property Act,—*Held*, following *Mohabir Pershad Narain Singh* v. *Gungadhur Pershad Narain Singh, I. L. R., 14 Calc., 599*, that proceedings for foreclosure having been commenced under the Regulation, those proceedings were saved by s. 6 of the General Clauses Consolidation Act (I of 1868). The "Proceedings" referred to in that section are not necessarily judicial proceedings only, but ministerial proceedings, as in the present case, the service of notice of foreclosure. UMESH CHUNDER DAS *v.* CHUNCHUN OJHA [I. L. R., 15 Calc., 357

559. ———— *Sufficiency of notice—Mortgage by agent.*—Where a mortgage was made by the lambardar for himself and as agent for other sharers, it was held necessary to issue notice of foreclosure both to the lambardar and his co-sharers. PUNCHUM SINGH *v.* MUNGLE SINGH [2 Agra, Pt. II, 207

560. ———— *Omission to give notice, Effect of.*—Omission to give notice to the mortgagor or his representative is sufficient to vitiate the whole of the foreclosure proceedings. KHUKROO MISRAIN *v.* JHOOMUCK LALL DASS [15 W. R., 263

561. ———— *Irregularity in foreclosure proceedings—Beng. Reg. XVII of 1806, s. 8.*—The omission of the Court to send with a notice of foreclosure a copy of the mortgagee's petition as required by s. 8, Regulation XVII of 1806, was held to be not such an irregularity as made void the foreclosure in a case where, subsequent to the issue of the notice, the mortgagor continued to live in the neighbourhood of the property, and the mortgagee erected buildings on it and used it as his own, without objection or claim on the part of the mortgagor. SALIGRAM TEWAREE *v.* BEHAREE MISSER [W. R., 1864, 36

562. ———— *Beng. Reg. XVII of 1806, s. 7—Notice of foreclosure not signed by Judge—Invalidity of foreclosure proceedings.*—A notice issued under Regulation XVII of 1806, which does not bear the signature of the District Judge, but bears the seal of his Court only, is informal and bad, and the foreclosure proceedings in which such a notice has issued are invalid *ab initio*. BASDEO SINGH *v.* MATA DIN SINGH [I. L. R., 4 All., 276

MORTGAGE—*continued.*

9. FORECLOSURE—*concluded.*

563. ———— *Form of notice—Omission to sign and seal by Judge.*—A notice of foreclosure, bearing the seal of the Court issuing it, but signed only by a Moonserim, is not a sufficient compliance with the law, which requires that the notice be given under the seal and official signature of the Judge. SEITH HUR LALL *v.* MANICKPAL [3 N. W., 176

564. ———— *Beng. Reg. XVII of 1806.*—A notice of foreclosure signed by the serishtadar of the Judge's Court and bearing the seal of the Court, but not the signature of the Judge,—*Held*, following the principle of the decision in *Basdeo Singh* v. *Mata Din, I. L. R., 4 All., 276*, not to be a valid notice under Regulation XVII of 1806, s. 8. DOMA SAHU *v.* NATHAI KHAN [I. L. R., 13 Calc., 50

565. ———— *Sufficiency of notice—Beng. Reg. XVII of 1806, s. 8—Notice not signed by Judge.*—*Held* that, where the notice of foreclosure under s. 8 of Regulation XVII of 1806 was signed not by the Judge, but only by the Munsarim, the foreclosure proceedings were void *ab initio*. *Held* also that the notice which was upon the record of the foreclosure proceedings and bore the mortgagor's signature must be regarded as the original notice in the matter; and that the acknowledgment of receipt of notice by the mortgagor did not cure the inherent defect of its non-signature by the Judge. HANUMAN SARAN SINGH *v.* BHAIRON SINGH . . . . I. L. R., 12 All., 189

10. ACCOUNTS.

566. ———— **Claim for account**—*Suit on mortgage payable on demand.*—Where a mortgage-debt is payable on demand, the mortgagee ought to sue, not for interest only, but for an account and payment of what remains due on the mortgage for principal and interest up to the filing of the plaint. ANNAPA *v.* GANPATI . I. L. R., 5 Bom., 181

567. ———— **Suit for account**—*Suit by mortgagor—Redemption.*—Ordinarily, a suit for an account upon a mortgage cannot be maintained by a mortgagor unless he asks for redemption also. HARI *v.* LAKSHMAN . . . I. L. R., 5 Bom., 614

See SHANKARAPA *v.* DANAPA [I. L. R., 5 Bom., 604

568. ———— **Obligation to account**—*Mortgagee in possession.*—Though a mortgage be not an usufructuary mortgage, the mortgagee in possession is bound to give an account of the profits realized by him from the mortgaged property so long as it was in his possession, whether he took possession with or without the consent of the mortgagor. NILKANT SEIN *v.* JAENOODDEEN . 7 W. R., 30

569. ———— **Mode of taking account**—*Beng. Reg. XV of 1793, s. 10.*—According to s. 10, Regulation XV of 1793, it is the duty of the Court to take an account of the receipts of the mortgagee in possession, and then to adjust the mortgage account of principal and interest. SHUMBOONATH ROY *v.* MONOWAR ALI . . . **W. R., 1864, 109**

570. ———— **Form of account**—*Mortgagee in possession.*—A mortgagee in possession should keep an account independent of the batwara accounts, which may be used as a test of the accuracy of the accounts filed by the parties. The mortgagee's account must be prepared by himself or by his own agent, and must comprise the gross receipts realized from the tenantry, and the account must be full and complete. RAM KISSEN SINGH *v.* KUNDUN LALL

[W. R., 1864, 177

571. ———— *Suit by second mortgagee against mortgagor and third mortgagee.*—In a suit by a second mortgagee against his mortgagor and a third mortgagee, asking for an account and sale, the Court directed an account to be taken, not only of what was due to the plaintiff, but also of what was due to the third mortgagee. AUHINDRO BHOOSUN CHATTERJEE *v.* CHUNNOOLALL JOHURRY

[I. L. R., 5 Calc., 101

572. ———— **Liability to account**—*Duty of mortgagee of share of estate.*—It is the duty of a mortgagee of a fractional share of an estate held in joint tenancy to see that he receives out of the estate all that the mortgagor ought to have received; not only that all assets are realized and brought to account, but that the expenses are regulated with care. ALI REZA *v.* TARASOONDEREE

[2 W. R., 150

573. ———— *Mortgagee in constructive possession—Duty of mortgagee.*—*Held* that an usufructuary mortgagee in possession is liable to account for the profits, whether such possession be by himself or by his agent, and that the suit should not be dismissed merely because the mortgagee refused to give the account, but that the Court should give proper directions for the mortgagee's account to be taken, charging the mortgagee with the amount of the ordinary annual profits if received by him or his agent, but not so charging him if the profits were received by the agent of the mortgagor. JAFFREE BEGUM *v.* UJBEE BEGUM

[3 Agra, 153

574. ———— *Waiver of right to account by mortgagor—Usury laws, Repeal of—Contract as to profits of estate.*—A mortgagor may give his usufructuary mortgagee the power to sue him personally, or to sell the land, or both, at any moment. Since the repeal of the usury laws a mortgagor and mortgagee may make what contract they please with reference to the profits of the mortgaged estate, and the mortgagor may by contract deprive himself of the right to compel the mortgagee in possession to account for the profits. MUNNOO LAL *v.* REET BHOOBUN SINGH . . . **6 W. R., 283**

575. ———— *Usufructuary mortgage—Redemption—Interest—Beng. Reg. XV of 1793, ss. 3, 4, 10, 11—Stat. 13 Geo. III, c. 63, s. 30—Act XXVIII of 1855, s. 7—Novation of contract—Recital of mortgage.*—*J*, the usufructuary mortgagee for R1,250 of certain land, of one-ninth of which he had purchased the equity of redemption, in 1854 gave a usufructuary mortgage of the land to *N* for R2,700, of which R1,950 represented the mortgage-money of the land he held as mortgagee, and R750 of the land he held as proprietor. By the instrument of mortgage it was provided that the mortgagee should take all the profits in lieu of interest, and the mortgage should be redeemable on payment by the mortgagor of the principal money. In 1880 *F*, the representative of the original mortgagor in respect of eight-ninths of the land, sued, with reference to Regulation XV of 1793, for possession of the land, on the ground that the mortgage had been redeemed, as the principal money and interest at twelve per cent. had been received out of the profits, and claimed an account. *N* set up as a defence that the provisions of that Regulation were not applicable, as after its repeal by Act *XXVIII* of 1855, the mortgagor had agreed not to claim an account. This agreement, he alleged, was contained in the wajib-ul-urz of 1871. *Held* that the wajib-ul urz did not contain a new contract or ratification of the old contract of 1854 between the parties, but merely a recital of the mortgage, and therefore *F* was entitled to an account. *Held* also that the account should be calculated on eight-ninths only of the land. Observations by STUART, *C.J.*, on Regulation XV of 1793 and Stat. 13 Geo. III, c. 63. *Shah Makhan Lal* v. *Srikrishna Singh, 2 B. L. R., P. C., 44,* and *Badriprasad* v. *Murlidhar, I. L. R., 2 All., 593,* referred to. MAHTAB KUAR *v.* COLLECTOR OF SHAHJAHANPUR

[I. L. R., 5 All., 419.

576. ———— *Usufructuary mortgage—Reservation of huka jori.*—When a deed is essentially in the nature of a usufructuary mortgage, the reservation of huk ajori, which was held to be not in the nature of rent, to the proprietor, and any other arrangement between him and his lessee cannot alter the essential character of the deed, nor relieve the mortgagee from the liability of rendering an account. HYDER BUKSH *v.* HOSSEIN BUKSH **4 W. R., 103**

See FUZLOOL RUHMAN *v.* ALI KUREEM

[5 W. R., 163

577. ———— **Right to an account**—*Suit for redemption—Usufructuary mortgage.*—In a redemption under the old law, for the possession of land, the subject of an usufructuary mortgage, the plaintiff is entitled to an account, even though the terms of the original agreement exempt the defendant from his liability to an account, and although the principal sum advanced is very small. DOORGA DABEE *v.* ISSUR CHUNDER CHATTERJEE . . **10 W. R., 367**

PUNJUM SINGH *v.* AMEENA KHATOOM . **6 W. R., 6**

578. ———— *Right of purchaser for mortgagor to an account.*—The fact that a purchaser of the equity of redemption received a certain sum for payment to the mortgagee does not preclude him from claiming from the mortgagee an account of the income of the mortgaged property. JAFREE BEGUM *v.* GUNGA RAM . **3 Agra, 91**

MORTGAGE—*continued.*

10. ACCOUNTS—*continued.*

579. ———— *Right of mortgagor to call on mortgagee to file account—Beng. Reg. XV of 1793—Beng. Reg. I of 1798.*—A mortgagor who has recovered possession of the mortgaged property by the deposit of the principal sum lent under Regulation I of 1798 is, in a suit subsequently brought by him for the adjustment of accounts during the period the mortgagee was in possession, entitled to force the defendant to file his accounts and swear to them according to the provisions of Regulation XV of 1793. TUFUZZOOL HOSSEIN *v.* MAHOMED HOSSEIN

[2 Hay, 17

580. ———— **Production of accounts**—*Beng. Reg. XV of 1793, s. 11.*—Under s. 11 of Regulation XV of 1793, a mortgagee in possession is bound to produce the accounts of collection and disbursement, and to swear to them; and a plea of "no assets" will not exempt him from acting up to those requirements. BHEECHUCK SINGH *v.* LUTCHMINARAIN SINGH . . . . . 1 Hay, 182

581. ———— *Beng. Reg. I of 1798, s. 3.*—In a suit for foreclosure brought by a mortgageee under a bye-bil-wafa, or conditional bill of sale, it is not incumbent on the mortgagee to produce his accounts; the language of s. 3 of Regulation I of 1798 pointing to an adjustment of accounts in the event of accounting becoming necessary, in which case the lender is to account. FORBES *v.* AMEEROONISSA BEGUM

[1 Ind. Jur., N. S., 117: 5 W. R., P. C., 47
10 Moore's I. A., 340

582. ———— **Objection to items in accounts**—*Jamabandi papers—Beng. Reg. IX of 1833.*—A mortgagor is not precluded from questioning the correctness of the jamabandi annually filed by the patwari in obedience to the provisions of Regulation IX of 1833 by reason of his not having brought the incorrect entries to the notice of the Collector at the time the papers were filed. TAIG ALI *v.* GOLAB CHOWDHREE . . . . . 3 Agra, 314

583. ———— **Mode of filing accounts**—*Conditional decree—Reconveyance, Power of Court for.*—In a suit for redemption of mortgaged property it was held (by BAYLEY, *J.*) that the law only requires that the mortgagee's account of receipts and disbursements shall be made out, filed in Court, and then sworn to as correct by the mortgagee. *Held* (by PHEAR, *J.*) that mortgagees are bound to exhibit the detailed items of all their actual receipts and disbursements to the time of accounting, verified by themselves, and accompanied by all vouchers. *Held* (by BAYLEY, *J.*) to be a rule of law which had been followed in practice, and which this Court must follow, that no redemption can be decreed in such a suit as long as there is any balance found due. *Held* (by PHEAR, *J.*) that plaintiff ought to obtain a decree for reconveyance on payment of the balance found to be due, with interest and costs of suits within a time specified, and that the Court is not bound by the previous practice, but has power to mould its decrees in such a way as to meet the exigencies of each case. MOKUND LALL SOOKUL *v.* GOLUK CHUNDER DUTT . . 9 W. R., 572

584. ———— **Nature and form of account**—*Beng. Reg. I of 1798, s. 3—Estate papers.*—In a suit for possession of mortgaged lands on the allegation of satisfaction of mortgage from the usufruct, the mortgagee is bound to furnish an account of the *bond fide* proceeds of the estate while in his possession. Toujees, mehal melanee papers, jaidars, and jumma-wasil-baki papers are not *per se* such an account within the meaning of s. 3, Regulation I of 1798, but may corroborate such account. GOLUCK CHUNDER DUTT *v.* MOHUN LALL SOOKUL

[5 W. R., 271

RAM LOCHUN PATUK *v.* KUNHYA LALL

[6 W. R., 84

585. ———— *Beng. Reg. XV of 1893, s. 11.*—To enable a Court to ascertain the amount received by the mortgagee whilst in possession, the mortgagee should file his jumma-wasil-baki papers, and proceed generally in accordance with s. 11, Regulation XV of 1793. AMEEROODDEEN *v.* RAM CHUND SAHOO . . . 5 W. R., 53

586. ———— **Proof of accounts**—*Beng. Reg. XV of 1793, s. 11—Co-sharers—Nature of proof.*—Mortgagees in actual possession should, under s. 11, Regulation XV of 1793, be examined as to the truth of mortgage accounts, excluding persons who, according to the manners and customs of the country, are unable to appear in Court, or others who from their position are not likely to be acquainted with the actual state of facts. Where one of the co-sharers has a competent knowledge of the facts, his deposition is sufficient to prove the truth of the accounts. RAM PHUL PANDEY *v.* WAHED ALI KHAN

[14 W. R., 66

587. ———— *Interest on sum due—Beng. Reg. XV of 1793, s. 10.*—The assignee of the mortgagor's rights in certain properties, of which a zur-i-peshgi lease for twenty-four years ending in 1286 had been granted, sued for an account and for possession on payment of what might be due (if anything). No rate of interest was specified in the zur-i-peshgi lease. *Held*, following the rule laid down by the Privy Council in *Shah Mukhun Lall v. Sreekishen Singh, 12 Moore's I. A., 157*, that, under s. 10 of Regulation XV of 1793, the lessee was entitled to simple interest at 12 per cent. on the money found due. *Held* further that under s. 11 of the Regulation it was sufficient for the lessee to tender accounts showing the collections and disbursements and to swear to their correctness, and that it was not necessary in the first instance for him to put in the original accounts on which the accounts tendered were prepared. TASADUK HOSSAIN *v.* BENI SINGH

[13 C. L. R., 128

588. ———— *Decision on insufficient proof.*—The Zillah Courts, in coming to a conclusion as to the state of the mortgage accounts having proceeded, not upon proof of the actual collections which were or ought to have been made by the mortgagees, but upon materials which were in a

MORTGAGE—*continued.*

10. ACCOUNTS—*continued.*

great measure speculative and conjectural, their decision was set aside. MOHUN LALL SOOKOOL *v.* GOLUCK CHUNDER DUTT

[1 W. R., P. C., 19 : 10 Moore's I. A., 1

589. ——— *Onus of proof—Income-tax papers.*—Where the accounts of a mortgagee who has been in possession are being taken, his income-tax papers are inadmissible as evidence in his favour, though they may be used against him. It is the mortgagee's duty to keep regular accounts, and the onus lies in the first instance upon him. If he has not kept proper accounts, the presumption will be against him; but this does not mean that all statements of the mortgagor against him must therefore be taken as true. GHOLAM NUZUF *v.* EMANUM

[9 W. R., 275

590. ——— *Usufructuary mortgage—Mesne profits.*—In the case of an usufructuary mortgage executed prior to Act XXVIII of 1855, where the mortgagor sues for redemption on the ground that the usufruct had paid off the debt, and claims mesne profits on the allegation that the mortgagee in possession has already collected more than his legal dues, the mortgagee is bound to produce the accounts of actual collections made by him during his possession. On the failure of the mortgagee in this respect, the mortgagor is expected to adduce some proof to justify a decree in his favour for redemption, as well as for mesne profits. HASHUM ALI *v.* RAMDHAREE SINGH . . 7 W. R., 82

591. ——— **Mode of taking accounts** —*Mortgagee in possession.*—As to the mode of taking accounts when the defendant is mortgagee in possession. HUNOOMAN PERSHAD PANDEY *v.* MUNDRAJ KOONWEREE

[18 W. R., 81 note : 6 Moore's I. A., 393

592. ——— *Mortgagee in possession.*—Mode of taking account when the mortgagee was in possession of the estates as mortgagee, and also as lessee under a lease. HUNOOMAN PERSAUD PANDAY *v.* MUNRAJ KOONWEREE

[6 Moore's I. A., 393
18 W. R., 81 note

593. ——— *Arrangement by some of the mortgagors and the mortgagee.*—Where a mortgagee comes to an arrangement with three out of five joint mortgagors by which he consents to take as payment a money-decree against three of them, the amount of the decree must, in taking an account of what is due on the mortgage, be considered as a sum paid in reduction of the liability of the five. RAM KANTH ROY CHOWDHRY *v.* KALEE MOHUN MOOKERJEE . . . . . 22 W. R., 310

594. ——— *Mortgage-debt—Apportionment by mortgagors—Mortgagee's acquiescence—Liability according to shares.*—Mortgagor co-sharers having, after the mortgage transaction, effected division among themselves and apportioned their liability under the mortgage-debt according to their shares with the acquiescence of the mortgagee,—*Held* that, though the mortgagee was not bound to recognize the arrangement made by the mortgagors among themselves, still as he appropriated the amounts paid by some of the mortgagors in paying off their respective shares of the mortgage-debt without there being a special direction to that effect from those mortgagors, he was entitled to recover the remainder of that debt from the share of the mortgagor co-sharer by whom it was due. MAHADAJI HARI LIMAYE *v.* GANPATSHET DHONDSHET . . . I. L. R., 15 Bom., 257

595. ——— *Government revenue—Annual rests—Surplus receipts—Wrongful payments by mortgagee—Transfer of Property Act, IV of 1882, s. 76 (c) and (h).*—By the terms of an usufructuary mortgage it was provided that the annual profits of the mortgaged property should be taken to be a certain amount; that out of this amount the revenue should be paid annually by the mortgagee; that the balance should be taken by the mortgagee as representing interest on the principal amount of the mortgage-money; and that the mortgage should be redeemed on payment of the principal of the mortgage-money in a lump sum. It was further provided that the mortgagor should not be entitled to claim mesne profits nor the mortgagee to claim interest. *J*,—alleging that he had purchased the equity of redemption of the mortgaged property in 1869; that since the purchase the mortgagee had not paid any revenue, and therefore he, *J*, had been compelled to pay it; and that consequently the mortgage-money had been paid out of the profits of the mortgaged property and a surplus was due,—sued the original mortgagor and the mortgagee for possession by redemption of the mortgaged property and for surplus profits, or for possession of the mortgaged property on payment of any sum which might be found due. One of the defences to the suit was that the mortgage had already been redeemed in 1877 by the original mortgagor, and the suit was therefore not maintainable. *Held* (i) that, assuming that such redemption had taken place, that fact could not prejudice the plaintiff's rights arising out of the mortgage, whatever the effect of such redemption might be as between the original mortgagor and the mortgagee, and such redemption was therefore not a bar to the suit; (ii) that the plaintiff was entitled to take into account the amount of revenue which he had been compelled to pay by reason of the mortgagee's default; (iii) that in the accounting the plaintiff was entitled to avail himself of annual rests; and (iv) that the mortgagee having had notice of the plaintiff's purchase, any payments which he might have made to the original mortgagor on account of revenue after the purchase were improperly made, and could not be taken into account against the plaintiff. JALJIT RAI *v.* GOBIND TIWARI

[I. L. R., 6 All., 303

596. ——— *Civil Procedure Code, s. 111—Transfer of Property Act (IV of 1882), ss. 2, 76—Set-off—Waste by mortgagee in possession—Possession after date fixed for payment—Interest.*—In a suit in 1883 to recover

MORTGAGE—*continued.*

10. ACCOUNTS—*continued.*

principal and interest due on a usufructuary mortgage executed on 15th June 1870, which contained a covenant for repayment of the secured debt on 5th June 1878, the defendant pleaded and proved that the mortgagee had permitted certain buildings on the mortgage premises to fall into a ruinous condition, and it appeared that the mortgagee had remained in possession after June 1878,—*Held* (1) that the defendant was entitled to have the amount of the loss occasioned by the plaintiff's failure to make repairs brought into the mortgage account under the Transfer of Property Act, s. 76, and a separate suit by him for that amount was not necessary; (2) that the profits derived by the mortgagee after the date fixed for repayment should be regarded as having been enjoyed in lieu of interest. SHIVA DEVI *v.* JARU HEGGADE **I. L. R., 15 Mad., 290**

597. ——— *Equity of redemption—Charge created by mortgagors—Power of executors—Property subject to a trust.*—*R* died leaving a will, under which he gave certain legacies and left the remainder of his property to two sons, *A* and *P*, whom he appointed executors. *P* died leaving his brother *A* and his widows executors to his will, under which his adopted sons, *M* and *S*, became entitled to his property In consequence of some alleged mismanagement on the part of *A*, *M* and *S* filed a bill in the late Supreme Court and obtained a decree ordering the master of the Court to take an account of the rents and profits which had come into the hands of *P*'s executors. While these accounts were being taken, *A* died, leaving a will by which he appointed his widow and his grandsons executors, and after certain devises, not comprising a property in Tumlook, gave the residue of his immoveable property to the said grandsons, who took it subject to payment—(1) of such of the legacies as remained unpaid under *R*'s will, and (2) of what might be due by *A* to *P*'s estate. After *A*'s death, the above suit in equity was revived against his executors. The said executors borrowed money from one Mackintosh on the security of a bond and a mortgage of certain property which he obtained (including the Tumlook property) by an indenture, which recited that the said executors were still accountable in respect of the above legacies and debts, and provided that in the event of any default, or of any sale by Mackintosh, the said debts and legacies were to be paid out of the proceeds in the first instance before either mortgage-money, or interest, or costs, or expenses. After this a decree in the above suit was made against *A*'s executors for R1,32,000, and this not being paid, a writ of *fieri facias* was issued under which the Sheriff sold to *M* (benami) the equity of redemption in the Tumlook property subject to Mackintosh's mortgage. The latter then obtained a decree of foreclosure and commenced another suit against *M* which was compromised, and a decree made by consent in favour of Mackintosh, who then sold his interest in the mortgaged property to *M*. Under these circumstances, *M* claimed the right of proving the whole amount of the sum due to him in the equity proceedings without taking into account the Tumlook property; on the other hand, the creditors of *A* insisted that *M* was bound to treat the Tumlook property as an asset of *A*'s estate. *Held* that *M* was bound to hold the property on the same terms as those on which he acquired it, *viz.*, that it was subject to a trust in his own favour for the payment of his own debt. MANOMATHO NATH DEY *v.* GREENDER CHUNDER GHOSE . . . . **24 W. R., 366**

598. ——— *Suit for possession of property mortgaged by zur-i-peshgi—Form of suit.*—Directions as to the nature of accounts to be taken in a suit for possession of property the subject of a zur-i-peshgi mortgage, and as to the form of suit of such a case. SUYEEDUN *v.* ZUHOOR HOSSEIN **[W. R., 1864, 44**

599. ——— *Interest—Beng Reg. XV of 1793, s. 10—Suit for redemption.*—Where a mortgage-deed stipulates for interest at 9 per cent., but other and collateral deeds, forming part of the same transaction, provide for further profits to the mortgagee,—*Held* that the mortgagor cannot, unless there be a positive legal enactment to that effect, be heard to plead that the written engagement, though not extending to the whole profit stipulated, must be adhered to as against the mortgagee, though the mortgagor may go beyond it to show the full extent of the profit, and so to be relieved from the consequences of his actual contract. The mortgagee may retain his pledge until he has received out of it his debt with interest at 12 per cent., the maximum allowed by s. 10 of Regulation XV of 1793. In a suit for redemption, on the ground that the debt has been satisfied with interest, the onus is on the plaintiff. A mortgagee is not an assurer of the continuation of the same rate of profit as his mortgagor was able to raise; hence an estimate of the rental preceding the mortgagor's possession is not sufficient proof of the profits in his time. The nature of the accounts which a mortgagor may call for from the mortgagee, explained. The mortgagee need not personally attest the accounts, if he has no personal knowledge of them. Presumptions against mortgagees for non-production of accounts must have reasonable limits, and not be mere conjectures or based on in exact data. MAKHANLAL *v.* SRIKRISHNA SINGH **[2 B. L. R., P. C., 44 : 11 W. R., P. C., 19 [12 Moore's I. A., 157**

600. ——— *Suit for redemption against mortgagee in possession—Account—Evidence.*—In a mortgage suit, where the defendant admitted that he was in possession of the property in dispute as a mortgagee under the plaintiff, but refused to put in evidence the mortgage-deed, which was insufficiently stamped,—*Held* that the plaintiff was entitled to redeem, on paying what was due from him on the mortgage, together with the costs of the suit; and that, if the mortgagee refused to pay the penalty and put the mortgage-deed in evidence, he could only be credited in the account with the sum which the plaintiff admitted to be the amount of the principal, and must be debited with the income derived from the land since he (mortgagee) had been in possession. In taking the account on

MORTGAGE—*continued.*

10. ACCOUNTS—*continued.*

a mortgage, it lies upon the mortgagee to prove what is due from the mortgagor in respect of principal and interest. GANGA MULIK *v.* BAYAJI

[I. L. R., 6 Bom., 669

601. ———— *Confiscation of mortgagee's rights—Suit for redemption—Account.*—A mortgagee's rights, being confiscated by Government for rebellion, were given to defendants. *Held*, on plaintiff's claim of redemption, that the defendants must account for excess of profits over interest in the years when they were in possession. MAHOMED SALAMUT HOSSEIN *v.* SOOKH DAYEE

[2 Agra, 116

602. ———— *Decree in mortgage suit giving mortgagee possession in default of payment of mortgage-debt—Relation between mortgagor and mortgagee—Mortgagee in possession under decree—Decree for possession in mortgage suit, Effect of.*—The plaintiff mortgaged certain land to the defendant in 1864. In 1874 the defendant (mortgagee) obtained a decree against the plaintiff upon the mortgage, ordering the plaintiff to pay the defendant the sum of R40; in default of payment, the defendant (mortgagee) to take possession of the land until the said sum should be paid. In pursuance of the said decree, the defendant took possession. The plaintiff brought the present suit to redeem the said land, alleging that the amount of the mortgage-debt had been fully liquidated out of the surplus profits of the land. *Held* that the defendant (mortgagee) was not liable to account to the plaintiff for such profits. Under the former decree, the defendant was entitled to take possession, and retain it with the attendant benefits until the plaintiff should pay a definite sum which he had never paid. The defendant held under the said decree a complete title to the land until such payment was made. NAVLU *v.* RAGHU **I. L. R., 8 Bom., 303**

603. ———— *Mortgagee in possession—Liability to account for profits, and to what extent.*—A mortgagee in possession of the mortgaged land, who, instead of letting it to raiyats and realizing the rents in the ordinary way, cultivates it himself, is not responsible or liable to account for the whole of the profits arising to him by farming the land, but only for such profits as he would have realized had he let it to a tenant, or as the mortgagor would have realized had he let it. RUGHOONATH ROY *v.* BARAIK GEEREEDHAREE SINGH

[7 W. R., 244

604. ———— *Mortgagee's charges—Mortgagee in possession, Duty of—Cultivation.*—*Held* that a mortgagee in possession of land was bound to cultivate the best crop which it was ordinarily capable of yielding. GIRJOJI BHIKAJI SONAR *v.* KESHAVERA RAVJI PATIL HENGE

[2 Bom., 211

605. ———— *Suit for redemption of zur-i-peshgi mortgage—Balance which might have been recovered by mortgagee.*—Under the terms of a zur-i-peshgi mortgage,—*Held* that the mortgagee was not entitled to demand the payment of so much of the balances as had become irrecoverable by reason of his own laches, but that he was entitled to retain possession of the mortgaged estate till the balances recoverable at the time of the commencement of the redemption suit were paid by the mortgagor. RAM PERSHAD *v.* KISHNA

[3 Agra, 146

606. ———— *Mortgagee's charges—Obligation of mortgagee in possession to repair.*—A mortgagee in possession of mortgaged premises is bound to keep them in necessary repair, and is at liberty to charge for the same with interest. JOGENDRONATH MULLICK *v.* RAJ NARAIN PALOOYE

[9 W. R., 489

607. ———— *Allowances to mortgagee—Suit for redemption—Costs of repairs.*—In a redemption suit a mortgagee is entitled to credit for reasonable costs of repairs, if he renders an account of rents and profits. LAKSHMAN BHISAJI SIRSEKAR *v.* HARI DINKAR DESAI

[I. L. R., 4 Bom., 584

608. ———— *Allowances to mortgagee—Conditional sale—Expense of repairs.*—In a suit brought to redeem certain property which had been conveyed by the ancestors of the plaintiff to the ancestor of the defendant, it was held that the deed of conditional sale amounted in effect to a mortgage of the property, and that, according to the Courts of Equity, a mortgagee in possession ought to be allowed for proper and necessary repairs to the estate. Where portion of the mortgaged premises was accidentally burned, and portion of them fell down, and the mortgagee rebuilt them, it was held that the mortgagor was not entitled to redeem, unless upon payment of the sum so expended by the mortgagee, though such sum amounted to more than double the price for which the premises had been conditionally sold to the mortgagee. MANOHARSHA ASHPANDIARJI *v.* KAMRUNISSA BEGAM

[5 Bom., A. C., 109

609. ———— *Allowances to mortgagee—Expenses of improvements and repairs.*—Though a mortgagee without any agreement is not allowed to charge the mortgagor with all sums which he may think fit to expend in the repair or the improvement of the mortgaged property, whether such expenditure be made by him voluntarily or in pursuance of some official order which he was not legally bound to comply with, yet he may charge the mortgagor for necessary repairs, and the latter will also be liable for any expenditure which he may himself have sanctioned. AMEEROOLLAH *v.* RAM DOSS DOSS

[2 Agra, 197

RAGHO BAGAJI *v.* ANAJI MANAJI PATIL

[5 Bom., A. C., 116

610. ———— *Allowance for improvements and repairs.*—Claims made by a mortgagee in respect of money laid out in improvements after the expiry of the day fixed for repayment must depend on an equitable consideration of all the circumstances of the case. The English rule should be adopted under which the mortgagee is only allowed to claim for such outlay as has been required in order to keep the mortgaged premises in a good state of repair and to protect title. RAMJI BIN TUKARAM *v.* CHINTO SAKHARAM . **1 Bom., 199**

611. ———— *Directions for account—Mortgagee in possession—Buildings and improvements, Allowance for.*—The rule of Courts of Equity in England as to allowance to a mortgagee in possession not applied, because the mortgagee was led into a belief by the course of decisions in the late Sudder Adawlut, and the general understanding caused by those decisions, that, upon the non-payment by the mortgagor of the money at the time fixed, he had, according to the terms of the mortgage instrument, become the absolute owner of the property. The mortgagee was allowed the benefit for buildings erected, or permanent improvements made by him upon the mortgage premises. ANANDRAV *v.* RAVJI . . . . . . **2 Bom., 214**

612. ———— *Cost of improvements on property—Transfer of Property Act (IV of 1882), s. 63—Right of prior mortgagee to add to the amount secured by his mortgage outlay incurred by him in the preservation of the property mortgaged.*—Where a mortgagee of agricultural land had, with the consent of his mortgagors, spent money in repairing a well on the property which had been rendered useless from natural causes, it was held that such mortgagee was entitled, in a suit by a subsequent mortgagee against him for redemption, to add the amount so expended to the mortgage-debt to be paid by the plaintiff before he could obtain the decree for redemption claimed by him. DURGA SINGH *v.* NAURANG SINGH

[I. L. R., 17 All., 282

613. ———— *Compound interest on money spent to protect property—Interest on money expended on improvements on property.*—In a suit on a mortgage by conditional sale the mortgagee was held to be not entitled to compound interest upon the sum spent by him to protect the subject of the security, nor to interest upon the money expended by him in its improvement. KISHORI MOHUN ROY *v.* GANGA BAHU DEBI

[I. L. R., 23 Calc., 228
L. R., 22 I. A., 183

614. ———— *Right of mortgagee in possession to execute repairs—Cost of improvements on redemption—Transfer of Property Act, s. 72.*—Transfer of Property Act, s. 72 (*b*), does not permit a mortgagee in possession to effect improvements. Consequently in a suit for redemption the costs of such improvements cannot be legally charged against the mortgagor seeking to redeem. ARUNACHELLA CHETTI *v.* SITHAYI AMMAL

[I. L. R., 19 Mad., 327

615. ———— *Value of improvements on redemption, Depreciatin of, between decree and date of redemption.*—A decree for the redemption of a kanam in Malabar was passed in December 1894 when there were on the land improvements in the form of trees, etc., to the value of R1,429. Within the six months limited by the decree for redemption, the mortgagor applied for execution, and it appeared that the value of improvements had diminished by the loss of trees of the value of R157. The loss was the result of want of water and was not attributable to neglect on the part of the mortgagee. *Held* that the loss should fall on the mortgagee. KRISHNA PATTER *v.* SRINIVASA PATTER . . . **I. L. R., 20 Mad., 124**

616. ———— *Purchase of mortgaged property by decree-holder for inadequate price Right of purchaser—Improvements, Right to value of, on redemption.*—*A* mortgaged land to *B*, and then to *C*. *B* sued on his mortgage and obtained a decree for sale without joining as defendant *C*, of whose mortgage he had notice; *D*, the son of the decree-holder, became the purchaser in execution and improved the land at a considerable cost. *C* now sued the sons and representatives of *A* and *B* (both deceased) on his mortgage, and sought a decree for sale. *Held* that the purchaser was not entitled to allowances for improvements. RANGAYYA CHETTIAR *v.* PARTHASARATHI NAICKAR

[I. L. R., 20 Mad., 120

617. ———— *Account of redemption of a mortgage—Appropriation of payments—Set-off of rents and profits—Expenditure on improvements—Interest—Transfer of Property Act (IV of 1882), s. 76—Lower Burma Courts Act (XI of 1889), s. 4.*—That an account should have been taken between mortgagor and mortgagee in possession consistently with the direction in s. 76 of the Transfer of Property Act, 1882, is in accordance with the "justice, equity, and good conscience" required to be administered by s. 4 of the Lower Burma Courts Act, 1889. It made no difference, in the result of the account, whether the rents and profits received by the mortgagee in each year were set off year by year against the amount expended by the mortgagor in that year for improvement and management, or their total was deducted at the end of possession from the sum expended by him. The balance of his expenditure had, in fact, exceeded in each year that of his receipts and carried only simple interest. The mortgage-debt decreed bore compound interest. *Held* that the account need not be taken on the principle that the mortgagee should give credit for his receipts, first, in reduction of that debt, which was most burdensome to the debtor. There was no obligation to pay off the compound interest debt before the other. Whether the improvements and the expenditure were reasonable, were questions of fact on which two Courts had concurred; and there was no ground for interference with their finding. During the life of the mortgagee, his son managed the property, living on it at a distance. The account directed was of sums "laid out in management." Salary to his manager was not paid, and in the account could not be allowed, such allowance not having been decreed.

But the cost of this manager's being separately maintained during the father's life could be allowed. For the period after the father's death, as the son became mortgagee himself, such cost of maintenance could not be allowed. Kadir Moidin *v.* Nepean

[I. L. R., 26 Calc., 1
L. R., 25 I. A., 241
2 C. W. N., 665

618. ——— *Suit for redemption—Mortgagee in possession.*—A mortgagee in possession is liable to account for profits arising from trees planted by himself on the mortgagor's land. A mortgagee in personal possession is, in the absence of any special contract to the contrary, chargeable with a fair occupation rent, in the case of buildings personally occupied by him for the purpose of residence or carrying on trade or business; and in the case of land personally occupied or cultivated by him, either with a fair occupation rent or with the actual net profits realized from the use of the land. In ascertaining what those profits are, with which the mortgagee ought to be credited in reduction of his mortgage-debt with interest thereon, the mortgagee ought to be credited for his expenses in obtaining produce from the land and a moderate interest on the amount of such expenses. Principles laid down on which an account should be taken from a mortgagee in possession. Prabhakar Chintaman Dikshit *v.* Pandurang Vinayak Dikshit **[12 Bom., 88**

619. ——— *Improvements and accretions, Right to—Fruit trees.*—The holder of a field, on the survey tenure, mortgaged it with possession, secured by a registry of the mortgagee's name as occupant. Certain fruit trees, coming under the operation of No. 3 of the Revised Survey Rules, were sold by the Government to the mortgagee as occupant. *Held* that the trees, by the sale, became a portion of the mortgaged estate, and, as such, were liable to redemption, on payment of the amount of the mortgage-money with interest, of the money laid out in purchasing the trees, and of other reasonable expenses. Bakshiram Gangaram *v.* Darku Tukaram . . . . **10 Bom., 369**

620. ——— *Village mortgaged without specifying boundaries—Accretions to village—Rights of parties on redemption or foreclosure.*—Where a village, without specification of boundaries, is mortgaged as a whole, the mortgagee is, on the one hand, entitled to it as a security with any casual increase or decrease which may occur to it, and is, on the other hand, subject to its redemption by the mortgagor to the same extent. Sadashiv Anant *v.* Vithal Anant . **11 Bom., 32**

621. ——— *Expenses of revenue survey.*—*Held* that a mortgagee in possession was entitled to be allowed for expenses incurred in connection with the revenue survey of the land mortgaged to him. Bapusa bin Sadashiv *v.* Ramji bin Gopalji . . . **2 Bom., 220**

622. ——— *Mortgagee in possession—Payment by mortgagee of assessment payable by mortgagor—Right of mortgagee to tack amount so paid to mortgage-debt.*—Where a mortgagee in possession pays the assessment on the mortgaged land which was payable by the mortgagor, he has a right to tack on the amount so paid to his mortgage-debt. Kamaya Naik *v.* Devapa Rudra Naik . . . **I. L. R., 22 Bom., 440**

623. ——— *Transfer of Property Act (IV of 1882), s. 72—Mortgagee compelled to pay Government revenue which should have been paid by the mortgagor—Remedies of the mortgagor.*—Where a mortgagee has been compelled to pay Government revenue which should have been paid by the mortgagor, the mortgagee may either add the amount which he has so been made to pay to the amount of the mortgage-debt under s. 72 of the Transfer of Property Act, 1882, or he may sue the mortgagor separately to recover the amount so paid. If, however, he has sued separately and obtained a decree against his mortgagor, he cannot then add the amount due to the mortgage-debt; his two remedies are not concurrent. Imdad Hasan Khan *v.* Badri Prasad . . . **I. L. R., 20 All., 401**

624. ——— *Mortgagee, Obligation of—Expenses incurred in protecting title—Stipulations not creating fresh obligations.*—Under the ordinary law of mortgage, the mortgagor is bound, so long as the equity of redemption remains with him, to indemnify the estate against expenses incurred in protecting the title. So that where a mortgage-bond contains stipulations under which the mortgagor engages to repay to the mortgagee any costs he may incur in suits brought against him by the mortgagor's co-sharers, and also any debts charged upon the mortgaged property which the mortgagee may pay, the stipulations do not create any fresh obligation. Damodar Gungadhar *v.* Vamanrav Lakshman. . . **I. L. R., 9 Bom., 435**

625. ——— *Right of purchaser of equity of redemption to set off sums paid in reduction of mortgage.*—The only payments which purchasers of the equity of redemption can claim to deduct from the mortgage-debt are sums actually received by the mortgagee in reduction thereof, not money owed by the mortgagee to the mortgagor on some other account. Tarinee Kant Bhuttacharjee *v.* Ganoda Soonduree Debee . **24 W. R., 460**

626. ——— *Suit by purchaser of equity of redemption—Costs of a redemption suit—Compensation to mortgagee.*—The plaintiffs sued as purchasers of the equity of redemption from *S*, a Hindu widow, to redeem a mortgage effected by her husband *B*. The mortgage-deed recited that a portion of the mortgaged land was held by *B*, not as owner, but as mortgagee, from a third party. *S* was alive when the suit was instituted, but she died after the settlement of issues. The plaintiff then filed a supplementary claim to succeed as *B's* next heir. The defendants (the sons of the mortgagee) contended that the plaintiff could not redeem, because the sale by *S* was invalid. They also claimed compensation for loss of the rents and profits of a portion of the mortgaged property redeemed from *B* by the original owner. The Subordinate Judge allowed the plaintiff's claim. On appeal, the District Judge confirmed his decree, being of opinion that the sale was valid as against the defendants, because there were no collateral heirs. On appeal to the High Court,—*Held* that the defendants were not entitled to any compensation on account of the redemption of a portion of the mortgaged property by the original owner, because they were aware that the mortgage to *B* was liable to be redeemed, and they (defendants) took such a precarious security at their own risk. In a redemption suit the defendant (mortgagee) is ordinarily entitled to his costs, unless he has refused a tender of the amount due to him, or has so misconducted himself in the course of the suit as to induce the Court to subject him to a penalty. DHONDO RAMCHANDRA *v.* BALKRISHNA GOBIND

[I. L. R., 8 Bom., 190

627. ——— *Costs incurred by mortgagee—Transfer of Property Act (IV of 1882), s. 72.*—Land, having been mortgaged to the defendant, was let by him for rent to the mortgagor. The rent fell into arrear, and the mortgagee sued and obtained a decree for the rent in arrear and for possession. Subsequently after the mortgagor's death, her heir, the present plaintiff, unsuccessfully resisted execution of the decree obtained against her, asserting that she had no right to mortgage the property which, it was alleged, had belonged to his father. The plaintiff now brought a suit for redemption. *Held* that in taking the account the defendant was entitled to have credit for the costs incurred in the proceedings between him and the plaintiff, but not in the proceedings between him and the original mortgagor. POKREE SAHEB BEARY *v.* POKREE BEARY

[I. L. R., 21 Mad., 34

628. ——— *Interest—Proof of accounts—Failure to keep or omission to produce accounts.*—In seeking to have the account taken and to have it ascertained whether the mortgagee has by means of the usufructuary mortgage obtained more than 12 per cent. interest, and if so, that the surplus may be applied in reduction of the principal, the mortgagee is not asking the Court to authorize a departure from the agreement of the parties (where there is one) that the mortgage-debt should bear no interest during a certain period. The onus is on the mortgagor to prove that the principal sum has been paid or satisfied; and on the mortgagee to show what, if anything, is due to him for interest. Failure of the mortgagee in his duty, as trustee for the mortgagor, to keep accounts, and to produce proper accounts, is to be regarded as misconduct which ought to be taken into consideration upon the question of costs. KALLYAN DASS *v.* SHEO NUNDUN PURSHAD SINGH . . . . . . **18 W. R., 65**

629. ——— *Usury laws—Beng. Reg. XXXIV of 1803—Obligation on mortgagee to file accounts.*—In a mortgage dated in 1852 of malikana fixed for the period of settlement, it was agreed that the mortgagee should collect the village jumma, pay the Government demand, and take the malikana, of which part was to be received by him as interest on the money lent at one per cent. per mensem, and the balance, *viz.*, R565 per annum, was to be retained by him as the costs of collection. No accounts were to be rendered of the malikana collected during the time of the mortgagee's possession. If this agreement had been a contrivance for securing to the mortgagee a higher rate of interest than that to which he was then by law entitled, it would have been void under the usury laws (in force under Regulation XXXIV of 1803 until the passing of Act XXVIII of 1855), and would not have prevented the accounts from being taken. But as the Courts found that the R565 per annum constituted a fair percentage, which it had been *bonâ fide* agreed should be allowed to the mortgagee for the costs of collection, it was held that the agreement had been rightly treated as a sufficient answer to a suit based on the assumption that the whole of the mortgage-money, principal and interest, would be satisfied if the accounts (contrary to the agreement) were taken on the basis of charging the mortgagee with the R565, or so much thereof as he should fail to prove had been actually expended in the collection. If the amount received by the mortgagee had been fluctuating, production of the accounts might have been necessary for a decision on the validity of the agreement set up. But it could not be said that by no agreement could a mortgagee relieve himself from the obligation of filing accounts under the 9th and 10th sections of Regulation XXXIV of 1803; and in this case he had done so: the only sum that he was to receive beyond the interest allowed by law being an unvarying balance found to be a fair allowance for the costs of collection. BADRI PRASAD *v.* MURLI DHAR . . . . . **I. L. R., 2 All., 593**

[L. R., 7 I. A., 51

630. ——— *Mortgagee in possession—Interest—Beng. Reg. XV of 1793.*—In taking the accounts as between a mortgagor and a mortgagee in possession, the interest may be set off from time to time against the rents and profits, the mortgagee only accounting to the mortgagor for any rents, profits, and interest on the same which he may have received over and above the interest due to him upon the debt. RADHABENODE MISSER *v.* KRIPAMOYEE DABEE . **10 B. L. R., 386 : 17 W. R., 262**

[14 Moore's I. A., 443

631. ——— *Interest on collections by mortgagee—Commission on amount collected.*—*Held* that in cases of redemption of mortgage the mortgagee should not be charged with interest on the money collected by him, but that the money so collected should first be applied in payment of interest accruing due on the mortgage-debt; and, if there is any surplus, in reduction of the principal mortgage-debt. *Held* further that the mortgagee is entitled to commission on the gross amount of collections to cover the expenses of collection, etc., and this he is entitled to get at the rate of 10 per cent., unless there is any express stipulation to the contrary, or it

MORTGAGE—*continued.*

10. ACCOUNTS—*continued.*

is shown to be unreasonable. ROGHONATH *v.* LUCHMUN SINGH . . . . . **1 Agra, 132**

632. ——— *Redemption after expiry of time and under new interpretation of law—Improvements.*—Where under the old law of mortgage by which the mortgagee after the expiry of the time for redemption acquired a proprietary right in the property, there was an absolute delivery of possession to the mortgagee, and the mortgagor afterwards stood by and allowed the property to be sold as unincumbered, the Court, in allowing the mortgagor after twenty years to have redemption of the property under the new interpretation of the law of mortgage, yet considered that, under the peculiar circumstances of this case, the Court would not be justified in calling upon the mortgagee to furnish accounts of the rents and profits on the one hand, and of the principal and interest on the other. Interest on the value of improvements made since the time the property came into the hands of *A* disallowed. RAMSHET BACHASHET *v.* PANDHARINATH **[8 Bom., A. C., 236**

633. ——— *Suit by mortgagor for possession under usufructuary mortgage.*—In a suit to recover possession of land with surplus collections, by redemption of a mortgage created by a zur-i-peshgi lease, which was executed before the usury law of 1855 was passed, where the lessee claimed the surplus collections as his profits,—*Held* that the question should be decided on the principle of the Privy Council ruling in the case of *Hoonooman Persaud, 6 Moore's I. A., 393, viz.,* that the mortgagee should be charged in the account for actual rents and profits, and receive interest at the highest rate sanctioned by the law then existing. Finding, on adjustment of the account between the parties, that there was a balance in favour of the mortgagee, and that therefore plaintiff was not entitled to a decree for re-entry, the Court (following *Kullyan Dass* v. *Sheo Nundun Purshad Singh, 18 W. R., 65*) determined to declare the state of the account between the parties up to the end of the year to which the evidence extended. PERLADH SINGH BAHADOOR *v.* BROUGHTON **[24 W. R., 275**

634. ——— *Mortgagee in possession—Interest.*—The proper sum to be allowed a mortgagee for surinjamee is what he has actually spent as expenses of his management. No decree should be given against a person as being the real mortgagee without evidence of the benami holding. A mortgagee is entitled to interest on account of the balance of patni rents paid by him. BROJONATH SINGH ROY *v.* BHUGOBUTTY DOSSEE . **1 W. R., 133**

635. ——— *Interest—Mode of calculation.*—There is no law restricting a mortgagee to the receipt by way of interest of the amount of principal lent. The mode of calculation to be followed in such cases is every year to add the amount of interest to the principal sum, and then deduct the value of the usufruct. ENAET ALI *v.* KUHUR ROY **[2 W. R., 289**

MORTGAGE—*continued.*

10. ACCOUNTS—*continued.*

DOORGA CHURN PAHAREE *v.* CHUTOORBHOOJ DOSS **[5 W. R., 200**

636. ——— *Suit for redemption—Interest—Amount of interest allowed to mortgagee—Transfer of Property Act (IV of 1882), s. 58.*—In 1882 the plaintiffs sued to redeem a mortgage effected in 1833. The Court of first instance allowed the mortgagee interest from the date of the bond. The Appellate Court reduced the interest awarded to the period of six years. *Held*, reversing the decision of the lower Appellate Court, that the mortgagee was entitled to claim interest from the date of the bond up to the date of the decree. *Hari Mahadaji Savaskar* v. *Balambhat Raghunath Khare, I. L. R., 9 Bom., 233,* referred to. No provision of limitation is made by the Limitation Act for the payment of interest on the sum due to the mortgagee. In s. 58 of the Transfer of Property Act the mortgage-money is interpreted to include the interest due, and no time to the payment of interest is fixed. *Prabhakar Chintaman Dikshit* v. *Pandurang Vinayak Dikshit, 12 Bom., 88,* followed. DAUDBHAI RAMBHAI *v.* DAUDBHAI ALLIBHAI **[I. L. R., 14 Bom., 113**

637. ——— *Mortgage transactions before Act XXVIII of 1855—Bom. Reg. V of 1827, ss. 11 and 12—Arrears of interest.*—In mortgage transactions in which the mortgage contracts have been entered into before Act XXVIII of 1855 came into operation, and to which Regulation V of 1827, ss. 11 and 12, applies, and in which an account of principal and interest on the one side, and of rents and profits on the other side, is not directed, the arrears of interest must be limited to six years. VITHAL MAHUDEB *v.* DAND VALAD MAHOMMED HOSSEIN . . . **6 Bom., A. C., 90**

638. ——— *Provision for payment of interest out of usufruct.*—Where the usufruct of mortgaged property was to be enjoyed in lieu of interest, the fact of the mortgagees having had possession was held to be no ground for the inference that any portion of the debt, save the interest, was paid off from the usufruct. BAMA SUNDUREE DOSSEE *v.* BAMA SUNDUREE DOSSEE . **10 W. R., 301**

639. ——— **Mortgage with decree for account and sale**—*Withdrawal of execution-proceedings—Principle on which accounts are to be taken.*—A mortgagee, who has obtained a decree for an account and sale, is not entitled to withdraw from the taking of accounts in his execution-proceedings when those accounts appear to be going against him. DOOLEE CHAND *v.* OMDA KHANUM *alias* BABU SHUBIBU **I. L. R., 6 Calc., 377: 7 C. L. R., 375**

640. ——— **Right to re-open accounts**—*Suit by mortgagor for possession under usufructuary mortgage.*—In a suit to recover possession of land in the possession of the mortgagor under a usufructuary mortgage (which is in reality a suit between the mortgagor and mortgagee for an adjustment of the account between them), if upon taking an account it appears that the mortgagee has been fully satisfied, the mortgagor is not only entitled to have the property back, but (the decision in *Motee Soonduree* v. *Indrajeet Kowaree, Marsh., 112,* being overruled) the Court is bound as a Court of Equity, and acting upon the principle that it is always the aim of a Court of Equity to finally determine as far as possible all questions concerning the subject of the suit, to cause an account to be taken up to the time of the decree, the account so taken being considered binding and the parties not being at liberty, except under peculiar circumstances, to reopen it in another suit. KULLYAN DASS *v.* SHEO NUNDUN PURSHAD SINGH . **18 W. R., 65**

and *see* ROY DINKUR DYAL *v.* SHEO GOLAM SINGH **[22 W. R., 172**

and LUTAFUT HOSSEIN *v.* CHOWDHRY MAHOMED MOONEM . . . . . **22 W. R., 269**

641. ———— **Realization by mortgagee of sum in excess**—*Interest—Usufructuary mortgage.*—Where a mortgagee under a usufructuary mortgage has realized a sum of money in excess of the amount due to him, it is an equitable practice to allow to the mortgagor interest on such sum at the same rate at which interest has been allowed to the mortgagee on his mortgage-debt. BECHOO SINGH *v.* ROY SHEO SAHOY **1 N. W., 56 : Ed. 1873, 111**

642. ————*Suit for account and redemption—Form of decree.*—In a suit for account and redemption, if the mortgagee, on taking the accounts, is found to have been overpaid, the general practice is to order the payment, by him, of the balance due to the mortgagor, with interest from the date of the institution of the suit. JANOJI *v.* JANOJI . . . . **I. L. R., 7 Bom., 185**

643. ———— *Suit for redemption of two distinct mortgages—Right to separate accounts—Dekkan Agriculturists' Relief Act (XVII of 1879), s. 13—Mode of taking accounts.*—By two separate mortgages certain land were mortgaged in 1830 by the plaintiff's father to the defendant. In 1882 the plaintiff as an agriculturist brought the present suit for redemption of the lands comprised in both mortgages. *Held* that separate accounts of the two mortgages should be taken. The mortgages were distinct transactions relating to different lands, and s. 13 of the Dekkan Agriculturists' Relief Act contains no words enabling the Court to treat them as one. The fact of their being included in the same suit could not affect the question. In taking the accounts of the above mortgages it was proved that on one mortgage there was a sum of R5,075-13-2 due to the plaintiff (mortgagor) by the defendant (mortgagee), and on the other mortgage a sum of R3,774-2-7 due to the defendant by the plaintiff. The plaintiff contended that, although by the ruling in *Janoji* v. *Janoji, I. L. R., 7 Bom., 185,* he could not compel payment of the R5,075-13-2 due to him on the one mortgage, he was entitled to have so much of it as might be necessary set-off against the R3,774-2-7

still due by him on the other mortgage. *Held* that on the authority of *Janoji* v. *Janoji, I. L. R., 7 Bom., 185,* the plaintiff had no legal claim to the R5,075-13-2, and, that being so, the existence of that balance in his favour on account of one mortgage could not be treated as extinguishing the claim of the defendant to the R3,774-2-7 due on the other mortgage. The plaintiff as an agriculturist mortgagor was enabled to free his land from both the mortgages on the favourable terms provided by the Dekkan Agriculturists' Relief Act (XVII of 1879), but was precluded from compelling the mortgagee to refund what the latter had personally acquired under the terms of his contract of mortgage. RAMCHANDRA BABA SATHE *v.* JANARDAN APAJI **[I. L. R., 14 Bom., 19**

644. ———— **Binding effect of account**—*Mortgagor and mortgagee—Puisne mortgagee.*—*Quære*—Whether the account arrived at in a decree obtained by the prior mortgagee against the mortgagor only is binding on a puisne mortgagee who had no notice of the subsequent incumbrance. SANKANA KALANA *v.* VIRUPAKSHAPA GANESHAPA **[I. L. R., 7 Bom., 146**

645. ———— *Assignee of mortgagee—Suit for redemption.*—In India, as in England, a mortgagee may transfer his rights to a third person by way of assignment, but such transfer must be without prejudice to the rights of the mortgagor, and in a suit by a mortgagor for redemption where the assignment has been made without the knowledge of the mortgagor, the assignee is bound by the state of the account between the mortgagor and mortgagee. CHINNAYYA RAWUTLAN *v.* CHIDAMBARAM CHETTI . . . **I. L. R., 2 Mad., 212**

646. ———— **Error in account**—*Ground for reforming account—Wrong statement of account agreement to pay mortgage-debt by instalments.*—In a written agreement by a debtor to pay his debt by instalments securing the payment by a mortgage of land, the amount of the debts was erroneously stated to be greater than it actually was. In a suit on the agreement,—*Held* that such an error was ground for reforming the account, but not for setting aside the agreement. SETH GOKUL DASS GOPAL DASS *v.* MURLI **[I. L. R., 3 Calc., 602 : 2 C. L. R., 156 L. R., 5 I. A., 78**

MORTGAGE-DEBT.

———— **Apportionment of—**

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR. **[3 B. L. R., A. C., 357**

See MORTGAGE—ACCOUNTS. **[I. L. R., 15 Bom., 257**

See CASES UNDER MORTGAGE—MARSHALLING.

MORTGAGE-DEBT—*concluded.*

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[I. L. R., 4 Calc., 283

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[I. L. R., 1 All., 431
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[12 B. L. R., Ap., 7

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3 B. L. R., A. C., 194

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[5 B. L. R., Ap., 27 : 13 W. R., 339

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[I. L. R., 9 Bom., 556

MULTIFARIOUSNESS.

See ADMINISTRATION 15 B. L. R., 296
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See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—MISJOINDER.

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[I. L. R., 15 Mad., 19

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.
[14 B. L. R., 418 note

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—MULTIFARIOUSNESS.

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[I. L. R., 1 All., 555

—— Dismissal of suit for—

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS 13 B. L. R., Ap., 37

1. —— **Misjoinder of causes of action**—*Different causes of action against different parties.*—When a plaint discloses different causes of action against different parties, it is bad in law, and the suit is not maintainable. SARAT SOONDERY DEBI *v.* SURJUKANT ACHARJI CHOWDHRY
[2 B. L. R., Ap., 53 : 11 W. R., 397

MOTEE LALL *v.* BHOOP SINGH
[2 Ind. Jur., N. S., 245

S. C. MOTEE LALL *v.* RANEE . 8 W. R., 64

2. —— *Causes of action accruing against parties separately—Rejection of plaint.*—A plaint against several defendants for causes of action which have accrued against each of them separately, and in respect of which they are not jointly concerned, should be rejected. RAJARAM TEWAR *v.* LUCHMUN PRASAD
[B. L. R., Sup. Vol., 731 : 2 Ind Jur., N. S., 216
8 W. R., 15

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PANCH COWREE MAHTOON *v.* KALEE CHURN
[9 W. R., 490

PEGOO JAN *v.* MULLICK WAIZOODDEEN
[18 W. R., 464

3. —— *Separate claims against separate parties.*—A suit against five defendants including claims of the most miscellaneous character against each defendant was dismissed by the first Court on the ground of multifariousness. The Subordinate Judge, on appeal, held that plaintiff was in any case entitled to a decision on one of his claims, and further held that the suit was not multifarious. *Held* on special appeal that the Court could not select one claim on which to proceed when plaintiff insisted on pressing all. *Held* also that the plaint was multifarious; and the suit was properly dismissed by the first Court. MANIRUDDIN AHMED *v.* RAM CHAND . . . 2 B. L. R., A. C., 341

RAM DOYAL DUTT *v.* RAM DOOLAL DEB
[11 W. R., 273

4. —— *Distinct causes of action against separate defendants.*—It is illegal to join different causes of action in the same suit against different parties where each has a distinct and separate interest, *e.g.*, to a joint action for the price of timber against defendants who purchased each one pair of timber from the plaintiff separately from the other. BAROO SIRCAR *v.* MASSIM MUNDUL
[21 W. R., 206

5. —— *Suit to set aside alienation by guardian to different alienees.*—Several causes of action against different defendants cannot be joined in one suit; therefore where a suit was brought to set aside several transactions entered into by a guardian with different persons, and no relief was sought against the guardian, it was held that the suit was bad by reason of misjoinder. MATA PERSHAD *v.* BHUGMANEE
[1 N. W., 75 : Ed. 1873, 128

See RUTTA BEEBEE *v.* DUMREE LAL
[2 N. W., 153

LOOLOO SINGH *v.* RAJENDUR LAHA
[8 W. R., 364

GOLAM MUSTAFA KHAN *v.* SHEO SOONDUREE BURMONEE . . . . . 10 W. R., 187

HURRO MONEE DOSSEE *v.* ONOOKOOL CHUNDER MOOKERJEE . . . . . 8 W. R., 461

6. —— *Suit to set aside separate alienations.*—A suit to set aside two sale transactions of different dates and made to different vendees will be dismissed for misjoinder. BANEE KRISHUN *v.* KOONDUN LALL . 2 N. W., 221

7. —— *Joinder of causes of action—Claim against different portions of property.*—Where the plaintiff claims to recover possession of two distinct portions of a property from

which he has been dispossessed at different periods and under different circumstances, and claims them under the same title and from the same party, there is no impropriety in the two claims being joined in one suit. JUNOKEE CHOWDHRANEE *v.* DWARKANATH CHOWDHRY . . . **1 Hay, 555**

8. ———— *Separate alienations of property—One suit against several alienees*—A suit brought against a number of alienees of a deceased member of an undivided family, for the recovery of family property illegally alienated by him, is not such a suit as ought to be dismissed on the ground of multifariousness. It is most desirable that the whole of the alienations should be at once before the Court called upon to decide the question, in order to secure the soundness of the particular decision, and perhaps the avoidance of discordant decisions in different cases upon facts nearly the same. VASUDEVA SHANBHAGA *v.* KULEADI NARNAPAI **[7 Mad., 290**

9. ———— *Suit by members of tarwad to set aside alienations by karnavan.*—A suit was brought by the junior members of a tarwad, which consisted of three stanoms and three tavaries, against the karnavan and others, including certain persons to whom he had alienated some tarwad property. The plaint, as originally framed, prayed (1) for the removal of the karnavan; (2) for a declaration that defendants Nos. 2 to 8, the senior anandravans, had forfeited their right of succession to him; (3) for the appointment of the plaintiff in his place; (4) for a declaration that his alienations were invalid as against the tarwad; and (5) for possession of the property alienated. Subsequently, the plaint was amended by the order of the Court by striking out items 2 and 5 of the prayer, and finally the plaintiffs further amended the plaint and sued only for a declaration that the alienations in question were invalid. *Held* that the suit was not bad for multifariousness. *Vasudeva Shanbhaga* v. *Kuleadi Narnapai, 7 Mad., 290,* considered. MAHOMED *v.* KRISHNAN . . . **I. L. R., 11 Mad., 106**

10. ———— *Civil Procedure Code, s. 45—Suit for declaration that alienations were not binding—Malabar law—Suit by junior members of tarwad.*—Suit by some of the junior members of a Malabar tarwad against the karnavan and the other members of the tarwad, and certain persons to whom some of the tarwad property had been alienated by the karnavan, for a declaration that the alienations were not binding on the tarwad. *Held* that the suit was not bad for multifariousness. *Vasudeva Shanbhaga* v. *Kuleadi Narnapai, 7 Mad., 290,* followed. ABDUL *v.* AYAGA **[I. L. R., 12 Mad., 234**

11. ———— *Misjoinder of parties.*—The plaintiff, a talukhdar, obtained a decree under s. 52 of the Rent Act (Bengal Act VIII of 1869) to eject his tenant for arrears of rent and to obtain possession of his tenure. In attempting to execute that decree he was opposed as regards certain plots, which he alleged were comprised in the tenure, by parties in possession, who instituted proceedings against him under s. 332 of the Civil Procedure Code. These proceedings resulted in their claims being decided in their favour. The plaintiff thereupon instituted one suit against his judgment-debtor and all parties who had opposed him in such proceedings to obtain a declaration that all the several plots claimed against him belonged to the tenure in respect of which he had obtained a decree for khas possession, and he also prayed for khas possession of the various plots. It was found that the titles relied on by the defendants, and which had been set up by them in the proceedings under s. 332, were quite distinct one from another, and that there had been no collusion or combination against them to keep the plaintiff out of possession, but on the contrary that the defences were *bonâ fide*. *Held* that the suit was bad for misjoinder of causes of action, and was properly dismissed. RAM NARAIN DUT *v.* ANNODA PROSAD JASHI **[I. L. R., 14 Calc., 681**

12. ———— *Misjoinder of parties—Civil Procedure Code (1882), ss. 28, 31, 373, and 578—Error not affecting merits of suit—Withdrawal of suit—Meaning of "cause of action."*—Where a plaintiff, alleging himself to be entitled on the death of a Hindu widow to the possession of certain immoveable property upon the death of such widow, brought a joint suit against three sets of defendants, being persons to whom the widow in her lifetime had by separate alienations transferred separate portions of the property claimed,—*Held* that such suit was bad for misjoinder of both parties and causes of action, and that s. 578 of the Code of Civil Procedure could not be applied to cure the defect; but the plaintiff was allowed on terms to withdraw his suit as against two out of the three sets of defendants with liberty to bring a fresh suit on the same cause of action. *Vasudeva Shanbhaga* v. *Kuleadi Narnapai, 7 Mad., 290; Banee Krishun* v. *Koondun Lal, 2 N. W., 221; Koondun Lal* v. *Himmut Singh, 3 N. W., 86; Narsingh Das* v. *Mangal Dubey, I. L. R., 5 All., 163; Kachar Bhoj Vaija* v. *Bai Rathore, I. L. R., 7 Bom., 289; Sudhendu Mohun Roy* v. *Durga Das, I. L. R., 14 Calc., 435;* and *Ram Narain Dut* v. *Annoda Prosad Joshi, I. L. R., 14 Calc., 681,* referred to. GANESHI LAL *v.* KHAIRATI SINGH . . **I. L. R., 16 All., 279**

13. ———— *Civil Procedure Code (1882), ss. 31, 45, and 53—Return of plaint.*—The term "cause of action" as used in ss. 31 and 45 of the Code of Civil Procedure is there used in the same sense as it is used in English law, *i.e.*, a cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. Where three plaintiffs brought a joint suit for the possession of immoveable property, in which two of them were claiming half the property under a title by inheritance, and the third was claiming the other half of the property in virtue of a sale thereof to him by the first two plaintiffs,—*Held* that the suit so framed was bad for misjoinder of causes of action, and that the plaint

MULTIFARIOUSNESS—*continued.*

should be returned, that the plaintiffs might elect which of them should proceed with the suit. *Jugobundhoo Dutt* v. *Maseyk, W. R. (1864), 81; Annund Chunder Ghose* v. *Komul Narain Ghose, 2 W. R., 219; Prem Shook* v. *Bheekoo, 3 Agra, 242; Cook* v. *Gill, L. R., 8 C. P., 107; Read* v. *Broun, L. R., 22 Q. B. D., 128; Smurthwaite* v. *Hannay, L. R. (1894), A. C., 494; Chand Kour* v. *Partab Singh, I. L. R., 16 Calc., 98 : L. R., 15 I. A., 156; Murti* v. *Bhola Ram, I. L. R., 16 All., 165; Nusserwanji Merwanji Panday* v. *Gordon, I. L. R., 6 Bom., 266; Ramanuja* v. *Devanayaka, I. L. R., 8 Mad., 361;* and *Ram Sewak Singh* v. *Nakched Singh, I. L. R., 4 All., 261,* referred to. Salima Bibi *v.* Muhammad . **I. L. R., 18 All., 131**

14. ——— *Suit by one plaintiff claiming by inheritance and another claiming as assignee from the first—Civil Procedure Code, ss. 31, 45, and 53.*—Where two plaintiffs joined in a suit for recovery of immoveable property, the one claiming a title by inheritance and the other a title by assignment from the first plaintiff, it was *held* that the suit was bad for misjoinder of causes of action. *Salima Bibi* v. *Muhammad, I. L. R., 18 All., 131,* followed. Rahim Bakhsh *v.* Amiran Bibi . . . . **I. L. R., 18 All., 219**

15. ——— *Misjoinder of parties—Civil Procedure Code, s. 53—Suit to set aside deed in fraud of creditors—Amendment of plaint.*—*Held* that several creditors, to each of whom separate debts were owing by the same debtor, could not sue jointly for the avoidance of a deed of gift executed by the debtor, which deed was alleged to have been made fraudulently with intent to defeat or delay the executant's creditors, the cause of action of each separate creditor not being the same as that of the others. Rajjo Kuar *v.* Debi Dial

[I. L. R., 18 All., 432

16. ——— *Suit for ejectment—Suit against several defendants—Parties, Joinder of.*—In a suit for ejectment against several defendants who set up various titles to different parts of the land claimed there is only one cause of action in several distinct and separate causes of action. So *held,* setting aside the decree of the District Judge who had dismissed the suit for misjoinder of causes of action. Ishan Chunder Hazra *v.* Rameswar Mondol . . . . **I. L. R., 24 Calc., 831**

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[4 C. W. N., 297

17. ——— *Joinder of several plaintiffs in respect of separate causes of action—Contribution, Suit for—Civil Procedure Code (1882), s. 578—Irregularity affecting merits.*—The plaintiffs, who were husband and wife, brought a suit to recover a certain sum of money, part of which was alleged to have been paid by plaintiff No. 1, who was a co-sharer with the defendants in two patnis to save the patnis from being sold for arrears of rent; and the remainder by plaintiff No. 2, who alleged that she had a subordinate miras talukh under the two patnis granted to her by plaintiff No. 1, and that the sale would have resulted in the cancellation of her miras talukh. In appeal it was contended by the respondents, in support of the decree made by the Court below dismissing the claim of plaintiff No. 2, that the claim was liable to dismissal by reason of its involving the misjoinder of plaintiffs with different causes of action. This objection had been raised in the written statement, and the Court was asked to raise an issue on the point. In answer to this contention, it was urged by the appellants that, as the respondents went to trial upon the merits, it was not open to them to urge any objection like this to the frame of the suit on appeal. *Held* that the suit was bad for misjoinder of plaintiffs, as the suit of plaintiff No. 2 ought properly to have been brought against all the holders of the patnis, including plaintiff No. 1, and not merely against the defendants in the suit. *Held* further that it was open to the respondents to raise the objection as to misjoinder in appeal. *Tarinee Churn Ghose* v. *Hunsman Jha, 20 W. R., 240,* distinguished. *Smurthwaite* v. *Hannay, L. R. (1894), A. C., 494,* referred to. Mohima Chandra Roy Chowdhry *v.* Atul Chandra Chakravarti Chowdhry . . . **I. L. R., 24 Calc., 540**

18. ——— *Suit against different alienees.*—Where a plaintiff sued to recover an estate in possession of several persons, who held, not collectively, but in different portions by virtue of several auction and private sales and mortgages,—*Held* that the Court of first instance should have dismissed the plaint for misjoinder, leaving the plaintiff to bring separate suits in respect of the several pieces of property in possession of each defendant or set of defendants. Tewaree Raghoonath Sahai *v.* Mahomed Nazeer **4 N. W., 108**

19. ——— *Suit for portions of property in different hands.*—The auction-purchaser of a talukh seeking to obtain possession against the former proprietors, many of whom are cultivators holding separate possession of specific portions and having their houses on the land, must sue them specially for those portions to which they lay claim. He cannot sue the whole community in the aggregate for all the lands of the village. Ramchunder Paul *v.* Omora Churn Deb . . . . **16 W. R., 155**

20. ——— *Suit for mesne profits in respect of several estates.*—Plaintiff, having obtained a decree establishing his title to a number of villages constituting one talukh, subsequently brought one suit against all the persons severally in possession of the several estates constituting the talukh for mesne profits during their wrongful possession. *Held* that, there being no common liability, the suit must be dismissed for misjoinder. Koondun Lal *v.* Himmut Singh . **3 N. W., 86**

21. ——— *Suit by son against several purchasers to set aside sale by father.*—In a suit by a son against a father and certain purchasers to obtain a declaratory decree in respect of certain property, the fact of each purchaser being concerned only in a portion of the case does not render the suit multifarious. Kanth Narain Singh *v.* Prem Lall Paurey . . **3 W. R., 102**

MULTIFARIOUSNESS—*continued.*

22. ——— *Suit against several alienees of property.*—Plaintiff alleged that, his father having died while he was a young child, during his minority his father's widows (defendants 1, 2, and 3) aliened the whole of the estate, in portions, to different people at different times. He therefore brought this suit against all the alienees to recover the estate as a whole. The District Judge dismissed the suit on the ground of misjoinder of causes of action. *Held* on appeal that the Judge was wrong; that plaintiff's cause of action, the right, was his relation to the family to which the property appertained; and on this right, if established, and if he be not otherwise barred, he would be entitled to recover; the fact that various persons, during his minority, affected to purchase portions of the property, did not destroy the unity of his ground of action. SAMI CHETTI *v.* AMMANI ACHY . . . . **7 Mad., 260**

23. ——— *Civil Procedure Code, 1882, s. 45—Hindu law—Suit for partition—Alienees made parties to suit.*—Where a suit was brought by a Hindu for partition of family property against his father, brothers, and fifteen others to whom, it was alleged, the father had impropely alienated numerous parcels of the said property at different times,—*Held* that the better course was for the Court to have ordered, under s. 45 of the Code of Civil Procedure, separate trials to be held in respect of each alienation. SUBRAMANYA *v.* SADASIVA

[I. L. R., 8 Mad., 75

24. ——— *Suit to recover property sold in execution of decree.*—Certain properties were sold to *A* by private contract. Subsequently the properties were attached in execution of a decree against *A*'s vendors and sold in execution to various purchasers. *A* instituted a suit against his vendors, the decree-holders, and the purchasers, to set aside the execution sale. *Held* that the suit was not defective by reason of misjoinder of causes of action. *Rajaram Tewari* v. *Luchmun Prasad, B. L. R., Sup. Vol., 173: 8 W. R., 15,* distinguished. HARANUND MOZOOMDAR *v.* PROSUNNO CHUNDER BISWAS

[I. L. R., 9 Calc., 763: 12 C. L. R., 556

25. ——— *Suit against several alienees of property.*—In a suit to have certain properties declared liable for the amount of certain decrees, plaintiff's case being that the properties were those of his judgment-debtor, and had passed, in fact, to his admitted representative—the other defendants being men of straw, fraudulently set up as ostensible purchasers,—*Held* that plaintiff had in reality but one cause of action against one party; that even if his suit had been multifarious, the defect or irregularity was not, under the circumstances, such as to warrant his being put out of Court. WISE *v.* GUREEB HOSSEIN CHOWDRY . . . **13 W. R., 271**

26. ——— *Suit to set aside different leases to different persons.*—The claims of different parties setting up different leases from *A*, and thus opposing the purchaser of the estate from *A* in obtaining possession, may be joined in one suit brought to set aside their leases, and to recover the profits which they had misappropriated. SHOROOP CHUNDER PAUL *v.* MOTHOOR MOHUN PAUL CHOWDHRY . . . . . . **4 W. R., 109**

27. ——— *Joinder of different causes of action against different parties.*—Under five different pottahs, *A* granted to *B* patni leases of five different mehals. The rents of the mehals falling into arrear, the mehals were sold on two different dates. *A* purchased two of the mehals, *C* purchased two of the mehals, and *D* purchased one of the mehals. In a suit brought by *B* against *A*, *C*, and *D*, to set aside the sales on the ground of irregularity,—*Held* the suit was bad for multifariousness, and must be dismissed. IMRIT NATH JHA *v.* ROY DHUNPUT SING **9 B. L. R., 241: 18 W. R., 288**

28. ——— *Suit for possession of different portions of property after ejectment.*—In a suit to recover possession on the ground of dispossession by all the defendants in consequence of certain Act X decisions,—*Held* that there was but one cause of action, and that the fact that the defendants each claimed to hold portions of the property under different titles could not make the suit bad for misjoinder. ACKJOO BIBEE *v.* LALLAH RAM CHUNDER LALL SAHAI **23 W. R., 400**

29. ——— *Suit for declaration that lands were wukf—Defendants holding under distinct titles.*—In a suit instituted for a declaration of the Court, under s. 15 of Act VIII of 1859, that certain lands and premises in Calcutta were wukf lands, under a certain towliatnamah executed by the ancestor of the plaintiff, the authenticity of which was admitted, and that the defendants who were in possession might be restrained by injunction from recovering the rents of, or intermeddling with, the said lands or premises, and that it might be referred to the Court in chambers to appoint a proper person to act as mutwalli under the said towliatnamah, and that such mutwali, when so appointed, might be declared entitled to the said lands and premises, the causes of action were alleged to have arisen at various times within the last twelve years, and were distinct as to the several defendants who held by different titles. On objection having been taken to the frame of the suit, the Court held that it was informal, as there was a joinder in one suit of several distinct causes of action, and no grounds were disclosed for relief in a suit in equity, and that the proceeding should have been by way of ejectment against each of the defendants. The suit was accordingly dismissed. If the defendants in such a suit be intruders and strangers, there is no common cause against them, and they must be turned out by action of ejectment against each separately. MUZHUR HOSSAIN *v.* DINOBUNDHO SEN

[Bourke, O. C., 8: Cor., 94

30. ——— *Held* that there was no misjoinder of different causes in a suit including plaintiff's whole claim, where his cause of action was that the Revenue Commissioners had taken possession of his lands and given it in pottah to other people. IN THE MATTER OF RUTNESSUR DASS

[14 W. R., 381

MULTIFARIOUSNESS—*continued.*

31. ———— *Suit to enforce the right of pre-emption—Civil Procedure Code, s. 45.*—Two co-sharers of a village, holding separate shares, sold their shares separately to the same person, upon which a third co-sharer of the village sued them and the vendor jointly to enforce his right of pre-emption in respect of sales. *Held* that the frame of the suit was bad by reason of misjoinder of defendants and causes of action, and the suit had been properly dismissed on that ground. BHAGWATI PRASAD GIR *v.* BINDESHRI GIR . . **I. L. R., 6 All., 106**

32. ———— *Civil Procedure Code, 1877, s. 45—Pre-emption, Suit for—Irregularity not affecting merits or jurisdiction.*—The sons of *R* and of *K* and of *S* possessed proprietary rights in two mehals of a certain mouzah. *P* possessed proprietary rights in one of those mehals. In April 1879 the sons of *R* sold their proprietary rights in both mehals to *G*. In August 1879 the sons of *K* sold their proprietary rights in both mehals to *G*. Later in the same month the sons of *S* sold their proprietary rights in both mehals to *N*. *G* sued *N* to enforce a right of pre-emption in respect of the sale to the latter, and obtained a decree. *P* then sued to enforce a right of pre-emption in respect of the three sales mentioned above, so far as they related to the mehal of which he was a co-sharer, joining as defendants *G* and *N* and the vendors to them. *G* alone objected in the Court of first instance to the frame of the suit. That Court overruled the objection and gave *P* a decree. The lower Appellate Court reversed this decree on the ground of misjoinder. *Held* that in respect of *G* there was no misjoinder but that, in respect of the other defendants, there was misjoinder of both causes of action and parties. KALLAN SINGH *v.* GUR DAYAL **[I. L. R., 4 All., 163**

33. ———— *Civil Procedure Code, ss. 28, 45.*—The judgment of the majority of the Full Bench in *Narsingh Dass* v. *Mungal Dubey, I. L. R., 5 All., 163,* except in its general observations as to the provisions of the Civil Procedure Code relating to joinder of parties and causes of action, proceeded upon and had reference to the special circumstances of the case and to the allegations made by the plaintiff in his plaint, and was not intended to be carried further. In a suit for possession of immoveable property, part of which had been usufructuarily mortgaged by defendant No. 1 to defendant No. 2, the plaintiff alleged that the first defendant had no title to make such a mortgage, while both defendants maintained such title. *Held* that, inasmuch as the title of defendant No. 2 was derived from defendant No. 1, and stood or fell with the failure or success of the plaintiff's claim against the latter, there were not two causes of action but one, namely, the infringement of the plaintiff's right by the defendant No. 1, and hence the suit was not bad for misjoinder of causes of action. INDAR KUMAR *v.* GUR PRASAD . . . **I. L. R., 11 All., 33**

34. ———— *Suit against several defendants for possession—Dispossession under forged document.*—A suit in which the plaintiff alleged that the defendants (including raiyats against whom he had been unsuccessful in the Collector's Court) had, in combination, fraudulently availed themselves of a fabricated jamabandi paper as evidence to support certain mokurrari claims, and had thereby ousted him from the full enjoyment of his milkiat right, was held to be simple in its character and not multifarious. GUJADHUR PERSHAD NARAIN SINGH *v.* SAHEB ROY . **19 W. R., 203**

In the same case after remand the plaintiff, having failed to prove the allegation of forgery, claimed a declaration that the defendants had not a right to occupy the land at a fixed rent. *Held* that such a declaration could rightfully be asked for only in a separate suit against each separate occupant. SAHEB ROY *v.* GUJADHUR PERSHAD NARAIN SINGH **[22 W. R., 221**

35. ———— *Joint trespassers.*—At an auction-sale for arrears of rent, on the 11th July 1885, plaintiffs purchased a tenure which, on the zamindar's serishta, stood in the name of one Sheikh Miajan, and proceeded to take steps to obtain possession, but were resisted by the defendants. Against one of the defendants who claimed a particular portion of the lands under the tenure in question, they brought a suit in 1869; but this suit was finally dismissed in June 1876, on the ground that all the persons, who were claimants of any part of the lands, ought to have been joined as defendants. Accordingly a fresh suit was brought against all the claimants of the tenure. To this suit the defendants set up various and distinct defences, some alleging one defence and some another, and so on. The Subordinate Judge dismissed the suit for multifariousness. *Held* that there was no multifariousness, the plaintiffs' claim being to recover possession against persons who were alleged to be joint trespassers. OMUR ALI *v.* WEYLAYET ALI . . **4 C. L. R., 455**

36. ———— *Civil Procedure Code, 1882, s. 28—Suit for declaratory decree—Specific Relief Act (I of 1877), s. 42.*—The plaintiffs, having obtained a decree for the possession of certain lands and having received formal possession thereof, brought a suit against eighty-six persons holding distinct and separate tenures in those lands, on the allegations that, "on the plaintiffs attempting to measure the lands and calling on the tenants to pay rent, ten of the defendants described as prodhans or headmen formed a combination and gained over the other defendants with a view to injure the plaintiffs; that through their help and endeavour the remaining defendants failed to recognize the plaintiffs as landlords, and declined to pay any rent or to allow them to measure the lands, driving away an Ameen who went to measure the lands on behalf of the plaintiffs, and thereby preventing the plaintiffs from exercising their proprietary rights; that the plaintiffs brought suits for rent against some of the defendants, and in those suits the defendants denied the plaintiffs' title as landlords, whereupon the plaintiffs, seeing the necessity of instituting a suit for declaring the defendants tenants of the land, withdrew the suits for rent." They stated their cause of action to be "the defendants' act of not recognizing us as their landlords and thereby preventing us exercising our proprietary

MULTIFARIOUSNESS—*continued.*

rights in respect of the land in suit, and not allowing us to make a measurement of that land, and also withholding the payment of rent;" and prayed for a decree establishing their proprietary right and declaring the defendants to be their tenants. *Held* that there was but one and the same cause of action against all the defendants,—*viz.*, a combination to keep the plaintiffs out of the enjoyment of the property they had purchased; and that the suit was not multifarious within s. 28 of the Civil Procedure Code. LOKE NATH SURMA *v.* KESHAB RAM DOSS **[I. L. R., 13 Calc., 147**

37. ———— *"Multifarious" suit—Act X of 1877 (Civil Procedure Code), ss. 28, 45.*—Defendant No. 1, the tenant of certain land at fixed rates, on the 12th November 1877 sold his interest in the land to the plaintiff. At the time of the sale the land was in the actual possession of defendant No. 2, defendant No. 1's sub-tenant, against whom, however, defendant No. 1 had obtained an order for ejectment on the 25th June preceding. On the 25th March 1878 defendant No. 1 applied a second time for the ejectment of defendant No. 2, and while this matter was pending the plaintiff endeavoured to obtain possession of the land, but was resisted by defendant No. 2. He thereupon instituted a charge of criminal trespass against the latter. This criminal proceeding was pending when, on the 14th September 1878, defendant No. 1 obtained a second order for defendant No. 2's ejectment. Under this order he obtained possession of the land, and also of the crop planted by defendant No. 2, which he sold to defendant No. 3 on the 22nd September 1878. On the 25th of the same month the plaintiff's charge of criminal trespass against defendant No. 2 was dismissed, on the ground that defendant No. 1 was in possession, and the plaintiff had never obtained possession under his purchase. Defendant No. 1 subsequently let the land to defendant No. 4. The plaintiff, alleging that three causes of action had accrued to him,—*viz.*, (i) on the 12th November 1877, the date of the sale to him; (ii) on the 30th March 1878, when defendant No. 1 applied a second time for the ejectment of defendant No. 2; and (iii) on the 22nd September 1878, when defendant No. 1 took possession of the land,—sued defendants Nos. 1, 2, 3, and 4, claiming (i) possession of the land as against them all; (ii) mesne profits by way of damages for the year 1285 Fasli (September 1877—September 1878) as against defendants Nos. 1 and 2; (iii) mesne profits by way of damages for 1286 Fasli (September 1878—September 1879) against defendants Nos. 1 and 3; and (iv) mesne profits by way of damages for 1287 Fasli (September 1879—September 1880) against defendants Nos. 1 and 4. *Held* by the Full Bench (MAHMOOD, *J.*, dissenting) that the Court of first instance had properly rejected the plaint, the suit being open to the objection that different causes of action against different defendants separately had been joined, for which procedure no sanction was to be found in the Code of Civil Procedure. NARSINGH DAS *v.* MANGAL DUBEY . **I. L. R., 5 All., 163**

38. ———— *Suit for possession and mesne profits—Civil Procedure Code, s. 45.*—In a suit on title in which the recovery of immoveable property and mesne profits are claimed, the Court may, under s. 45 of the Code of Civil Procedure, order separate trials in respect of the claim for the recovery of the immoveable property and in respect of the claim for mesne profits. FATIMA BIBI *v.* ABDUL MAJID . . . **I. L. R., 14 All., 531**

39. ———— *Detention in jail—Suit by thirteen persons jointly for damages for detention—Plaint taken off the file—Separate causes of action—Practice—Act XIV of 1882, s. 26.*—Thirteen persons who had been committed to jail under one warrant, and for the same offence, jointly sued the Superintendent of the Presidency Jail for their wrongful detention in jail after the term of imprisonment to which they had been sentenced had expired, claiming R2,600 as damages. The defendant applied to have the plaint taken off the file on the ground that the plaintiffs had improperly joined in one suit several distinct and separate causes of action accruing to them as separate individuals. *Held* that the plaint must be taken off the file. ALI SERANG *v.* BEADON **I. L. R., 11 Calc., 524**

40. ———— *Suit on foreign judgment against members of a firm against some of whom only the judgment was obtained.*—*A* obtained a decree against *B* and *C* in Ceylon, and, having realized a portion of the sum decreed by sale of property in Ceylon, instituted a suit for the balance upon the foreign judgment in British India against *B*, *C*, *D*, *E*, *F*, *G*, on the ground that all were members of one firm. *Held* that the suit would not lie against *D*, *E*, *F*, *G*, upon the foreign judgment, and that, if the intention was to sue *D*, *E*, *F*, *G*, upon the original cause of action, and *B*, *C* upon the foreign judgment, the suit was bad for misjoinder. LAKSHMANAN CHETTI *v.* KARUPPAN CHETTI **[I. L. R., 6 Mad., 273**

41. ———— *Suit for share of zamindari cesses realized by auction-sale in execution of decree—Joinder of causes of action—Joint decree-holders.*—The plaintiff claimed from the defendants as joint decree-holders a fourth share of the proceeds realized by auction-sale through the Court of the Munsif of certain houses situate on land subject to a village custom whereby a proprietary due of the above amount was payable to the zamindar of the said land. *Held* by the Division Bench that the claim was not bad for misjoinder, as the due was payable out of the sale-proceeds taken out of Court by the decree-holders. NANKU *v.* BOARD OF REVENUE. **[I. L. R., 1 All., 444**

42. ———— *Suit for sale-proceeds after rateable distribution.*—In execution of a decree against six persons, the plaintiffs had certain property brought to sale, the proceeds of which were brought into Court. The defendants, who held five separate decrees against some of the persons against whom the plaintiff's decree was obtained, applied to have the amount in Court rateably distributed, and this was done in accordance with an order of the Court, the proceeds being distributed in proportion to the amount of the decrees. In a suit brought against

MULTIFARIOUSNESS—*continued.*

the defendant, on the allegation that the plaintiffs were entitled to the whole of the proceeds; or in the alternative for distribution on a different principle,—*Held* that there was no misjoinder of causes of action by reason of all the defendants being included in one suit. GOURI PROSAD KUNDU *v.* RAM RATAN SIRCAR . . . . **I. L. R., 13 Calc., 159**

43. ———— *Separate liability of defendants for rent.*—In a suit to recover rent from defendants, with whom engagements had been entered into separately, plaintiff obtained a decree making each of them liable for the whole sum claimed. *Held* that there was a misjoinder of the defendants, and that the decree was wrong in law; but if the first Court had made each defendant liable in proportion to the rent he had engaged to pay, the objection of misjoinder would not have been allowed to prevail. JUMOONA DOSS *v.* POOKHUR SINGH **22 W. R., 133**

44. ———— *Suit for rent—Purchaser of portion of tenure—Civil Procedure Code, 1882, s. 28.*—Although a purchaser of a portion of a tenure is not personally liable for the rent falling due before the date of purchase, a suit for recovery of rent for the whole claim is not bad, if such purchaser is joined as one of the parties, regard being had to the provisions of s. 28, Civil Procedure Code. JOGEMAYA DASSI *v.* GIRINDRA NATH MUKHERJEE **[4 C. W. N., 590**

45. ———— *Suit for contribution.*—The plaintiff was compelled to pay the whole costs of a suit in which there was a misjoinder of causes of action, and which resulted in his and his co-defendants being charged with costs relating to causes of action with which they had no concern. The plaintiff sued, after deducting R71 as his own proper share to recover the balance from his co-defendants. The plea of misjoinder was allowed. BENI RAM *v.* HIDAYAT HOSSEIN . . . **7 N. W., 82**

46. ———— *Suit for contribution.*—In a suit against *A K* for contribution of moneys paid in satisfaction of two decrees under which the present plaintiffs and defendants were jointly liable, and one of which decrees was founded on an ikrar executed by the parties to the present suit and by one *F*, not a party, who was expressly excluded from liability in the decree last mentioned. the Judge, considering that *F* was liable under the ikrar, but *not* liable under the bond on which the other decree was founded, decided that there were two distinct causes of action, and dismissed the suit. *Held* that the cause of action on which plaintiffs relied was simply the joint liability of the parties under the decree, and the suit was not multifarious. MAHOMED MIRZA *v.* ABDOOL KUREEM . . . . **25 W. R., 41**

47. ———— *Parties—Suit for contribution.*—The purchaser of a share in a mortgaged estate, who has paid off the whole mortgage-debt in order to save the estate from foreclosure, can claim from each of the mortgagors a contribution proportionate to his interest in the property, but he cannot claim from the othe mortgagors collectively the whole amount paid by hrim. HIRA CHAND *v.* ABDAL **[I. L. R., 1 All., 455**

MULTIFARIOUSNESS—*continued.*

See RUJAPUT RAI *v.* MAHOMED ALI KHAN **[5 N. W., 215**

48. ———— *Joinder of parties—Contribution, Suit for.*—Where the owner of two villages sold under a decree obtained upon a mortgage, claims contribution proportionately against the owners of the other properties included in the mortgage, and does not claim from them all collectively one lump sum as contribution, he may join all the contributors in one suit, and is not bound to bring separate suits for contribution against the separate owners. *Hira Chand* v. *Abdal, I. L. R., 1 All., 455*, distinguished. *Rujaput Rai* v. *Mahomed Ali Khan, 5 N. W., 215; Tavasi Telavar* v. *Palani Andi Telavar, 3 Mad., 187; Khema Debea* v. *Kamola Kant Bukhshi, 10 B. L. R., 259 note;* and *Eglinton* v. *Koylashnath Mozoomdar, W. R., 1864, 303,* referred to. He may also bring a single suit in respect of the two sales, and is not bound to bring a separate suit in respect of each sale. IBN HUSAIN *v.* RAMDAI . . . **I. L. R., 12 All., 110**

49. ———— *Institution of suit to redeem, pending a suit by plaintiff to establish his title as representative of the mortgagee.*—The ancestor of the defendants held as mortgagee a 10-biswa share of a mouzah; of this share 5 biswas were recovered and held by the plaintiffs as proprietors. Of the remaining 5 biswas, 3 biswas 6¾ biswansees belonged to *D* and 1 biswa 13¼ biswansees to *H*. These 5 biswas were in the defendants' possession. The plaintiffs sued to recover possession of them, alleging that the mortgage had been redeemed out of the usufruct, and that they had acquired *D*'s rights by auction-purchase in the year 1848, and *H*'s rights by private purchase from his sons in 1873. They also sued for mesne profits. The defendants pleaded that they held the 5 biswas in suit as proprietors, having acquired *D*'s rights by private purchase in 1847, and *H*'s rights similarly in 1851. They also pleaded that, inasmuch as the plaintiffs had brought a suit to establish the sale alleged to have been made to them by *H*'s sons, and that suit was still pending, the claim for possession of *H*'s share could not be maintained; and they lastly pleaded that, inasmuch as the plaintiffs admitted that the rights of *D* and *H* were acquired by them under separate sales, their claims to those rights could not be joined in one suit. The plaintiffs replied that, assuming the claim to *H*'s share could not be maintained on the basis of the alleged sale to them, they were nevertheless entitled to possession of *H*'s share in virtue of their right to *D*'s share, both shares having been jointly mortgaged. *Held* that the plaintiffs were entitled to ask in one suit for a determination of their claim to the possession of the shares, and to any surplus mesne profits which might be found due in respect of them on taking account, and that the pendency of the suit to establish their purchase of *H*'s share did not deprive them of the right to sue to recover possession from the mortgagees, although it might have been necessary to determine incidentally in the suit the question at issue in the suit respecting the purchase. *Held* also that, if the plaintiffs established their right to

MULTIFARIOUSNESS—*continued.*

the share of *D*, but failed to prove their title as purchasers of *H*'s share, they could not obtain possession of the share on the ground that it was mortgaged jointly with the shares they already held, and with the share of *D*, for, according to their own allegation, the mortgage-debt had been redeemed, and there was no longer any common liability which they were required to discharge. MOHUN LALL *v.* JHUMMUN LALL . . . . **6 N. W., 246**

50. ———— *Form of suit—Joinder of defendants—Joinder of causes of action—Civil Procedure Code, 1882, s. 28.*—*A* leased certain lands to *B* for a term of seven years commencing with the year 1288 Fasli (19th September 1880). On the 23rd October 1883 *A* sold the lands to *D*, who, under his purchase, became entitled to the rents of the lands from the commencement of the year 1291 Fasli (17th September 1883). When some of the instalments of the rent for the year 1291 Fasli became due, *D* applied for payment thereof to *B*, who informed him that he had paid the whole of the rent for the year 1291 in advance to *A* on the 21st May 1883. *D* then sued *A* and *B* for the rent due, praying a decree for rent against *B*, and in the alternative for a decree against *A* if it should turn out that *B*'s allegation of payment was correct. The lower Courts found that *B* had paid *A* in good faith, and they dismissed the suit as against him. They also dismissed the suit as against *A* on the ground that the claims against *A* and *B* could not be joined in one suit. On appeal to the High Court,—*Held* that the frame of the suit was unobjectionable, and that on the facts found by the lower Courts *D* was entitled to a decree against *A*. MADAN MOHUN LALL *v.* HOLLOWAY . . **I. L. R., 12 Calc., 555**

51. ———— *Suit for money on contract for money deposited on kistbandi, and for cancellation of kistbandi.*—There is no misjoinder of causes of action in a suit for money contracted to be paid, and for the cancellation of a kistbandi, and for money deposited on the kistbandi. Combined causes of action may be brought in the Court which has jurisdiction to the full amount of such combined causes of action. KINNOO MONEE DEBIA *v.* SHOHORAM SIRKAR . . . **3 W. R., 128**

BROJO KISHORE CHOWDHRANI *v.* KHEMA SOONDAREE DOSSEE . . . . **7 W. R., 409**

52. ———— *Suit for declaration of right to redeem and for damages.*—A plaintiff cannot bring, in one suit, a claim for a declaration of his right to redeem, and also a claim to a declaration of his right to damages. KESHAREE LALL *v.* GOVINDRAM . . . . **4 N. W., 70**

53. ———— *Claims for arrears of rent and to remove cloud on title.*—A claim for rent in arrear and a claim to remove clouds on the title to demise raised by the tenant are not objectionable on the ground of multifariousness, and may therefore be included in the same plaint. RAJENDUR KISHWUR SINGH *v.* SHEOPURSHUN MISSUR
[1 Ind. Jur., N. S., 273: 5 W. R., P. C., 65
10 Moore's I. A., 438

MULTIFARIOUSNESS—*continued.*

54. ———— *Suit on hundis—Persons parties to hundi in separate capacities.*—Where the payee of a hundi, in a suit to recover the amount of the same, made four persons defendants,—*viz.*, the drawer and the acceptor of the hundi, his own endorsee, and a party whom plaintiff alleged to be the principal, whose agent was the drawer,—the suit was held to be a combination of four suits in one, not allowed by the Civil Courts. HABEEL BEPAREE *v.* CHOALMUN MAH
[10 W. R., 263

55. ———— *Suit for partition and to eject raiyats.*—In a suit for partition of the joint inam lands of a Hindu family, it was not disputed that the plaintiffs were entitled to the share which they claimed, but they joined as defendants a number of cultivating raiyats whom they sought to eject. The raiyats pleaded that the suit was bad for multifariousness. *Held* that the raiyats were improperly joined as defendants in the suit. SAMINADA PILLAI *v.* SUBBA REDDIAR . **I. L. R., 1 Mad., 333**

56. ———— *Suit for misappropriation and breach of contract against two defendants.*—Plaintiffs, members of a pagoda committee appointed under Act XX of 1863, sued defendants for the recovery of R4,480-2-0. The plaint alleged that, in October 1865, the first defendant and another agreed to travel and collect subscriptions for the purpose of erecting a tower at the entrance of the pagoda in question, paying to the pagoda R130 a month during the period they should be engaged in the work, irrespective of the actual collections; that an agreement to this effect was executed, and first and second defendants deputed to collect subscriptions; that both were engaged in the work until November 1869; that under the terms of the said agreement a sum of R6,500 was due, of which only R2,019-14-0 were credited in the accounts of the pagoda; that first and second defendants, when required to account for the balance, informed the plaintiffs that they had paid to the third defendant, the then manager of the said temple, R5,330, and that only R1,170 was due by them. The present suit was accordingly filed against the defendants for the sum of money due by them. The Court of first instance decreed against third defendant alone. On appeal the Civil Judge dismissed the suit as against the third defendant on the ground of multifariousness, he having been sued on the ground of misappropriation, while the cause of action against the first defendant was breach of contract. *Held* on special appeal that the suit was not multifarious; that the third defendant was properly included in the suit as a defendant, and did not appear to have been prejudiced in his defence by the course of the proceedings. ARUNACHELLA TEVAR *v.* VENKATASAMI NAIK
[7 Mad., 123

57. ———— *Civil Procedure Code (Act X of 1877), s. 45.*—The plaintiffs sued for a declaration that the several alienations made by defendant No. 1 (a Hindu widow) to the other defendants were void, and that they, the plaintiffs, were entitled to the several properties after her death; also for an

MULTIFARIOUSNESS—*continued.*

injunction restraining her from making similar unlawful alienations in the future. *Held* that the suit as framed was not maintainable, inasmuch as it included within it several distinct causes of action which, under s. 45 of Act X of 1877, could not be joined together in the same suit. The course which should be adopted by a Court or Judge, where there has been such a misjoinder of causes of action, discussed. KACHAR BHOJ VAIJA *v.* BAI RATHORE . . . **I. L. R., 7 Bom., 289**

58. ——— *Property situated in different districts—Civil Procedure Code, 1877, ss. 28, 31.*—*A*, *B*, *C*, and *D* were the proprietors of a 2 annas 13 gundas share in mouzah E, and also of a 2 annas 13 gundas share in mouzah F, both in the district of Bhaugulpore. On 19th September 1872 *A* mortgaged a 1 anna 4 pie share of E to *H*. On the 20th September 1872 *A*, *B*, *C*, and *D* mortgaged their shares in E and F, together with property in the district of Tirhoot, to the plaintiff. On the 24th March 1873 *A* mortgaged his share in E and F to *J*. On the 13th November 1874 *A* and *B* mortgaged their shares in E to *K*. On the 25th March 1874 *J* obtained a decree on his mortgage, and the interests of *A* and *B* were purchased on the 5th January 1875 by *L*. On the 17th April 1874 *M*, to whom the first mortgage had been assigned, obtained a decree and attached the property mortgaged. *L* objected that he had already purchased the interest of *A*, and on the objection being allowed, *M* brought a suit against *L* for a declaration of priority, and obtained a decree on the 9th August 1876. In execution of this decree, the property first mortgaged was sold on the 4th March 1878, and after satisfying the mortgage a surplus of R7,664 remained. After the institution of the first suit and before *L*'s purchase, the plaintiff instituted a suit upon his mortgage in the Tirhoot Court without having obtained leave to include that portion of the mortgaged property situate in the Bhaugulpore district. On the 17th July 1874 a decree was made in this suit. On the 17th January 1877 *K* obtained a decree on his mortgage, and the shares of *A* and *B* in E were sold and purchased on the 3rd September 1877 by *N*. The plaintiff had his decree transferred for execution to the Bhaugulpore Court, and he attached the surplus sale-proceeds and a 1 anna 9 gundas share in E. This attachment was withdrawn on the objection of *L*, who drew out the surplus sale-proceeds. The share purchased by *N* was also released from attachment. The plaintiff now sued *L*, *N*, and the mortgagors for a declaration that his decree of the 17th July 1874 affected the E property, to recover the surplus sale-proceeds from *L*, and in case the decree should not be valid to the extent mentioned, for a decree declaring his prior lien on the property in E. *Held* that the suit was not bad by reason of multifariousness. BUNGSEE SINGH *v.* SOODIST LALL

[I. L. R., 7 Calc., 739 : 10 C. L. R., 263

59. ——— *Civil Procedure Code, s. 26.*—S. 26 of the Code of Civil Procedure does not authorize the joinder of plaintiffs with antagonistic claims arising out of distinct causes of action. Where one of two widows of a deceased Hindu and her adopted son sued as co-plaintiffs claiming in the alternative either to recover the whole family estate for the latter, if the adoption was valid, or if the adoption was invalid, one-half of the estate for the former,—*Held* that the suit was bad for misjoinder. LINGAMMAL *v.* CHINNA VENKATAMMAL

[I. L. R., 6 Mad., 239

60. ——— *Suit for maintenance and marriage expenses—Misjoinder of parties.*—A Hindu widow, with her two daughters as co-plaintiffs, sued the son of her deceased husband by another wife, alleging that he was in possession of his father's property, for maintenance, and for the marriage expenses of the daughters, both of whom were of marriageable age. The Court of first instance gave the plaintiffs a decree for a monthly allowance, and R540 to the widow as arrears of maintenance, and R1,000 for the marriage expenses of the daughters. *Held* that, inasmuch as the mother was the natural guardian of the two other plaintiffs, and it was proper for them to reside with and be provided for by her, and the common maintenance was, so to speak, a joint matter, the suit was not, at any rate at the stage of appeal, open to objection on the ground of misjoinder of parties and causes of action; nor, looking at the peculiar circumstances of this family, which made the mother the most natural and proper person to arrange the marriages of the two minor plaintiffs, was the prayer for marriage expenses improperly added. TULSHA *v.* GOPAL RAI

[I. L. R., 6 All., 632

61. ——— *Joinder—Civil Procedure Code, 1877, ss. 28, 31, and 45—Alternative relief—Parties.*—In a suit instituted against six different parties, the plaintiff prayed for khas possession of a four-anna share in a certain lot, or in the alternative, for a decree for arrears of rent against the defendants or such of the defendants as should on inquiry appear to be respectively liable. It appeared that the plaintiff had been kept out of possession by one only of the six defendants, and that, if he was entitled to a decree for arrears of rent, another of the defendants was liable for a portion only of such arrears. *Held* that the suit was not improperly framed; that there was no objection to the prayer for alternative relief; and that the suit should not have been dismissed for misjoinder. JANOKINATH MOOKERJEE *v.* RAM RUNJUN CHUCKERBUTTY . . **I. L. R., 4 Calc., 949**

62. ——— *Civil Procedure Code, 1882, ss. 32, 45, and 46—Adding parties—Striking off parties—Causes of action, Joinder or severance of—Non-joinder or misjoinder of parties—Practice—Procedure.*—*C* sued *P* to recover possession of certain lands. The plaintiff and defendant were members of the same family, and at the hearing of the suit the appellants, who were also members of the family, applied to be made parties, alleging that the suit was collusive, and that they were in possession of some of the lands which the plaintiff sought to recover, and wished to defend their possession. The Subordinate Judge granted their application, and made them co-defendants in the suit

They filed written statements setting forth their right, and time was allowed in order that the plaintiff might put in a counter-statement. Before the case came on again, the Subordinate Judge had been removed, and his successor was of opinion that the causes of action, as against the original defendant *P* and as against the new defendants (the appellants), were different, and ought to be the subject of different suits. He accordingly dismissed the appellants from the suit under s. 45 of the Civil Procedure Code (XIV of 1882), and ordered that they should bear their own costs. *Held,* on appeal to the High Court, that the order dismissing the appellants from the suit should be reserved, and that s. 45 did not apply. When the parties concerned, though in different relation, in a particular litigation are all before the Court, and their cases have been stated, the Court, if it finds the several causes as between plaintiff and the several defendants cannot properly or conveniently be tried together, should deal with them separately as sub-suits under the title and number of the principal suit from which they spring. The dismissal of defendants added without objection, or the addition of whom has been submitted to, is not contemplated, and would tend to further needless expense. The power given by s. 45 does not extend to an order for the dismissal of defendants, and that a fresh suit should be brought against them. Such an order would not be one for the "separate disposal" of the several causes of action; it would be an order preventing the disposal of them in the suit before the Court. S. 45 is meant to apply to cases in which questions arise as to the joinder or severance of several causes of action against the same defendant. For non-joinder or misjoinder of parties provision is made in s. 32 and the plaintiff had not resisted the joinder of the appellants as defendants. The Subordinate Judge could only strike out the name of a party upon an application being made, and no such application had been made. KHADAR SAHEB *v.* CHOTIBIBI

[I. L. R., 8 Bom., 616

63. ———————— *Civil Procedure Code (1882), ss. 278-283—Attachment of same property in execution of decrees obtained by different creditors—Claim made in one suit to attached property under s. 278—Order made under s. 281—Suit by claimant to establish right—All attaching creditors made defendants to suit—Civil Procedure Code (1882), s. 28.*—The first and second defendants obtained a decree in suit No. 1548 of 1897 against *R,* described as the owner of the Wahalan Mills, and attached property on the mill premises. Twelve other creditors also brought twelve other similar suits and obtained decrees against other persons who were also described as owners of the Wahalan Mills, and attached the same property. In suit No. 1548 of 1897, *R M* (the present plaintiff), under s. 278 of the Civil Procedure Code (Act XIV of 1882), claimed the property. His claim was disallowed, and he was ordered to bring a suit under s. 283. No claim or order was made in the case of the other twelve suits. *R M* now sued in pursuance of the above order to recover his property, and he included as defendants not merely those (defendants Nos. 1 and 2) who had been plaintiffs in suit No. 1548 of 1897, but also those who had been plaintiffs in the twelve other suits, and who had attached the property in execution of their decrees. *Held* that the plaintiff might join in one suit as defendants persons who had decrees against different persons without making the suit multifarious. The right to relief was in respect of the same matter and therefore fulfilled the requirements of s. 28 of the Civil Procedure Code, 1882. RAGHUNATH MUKUND *v.* SAROSH KAMA . . . **I. L. R., 23 Bom., 266**

64. ———————— *Civil Procedure Code, s. 31—Suit for removal of trustees and for money-decree.*—Suit by certain dikshadars or hereditary trustees of the Chitambaram temple against others of the dikshadars praying their removal from office and for a money-decree alleging that they had been jointly guilty of misconduct in respect of temple property in their custody and had obstructed the repair of certain shrines. *Held* that the suit was not bad for misjoinder of causes of action. NATESA *v.* GANAPATI . . **I. L. R., 14 Mad., 103**

65. ———————— *Misjoinder of parties—Suit for partition and to set aside order disallowing objection to attachment—Civil Procedure Code, 1882, s. 283—Right of suit—Superintendence of High Court.*—There is nothing in the words of s. 283 of the Code of Civil Procedure (Act XIV of 1882) to limit the party unsuccessful in the attachment proceedings to a suit for a mere declaration of his alleged right. He is at liberty to pray, in the same suit, for any consequential relief to which he may be entitled. *A, B,* and *C* were members of a joint Hindu family. In execution of a decree against *B,* a portion of the family property was attached. Thereupon *A* intervened and objected to the attachment so far as his own share was concerned. The objection was disallowed, and the property was brought to sale and purchased by *D. A* then filed a suit (1) to set aside the order in the miscellaneous proceedings disallowing his objection to the attachment; and (2) for a partition of the whole family property. In this suit he impleaded not only his co-sharers, *B* and *C,* but also *D,* the auction-purchaser, and *E,* a mortgagee of *B's* share in the joint property. The Subordinate Judge, holding that the suit was bad for misjoinder of parties as well as of causes of action, returned the plaint for amendment by striking out the prayer for partition. On appeal this order was confirmed by the District Judge. On *A's* application to the High Court under s. 622 of the Code of Civil Procedure,—*Held* that the suit was not bad either for misjoinder of parties or for misjoinder of causes of action. Treating the suit as one for partition, the auction-purchaser *D* and the mortgagee *E* were proper and even necessary parties. If *A* established his right to partition, he would be entitled to have the order in the miscellaneous proceedings set aside in the same suit. *Held* also that s. 283 of the Code of Civil Procedure did not prevent *A* from claiming partition in the present suit. *Held* further that, even if the Subordinate Judge's view were right that the two prayers could not be joined in one suit, his proper course was to have left it to the

MULTIFARIOUSNESS—*concluded.*

plaintiff to elect which of the two prayers he wished should be adjudicated upon by the Court. Sadu bin Baghu *v.* Ram bin Govind
[I. L. R., 16 Bom., 608

66. ———— *Suit for partition of property of deceased by his heirs.*—Two suits were brought for partition of the property of a deceased by his heirs under the Mahomedan law: the first by his widow and six children in the Court of the Subordinate Judge; the second by two other children by his first wife in the Court of the District Munsif, from which Court it was transferred to the Court of the said Subordinate Judge. The Subordinate Judge having ruled that the plaintiffs in each suit were not entitled to sue jointly, the plaints were permitted to be amended. The first plaint was accordingly re-presented in the Subordinate Court as that of the widow; the second, also in the subordinate Court, as that of the first child of the first wife; and seven further plaints were filed in the Subordinate Court on behalf of the remaining children, respectively. *Held* (on the question of joinder) that there was no misjoinder of causes of action. If the suits were viewed substantially as suits against trespassers, the plaintiffs, as tenants in common, were competent to sue together in respect of what was thus a common injury to them. If, on the other hand, the suits were suits for partition, the plaintiffs were *à fortiori* entitled to join. Assam *v.* Pathumma
[I. L. R., 22 Mad., 494

67. ———— *Complaint of dealings by executors as act of mal-administration added to claim in administration suit.*—Where the suit is one to administer the assets of a deceased person, and in the claim various dealings by the executors of the estate are complained of as acts of mal-administration and sought to be redressed, such dealings do not constitute separate causes of action, and such a suit is not multifarious. Nistarini Dassi *v.* Nundo Lall Bose . I. L. R., 26 Calc., 891
[3 C. W. N., 670

68. ———— *When objection can be taken.*—It is too late for defendants to object with effect to a suit on the ground of multifariousness after it has been fully tried and decided on the merits; but the objection is one which a defendant has a right to raise on the settlement of issues, or on a motion to take the plaint off the file. Ram Doyal Dutt *v.* Ramdoolal Deb . . 11 W. R., 273

MUNICIPAL BOARDS.

———— Control over—

See Jurisdiction of Civil Court—Municipal Bodies . 19 W. R., 309

———— Power of—

See N.-W. P. and Oudh Municipalities Act, 1883, s. 55 . I. L. R., 19 All., 313

———— Secretary of—

See Stamp Act, sch. I, art. 22.
[I. L. R., 19 All., 293

MUNICIPAL COMMISSIONERS.

See Collector . I. L. R., 1 Bom., 628

See Magistrate, Jurisdiction of—Special Acts—Act XXVI of 1850.
[5 Bom., Cr., 10
8 Bom., Cr., 39

See Public Servant . 4 Bom., A. C., 93
[5 Bom., Cr., 33

See Rules made under Acts.
[8 Bom., Cr., 39

———— Appeal against assessment by—

See Jurisdiction of Civil Court—Municipal Bodies I. L. R., 1 Calc., 409

———— Election of—

See Calcutta Municipal Consolidation Act, s. 31.
[I. L. R., 19 Calc., 192, 195 note, 198
I. L. R., 22 Calc., 717

See Jurisdiction of Civil Court—Municipal Bodies I. L. R., 24 Calc., 107

———— Notice of suit against—

See Appellate Court—Objections taken for First Time on Appeal—Special Cases—Notice of Suit.
[I. L. R., 1 All., 269

See Bengal Municipal Act, 1864, ss. 77, 81 . . . . 7 W. R., 92
[9 W. R., 279, 562

See Madras Towns Improvement Act, 1871, s. 168 . I. L. R., 2 Mad., 124

See Cases under Notice of Suit.

———— Order of District Judge as to—

See Superintendence of High Court—Civil Procedure Code, s. 622.
[I. L. R., 21 Bom., 279

———— Power to administer oath.

See Bengal Municipal Act, 1864, s. 6.
[19 W. R., 309

———— Power to close or divert public highway.

See Bengal Municipal Act, 1864.
[I. L. R., 2 Calc., 425

———— Power to institute criminal proceedings.

See Bengal Municipal Act, 1884, s. 133.
[I. L. R., 22 Calc., 131

———— Suit against—

See Bengal Municipal Act, 1864, ss. 77, 87 . . . . . 7 W. R., 92
[5 B. L. R., Ap., 50
I. L. R., 6 Calc., 8

See Res Judicata—Judgment on Preliminary points . 5 B. L. R., Ap., 50

See Right of Suit—Municipal Officers, Suits against.

MUNICIPAL COMMISSIONERS —*continued.*

1. ———— **Liability of Commissioners for negligence or misconduct**—*Beng. Act III of 1864.*—Municipal Commissioners under Bengal Act III of 1864 and their servants incur no personal responsibility for what they do so long as they act in the line of their duty. But if they do, or order to be done, that which is not within the scope of their authority or if they are guilty of negligence or misconduct in doing that which they are empowered to do, then they render themselves personally liable to an action. There is no special law extending to members of Municipalities which protects them so long as they act *bonâ fide.* SOONDER LALL *v.* BAILLIE . . . . **24 W. R., 287**

2. ———— **Liability of Corporation for breach of statutory duty**—*Calcutta Municipality Act (Beng. Act IV of 1876), ss. 189, 191, 213, 252—Obstruction in public way—Damages.*—Under s. 189 of Bengal Act IV of 1876, the roads and streets in Calcutta are vested in the Commissioners of the Corporation of the Town of Calcutta, and s. 191 provides that the "Commissioners shall, so far as the municipal funds permit, from time to time, cause the public streets to be maintained and repaired, and for such purpose may do all things necessary for the public safety and convenience." Ss. 252 and 213 respectively direct the Commissioners on opening up the roads, and persons to whom they have given permission so to do, to fence and light any excavations so made. In March 1882 the Commissioners, at the request of the Executive Engineer of the Public Works Department of the Government of Bengal, permitted the latter to open up one of the roads in Calcutta for the purpose of carrying off surplus water from a tank which was under the charge and control of such Executive Engineer aforesaid, and for the purpose of connecting the tank with the public sewer. Permission was granted on the usual condition that a contractor licensed to do such works by the Municipality (but who was not in their employ further than that the Commissioners had power to cancel his license, nor was he in the employ of the Secretary of State for India), should be employed in the work. Such a contractor was employed by the Secretary of State and obtained a license from the Commissioners empowering him to break open the road. The road was open, but was left unfenced and insufficiently lighted at night. The plaintiff, in driving along this road after dusk, drove into the hole and was badly injured, and sued the Corporation, the contractor, and the Secretary of State for damages. *Held* by the Court of first instance (1) that the Secretary of State was not liable, because he came within the established rule that one who employs another to do what is perfectly legal must be presumed to employ that other to do this in a legal way; (2) that the Corporation, who had a statutory obligation imposed upon them to repair and maintain the roads, were liable to the plaintiff for a breach of their statutory duty; that where there is a dangerous obstruction, *à fortiori* where such dangerous obstruction results from a permission accorded by the Commissioners, they are to be held liable for damage caused by it; (3) that the contractor also was liable. *Held* on appeal that the fact that the Commissioners gave permission to another person to open up the road, although for a perfectly proper purpose, would not relieve them from their statutory duty under s. 191 of Bengal Act IV of 1876. CORPORATION OF TOWN OF CALCUTTA *v.* ANDERSON

[I. L. R., 10 Calc., 445

3. ———— **Commissioner acting as Magistrate, Power of**—*Procedure—Proceeding against absent party.*—A Municipal Commissioner, acting as a Magistrate, may enquire into a charge of the breach of a bye-law and may punish the accused party by inflicting a fine; but the procedure to be followed is that of the Code of Criminal Procedure, which does not contemplate a proceeding against an absent party *ex-parte.* TARINEY CHURN BOSE *v.* MUNICIPAL COMMISSIONERS OF SERAMPORE

[24 W. R., Cr., 25

4. ———— **Editor of newspaper**—*Trial of case on which he has written strong opinion in newspaper.*—The High Court declined to interfere, under s. 296, Act X of 1872, with the order of a Municipal Commissioner, who was the editor of a newspaper, who had, prior to the disposal of the case, made very strong remarks on the case in the newspaper of which he was the editor, holding that there was nothing illegal in his order; though he would have exercised a wise discretion if he had refused to sit as one of the Commissioners in the case. QUEEN *v.* TARINEE CHURN BOSE **21 W. R., Cr., 31**

MUNICIPAL COMMITTEE.

See CASES UNDER RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST.

See RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY **I. L. R., 1 All., 557**

MUNICIPAL CORPORATION.

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.

[I. L. R., 3 Calc., 758

MUNICIPAL COURTS.

———— **Jurisdiction of**—

See CASES UNDER ACT OF STATE.

MUNICIPAL DEBENTURES.

———— **Agreement to exchange land for debentures**—*Quit-rent—Liability for interest on debentures.*—The Port Canning Municipal Commissioners invited loans on debentures convertible into leasehold titles to lands in the town. The Port Canning Land Company subscribed to the loan declaring their desire to take land in lieu of the debentures. After the debentures were issued, a correspondence commenced between the parties with the object of effecting the conversion, in which correspondence the Commissioners intimated to the Company the construction they put upon the Company's tender, *viz.,*

MUNICIPAL DEBENTURES—*concluded.*

that they elected to take land to the full value of their debentures. The Commissioners also intimated to the Company that the latter had selected lots amounting to a part only of their debentures, and required them to select others, giving notice at the same time that they did not consider themselves liable to pay interest. The Company after this proposed to defer exchanging the debentures till their due date, and if the Commissioners consented, not to call for the interest in the meantime, but agreeing to pay a quit-rent equivalent to the interest. The Commissioners agreed to this and asked the Company to declare the lots which they would receive in commutation. A selection was made, but not in accordance with the contract: the lots selected being of more value than the debentures. The Commissioners then proposed that the Company should return the debentures, and pay quit-rent upon the additional lots. This was not accepted, but the matter was left in an imperfect state. The Port Canning Land Company subsequently brought an action against the Port Canning Municipality for two years' interest on the debentures. *Held* that the non-acceptance of the proposal as to the additional lots could not affect the previous agreement to exchange debentures then held for equivalent lots; and that such previous agreement had been made involving quit-rent which extinguished the interest. PORT CANNING LAND COMPANY *v.* SMITH

[21 W. R., 315 : L. R., 1 I. A., 124

MUNICIPAL ELECTION.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 31.

[I. L. R., 19 Calc., 192, 195 note, 198
I. L. R., 22 Calc., 717

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES **I. L. R., 24 Calc., 107**

MUNICIPAL INSPECTOR.

See PUBLIC SERVANT.

[I. L. R., 13 Mad., 131

MUNICIPAL NOTICE.

See NOTICE OF SUIT.

MUNICIPAL OFFICERS.

See CASES UNDER JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.

See CASES UNDER RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST.

——— Complaints by—

See COURT FEES ACT, 1870, s. 19.

[I. L. R., 16 Mad, 423

MUNICIPAL TAX.

See BOMBAY MUNICIPAL ACT, 1865, s. 2.

[9 Bom., 217

See CASES UNDER TAX.

MUNICIPALITY.

See CASES UNDER THE CALCUTTA, BENGAL, MADRAS AND BOMBAY MUNICIPAL ACTS.

——— Chairman of—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.

[I. L. R., 17 Calc., 329
I. L. R., 21 All., 348

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[I. L. R., 23 Calc., 44

——— Suit against—

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.

See PARTIES—PARTIES TO SUITS—GOVERNMENT . **I. L. R., 15 Mad., 292**

See RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST.

——— Suit by—

See LIMITATION ACT, 1877, ART. 149.

[I. L. R., 19 Mad., 154

MUNSIF.

See MAGISTRATE, JURISDICTION OF—WITHDRAWAL OF CASES.

[I. L. R., 15 Mad., 94

See WITNESS—CIVIL CASES—PERSON COMPETENT OR NOT TO BE WITNESS.

[6 Mad., Ap., 42

——— Dismissal of—

See ENGLISH COMMITTEE OF HIGH COURT.

[10 B. L. R., 79, 80, 82 note

——— Jurisdiction of—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT, ETC. **I. L. R., 12 Calc., 307**

[23 W. R., 233
2 C. L. R., 334
I. L. R., 7 Mad., 397
I. L. R., 15 Calc., 365
I. L. R., 17 Mad., 309
I. L. R., 22 Calc., 764
I. L. R., 25 Calc., 315

See PUBLIC SERVANT **4 Bom., A. C., 93**

See CASES UNDER RES JUDICATA—COMPETENT COURT—GENERAL CASES.

See CASES UNDER SALE IN EXECUTION OF DECREE — INVALID SALES — WANT OF JURISDICTION.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES.

[4 Mad., 334
5 Mad., 45, 287
I. L. R., 13 Mad., 145

See SUBORDINATE JUDGE, JURISDICTION OF . . . **I. L. R., 7 All., 230**

[I. L. R., 14 All., 348
I. L. R., 17 Calc., 155
I. L. R., 14 Mad., 183

MUNSIF—*continued.*

See TRANSFER OF CIVIL CASE—GENERAL CASES . . . . **13 W. R., 399**
[6 Mad., 18
25 W. R., 219
I. L. R., 8 Mad., 500
I. L. R., 13 All., 324

See CASES UNDER VALUATION OF SUIT—SUITS.

1. ———— **Execution proceedings before Act XVI of 1868**—*Suit pending on abolition of office.*—Where execution had been issued by a Sudder Ameen, and, notwithstanding the proceedings were struck off the file, a consequent attachment was still pending when that office was abolished (by Act XVI of 1868),—*Held* that the Sudder Munsif, who succeeded to the jurisdiction of the Sudder Ameen, had power to take up the case and issue execution proceedings. SREENATH BANERJEE *v.* PURRUM SOOKH CHUNDEE . . **25 W. R., 105**

2. ———— **Suit pending when Act XVI of 1868 came into operation.**—A suit, of which the subject-matter did not exceed in amount or value R1,000, instituted one day after Act XVI of 1868 received the assent of the Governor General in Council, was held to be cognizable by the local Munsif, and not by the Sudder Munsif of the district. BUNGSHEE BUDDEN DEY *v.* TARINEE CHURN DEY **[14 W. R., 375**

3. ———— **Appeal pending when Act XVI of 1868 came into operation**—*Execution of decree—Act XVI of 1868, s. 12.*—At the time of the passing of Act XVI of 1886, which abolished the Courts of Sudder Ameens, an appeal was pending against the decree of the Sudder Ameen which resulted in a modified decree afterwards executed by the Sudder Munsif. *Held* that, although the appeal was pending in a superior Court, yet the proceedings in the suit were pending in the original Court of trial within the meaning of s. 12, and the Sudder Munsif's Court was the only Court which had jurisdiction to execute the decree. GOBIND SINGH *v.* MUNNO RAM DOSS . . . **19 W. R., 414**

4. ———— **Suit against public servant for acts done by him officially.**—A Munsif had not jurisdiction to try an action brought against a public servant for acts done by him in his official capacity. *Semble*—The only judicial officers having jurisdiction to try such cases would be the Judge or Assistant Judge of the district in which the suit arose. VALLABRAHM JAGJIVAN *v.* WOODHOUSE **[1 Bom., 144**

5. ———— **Suit for rent**—*Dekkan Agriculturists' Act, XVII of 1879—Village Munsif.*—A Village Munsif has no jurisdiction to try a suit for rent under the Dekkan Agriculturists' Relief Act, XVII of 1879. VITHAL RAMCHANDRA *v.* GANGARAM VITHOJI . . **I. L. R., 5 Bom., 180**

6. ———— **Order enforcing award as to determination of rent.**—A Munsif has no jurisdiction to entertain an application and pass an order on the enforcement of an arbitration award relating to the determination of rent. When a Munsif acts without jurisdiction, the question may be the subject of an appeal to the Appellate Court of the district. ALTAF HOSSEIN *v.* GRISH CHUNDER ROY . . . . . **15 W. R., 556**

7. ———— **Suit for dissolution of partnership**—*Jurisdiction—Arbitration—Finality of decree in accordance with award.*—A suit for dissolution of a partnership, taking the accounts of the firm, and a declaration of the plaintiff's right to a certain share in the debts due to the firm, was, with reference to the value of the subject-matter of the suit, instituted in the Court of a Munsif. The matters in difference in the suit were eventually referred to arbitration under Ch. XXXVII of the Code of Civil Procedure, and an award was made declaring the plaintiff entitled to recover a certain sum from the defendant. Judgment and a decree were given in accordance with the award. *Held* that, the award notwithstanding, the question whether the suit was cognizable in the Munsif's Court was entertainable. *Bhagirath* v. *Ramghulam, I. L. R., 4 All., 283,* referred to. KALIAN DAS *v.* GANGA SAHAI **[I. L. R., 5 All., 500**

8. ———— **District Munsif**—*Villages under attachment for breach of duty by karnam—Fine.*—A District Munsif's Court has not authority to inflict fines on karnams of villages which are under attachment by that Court for breach of duty on the karnam's part. RAMAKISTNAM *v.* RAGAVACHARI **[I. L. R., 3 Mad., 406**

9. ———— **Power to take voluntary depositions**—*Application to restore appeal.*—A Munsif has no power to take voluntary depositions, *e.g.*, the deposition of a party to show his illness where he wishes for restoration of an appeal in the High Court which has been struck off for his absence from that cause. IN THE MATTER OF THE PETITION OF KULNO KHOND KAR . . . **7 W. R., 47**

10. ———— **Power to transfer suit**—*Mad. Reg. IV of 1816, s. 26—Village Munsif—Jurisdiction.*—In a suit under Regulation IV of 1816, the defendant having objected to the Village Munsif trying the suit on the ground of personal hostility, the Munsif transferred the suit to another Village Munsif. *Held* that the transfer was illegal. *Per* HUTCHINS, J.—*Semble*—In such a case the Village Munsif should report the facts to the District Court, and the District Judge should transfer the case for trial to another Village Munsif. LAKSHMAKKA *v.* BALI . . **I. L. R., 8 Mad., 500**

11. ———— **Attachment and sale of land**—*Mad. Reg. IV of 1816, s. 30—Village Munsif—Decree—Execution.*—Immoveable property can be attached and sold in execution of a decree of a Village Munsif under the provisions of s. 30 of Regulation IV of 1816. RAMASAMI CHETTI *v.* ANGAPPA CHETTI **[I. L. R., 7 Mad., 220**

12. ———— **Power of Village Munsif to administer oath to witness**—*Mad. Reg. IV of 1816—Criminal Procedure Code, s. 195—Sanction for prosecution of witness for perjury by Village Munsif.*—*V* was tried and convicted under s. 193 of the Penal Code for giving false evidence

before the Court of a Village Munsif in a suit in which *V* was defendant. The Village Munsif sanctioned the prosecution of *V* under s. 195 of the Code of Criminal Procedure. On appeal, the Sessions Judge acquitted *V* on the grounds that a Village Munsif had no power to administer an oath to *V* (the case not being one in which either party was willing to allow the cause to be settled by the oath of the other), and because s. 195 of the Code of Criminal Procedure did not apply. *Held* that both objections to the conviction were bad in law. QUEEN-EMPRESS *v.* VENKAYYA . . **I. L. R., 11 Mad., 375**

13. ———— **Village Munsifs**—*Criminal Procedure Code, ss. 1, 480, 482—Contempt of Court.*—Ss. 480-482 of the Code of Criminal Procedure do not apply to Village Munsifs. QUEEN-EMPRESS *v.* VENKATASAMI **I. L. R., 15 Mad., 131**

14. ———————— *Madras Village Courts Act (Mad. Act I of 1889), s. 13 (3)—"Land," Meaning of—Suit for rent of house.*—In Madras Act I of 1889, s. 13, proviso 3, the word "land" includes land covered by a house, and consequently a suit for house-rent, unless due under a written contract signed by the defendant, is not cognizable in a Village Munsif's Court. NARAYANAMMA *v.* KAMAKSHAMMA . . **I. L. R., 20 Mad., 21**

15. ———————— *Village Munsif's Court—Succession Certificate Act—Act VII of 1889.*—The provisions of the Succession Certificate Act apply to suits in a Village Munsif's Court. RASIBI AMMAL *v.* OLAGA PADAYACHI

[I. L. R., 21 Mad., 115

16. ———— **Suit for share of annual allowance**—*Question of title.*—In an action brought to recover a third share of arrears of varshasan or annual allowance paid by the Gaikwar of Baroda to the defendant, and in which the plaintiff alleged that he was entitled to a third share,—*Held* that such an action can be maintained in a Munsif's Court, although it may be necessary to determine the title of the plaintiff to share in such varshasan. RATAN SHANKAR REVASHANKAR *v.* GULABSHANKAR LALSHANKAR . . . **4 Bom., A. C., 173**

17. ———— **Suit for money charged on immoveable property.**—*Held* that a suit for money charged on immoveable property in which the money did not exceed R1,000, although the value of the immoveable property did exceed that sum, was cognizable by a Munsif, provided the property was situate within the local limits of his jurisdiction. JANKI DAS *v.* BADRI NATH

[I. L. R., 2 All., 698

18. ———————— *Suit on mortgage-bond mortgaging sayer compensation—Malikana—Interest in immoveable property—Civil Procedure Code, s. 16 — Beng. Reg. XXVII of 1793.* — *A* mortgaged at Calcutta to *B* his sayer compensation payable at the General Treasury at Calcutta in respect of a certain hât within the Diamond Harbour sub-division. In a suit to enforce the mortgage-bond in the Court of the Munsif of Diamond Harbour,—*Held* that sayer compensation did not partake of the nature of malikana, that it was not immoveable property or any interest in immoveable property within the meaning of s. 16 of the Code of Civil Procedure, and that therefore the Munsif had no jurisdiction to entertain the suit. *Bungsho Dhur Biswas* v. *Mudhoo Mohuldas, 21 W. R., 383,* distinguished. SURENDRO PROSAD BHUTTACHARJI *v.* KEDAR NATH BHATTACHARJI . **I. L. R., 19 Calc., 8**

19. ———— **Suit for redemption of usufructuary mortgage**—*Question of title.*—Where the question in dispute in a suit for redemption of a usufructuary mortgage is not only whether the property has been redeemed out of the usufruct, but whether the property and the right to redeem belongs to the plaintiff, and the value of the property exceeds R1,000, such suit is not cognizable by a Munsif. KALIAN DAS *v.* NAWAL SINGH

[I. L. R., 1 All., 620

20. ———— **Mortgage set up by defendant exceeding limit of jurisdiction**—*Court Fees Act, s. 7, cl. 9 — Ejectment—Madras Civil Courts Act (III of 1873).*—In a suit brought in a District Munsif's Court to recover several parcels of land from the defendant, plaintiff alleged that defendant held a valid mortgage of R206 on two parcels which he offered to redeem. As to the other parcels, he alleged that, if any charges had been created in defendant's favour over them by his predecessor in title, such charges were invalid. The suit, as valued by the plaintiff, was within the pecuniary limit of the Munsif's jurisdiction. Defendant pleaded that he held a mortgage for R3,000 over the land, and therefore the Munsif's Court had no jurisdiction to try the suit. The Munsif tried the question of the validity of the defendant's mortgage, and decreed possession to plaintiff on payment of R906 due on account of mortgages and R1,647-11-9 on account of improvements. On appeal, the District Judge held that the Munsif had no jurisdiction, reversed the decree, and ordered the plaint to be returned to be presented in the proper Court. *Held* that the Munsif's Court had jurisdiction. CHANDU *v.* KOMBI

[I. L. R., 9 Mad., 208

21. ———— **Suit regarding minors**—*Act IX of 1861.*—Suits regarding minors are cognizable by principal Civil Courts of districts. Munsifs have no jurisdiction to try them. KRISTO CHUNDER ACHARJEE *v.* KASHEE THAKOORANEE **23 W. R., 340**

HARASUNDARI BAISTABI *v.* JAYADURGA BAISTABI

[4 B. L. R., Ap., 36 : 13 W. R., 112

22. ———————— *Act IX of 1861—Civil Procedure Code, ss. 11, 15—Parent and child—Suit for recovery of minor by parent.*—Act IX of 1861 does not debar a District Munsif's Court from entertaining a suit by a Hindu father to recover possession of his minor son alleged to be illegally detained by the defendant. KRISHNA *v.* READE

[I. L. R., 9 Mad., 31

23. ———— **Suit for dismissal of a zamindari karnam**—*Mad. Reg. XXV of 1802, s. 11—Mad. Reg. XXIX of 1802, ss. 5, 7, 10 16, 18.*—A suit by a zamindar for the dismissal of a zamindari karnam cannot be entertained by a

District Munsif. The Subordinate Court, and the District Court where there is no subordinate Court, is the tribunal that has taken the place of the Court of Adawlut of 1802. VENKATANARASIMHA *v.* SURYANARAYANA . . . **I. L. R., 12 Mad., 188**

24 ———— **Suit for office of karnam**—*Mad. Reg. XXIX of 1802, s. 7—District Court, Jurisdiction of.*—A suit to establish plaintiff's right to, and to recover possession of, the office of karnam, and for the restoration of the inam lands, and for damages, was brought in the Court of the District Munsif. *Held* that it was properly so brought. JAGANNATHA PILLAI *v.* SUBBARAYA PILLAI . . . **I. L. R., 22 Mad., 340**

25. ———— **Suit to recover share of inheritance**—*Madras Civil Courts Act (III of 1873), s. 12—Subject-matter of suit.*—The plaintiff sued to be declared an heir to a deceased Mahomedan and to recover her share of the inheritance, the share claimed being less than R2,500, while the value of the whole estate exceeded that amount. *Held* that the suit was within the jurisdiction of a District Munsif. KHANSA BIBI *v.* SYED ABBA **[I. L. R., 11 Mad., 140**

26. ———— **Suit for partition and mesne profits**—*Madras Civil Courts Act, 1873—Civil Procedure Code, s. 544.*—*N* sued *S* and others for partition of a share of certain land, and claimed mesne profits from other defendants who were tenants of the land. *S* obtained a decree by consent for her share, and a sum of 99 rupees was decreed to her against the tenants for mesne profits. Against this decree the tenants appealed. The Subordinate Judge, finding that the subject-matter of the suit, the land of which partition was claimed, exceeded the jurisdiction of the Munsif, reversed the decree of the Munsif, and directed the plaint to be returned for presentation in the proper Court. It was contended, on appeal to the High Court, that the Subordinate Judge could not set aside the decree against the tenants for mesne profits. *Held* that, as the Munsif's Court had no jurisdiction to entertain the suit for partition, it could make no decree for mesne profits. NAGAMMA *v.* SUBBA . **I. L. R., 11 Mad., 197**

27. ———— **Suit for share of undivided property**—*Madras Civil Courts Act (Mad. Act III of 1873), s. 12—Suits Valuation Act (VII of 1887), s. 8.*—Persons entitled to a share in certain lands of a village only part of which was held in severally, executed a mortgage of part of the lands due to their share. The mortgage contained a description of the land comprised therein by paimash numbers and admeasurement. The mortgaged property was brought to sale in execution of a mortgage-decree, and was purchased by the present plaintiff. The plaintiff now sued for the appointment and possession of the share to which he was entitled, and stated the value of the suit to be the value of the share claimed by him, *viz.*, R1,870, and not that of the entire property. The defendants were the mortgagors and the other persons interested in the land, their respective shares not having been ascertained and demarcated. *Held* that the suit was within the jurisdiction of a District Munsif. GHAKRAPANI ASARI *v.* NARASINGA RAU **[I. L. R., 19 Mad., 56**

28. ———— **Remedy by ordinary suit barred**—*Madras Forest Act, 1882, s. 10—Procedure.*—Where by an Act of the Legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the ordinary jurisdiction of Civil Courts is ousted, and in the case of injury the party cannot proceed by action. Plaintiff sued in a Munsif's Court to cancel the decision of a forest officer confirmed by a District Judge under s. 1 of the Madras Forest Act, 1882, and to recover certain land, a claim to which had been rejected under the said section. *Held* that the Munsif had no jurisdiction to entertain the suit. RAMACHANDRA *v.* SECRETARY OF STATE FOR INDIA **[I. L. R., 12 Mad., 105**

29. ———— **Mad. Act IV of 1863**—*Small Cause Court Judge—Act XI of 1865.*—A District Munsif is a Small Cause Court Judge under Madras Act IV of 1863 within Act XI of 1865. HARAJAI KUMARA VENKATA PERUMAL RAJ *v.* KANNIAPPAH. ZAMINDAR OF KARVATINUGGAR *v.* KANNIAPPAH **[4 Mad., 149**

30. ———— Madras Act IV of 1863 did not take away the former jurisdiction given to the District Munsif in respect of causes of action arising within the limits of his jurisdiction. MAGAM TIMMAYA *v.* TANGATTUR KANDAPPA **[2 Mad., 82**

31. ———— *Suit for money paid to use of undivided brother.*—Plaintiff sued for R31-2-3½, money paid for the use of defendant, his undivided brother. The defence was that plaintiff held family property, defendant's share of which exceeded in value the debt sued for, as also the amount for which a suit would lie before a Munsif under Act IV of 1863. *Held* that, provided it was proved in evidence that the money was paid out of plaintiff's self-acquired property, the suit was cognizable by the Munsif under Act IV of 1863. *Held* also that the share of the defendant being both in nature and amount beyond the District Munsif's Small Cause jurisdiction, it was not available as a defence, even if it formed a fit object of set-off. KATTAPERUMAL PILLAI *v.* PANCHANADAM PILLAI **[3 Mad., 339**

32. ———— **Suit against Government**—*Small Cause Court Act, XI of 1865, s. 9.*—A Munsif has jurisdiction to try a suit against Government which, but for s. 9, Act XI of 1865, would be cognizable by a Court of Small Causes. KOMALOODEEN SHEIKH *v.* COLLECTOR OF MIDNAPORE **[11 W. R., 233**

33. ———— **Suit cognizable in Small Cause Court**—*Defendant residing out of jurisdiction.*—A Munsif has no jurisdiction as a Small Cause Court to take cognizance of a suit against defendants not resident within his jurisdiction. ANONYMOUS . . . . **3 Mad., Ap., 24**

MUNSIF—*continued.*

Correcting as to this point MAGAM TIMMAYA *v.* TANGATTUR KANDAPPA . . . **2 Mad., 82**

34. ———— **Suit cognizable in Small Cause Court, but erroneously dismissed there.**—A plaint was rejected by a Court of Small Causes on the ground that that Court had no jurisdiction. It was then filed in the Court of a District Munsif, who decreed for the plaintiff. On appeal to the Principal Sudder Ameen, it was objected that the Munsif had no jurisdiction, as the suit was one cognizable by the Small Cause Court. *Held* (the Court having decided that the Small Cause Court had jurisdiction) that the District Munsif's Court had no jurisdiction; that the erroneous dismissal of a former suit for the same cause of action by a Small Cause Court did not warrant the institution of the suit in the District Munsif's Court; and that the Principal Sudder Ameen rightly concluded that the suit ought to be dismissed. PANAPPA MUDALI *v.* SRINIVASA MUDALI . . . . . **3 Mad., 86**

35. ———— **Jurisdiction where Small Cause Court exists**—*Civil Procedure Code, 1859, s. 6.*—Where a Munsif is vested under Act VI of 1871 with powers up to R50 in a place in which there is a Court of Small Causes constituted under Act XI of 1865 with jurisdiction extending up to R500, a suit of the nature cognizable by Small Cause Courts, being in amount or value below R50, ought, by the operation of Act VIII of 1859, s. 6, to be instituted in the Court of the Munsif exercising Small Cause Court powers. DWARKANATH DUTT *v.* VHATHEE HAWALDAR. CHUNDOO VISTEE *v.* SODAGUR VISTEE . . . **22 W. R., 457**

36. ———— **Power of Munsif sitting as Small Cause Court to transfer case to Munsif's Court.**—When a District Munsif has jurisdiction to try a suit as a Small Cause Court Judge, he cannot transfer it to the District Munsif's Court on any ground of expediency. BODI RAMAYYA *v.* PERMA JANAKIRAMUDU . **5 Mad., 172**

37. ———— **Jurisdiction of Small Cause Court to return a plaint for presentation to an ordinary Civil Court when the title of the plaintiff is questioned**—*Provincial Small Cause Courts Act (IX of 1887), s. 23—Suit for damages for use and occupation—Code of Civil Procedure (1882), ss. 646A and 646B.*—In a suit for damages on account of use and occupation of land brought in a Court of Small Causes, exception was taken to the plaintiff's title. The plaint was returned by the Judge, under s. 23 of the Provincial Small Cause Courts Act (IX of 1887), for presentation in the ordinary Civil Court, and it having been presented to the Munsif, he tried the suit, and passed a decree in favour of the plaintiff. On appeal, the Subordinate Judge reversed that decree, holding that the Munsif had no jurisdiction to try the suit. *Held* that, under s. 23 of the Provincial Small Cause Courts Act, the order of the Small Cause Court Judge was regularly made, and the Munsif had therefore jurisdiction to entertain the plaint. *Semble*—Having regard to the provisions of ss. 646A and 646B of the Code of Civil Procedure, it is doubtful whether the Appellate Court would have been right in dismissing the suit for want of jurisdiction, even supposing that the order made under s. 23 of the Provincial Small Cause Courts Act had not expressly conferred jurisdiction upon the Munsif. MAHAMAYA DASYA *v.* NITYA HARI DAS BAIRAGI . **I. L. R., 23 Calc., 425**

38. ———— **Suit which may be filed in more than one of several Courts**—*Civil Procedure Code (1882), s. 17—Provincial Small Cause Courts Act (IX of 1887), s. 16—Choice of forum.*—Where a suit may be filed in more than one of several Courts, it is a general principle of law that the plaintiff may select the forum in which to bring the suit. Where a plaintiff sued in a District Munsif's Court, having jurisdiction at the place where the money due under a contract was to be paid, there being no Small Cause Court having jurisdiction at such place,—*Held* that the jurisdiction of the District Munsif was not ousted by the fact that there was in existence at the date of suit a Small Cause Court having jurisdiction at the place where the contract was made. RATNAGIRI PILLAI *v.* VAVA RAVUTHAN

[I. L. R., 19 Mad., 477

39. ———— **Jurisdiction to execute decree passed by him in Small Cause Court case after his powers as Small Cause Court Judge have been withdrawn**—*Civil Procedure Code, s. 649—Provincial Small Cause Courts Act (IX of 1887), s. 35 (1)—Madras Civil Courts Act (Mad. Act III of 1873), s. 28.*—Under Madras Act III of 1873, s. 28, a Munsif was invested with the powers of a Small Cause Court's Judge for the trial of suits cognizable by such Court up to R200 in value. Subsequent to decree, but prior to execution, his powers as Small Cause Court's Judge were withdrawn by notification in the Gazette. *Held* that application for execution must be made to the Court in which the Small Cause Court's jurisdiction vested at the date of the application. ZAMINDAR OF VALLUR AND GUDUR *v.* ADINARAYUDU

[I. L. R., 19 Mad., 445

40. ———— **Interpleader suit**—*Civil Procedure Code (1882), ss. 470 and 622—Claim for compensation awarded under Land Acquisition Act—Provincial Small Cause Court Act (IX of 1887)—Superintendence of High Court.*—Land having been compulsorily acquired under the Land Acquisition Act for the purpose of the East Coast Railway, the compensation was fixed at R468. A conflict having arisen as to the right to receive the compensation, and the District Court having declined to determine it under the Land Acquisition Act, s. 15, an interpleader suit was instituted on behalf of the Secretary of State in the Court of the District Munsif. The decision of the District Munsif having been confirmed on appeal, the unsuccessful claimant preferred a petition to the High Court under s. 622, Civil Procedure Code. *Held* that the interpleader suit was not within the jurisdiction of a Provincial Small Cause Court, and was rightly brought on the ordinary side of the District Munsif's Court, and consequently where the petitioner's remedy was by way of second

MUNSIF—*continued.*

appeal, the petition for revision was not admissible. Tirupati Raju *v.* Vissam Raju

[I. L. R., 20 Mad., 155

41. ———— **Suit brought for amount in excess of Court's jurisdiction**—*Suit to declare land liable to be sold in execution of decree—Civil Procedure Code, s. 373—Withdrawal of part of claim.*—In a suit brought in a District Munsif's Court to declare certain land liable to be sold in execution of a decree for more than R2,500, the defendants pleaded that the Court had no jurisdiction. The Munsif allowed the plaintiff to amend the plaint by stating that he abandoned his claim to execute the decree against the land for more than R2,500. On appeal the District Judge held that the plaint could not be amended after the first hearing. *Held* on appeal to the High Court that the claim was not one which could be amended so as to bring the suit within the pecuniary jurisdiction of the Munsif. Annaji Rau *v.* Rama Kurup

[I. L. R., 10 Mad., 152

42. ———— **Decree passed in a restored suit pending appeal against order of restoration**—*Civil Procedure Code, ss. 98, 99.*—A suit was filed in a Munsif's Court, but neither party appeared for the hearing, and the suit was dismissed. The Munsif subsequently on review made an order restoring the suit and eventually decreed for the plaintiff. The defendant in the meanwhile appealed to the District Court against the order of restoration, and after the date of the decree the District Court made an order allowing the defendant's appeal. The plaintiff appealed to the High Court, and the order of the District Court was reversed, and the order of restoration upheld. *Held* that the Munsif's decree was not passed without jurisdiction. Alwar *v.* Seshammal . . . I. L. R., 10 Mad., 290

43. ———— **District Munsifs**—*Suit for declaration of title to paid offices—Withdrawal of claim to some of the offices—Office still claimed involving the right to the others.*—In a suit to declare title to four paid offices in a temple, the plaintiffs asked that the issues with regard to three of them should not be tried, but on cross-examination asserted right to them. *Held* that the plaintiffs were not shown to have relinquished their claim on the three offices for the purposes of the suit. On findings that the fourth office carried with it the right to the other three, and that the united value of the four offices exceeded the jurisdiction of the District Munsif,—*Held* that the District Munsif had no jurisdiction to entertain the suit, and that the plaint should be returned for presentation in the proper Court. Sundra *v.* Subba . . I. L. R., 10 Mad., 371

44. ———— **Suit for declaration that property is liable to sale in execution of decree** — *Valuation of suit.* — In a suit to have it declared that certain property valued at R400 was liable to sale in execution of the plaintiff's decree for R1,500,—*Held* that in this case the value of the property determined the jurisdiction, that it was immaterial that the amount of the decree was higher than the limit of the Munsif's jurisdiction, and that

MUNSIF—*continued.*

the case was therefore triable by the Munsif. *Gulzari Lal* v. *Jadaun Rai, I. L. R., 2 All., 799,* distinguished. Durga Prasad *v.* Rachla Kuar

[I. L. R., 9 All., 140

45. ———— **Attached property, Suit to establish right to**—*Bengal Civil Courts Act (VI of 1871), s. 20—Value of the subject-matter in dispute—Civil Procedure Code (Act XIV of 1882), s. 283—Valuation of suit.*—A Munsif has jurisdiction to try a suit brought under s. 283 of the Civil Procedure Code to test the question whether a property which has been attached in execution is liable to pay the claim of the creditor, the value of the property being over one thousand rupees, but the amount of the debt being less than that sum. In such suits the amount which is to settle the jurisdiction of the Court is the amount which is in dispute, and which the creditor would recover if successful, *viz.*, the amount due to him and not the value of the property attached, unless the two amounts happen to be identical. *Janki Dass* v. *Badri Nath, I. L. R., 2 All., 698; Gulzari Lal* v. *Jadaun Rai, I. L. R., 2 All., 799; Krishnama Chariar* v. *Srinivasa Ayyangar, I. L. R., 4 Mad., 339;* and *Dayachand Nemchand* v. *Hemchand Dharamchand, I. L. R., 4 Bom., 515,* followed. Modhusudun Koer *v.* Rakhal Chunder Roy

[I. L. R., 15 Calc., 104

46. ———— **Application to be declared insolvent made to Court to which decree was transferred for execution**—*Civil Procedure Code, ss. 228, 239, 344, 360.*—Where a decree had been transferred for execution from the Court of the District Munsif of E to that of the District Munsif of B, and an application was made by the judgment-debtor under s. 344 of the Code of Civil Procedure to be declared an insolvent and entertained by the latter Court,—*Held* that the District Munsif of B had no jurisdiction to entertain the application. Venkatasami *v.* Narayanaratnam

[I. L. R., 11 Mad., 301

47. ———— **Decree containing order for ascertainment of mesne profits from date of suit to date of recovery of possession**—*Effect on jurisdiction of such mesne profits added to amount of decree exceeding jurisdiction of the Munsif—Valuation of suit.*—A suit, valued at R950, was brought in the Munsif's Court to recover possession of certain lands on the ground of illegal dispossession. No mesne profits up to the date of suit were claimed, but the plaint prayed that such mesne profits from date of suit to recovery of possession, as might be ascertained in execution of decree, should be awarded to the plaintiff. The Munsif gave a decree in accordance with the prayer of the plaint. The plaintiff then asked that the mesne profits might be assessed, and in his petition he roughly estimated them at R1,595, and thereupon it was held both by the Munsif, and on appeal by the District Judge, that the Munsif had no jurisdiction, as he could not give a decree for more than R1,000. *Held* on appeal to the High Court that the Munsif had jurisdiction to ascertain the mesne profits, and to give effect to

MUNSIF—*concluded.*

the order made in his decree in the suit, notwithstanding that the amount of such mesne profits, when added to the value of the suit, might come to a sum in excess of the pecuniary jurisdiction of his Court. RAMESWAR MAHTON *v.* DILU MAHTON
[I. L. R., 21 Calc., 550

48. ———— **Power of District Munsif on revision**—*Madras Village Courts' Act (Mad. Act I of 1889), s. 73.*—A District Munsif has no jurisdiction to reverse the decree of a Village Munsif on a question of evidence; he can only revise the proceedings of village Courts on the grounds mentioned in s. 73 of the Village Courts Act. GIDDAYYA *v.* JAGANNATHA RAU . **I. L. R., 21 Mad., 363**

MURDER.

See CASES UNDER ABETMENT—MURDER.

See ATTEMPT TO COMMIT OFFENCE.
[4 Bom., Cr., 17
8 Bom., Cr., 164
I. L. R., 15 Bom., 194
I. L. R., 14 All., 38
I. L. R., 20 All., 143

See CRIMINAL PROCEDURE CODES, s. 376 (1872, s. 288 . I. L. R., 1 Bom., 639

See CASES UDER CULPABLE HOMICIDE.

See DACOITY . I. L. R., 16 All., 437
[I. L. R., 17 All., 86

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE.
[I. L. R., 13 Mad., 426

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—MURDER.
[I. L. R., 2 All., 218
I. L. R., 10 Bom., 258, 263

See CASES UNDER SENTENCE—CAPITAL SENTENCE.

See CASES UNDER UNLAWFUL ASSEMBLY.

See VERDICT OF JURY—GENERAL CASES.
[1 W. R., Cr., 50
21 W. R., Cr., 1
I. L. R., 20 Bom., 215

———— **Abetment of—**

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT.
[I. L. R., 19 Bom., 105

1. ———— **Motive, Proof of.**—The evidence as to the motives with which a prisoner commits an offence should be of the strictest kind. QUEEN *v.* ZAHIR . . . . **10 W. R., Cr., 11**

2. ———— **Motive or ill-will, Proof of.**—Proof of motive or previous ill-will is not necessary to sustain a conviction for murder in a case where a person is coolly and barbarously put to death. QUEEN *v.* JAICHAND MUNDLE . **7 W. R., Cr., 60**

MURDER—*continued.*

3. ———— **Absence of premeditation—** *Culpable homicide.*—The absence of premeditation will not reduce a crime from murder to culpable homicide not amounting to murder. QUEEN *v.* MAHOMED ELIM . . . **3 W. R., Cr., 40**

4. ———— **Suffering death by consent—** *Penal Code, s. 300, excep. 5.*—In a case of a wife consenting, while in violent grief for the loss of her child, to suffer death at the hands of her husband,—*Held* that evidence of consent which would be sufficient in a civil transaction must be equally sufficient in exculpation of a prisoner's guilt. QUEEN *v.* ANUNTO RURNAGAT . . **6 W. R., Cr., 57**

5. ———— **Grievous hurt, Murder arising from**—*Inseparable acts.*—In order to convict a person of murder arising out of grievous hurt, it is indispensable that the death should be clearly and directly connected with the act of violence. QUEEN *v.* MAHOMED HOSSEIN
[W. R., 1864, Cr., 31

6. ———— **Act by which death is caused occurring in dacoity**—*Penal Code, s. 300.*—If the act by which death is caused does not in itself constitute the crime of murder, it does not constitute murder because it is coupled with dacoity. QUEEN *v.* RAM COOMAR CHUNG . **1 Ind. Jur., O. S., 108**

7. ———— **Murder in committing dacoity.**—When murder is committed in the commission of a dacoity, every one of the persons concerned in the dacoity is liable to be punished with death. QUEEN *v.* RUCHEE AHEN **2 W. R., Cr., 39**

8. ———— **Culpable homicide**—*Distinction between it and murder.*—Culpable homicide and murder distinguished. QUEEN *v.* GORACHAND GOPE
[B. L. R., Sup. Vol., 443: 5 W. R., Cr., 45
1 Ind. Jur., N. S., 177

9. ———— **Grave and sudden provocation**—*Actual intention to kill.*—Under the Penal Code, no constructive but an actual intention to cause death is required to constitute murder. Thus, when a boy of fifteen years old, in the heat of discovering the deceased in the act of adultery with the wife of a near relative, and, without the use of any weapon, joined that relative in committing an assault upon the deceased which caused his death, the offence committed was held to have been culpable homicide not amounting to murder. QUEEN *v.* GOREEBOOLLAH
[5 W. R., Cr., 42

10. ———— *Grievous hurt.*—A man who, by a single blow with a deadly weapon, killed another man who, at dead of night, was entering his room for the purpose of having criminal intercourse with his wife, was held guilty not of murder, but of causing grievous hurt on a grave and sudden provocation. QUEEN *v.* CHULLUNDEE PORAMANICK
[3 W. R., Cr., 55

11. ———— *Culpable homicide.*—Culpable homicide not amounting to murder is when a man kills another being deprived of self-control by reason of grave and sudden provocation. But when the act is done after the first excitement had

MURDER—*continued.*

passed away, and there was time to cool, it is murder. QUEEN *v.* YASIN SHEIKH

[4 B. L. R., A. Cr., 6 : 12 W. R., Cr., 68

12. ———— *Culpable homicide not amounting to murder—Penal Code, ss. 300, excep. 1, 302, 304.*—Upon the trial of a person charged with the murder of his wife, it was proved that the accused had entertained well-founded suspicions that his wife had formed a criminal intimacy with another person; that one night the deceased, thinking that her husband was asleep, stealthily left his side; that the accused took up an axe and followed her, found her in conversation with her paramour in a public place, and immediately killed her. *Held* that the act of the accused constituted the crime of murder, the facts not showing "grave and sudden provocation" within the meaning of s. 300, excep. 1, of the Penal Code, so as to reduce the offence to culpable homicide not amounting to murder. *Queen-Empress* v. *Damarua, Weekly Notes, All., 1885, p. 197,* distinguished by STRAIGHT, *Offg. C. J.* QUEEN-EMPRESS *v.* MOHAN

[I. L. R., 8 All., 622

13. ———— *Culpable homicide—Penal Code (Act XLV of 1860), ss. 299, 300.*—In deciding the question whether culpable homicide amounts to murder, it would be erroneous to convict the prisoner of murder simply because there is nothing to bring an accused person under any of the exceptions, reducing the offence to one not amounting to murder, and it is the duty of the Court to consider, in the first place, whether the element or elements which constitute the offence of murder, as defined in s. 300, exist. PASPUT GOPE *v.* RAM BHAJAN OJHA

[1 C. W. N., 545

14. ———— *Culpable homicide not amounting to murder—Penal Code, ss. 300, excep. 1, 302, 304.*—An accused person was convicted of culpable homicide not amounting to murder in respect of the widow of his cousin, who lived with him. The evidence showed that the accused was seen to follow the deceased for a considerable distance with a gandasa or chopper, under circumstances which indicated a belief on his part that she was going to keep an assignation, and with the purpose of detecting her in doing so. He found her in the act of connection with her paramour, and killed her with the chopper. *Held* that the conviction must be altered to one of murder, as the accused went deliberately in search of the provocation sought to be made the mitigation of his offence, and under the circumstances disclosed it could not be said that he was deprived of self-control by grave and sudden provocation. *Queen-Empress* v. *Damarua, Weekly Notes, All., 1885, p. 197,* and *Queen-Empress* v. *Mohan, I. L. R., 8 All., 622,* referred to. QUEEN-EMPRESS *v.* LOCHAN . . . . I. L. R., 8 All., 635

15. ———— **Absence of intention to kill**—*Indication of intention by acts.*—It is not murder if a person kills another without intending to take his life, and if the acts done were not such as conclusively indicated an intention to cause such injury as was likely to cause death. QUEEN *v.* SOLIM

[5 W. R., Cr., 41

MURDER—*continued.*

16. ———— **Intention to kill another person.**—Where an accused killed *A*, whom he had no intention of killing, by a blow with a highly lethal weapon intended to kill *B*, he was held guilty of the murder of *A*. QUEEN *v.* PHOMONEE AHUM

[8 W. R., Cr., 78

17. ———— **Absence of proof of common intention to cause death**—*Penal Code (Act XLV of 1860), s. 302.*—Where three prisoners assaulted the deceased and gave him a beating, in the course of which one of the prisoners struck the deceased a blow on the head, which resulted in death,—*Held* that, in the absence of proof that the prisoners had the common intention to inflict injury likely to cause death, they could not be convicted of murder. QUEEN-EMPRESS *v.* DUMA BAIDYA

[I. L. R., 19 Mad., 483

18. ———— **Exposure of child**—*Penal Code, s. 317—Remote cause of death.*—*Held* that where, from the circumstances, it appeared that a child had been exposed by the prisoner died, but that death was not caused except very remotely by the exposure, the prisoner, though guilty under s. 317 of the Penal Code, could not be convicted of murder. That section contemplates cases in which death is caused from cold or some other result of exposure. QUEEN *v.* KHODABUX FAKEER 10 W. R., Cr., 52

19. ———— **Neglect of child**—*Culpable homicide—Death from starvation.*—Where it appeared that the prisoner, a Rajput, had allowed his female child, after the mother's death, to gradually languish away and die from want of proper sustenance, and had persistently ignored the wants of the child, although repeatedly warned of its state and the consequences of his neglect of it, and there was nothing to show that the prisoner was not in a position to support the child,—*Held* that the offence which the prisoner committed was murder, and not simply culpable homicide not amounting to murder. QUEEN *v.* GANGA SINGH . . 5 N. W., 44

20. ———— **Exercise of right of private defence on thief.**—The prisoners detected a weak half-starved old woman stealing their rice, and so used their right of private defence that she died from the injuries they inflicted. The prisoners were held guilty by the majority of the Court of murder (*dissentiente,* CAMPBELL, *J.*). QUEEN *v.* GOKOOL BOWREE . . . . . . 5 W. R., Cr., 33

21. ———— **Right of private defence**—*House-breaking by night.*—Prisoner found deceased in act of house-breaking by night in his house, and killed him with a kodali which he had called for, as he admitted, for that purpose. He was convicted of murder, and sentenced to death by the Sessions Judge. The sentence being referred to the High Court for confirmation, it was held that the prisoner had been legally convicted of murder, that he had intentionally done to the deceased more harm than was necessary for any purpose of defence, and that not whilst deprived of power of self-control. But the sentence was mitigated to transportation for life, than which, it was held, no less sentence could be legally

MURDER—*continued.*

passed. The Judge, however, in a letter to Government, suggested the mitigation of the punishment, which was accordingly reduced to imprisonment for six months. REG. *v.* DURWAN GEER

[1 Ind. Jur., N. S., 253 : 5 W. R., Cr., 73

See QUEEN *v.* FUKEERA CHAMAR

[6 W. R., Cr., 50

22. ——— Death from blow in a fight.—A conviction for murder was held to be wrong in a case where a prisoner, taking advantage of an incident which occurred in what till then had been a fair fight, struck his opponent and knocked him over, thereby causing his death. QUEEN *v.* KEWAL DOSAD

[W. R., 1864, Cr., 36

23. ——— Fatal blow after quarrel—*Penal Code, s. 300, cls. (2) and (3).*—Two persons met each other in a drunken state and commenced a quarrel, during which they became grossly abusive to each other. This lasted for about half an hour, when one of them ran to his own house, distant 30 yards from the spot, and came back with a heavy pestle, with which he struck the other a violent blow on the left temple as the latter was rising, or had just risen from the ground, causing instant death. *Held* that the act was done with the intention of causing such bodily injury as was likely to cause death, and also with the knowledge that such act was likely to cause death, and that the offence committed was murder within the provisions of cls. (2) and (3), s. 300, Penal Code. QUEEN *v.* DASSER BHOOYAN

[8 W. R., Cr., 71

24. ——— Blow with knowledge of likelihood to cause death—*Absence of intention to kill.*—When a Judge acquits a prisoner of intention to kill, but admits that the prisoner struck the deceased with a highly lethal weapon, with the knowledge that the act was likely to cause death, the conviction should be of murder, and not of culpable homicide not amounting to murder. QUEEN *v.* SOBEEL MAHEE . . . **5 W. R., Cr., 32**

25. ——— Beating with knowledge of likelihood to cause death.—*Held* by the majority that, when four men beat another at intervals so severely as to cause death, they must be presumed to have known that by such acts they were likely to cause death, and that, when such acts were done without any grave or sudden provocation, or sudden fight or quarrel, the offence was murder and was not reduced to culpable homicide not amounting to murder by the absence of intention to cause death. QUEEN *v.* POOSHOO . . . **4 W. R., Cr., 33**

26. ——— Blow struck by order of another person—*Death by beating.*—Where a blow is struck by *A* in the presence of and by the order of *B*, both are principals in the transaction; and where two persons join in beating a man and he dies, it is not necessary to ascertain exactly what the effect of each blow was. QUEEN *v.* MAHOMED ASGAR

[23 W. R., Cr., 11

QUEEN *v.* GOUR CHUNDER DAS

[24 W. R., Cr., 5

MURDER—*continued.*

27. ——— Presumption from consequences of act likely to cause death—*Culpable homicide.*—Appellant, having armed himself with a sword, struck in the dark at certain persons in a house, causing wounds which resulted in the death of one person. *Held per* JACKSON, *J.*—That such conduct raises an inference that he intended to cause death. *Per* AINSLIE, *J.*—That though he probably did not see how his blows were directed, as he struck them with a deadly weapon regardless of consequences, he must have known that his act was imminently dangerous, and that it must, in all probability, cause such bodily injury as was likely to cause death. *Per* CUNNINGHAM, *J.*—That the offence was culpable homicide, and not murder, being an unpremeditated act of reckless violence rather than an act done with the knowledge or intention which is essential to constitute murder. BEJADHUR RAI *v.* EMPRESS . . . . **2 C. L. R., 211**

28. ——— Conspiracy to kill—*Penal Code, s. 302.*—*L*, *C*, *K*, and *D* conspired to kill *S*. In pursuance of such conspiracy, *L* first and then *C* struck *S* on the head with a lathi and *S* fell to the ground. While *S* was lying on the ground, *K* and *D* struck him on the head with their lathis. *Held* (STUART, *C.J.*, dissenting) that, inasmuch as *K* and *D* did not commence the attack on *S*, and it was doubtful whether *S* was not dead when they struck him, transportation for life was an adequate punishment for their offence. EMPRESS *v.* CHATTAR SINGH

[I. L. R., 2 All., 33

29. ——— Knowledge of likelihood to cause death—*Penal Code, s. 300, cl. 4, and s. 314.*—To bring a case under cl. 4, s. 300 of the Penal Code, it must be proved that the accused in committing the act charged knew that it must, in all probability, be likely to cause death, or that it would bring about such bodily injury as would be likely to cause death. Where a poisonous drug was administered to a woman to procure miscarriage, and death resulted, and it was not proved that the accused knew that the drug would be likely to cause death, etc., they were acquitted by the High Court of murder and convicted of an offence under s. 314 of the Penal Code. QUEEN *v.* KALA CHAND GOPE . **10 W. R., Cr., 59**

30. ——— Death caused by snake-charmers—*Culpable homicide.*—Certain snake-charmers, by professing themselves able to cure snake-bites, induced several persons to let themselves be bitten by a poisonous snake. From the effect of the bite, three of these persons died. *Held* that the offence was murder under cls. 2 and 3 of s. 300 of the Penal Code, unless it could be brought within the 5th exception to that section. If the prisoners, really believing themselves to have the powers they professed to have, induced the deceased to consent to take the risk of death, the offence would be culpable homicide not amounting to murder. QUEEN *v.* PUNAI FATTAMA

[3 B. L. R., A. Cr., 25 : 12 W. R., Cr., 7

31. ——— *Penal Code, ss. 304, 304A*—*Culpable homicide*—*Causing death by negligence.*—A snake-charmer exhibited in public

MURDER—*concluded.*

a venomous snake, whose fangs he knew had not been extracted; and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators; the spectator tried to push off the snake, was bitten, and died in consequence. *Held* the snake-charmer was guilty, under s. 304 of the Penal Code, of culpable homicide not amounting to murder, and not merely of causing death by negligence, an offence punishable under s. 304A. EMPRESS *v.* GONESH DOOLEY I. L. R., 5 Calc., 351; 4 C. L. R., 580

32. ——— **Running amuck**—*Punishment.*—Where a quiet, peaceable man, suddenly, and without the least motive or provocation, runs amuck against all around him, his case is different from an ordinary case of deliberate murder deserving of the extreme penalty. QUEEN *v.* BISHONATH BUNNERA [8 W. R., Cr., 53

33. ——— **Presumption of death.**—In a case where a man was struck on the head in a boat with a heavy paddle and knocked overboard in a large river in the height of the rains, and had never been heard of since, it was held impossible to suppose that the man was still alive, and the conviction of murder was upheld. QUEEN *v.* POORUSOOLAH SIKHDAR . . . . . . 7 W. R., Cr., 14

34. ——— **Sacrifice of son by father.**—Curious case of murder where a father sacrificed his son, because wealth had not accompanied its birth, and afterwards cut his own throat as a protest against his deity's injustice. QUEEN *v.* BISHENDHAREE KAHAR [7 W. R., Cr., 100

35. ——— **Charge of murder where no body is found**—*Penal Code, s. 302—"Corpus delicti."*—The mere fact that the body of the murdered person has not been found is not a ground for refusing to convict the accused person of the murder. EMPRESS *v.* BHAGIRATH [I. L. R., 3 All., 383

36. ——— Although, under some circumstances, a charge of murder may be sustained, when the body of the person said to have been murdered is not forthcoming, still, when that is the case, the strongest possible evidence as to the fact of the murder should be insisted on before an accused is convicted. ABU SHIKDAR *v.* QUEEN-EMPRESS [I. L. R., 11 Calc., 635

37. ——— **Conviction of murder where body is not found**—*Sentence of death.*—A Judge was held to have exercised a proper discretion in not passing sentence of death in a case in which the dead body was not found. QUEEN *v.* BUDDREODDEEN . . . . 11 W. R., Cr., 20

MUSCAT ORDER IN COUNCIL.

——— **November 4th, 1867.**

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL. [I. L. R., 24 Bom., 471

MUTARAFA.

See TAX . . I. L. R., 9 Mad., 14

MUTINY ACT.

——— **s. 99.**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY . I. L. R., 1 All., 730

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN. [2 B. L. R., S. N., 3, 7; 6 Mad., 83

——— **s. 101.**

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS. [I. L. R., 5 Calc., 124

——— **s. 103.**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN. [2 Mad., 389

MUTUAL ACCOUNTS OR DEALINGS.

See CASES UNDER LIMITATION ACT, 1877, ART. 85.

MUTUAL ASSURANCE SOCIETY.

See COMPANY—FORMATION AND REGISTRATION . I. L. R., 17 Calc., 786

MUTUAL BENEFIT SOCIETY.

1. ——— **Power of majority to alter rules**—*Payment of pensions in England—Adjustment of payments in accordance with rate of exchange—Interest of subscriber to society.*—The U. S. F. P. Fund, a Society established, as stated in rule 2 of the Rules of the Society, "to provide for the maintenance of the widows and children of those who shall subscribe to it upon the terms and conditions specified below, or upon such others as may be determined upon by the subscribers or by a majority of them," had, prior to 1850, passed a rule (33) that "widows, being incumbents on the Fund, shall be paid their pensions at any place they may desire, subject to the usual charges of remittance; the pensions of children, being incumbents on the Fund, shall also be so paid and on the same condition." The subscriptions were then, and continued to be, paid in rupees, and the pensions were calculated in rupees according to certain tables. On being admitted, a subscriber had to "promise and engage to submit to, and abide by, the rules and bye-laws of the Institution" (rule 22), and by rule 27 had to "pay a fee equal to ten per cent. on the amount of monthly pension insured." Rule 60 gave power to alter any existing rule by the duly recorded votes of a majority of the subscribers. In 1850 exchange between India and England being then about par, rule 33 was repealed, and a new rule (41) was substituted for it, which provided that "incumbents on the Fund shall be paid their annuities in India at par, or in Europe at the fixed rate of two shillings in the rupee." On the 1st July 1878, exchange being adverse on remittances from India to England, a rule was passed, which provided that "incumbents on the Fund shall be paid their annuities in India in full, and those residing in Europe at the rate of exchange

MUTUAL BENEFIT SOCIETY—*continued.*

fixed for the official year by the Secretary of State; annuities already due or hereafter becoming due on risks accepted before the 1st July 1876 shall be payable to incumbents residing in Europe at the fixed rate of two shillings to the rupee." Exchange continuing to decline, on the 22nd May 1880, the Society, by the votes of 553 against 505 of the subscribers, passed the following rule: "Annuities already due, or becoming due before the 1st May 1880, on risks accepted before the 1st July 1876, shall be payable to incumbents residing in Europe at the fixed rate of two shillings to the rupee: but all other annuities due, or becoming due, shall be paid, if to incumbents in India, in full, and if to incumbents residing in Europe in London, at the market rate of exchange." The plaintiffs were the widow and children of *F*, a member of the Society, who was admitted as a subscriber for the benefit of his widow in November 1871 for the benefit of his son in September 1873, and for the benefit of his daughter in November 1874. He commenced to pay an increased subscription for the benefit of his son in September 1878. He was not one of the majority who voted in favour of the rule of the 22nd May 1880, though he attended the meeting of subscribers. He died on the 25th June 1880, having up to that time duly paid his subscription to the Fund. In a suit in which the plaintiffs, who were residing in England, claimed to be paid their pensions at the rate of two shillings in the rupee,—*Held* that *F* had no vested interest at the time of the passing of the rule of the 22nd May 1880; that the plaintiffs were, with respect to their pensions, bound by the terms of that rule, which a majority of the subscribers had full powers to pass so as to affect the nominees of all existing subscribers, and therefore the suit should be dismissed. Rule 41 gave an undue advantage to one class of subscribers, which was *extra vires* and open to correction under rule 60 by a majority of the subscribers. The Society being one for the equal benefit of all subscribers, even if rule 60 did not give power to adjust payments in accordance with the rate of exchange, such a power might be implied for the purpose of continuing the business of the Association. FALLE *v.* MACEWEN

[I. L. R., 7 Calc., 1: 8 C. L. R., 577

2. ——— **Madras Civil Service Annuity Fund**—*Refund of excess subscriptions, Right to.*—The Madras Civil Service Annuity Fund was established in 1825 for the purpose of providing annuities to the Civil Servants of the East India Company in the Madras Presidency on retiring from service. The annuities were to be provided for by subscriptions of the Civil Servants to that Fund to the amount of one half and by contributions by the East India Company to the extent of the other half. These contributions were to be received by trustees and applied by them to make good the deficiency which was to be supplied by the Company. It appeared that in some instances the trustees of the Fund, where an excess of subscriptions had been paid by a subscriber entitled to an annuity beyond the half value of the annuity, had returned the excess. *R*, a subscriber from the commencement, had contributed beyond the half value of his annuity. *Held* that, although the regulations of the Fund did not justify a refund to a subscriber of the amount of his subscriptions in excess of the prescribed amount, yet that the practice which had prevailed of refunding the contributions in excess, and the acquiescence of the East India Company in such practice, precluded the Company from disputing the right of the subscriber to repayment of the surplus of his subscriptions in excess of the half value of the annuity payable out of the Fund. *Held* also that, *R* having become entitled to his annuity in 1852, his right to such repayment could not be affected by rules passed in 1853 prohibiting such refund, although *R* remained a subscriber in 1853. EAST INDIA COMPANY *v.* ROBERTSON

[4 W. R., P. C., 10: 7 Moore's I. A., 361

3. ——— **Rules of Benefit Society**—*Power to alter rules.*—The Bombay Uncovenanted Service Family Pension Fund was a voluntary society established in 1850. Its object was to provide pensions for the widows of its members. One of its rules provided that the rules of the society were subject to such additions and alterations as might from time to time be sanctioned by the general body of subscribers, and by the form of application for admission as a member each applicant promised and engaged to abide by the rules of the society. The plaintiff became a member in 1875. At that time one of the rules (which had been passed in 1871) provided that the pensions of widows resident in Europe should be payable to them at the rate of 2*s.* per rupee. On the 20th July 1895 the society passed a new rule which provided that all pensions due or becoming due after the 31st July 1895 should be paid to incumbents residing in Europe or the colonies at the market rate of exchange on the day of remittance. The plaintiff contended that the society was not competent to alter the rule passed in 1871 by which he had been induced to join the society, and he prayed for a declaration that his wife, if and when she became a widow, would be entitled to have her pension paid at par. *Held*, dismissing the suit, that the society was competent to alter its rules, and that the plaintiff was bound by such altered rules. The contract with the plaintiff was that his widow, if he left one, should receive such pension as the rules prescribed, and that the rules were liable to alteration by a majority at a general meeting to which he would be subject so long as he remained a member. STEVENS *v.* BEDFORD

[I. L. R., 22 Bom., 451

MUTUAL CREDIT.

See INSOLVENT ACT, s. 39.

[I. L. R., 19 Calc., 146

MUTWALLI.

See CASES UNDER MAHOMEDAN LAW—ENDOWMENT.

——— **Suit to remove**—

See ACT XX OF 1863, s. 18.

[15 B. L. R., 167

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